EXPLANATORY MEMORANDUM TO

THE BUILDING SAFETY ACT 2022 (CONSEQUENTIAL AMENDMENTS ETC.) 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 instrument makes amendments which are consequential on Part 3 of the Building Safety Act 2022 coming into force. Part 3 of that Act makes amendments to Building Act 1984. The amendments in this instrument mainly replace references in primary legislation to deposit of plans with references to applications for building control approval. It also includes consequential amendments which reflect that the Building Safety Act 2022 transfers procedures for appeals under the Building Act 1984 from the magistrates' court to the to the First-tier Tribunal. This is required in local acts where additional building control requirements have been imposed that include a right of appeal to the magistrates' court.

3. Matters of special interest to Parliament

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 only.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

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

"In my view the provisions of The Building Safety Act 2022 (Consequential Amendments etc.) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made pursuant to the bringing into force of provisions in Part 3 of the Building Safety Act 2022. Part 3 of that Act makes several changes to concepts in the Building Act 1984 that are referred to in other legislation. For example, the Building Safety Act 2022 repeals section 16 (deposit of plans) of the Building Act 1984 and provides instead for applications for building control approval. In order to bring these other Acts into line with the new terminology, the Government has introduced this consequential amendments instrument. This instrument amends the Highways Act 1980, the Clean Air Act 1993, and a number of local acts.

7. Policy background

What is being done and why?

7.1 We are proposing that the building safety regulator (established in the Health and Safety Executive by section 2 of the Building Safety Act 2022) will become the building control authority for higher-risk buildings in autumn 2023 – this will be achieved by switching on section 32 of the Building Safety Act 2022 at that time. Simultaneously, we propose that the existing provisions requiring plans for building work to be deposited (section 16 of the Building Act 1984) will be repealed and under new powers inserted into the Building Act 1984 (by section 33 etc of the Building Safety Act 2022) we will make regulations, which come into force at the same time, and instead require applications for building control approval to be made for building work. We consulted last year on proposals for the new building regulations and are proposing to make and lay the building regulations before the summer recess to give the sector advance notice of the procedures which will apply from the autumn. We will respond to the consultation when the new building regulations are laid.

7.2 ***First Tier Tribunal*** – The Building Safety Act 2022 also largely transfers procedures for appeals under the Building Act 1984 from the magistrates' court to the to the First-tier Tribunal. In a number of local acts additional building control requirements have been imposed and these Acts have often included a right of appeal to the magistrates' court in relation to these requirements. Regulations 2(4), 3(4), 4(4), 7(4), 8(3), 9(3), 10(3), (4) and (5), 11(4) and (5), 12(4), (5), (7) and (8), 13(4), and 15(4) make these amendments.

7.3 To align with the transfer of the appeals procedure for all building control decisions in England to the Tribunal, and to accommodate the Building Safety Regulator's position as a new building control authority and oversight body for other building control bodies, we are consequentially amending the local acts so appeal procedures align with the new ones in the Building Safety Act 2022.

7.4 The First-tier Tribunal has expertise in hearing complicated land and property matters. The transfer of existing work, plus other appeal rights we are creating (for example, compliance and stop notices during design and build, and compliance notices in occupation) will enable it to develop expertise in building and building safety matters.

7.5 ***Application for Building Control Approval*** - Regulations 2 to 5 and 7 to 15 of this instrument set out amendments to certain local acts.

7.6 These regulations amend the following local acts to remove references to deposit of plans, and replace them with references to the new system of applications for building control:

London Building Acts (Amendment) Act 1939
County of Merseyside Act 1980
Cheshire County Council Act 1980
West Yorkshire Act 1980
Greater Manchester Act 1981
County of Kent Act 1981
Staffordshire Act 1983
Surrey Act 1985
Leicestershire Act 1985
Poole Borough Council Act 1986
Berkshire Act 1986

Plymouth City Council Act 1987
Essex Act 1987

7.7 ***Highways Act 1980*** - Regulation 6 makes amendments which relate to the street works charging under the Highways Act 1980. Currently the Act requires that the charge must be paid when building control plans are deposited. For England, this instrument replaces this with reference to applications for building control approval. Section 166 of the Building Safety Act 2022provides Welsh Ministers with their own power to make amendments for Wales, so the regulation clarifies that extant measures will continue to apply to Wales and duplicates the existing provisions as new measures which only apply to England.

7.8 The regulation requires the Building Safety Regulator or the district council, whichever is the relevant authority, to notify the county, as the street works authority, when it grants an application control approval where the building is in an advance payments code area.

7.9 ***Clean Air Act 1993*** - Regulation 16 makes amendments to section 16 of the Clean Air Act 1993. This section requires Local Authorities to check the height of a chimney proposed to ensure that it is tall enough so that smoke, grit, dust or gases do not become prejudicial to health or a nuisance. Regulation 16 changes references to plans deposit to application for building control approval.

7.10 ***Transitional provision*** – Regulation 17 of this instrument provides that the consequential amendments in the instrument do not apply to plans for building work which were deposited with a local authority before the date on which the Regulations came into force. This is to align with transitional provisions for the new building control regime which will also not generally apply to building work for which plans were deposited before the new regime came into force.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument makes amendments to legislation in consequence of the implementation of the Building Safety Act 2022. Consolidation is not applicable.

10. Consultation outcome

10.1 All affected local authorities and building control departments were contacted to make them aware of the changes, and the Department for Environment, Food, and Rural Affairs and the Department for Transport were contacted concerning changes to the Clean Air Act and the Highways Act respectively.

10.2 The Ministry of Justice was consulted for changes concerning the First Tier Tribunal.

11. Guidance

11.1 Guidance will be provided in relation to the parent provisions.

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 these provisions do not themselves make any material changes to the costs associated with the respective Acts.

13. Regulating small business

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

14. Monitoring & review

14.1 There is a statutory review clause in the Building Safety Act 2022.

14.2 Under that provision the impact of the new regime will be reviewed at least every 5 years. Section 162 of the Building Safety Act 2022 sets out that the Secretary of State must appoint an independent person to carry out a review of the new regime at least once every five years.

15. Contact

15.1 Edward Quinn-Savory at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 8381 or email: edward.quinn-savory@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Camilla Sheldon, Deputy Director for Reform, Legislation and Regulators, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

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