EXPLANATORY MEMORANDUM TO

THE BUILDING SAFETY (RESPONSIBLE ACTORS SCHEME AND PROHIBITIONS) (AMENDMENT) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments (JCSI).

2. Declaration

2.1 Samantha Dixon MP, Parliamentary Under Secretary of State for Building Safety, Fire and Democracy at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Offer Stern-Weiner, Deputy Director for Responsible Industry Division, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Julian Schon at the Ministry of Housing, Communities and Local Government Telephone: 07458 113 142 or email: julian.schon@communities.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes technical amendments to the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 ("the RAS Regulations"; unless otherwise stated, references to Regulation numbers in this memorandum are to the RAS Regulations) to ensure that these Regulations work as intended, using primary legislative powers in sections 126-129 Building Safety Act 2022 ("the Act").

4.2 The RAS Regulations established a scheme under which relevant residential developers needed to join the Responsible Actors Scheme ("RAS", or the "Scheme") and identify and remediate relevant potentially unsafe buildings, or face being subject to building control and planning prohibitions, which would involve significant commercial consequences for them, and entities they control.

4.3 The instrument primarily corrects technical drafting issues in relation to the building control prohibition. The main practical purpose of the instrument is to ensure that exceptions to the building control prohibition (which are designed to mitigate against the risk of the prohibition having adverse impacts on third parties) work effectively, and are clear for the building control professionals who will need to operate them.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 The RAS was established under the RAS Regulations to make sure that eligible developers take responsibility for remediating or mitigating the risk of life-critical fire safety defects in residential buildings over 11 metres in height that they developed or refurbished in the 30 years to 4 April 2022. The Scheme is an essential part of the Government's approach to tackling urgent building safety issues, including ensuring that industry contributes to the costs of fixing the building safety crisis, protecting leaseholders from the expensive and unfair costs associated with making their buildings safe and ensuring that residents feel safe in their homes.

5.2 The Scheme is supported by prohibitions which can be applied to persons eligible for the RAS who do not join, or who join but subsequently fail to comply with the Scheme conditions and have their membership revoked, and to persons controlled by them.

5.3 The building control prohibition would, when applied, stop a prohibited person from initiating a building control process or receiving relevant building control approvals, including final or completion certificates which are often needed to sell new properties. The intent is to prevent relevant developers who refuse to remediate life-critical fire safety defects from operating freely in the housing market, as they would be unable to receive the building control consents needed to build new homes.

5.4 The RAS Regulations contain exceptions to building control prohibition which are primarily designed to mitigate potential impacts on third parties, who are unrelated to the failure to remediate. Specifically, the exceptions seek to provide protection for homebuyers who have reached an advanced stage of their transaction when the prohibition goes into effect, and for any residents of buildings owned or managed by the prohibited person who expect to live in a safe, well-maintained building regardless of whether their freeholder is prohibited.

5.5 The primary intent of this instrument is to correct drafting defects, including those previously reported by JCSI, clarify ambiguities in the building control prohibition, and ensure that the exceptions work as intended to protect third parties. The main changes are set out below:

Ensuring the main building control prohibition in Regulation 33 is clear

5.6 Under section 129 of the Act, the Secretary of State may make Regulations to prevent a prohibited developer from, among other things, making or receiving applications for building control approval, and Regulation 33 of the RAS Regulations seeks to put this into effect. However, Regulation 33 omits applications for building control approvals in its lists of prohibited matters. These amending Regulations seek to provide clarity by adding applications for building control approval to the lists in Regulation 33, into line with the provisions of section 129(4) of the Act.

5.7 The amendments would also update Regulation 33 to reflect up to date terminology to describe how completion certificates and partial completion certificates are sought and granted under the Building Regulations 2010.

Enabling emergency repair work done under Regulation 34 to receive a completion certificate

5.8 Regulation 34 sets out an exception to the building control prohibition allowing for emergency repair work to take place on a building, to avoid risks to safety where a freeholder or Responsible Entity is subject to the building control prohibition. For higher-risk (over 18m) buildings, there is a path to have this work regularised under Regulation 34A, but there is currently no pathway to regularisation or to receive a completion certification for under 18m buildings under Regulation 34. This instrument allows for a completion certificate to be issued by the local authority where this exception applies.

Ensuring that the Regulation 35 exception for occupied buildings works as intended

5.9 Regulation 35 sets out an exception to the building control prohibition for occupied residential buildings, so that existing occupied buildings can be properly maintained and residents are not penalised in the event that their freeholder or Responsible Entity has been prohibited.

5.10 The instrument corrects drafting defects to ensure that the persons subject to the building control prohibition have effective access both to local authority and Registered Building Control Approver routes to building control where the exception applies, and the relevant procedures are as clear as possible for building control professionals to operate.

Extending the ability to apply for the Regulation 36 exception

5.11 Regulation 36 provides for an exception to the building control prohibition aimed at protecting purchasers of residential property. Under this provision, Secretary of State may grant an exception which enables relevant building control professionals to issue completion certificates and final certificates in circumstances where they would otherwise be prohibited. The exception is available where an arms-length transaction has reached an advanced stage (after exchange of contracts) before the building control prohibition came into effect.

5.12 Responsibility for applying for the exception currently lies with the prohibited developer, as they would have to apply for the completion or final certificate. This instrument extends the ability to apply for the exception to the purchaser (or their legal representative - as appropriate where it is clear to the Ministry that the legal representative is authorised to act on behalf of the purchaser) to enable them to be more proactive in protecting their interests and less reliant on decisions of the developer during the conveyancing process.

Correcting drafting defects previously identified by JCSI

5.13 The JCSI previously reported Regulations 13, 15 and 16 of the RAS Regulations for defective drafting. Regulation 6 sets out the conditions which a person must meet to be eligible to be a member of the Scheme. The combination of Regulation 6(b) and Regulation 13(1)(a), Regulation 13(3), Regulation 15(1), Regulation 16(1) creates double negatives which read as indicating that only Registered Providers of Social Housing (RPs) are eligible for the RAS. This is contrary to the clear purpose of RAS, which is a scheme for private sector developers and is intended to exclude RPs.

5.14 In its response to JCSI, the Government was clear that the words were intended to refer to a person who is not a RP or a wholly owned subsidiary of such a provider. At the time, Government was satisfied that the JCSI concerns did not represent a significant risk to the functionality of the Regulations but agreed to consider clarifying the text at a future date through further Regulations. This instrument now addresses this point by removing the double negatives.

5.15 JCSI also reported Regulation 30 (which imposes notification requirements on prohibited persons in respect of local planning authorities) for defective drafting. Regulation 30 was reported on the basis that it did not provide any sanction or other consequences if the person fails to comply with the requirement, as required to make the obligation effective.

5.16 The notification requirements are not essential to the working of the planning prohibition as the authoritative source for a planning officer to identify which entities are prohibited is the list that the department must publish under Regulation 20(1). This instrument therefore removes the drafting defect identified by JCSI by deleting Regulation 30.

What was the previous policy, how is this different?

5.17 This instrument does not materially change the previous policy; rather it corrects technical defects which risk the law not being clear or not working as intended, improves processes to meet existing policy objectives, and makes minor changes better to meet the aim of the policy.

6. Legislative and Legal Context

How has the law changed?

6.1 Sections 126-129 of the Act establish primary legislative powers for the Secretary of State to secure that developers remedy defects in buildings and contribute to the costs of doing so through the creation of building industry schemes.

6.2 Section 126 and 127 of the Act gives the Secretary of State powers to establish through affirmative Regulations a scheme or schemes aimed at persons in the building industry and makes provision for Regulations to set out how the scheme will work. Section 128 of the Act makes provision for a prohibition on development, and section 129 of the Act makes provision for a building control prohibition; both of these provisions are to be implemented through affirmative Regulations. Sections 128 and 129 of the Act make clear that Regulations may set out that the prohibitions will be applied to persons who are eligible to join a building industry scheme and are not members.

6.3 The only building industry scheme in operation was created through the RAS Regulations, which were made on 3 July 2023 and came into force on 4 July 2023. Under the RAS Regulations, eligible persons who opt not to be a member of the RAS can be subject to the planning and building control prohibitions, along with entities they control. The RAS Regulations set out details about how the prohibitions will work, including exceptions designed to protect third parties and the public interest.

6.4 This instrument makes amendments and clarifications to the existing RAS Regulations to ensure they have effect in the way originally intended.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation was not undertaken given the minor, technical nature of the changes being made. The building control changes reflect issues brought to the Ministry's attention by building control professionals through regular engagement with the profession.

8. Applicable Guidance

8.1 The Ministry plans to issue revised guidance to building control professionals on implementing the building control prohibition at the time of implementing these Regulations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the Ministry does not deem it necessary. A full Impact Assessment was produced alongside the RAS Regulations. Given that the changes made by this instrument are to make the building control prohibition work as intended and that the building control prohibition has never been used, the Ministry believes that any cost changes from the amendments included in this instrument will be minor.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities, voluntary bodies or the public sector because the impact of the amendments we are making to existing legislation are minor and for the most part de-regulatory.

9.3 The legislation does not materially impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the instrument will make existing processes work effectively; any effect will be positive as the instrument aims to avoid ambiguity and make the building control prohibition easier to implement.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Ministry will continue to monitor and publish data on the progress that developers are making towards meeting their obligations under the RAS Regulations (as amended by this instrument).

10.2 The Ministry will also assess the effectiveness of the specific changes made by this instrument through routine engagement with the building control sector and other stakeholders.

10.3 A statutory review clause is not included in this instrument because a statutory review clause is included at Regulation 43 of the RAS Regulations, and the RAS Regulations (as amended by this instrument) will therefore continue to be subject to review.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects drafting defects identified by the JCSI when it reported on the draft RAS Regulations in May 2023. At the time, the Government was satisfied that, notwithstanding the JCSI's concerns, there were no issues with the Regulations that would prevent the provisions from operating successfully but agreed to consider clarifying the text at a future date as part of any further Regulations. Therefore, it is appropriate to apply the free issue procedure to this instrument.

12. European Convention on Human Rights

12.1 The Parliamentary Under Secretary of State for Building Safety, Fire and Democracy has made the following statement regarding Human Rights:

"In my view the provisions of the Building Safety (Responsible Actors Scheme and Prohibitions) (Amendment) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").