EXPLANATORY MEMORANDUM TO

THE BUILDING (PUBLIC BODIES AND HIGHER-RISK BUILDING WORK) (ENGLAND) REGULATIONS 2023

2023 No. [XXXX]

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 statutory instrument makes amendments to the Building Act 1984 making use of powers in section 54A of the Building Act 1984 (inserted by section 47 of the Building Safety Act 2022). It will ensure that the Building Safety Regulator is the building control authority for all higher-risk building work carried out on public body buildings, by removing the ability for ministers to grant procedural exemptions from the higher-risk building control regime.

2.2 Higher-risk buildings are defined in section 120D of the Building Act 1984 and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is the first exercise of the powers in section 54A of the Building Act 1984.

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.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Building (Public Bodies and Higher-Risk Building Work) (England) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 A public body is defined in section 54 of the Building Act 1984 as a body (corporate or unincorporated) that acts under an enactment for public purposes and not for its own profit and is, or is of a description that is, approved by the Secretary of State in accordance with building regulations. Currently no public bodies are approved under section 54 and consequently there are no bodies to which section 54 applies.

6.2 The Building Act 1984 (sections 5 and 54) gives ministers powers to grant public bodies an exemption from the procedural requirements of the building regulations, although the substantive requirements set out in building regulations, such as around safety, still apply.

6.3 This statutory instrument uses powers under section 54A of the Building Act 1984 to amend sections 5 and 54 of, and Schedule 4 to, the Building Act 1984 to limit powers so that exemptions for public bodies can only be granted in relation to non-higher risk building work. This aligns with Government policy which is to ensure the Building Safety Regulator is the building control authority for all higher-risk buildings. The amendments do not change the power to grant exemptions for non-higher-risk buildings.

6.4 The instrument provides at regulation 2 that section 5 of the Building Act 1984 is amended so an exemption in relation to higher-risk buildings has no effect, and regulation 3 makes similar provision in relation to section 54 of that Act. Regulation 4 of the instrument amends Schedule 4 of that Act to introduce provisions for public body's notices which provide a power to cancel a public body's notice where the work becomes higher-risk building work.

7. Policy background

What is being done and why?

7.1 So that all building control on higher-risk buildings is undertaken by the Building Safety Regulator, public bodies will not be allowed to carry out building control on these buildings once the higher-risk building control regime starts. Public bodies subject to a partial procedural exemption under section 54 of the Building Act 1984 will also be required to cancel their public body notice – which is the notification process to the local authority – if building work becomes work on a higher-risk building (for example where storeys are added to a building so that it becomes in scope of the higher-risk building regime).

7.2 Although, currently, no public body has an exemption under section 54 of the Building Act 1984, the Mayor's Office for Policing and Crime (operating as the Metropolitan Police Authority until 2011) has been given an exemption under section 5 of the Building Act 1984.

7.3 The department has worked with the Metropolitan Police and the Home Office to consider the impact of this change on their building work. An agreement has been reached between all interested parties to maintain existing security and logistical protocols. It is however important to ensure the Building Safety Regulator is the building control authority for all higher-risk buildings and that these buildings are subject to the new more stringent regulatory regime. We, therefore, intend to lay a separate statutory instrument that will limit the Metropolitan Police's existing exemption and ensure that the Building Safety Regulator is the sole building control body for these buildings.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 This is the first instrument made under the power in section 54A of the Building Act 1984 and therefore consolidation is not applicable.

10. Consultation outcome

10.1 We have engaged with those who would be immediately affected, and a 'for information' letter has been sent to all government departments, as advised by the Cabinet Office's Economic and Domestic Affairs Secretariat. No wider formal consultation has been carried out in relation to the provisions of this instrument, which has no impacts outside the public sector and delivers the procedural requirements for all higher-risk buildings.

11. Guidance

11.1 No public guidance is needed. This statutory instrument removes the ability for minsters to allow a public body to have a procedural exemption for higher-risk building work.

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 of its very limited impact. Only one public body building is currently expected to fall in scope of the Building Safety Regulator's higher-risk building regime hence there is a minimal cost from this change.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Section 162 of the Building Safety Act 2022 requires an independent review of the effectiveness of the regulatory system for higher-risk buildings created by that Act.

15. Contact

15.1 Oliver Whitney-Coates at the Department for Levelling Up, Housing and Communities Oliver.Whitney-Coates@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.