EXPLANATORY MEMORANDUM TO

THE BUILDING SAFETY (REGULATOR'S CHARGES) REGULATIONS 2023

2023 No. 965

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty

2. Purpose of the instrument

2.1 This instrument uses the powers in section 28 of the Building Safety Act 2022 (BSA22) to make regulations authorising the Building Safety Regulator (established in the HSE by section 2 of BSA22) (the regulator) to recover its costs for or in connection with the performance of a relevant function under BSA22. The instrument also uses the powers in section 105B of the Building Act 1984 (BA84) to make regulations authorising the regulator to recover the costs for or in connection with the performance of its functions under, or under an instrument made under, BA84.

2.2 The regulations made under both these powers may also provide for the amount of any charge under the regulations to be determined by the regulator in accordance with a charging scheme made and published by it.

2.3 This instrument is one of a package of statutory instruments laid by the Department for Levelling Up, Housing and Communities, which will facilitate the implementation of changes to the current building control system and deliver improvements across the entire built environment.

2.4 Following the Grenfell Tower tragedy, the government appointed Dame Judith Hackitt to lead an independent review of building regulations and fire safety. In her report, 'Building a Safer Future', Dame Judith outlined a new approach to managing fire and structural safety risks in high-rise multi-occupied residential buildings.

2.5 The new regulatory regime introduces a new building control process for higher-risk building work, to be overseen by the regulator. The new regime also makes changes to non-higher risk building work, to raise standards and achieve improvements across the built environment. Through this instrument and others, legal responsibilities will be placed on those who commission building work, participate in the design and construction process and carry out the building control function, to ensure standards are met and structural and fire safety are managed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England except in relation to regulation 3(2)(s) which applies in both England and Wales.

5. European Convention on Human Rights

5.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 BSA22 contains provisions intended to secure the safety of people in or about buildings and to improve the standard of buildings. The Health and Safety Executive is established as the regulator under the BSA22. BSA22 also amends BA84 to provide for the regulator to be the building control authority in relation to higher-risk buildings in England. Higher-risk buildings are defined in BSA22 and BA84 and by regulations made under those Acts.

6.2 The BSA22 and BA84 set out new functions for the regulator. The BA84 sets out functions for the regulator mainly in relation to building control in relation to higher-risk buildings. Part 4 of the BSA22 sets out functions for the regulator in relation to occupied higher-risk buildings.

6.3 To enable the regulator to recover charges for its costs for or in connection with the performance of a chargeable function under BSA22 and BA84 this instrument:

- Sets out those functions under BSA22 and BA84 for and in connection with which the regulator is authorised to recover its costs (the instrument refers to these as chargeable functions).
- Sets out who is legally responsible for paying the associated costs of each chargeable function (including costs to the regulator of assistance from relevant authorities and third parties).
- Provides that the amount of any charge is to be determined by the regulator in accordance with a charging scheme made and published by it.

7. Policy background

What is being done and why?

7.1 The Government expects the regulator to recover the costs of carrying out its functions from the sector in line with government policy and the principles set out in Managing Public Money. This instrument gives the regulator the power to recover costs in relation its functions. The legislative context for this instrument is set out in paragraphs 6.1 and 6.2.

7.2 These regulations will enable the regulator to develop a charging scheme setting out how charges are to be determined and which can include the administrative and operational detail on the delivery of the chargeable functions set out in this instrument.

7.3 This instrument also provides for the amount of particular charges to be determined in accordance with a charging scheme published by the regulator.

7.4 The policy objective behind allowing the regulator to determine charges in a charging scheme is to provide greater flexibility to update charges to ensure they are an accurate reflection of expected costs (whether that means decreasing or increasing the rates).

7.5 Other benefits from using a charging scheme include:

- Transparency - the instrument sets out the principles which the regulator must use in relation to the charges in its charging scheme.
- Clarity – the instrument provides clarity to those being charged and sets out how charges will be requested or paid, and how decisions can be appealed.

What did any law do before the changes to be made by this instrument?

7.6 This instrument does not of itself make any changes. The functions of the regulator to which the instrument relates are new functions. Before the BSA22 local authorities undertook the building control functions. The functions under Part 4 of BSA22 are new functions created in response to Dame Judith Hackitt's recommendations in her 'Building a Safer Future' report. Since the regulator replaces the local authorities as the building control authority for higher risk buildings in England, with the amendment to BA84, this legislation gives the regulator powers to fix and recover charges for the performance of building functions under BA84 in a similar manner to Local Authorities under the Building (Local Authority Charges) Regulations 2010.

What will it now do?

7.7 This instrument will enable the regulator to set out in a charging scheme the charges for its chargeable functions under BSA22 and BA84. The Government expects it will recover its costs in line with government policy and the principles set out in Managing Public Money.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument is new legislation pursuant to the BSA22 and BSA84 (as amended) and amends the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 so all the regulator's charges are set out in one instrument.

10. Consultation Outcome

10.1 In accordance with section 120B BA84 and section 7 BSA22 the regulator consulted on the proposals in this instrument. The statutory consultation on these proposals was completed over 10 weeks between August 1 and October 7, 2022. The consultation was primarily online with the additional facility to receive written (email, hardcopy) responses.

10.2 The consultation was public and open to all, although the technical nature of the subject (that is the proposed instrument and draft charging scheme at that time) meant the consultation was of most interest to, and received responses predominantly from, the industry and regulatory stakeholders.

10.3 The scope of the consultation was to seek views on whether the proposals for recovering costs were reasonable overall and then to seek further views on whether:

- The trigger points for charges in the charging scheme were reasonable.

- The allocation of the costs for each schedule in the charging scheme was appropriate.
- Any aspect of the regulations or charging scheme could adversely impact persons with the protected characteristics.

10.4 The quantitative and qualitative analysis of the responses to the consultation showed that responses were received from across the spectrum of the anticipated audience.

10.5 The responses confirmed an overall and broad support for the regulator's proposals, which were generally described as reasonable and proportionate with the potential to promote positive behaviours among duty-holders and support regulator effectiveness and efficiency. The consultation also highlighted some particular issues, such as a preference for fixed charges and the need for clarity around processes.

11. Guidance

11.1 A separate charging scheme, developed by the regulator will set out further detail on how each charge in relation to a chargeable function is to be determined and administered.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full impact assessment has not been prepared for this instrument because it is an enabling instrument which does not, by itself, have an impact on businesses or other bodies.

12.4 There are three impact assessments for implementing the overall changes to the building safety regime. These were published alongside the explanatory memorandum for S.I.s 2023/906, 2023/907 and 2023/911 at www.legislation.gov.uk.

13. Regulating small business

13.1 The legislation could apply to small businesses where they build or manage higher risk buildings as defined by the BSA22 or the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023. There is no impact on small businesses as this is an enabling instrument which does not, by itself, have an impact on business.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of section 31 of the Small Business, Enterprise and Employment Act 2015, Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley MP, has made the following statement:

"The regulatory measures in this instrument are within the scope of the periodic review provided for in section 162 of the Building Safety Act 2022, and it would not be appropriate in the circumstances to make provision for a separate review in this instrument".

15. Contact

15.1 Catherine Canning at the Department for Levelling Up, Housing and Communities. Email: catherine.canning@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Camilla Sheldon, Deputy Director for Regulatory Stewardship and Reform, at the Department for Levelling Up, Housing and Communities can confirm that this explanatory memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State Lee Rowley at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.