



[Home](#) > [Housing, local and community](#) > [Planning and building](#)

> [Building regulation](#)

> [Changes to the building control profession and the building control process for approved inspectors](#)

[Department for
Levelling Up,
Housing &
Communities](#)

Open consultation

Consultation for changes to the building control profession and the building control process for approved inspectors (in future to be known as registered building control approvers)

Published 31 January 2023

Applies to England

[Contents](#)

Scope of the consultation

Basic Information

Introduction

1. Transition
2. Registration
3. Restricted activities and functions
4. Cancellation of initial notices
5. Plans certificates
6. New initial notices
7. Information gathering – Section 52
8. Further amendments to The Building (Approved Inspectors etc.) Regulations 2010

About this consultation

Personal data



© Crown copyright 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/consultations/changes-to-the-building-control-profession-and-the-building-control-process-for-approved-inspectors/consultation-for-changes-to-the-building-control-profession-and-the-building-control-process-for-approved-inspectors-in-future-to-be-known-as-registe>

Scope of the consultation

Topic of this consultation:

This consultation sets out the detailed requirements needed to implement the changes brought about by the Building Safety Act 2022. It seeks views on:

1. Approved inspectors becoming registered building control approvers, and implications for their existing work.
2. Restriction of activities and functions for building control bodies, both public and private.
3. Length of registrations period for building control approvers and building inspectors.
4. Oversight, sanctions and appeals.
5. Initial notices.
6. Plans certificates.
7. Information gathering.
8. Consultations with other regulators.

Scope of this consultation:

Building Safety.

Geographical scope:

These proposals relate to England only.

Basic Information

Body/bodies responsible for the consultation:

Department for Levelling Up, Housing and Communities

Duration:

This consultation will last for 6 weeks from 31 January to 14 March 2023.

Enquiries:

For any enquiries about the consultation please contact:

BuildingControlConsultation@levellingup.gov.uk

How to respond:

You may respond by completing an [online survey](https://consult.levellingup.gov.uk/building-safety/building-control) (<https://consult.levellingup.gov.uk/building-safety/building-control>).

Alternatively you can email your response to the questions in this consultation to BuildingControlConsultation@levellingup.gov.uk

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address, and
- a contact telephone number

Introduction

1. Following the Grenfell Tower tragedy, the government appointed Dame Judith Hackitt to lead an Independent Review of Building Regulations and Fire Safety. In her [final report \(https://www.gov.uk/government/publications/independent-review-of-building-regulations-and-fire-safety-final-report\)](https://www.gov.uk/government/publications/independent-review-of-building-regulations-and-fire-safety-final-report), Dame Judith Hackitt outlined a new approach to managing fire and structural safety risks in high-rise multi-occupied residential buildings together with fundamental changes to the way building control operates, alongside driving up competence across the profession and industry more widely. Overall, 53 recommendations were made for government and industry to drive the cultural change and behaviours necessary to improve building safety.

2. The government has committed to implementing Dame Judith Hackitt's recommendations and the Building Safety Act 2022 brings forward a package of legislative changes to deliver her recommendations and make buildings safer. These changes will deliver improvements across the entire built environment, through strengthening oversight in particular for residents in high-rise buildings. The focus on managing risk will help building owners ensure their buildings are safe, and the home-building industry will have the clear, proportionate, framework it needs to deliver more, better, high-quality homes.

3. In her review, Dame Judith raised specific concerns about “the lack of a level playing field” for approved inspectors and local authority building control, with the different statutory and non-statutory processes leading to incoherence, confusion and complexity in the system.

4. Through the Building Safety Act 2022, and associated secondary legislation, the reforms that are being taken forward will improve standards in building control by establishing a regulated building control profession. This profession will be overseen by the Building Safety Regulator, with competence requirements for individual building control professionals that will be common for public sector (local authorities) and private sector (currently approved inspectors but registered building control approvers in the new regime).

5. The Building Safety Act 2022 changes who can advise on, and carry out, building control work, with the purpose of improving competence levels, transparency and accountability in the building control profession. This is to make sure that only individuals who have demonstrated the relevant competence are advising decision-makers before important building control decisions are taken.

6. The key changes are:

- Approved inspectors must register, as building control approvers, to continue to undertake building control work.
- Individual inspectors must register with the Building Safety Regulator, and

meet certain criteria, to be able to provide advice to local authorities and the Building Safety Regulator (collectively building control authorities) and registered building control approvers.

- Registered building control approvers and building control authorities must obtain and consider the advice of a registered building inspector before carrying out certain building control functions.

7. We will set out the functions which can only be carried out after having obtained and considered the advice of a registered building inspector in secondary legislation, following this consultation and other engagement with the sector.

8. The Building Safety Act 2022 also introduces a new oversight regime for building control bodies by the Building Safety Regulator.

9. We have worked with both local authority and private sector building control representatives to develop these reforms and will continue to work with the sector and the Health and Safety Executive (HSE) on ensuring the new system operates effectively in practice.

1. Transition

1.1 Proposals for the end of the approved inspector regime

10. The Building Safety Act 2022 provides for registered building control approvers to take over from approved inspectors by repealing section 49 of the Building Act 1984. We intend for the approved inspector registration regime to conclude on day one of the new registered building control approver regime. From this point, an approved inspector will not legally be able to submit a new initial notice or supervise any new work.

11. To ensure a smooth transition to the new regime, we are proposing a number of transitional proposals which cover the following scenarios:

- Where an approved inspector registers as a building control approver (section 1.2)
- Where an approved inspector overseeing non higher-risk building work does not become a registered building control approver (section 1.3)
- 'In-flight' higher-risk building work (section 1.4)

1.2 Where an approved inspector becomes a registered building control approver

12. We propose that where an approved inspector becomes a registered building control approver the initial notices of the approved inspector are treated as the initial notices of the registered building control approver, provided certain requirements are met, under a deeming provision in regulations. We propose that a deeming provision can only be used where:

- An approved inspector has registered as a building control approver with the Building Safety Regulator by the time registration becomes a mandatory requirement (six months after the register opens)
- Their registration covers the specific work with which they wish to continue
- The registered building control approver is the same legal entity as the approved inspector.

13. These proposals would take effect from day one of the registered building control approver regime and would mean that the same legal entity can continue with existing work without interruption when an approved inspector becomes a registered building control approver. An approved inspector can begin the registration process with the building safety regulator to become a registered building control approver six months before the new regime formally begins.

Situations where the deeming provision will not apply

14. The deeming provision will not apply where an approved inspector does not become a registered building control approver - either through choice or because they fail to meet the registration requirements.

15. The deeming provision also will not apply to work not covered by the registration, where an approved inspector is granted registration as a registered building control approver, but that registration does not cover all their existing work. Only those initial notices which include work covered by registration with the Building Safety Regulator (plus any higher-risk building work^{[footnote 1](#)}) will be deemed to be initial notices of the registered building control approver. There are separate proposals for higher-risk building work explained below.

1.3 Where an approved inspector overseeing non-higher-risk building work does not become a registered building control approver

16. We propose to allow a transitional period after day one of the registered building control approver regime to allow approved inspectors who do not become registered building control approvers (either through choice or not meeting the registration requirements) to complete their building control approval for existing non higher-risk building work.

17. We consider a 6-month transitional period from the start of the registered building control approver regime sufficient for approved inspectors to conclude their remaining non higher-risk building work cases. This transition period will help to minimise disruption to the market and the impact on local authorities, who would otherwise have to absorb all such building work cases, and ensure that approved inspectors have the time to take steps to either achieve registered building control approver registration or conclude any remaining business and exit the market. Approved inspectors will not be able to take on any new work (i.e., submit a new initial notice) during this time.

18. During the 6-month period the approved inspector will retain existing powers to issue plans certificates and final certificates, and cancel existing initial notices where work needs to transfer to a registered building control approver or revert to the local authority. We propose that approved inspectors will also be able to issue amendment notices. However, this will not include any changes to the work specified in the initial notice that would result in a non-higher-risk building becoming a higher-risk building. If the building work specified in the initial notice is varied to become higher-risk building work, the higher-risk building work must transfer to the jurisdiction of the Building Safety Regulator as the sole building control authority for higher-risk building work.

19. At the end of the six-month transition period, we propose to provide that all initial notices for approved inspectors which do not benefit from the deeming provision will cease to be in force. The power to do this is set out in section 47(4)(b)(ii) of the Building Act 1984. Any remaining work will revert to the relevant local authority, unless a registered building control approver has submitted a new initial notice for this work and the notice is accepted. We are proposing that during the six-month period an approved inspector will be able to cancel its initial notice and a registered building control approver can submit a new initial notice for that work.

Q. 1: Do you agree that where an approved inspector and a registered building control approver are the same legal entity then, with some exceptions, the initial notices of the approved inspector will be treated as the initial notices of the registered building control approver?

Response: Yes / No

Q. 1A: Please provide an explanation for your answer.

Q. 2: Where the approved inspector and registered building control approver are not the same entity, or one of the exceptions applies, do you agree that approved inspectors should have a transitional period to complete work which is not higher-risk building work?

Response: Yes / No

Q. 2A: Please provide an explanation for your answer.

Q. 3: Do you agree that six months is a sufficient transition time for approved inspectors who do not become registered building control approvers to conclude non higher-risk building work?

Response: Yes / No

Q. 3A: Please provide an explanation for your answer.

Q. 4: Do you think a different length of transitional period for approved inspectors to conclude non higher-risk building work would be more appropriate?

Response: Yes / No

Q. 4A: Please provide an explanation for your answer. If you have answered yes, please specify for how long.

1.4 Approach to in-flight higher-risk building work

20. As outlined in the government's previous consultation on implementing the [new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings](https://www.gov.uk/government/consultations/consultation-on-implementing-the-new-building-control-regime-for-) (<https://www.gov.uk/government/consultations/consultation-on-implementing-the-new-building-control-regime-for->

[higher-risk-buildings-and-wider-changes-to-the-building-regulations-for-all-buildings/consultation-on-implementing-the-new-building-control-regime-for-higher-risk-buildings-and-wider-changes-to-the-building-regulations-for-all-buildings](#)), the government intends to introduce a more stringent regulatory regime for the design and construction of higher-risk buildings overseen by the Building Safety Regulator. In this consultation, the government proposed transitional arrangements for the new higher-risk building control regime to support the regulatory changes being made.

21. For transitional arrangements to apply to an individual building project, we proposed that developers would need to meet the following conditions:

- Submit an initial notice or deposit full plans by the day the new higher-risk building regime comes into force
- Commence work in line with the proposed relevant new definition of commencement on the individual building within the transition period, which will be established from the day the new regime for higher-risk building work comes into force.

22. Where an initial notice has been submitted or full plans have been deposited before the new regime for higher-risk building work comes into force, but work is not commenced within a transition period set out in law, we proposed to provide in regulations that the higher-risk buildings overseen by both a local authority and an approved inspector would be transferred to the jurisdiction of the Building Safety Regulator once the transition period has elapsed. The process outlined in paragraph 12.17 of the aforementioned consultation would then apply.

23. The government is proposing additional measures related to the transitional provisions for higher-risk building work currently being overseen by approved inspectors, to make sure that the proposed approach aligns with the new registered building control approver regime.

24. First, for higher-risk building work subject to an initial notice to benefit from the transitional provisions, the initial notice must have been accepted or be deemed to be accepted by the local authority by the date when the new regime for higher-risk building work comes into force. This means that the five days, under current regulations, in which the local authority has to accept or reject an initial notice before the notice is deemed to be accepted, must have taken place prior to the regime for higher-risk building work coming into force. We consider this to be important to make sure that building work that a local authority wishes to reject cannot continue to be built to previous building regulations. To ensure this is clear we propose to provide in transitional provisions that work where an initial notice including higher-risk building work is submitted but not accepted or deemed to be accepted before the start of the new regime then the notice will cease to have effect on that date.

25. Second, the government wants to ensure that all higher-risk building work transferred to the Building Safety Regulator can be overseen appropriately and there is no ambiguity with regard to compliance and enforcement. Therefore, we are proposing to use the power in section 47(4)(b)(ii) of the Building Act 1984 to prescribe that at the end of the transitional period, where higher-risk building work subject to an initial notice is uncommenced, the initial notice will cease to be in force. As a result, any uncommenced higher-risk building work subject to an initial notice will not be able to begin construction without submitting a building control approval application to the Building Safety Regulator under the new higher-risk building control regime. Without this intervention, uncommenced higher-risk building work would be overseen by an approved inspector, with the Building Safety Regulator taking over the role the local authority has under the current system, [\[footnote 2\]](#) and this is not the intended policy outcome. The government has made clear that new higher-risk building work, when the new regime for higher-risk building work comes into force, must be solely overseen by the Building Safety Regulator.

26. In addition, we propose to use section 53(2) of the Building Act 1984 to make provision in building regulations that plans certificates also cease to be in force where the initial notice to which they relate ceases to be in force. This approach will make sure that enforcement action can be taken against work completed where the work is not covered by a final certificate. We consider this to be necessary to enable to Building Safety Regulator to properly oversee higher-risk building work subject to an initial notice that fails to commence within the transitional period and must meet the requirements of the new building control regime for higher-risk buildings.

27. Third, we are proposing to put in place new requirements on approved inspectors and registered building control approvers with regard to higher-risk building work. Once the higher-risk building work regime comes into force, an approved inspector will not be able to submit an initial notice which relates (in whole or in part) to higher-risk building work. From this date, approved inspectors will not be able to take on any new work which relates to higher-risk buildings.

28. Furthermore, for approved inspectors to continue to supervise ongoing higher-risk building work when the new higher-risk building regime comes into force, we propose that, in addition to commencing that work within the transitional period, they must be registered as a building control approver by day one of the registered building control approver regime and remain as the same legal entity. They will be able to register with the Building Safety Regulator six-months ahead of the start of the new regime. We expect that day one of the registered building control approver regime will align with the end of the period to commence work under the transitional provisions for higher-risk building work. Up until this point, approved inspectors will still be able to supervise ongoing higher-risk building work that commences before the end of the transitional period. They will be able to issue plans certificates

and final certificates as well as cancel existing initial notices. However, at the end of the transitional period and the beginning of the registered building control approver regime, all initial notices for approved inspectors which relate to higher-risk building work will cease to be in force if any of the aforementioned conditions are not met.

29. Where an initial notice is cancelled, for any reason, during or at the end of the transitional provisions for higher-risk building work, this work will transfer to the Building Safety Regulator as building control authority for higher-risk building work. It will not revert to the local authority, and it cannot be transferred to another approved inspector or registered building control approver as no new initial notices including higher-risk building work can be issued after the start of the higher-risk building regime. From this point it will only be the Building Safety Regulator who can oversee higher-risk building work, unless the criteria related to the transitional provisions for higher-risk building work and the new registered building control approver regime have been met.

30. Due to the high-risk nature of the work, we do not think it is appropriate for an approved inspector to continue with their existing higher-risk building work once the new registered building control approver regime is enacted, if they have not demonstrated that they meet the competence requirements of the Building Safety Regulator and have successfully registered in the new regime. Furthermore, these approved inspectors will not be subject to oversight by the Building Safety Regulator under the Operational Standards Rules, because as set out in the Building Safety Act 2022, these rules will apply to local authorities and registered building control approvers only.

31. If building work has commenced by the end of the transitional period, the approved inspector has successfully registered as a building control approver and the approved inspector meets the other criteria for the deeming provisions, we propose that it will be able to continue oversight of the higher-risk building work to completion. This will mean that the initial notices issued by the approved inspector for the higher-risk building work will be treated as initial notices for the registered building control approver. Should an initial notice be subsequently cancelled, the incomplete higher-risk building work will revert to the Building Safety Regulator.

Q. 5: Do you think registered building control approvers should be able to complete existing higher-risk building work in line with the higher-risk building control transitional arrangements?

Response: Yes / No

Q. 5A: Please provide an explanation for your answer.

Q. 6: Do you agree that ending the ability for an approved inspector (who is not registered as a building control approver) to oversee higher-risk building work is appropriate?

Response: Yes / No

Q. 6A: Please provide an explanation for your answer.

Q. 7: Do you think an approved inspector should be able to appeal a decision from the Building Safety Regulator not to register it as a registered building control approver in the Courts?

Response: Yes / No

Q. 7A: Please provide an explanation for your answer.

Q. 8: Do you agree with the proposed approach to initial notices and plans certificates where higher-risk building work is uncommenced at the end of the transitional period?

Response: Yes / No

Q. 8A: Please provide an explanation for your answer.

Q. 9: Do you agree that where an initial notice is cancelled, the plans certificate should be cancelled and the Building Safety Regulator should be able to take enforcement action for any work not covered by a final certificate?

Response: Yes / No

Q. 9A: Please provide an explanation for your answer.

2. Registration

2.1 Registration length

32. The Building Safety Act 2022 sets out changes to the current building control system. The Building Safety Regulator will oversee building control registration for individual building inspectors and private sector building control approvers, setting the criteria and competence requirements needed for registration, and the codes to which they will need to adhere. Building control bodies who are currently approved inspectors under the Construction Industry Council Approved Inspectors Register (CICAIR) will need to register with the Building Safety Regulator as building control approvers.

33. Local authorities will not be required to register with the Building Safety Regulator as building control authorities as they have a statutory building control function^{[footnote 3\]](#)}. Individual local authority employees will however be able to register with the Building Safety Regulator as building inspectors if they meet its registration requirements. In addition, local authorities will be subject to the new rigorous requirements in having to comply with the Building Safety Regulator's Operational Standards Rules for building control bodies, and seek the advice of a registered building inspector before carrying out certain building control activities.

34. For the first time, individual building control professionals, who want to carry out key activities such as inspections of building work and to advise on important decisions such as issuing certificates, will also be required to register as building inspectors with the Building Safety Regulator. Details of the activities and decisions that require registration as a building inspector are included in section 3.2 of this consultation. In this section, we are seeking views on the proposed registration lengths for both registered building control approvers and registered building inspectors.

35. The approval period for approved inspectors is currently set at five years. We propose to keep registration length the same going forward to provide consistency and continuity for the sector, and therefore propose to set the registration length for registered building control approvers at five years.

Q.10: Do you agree that registration length for registered building control approvers should be 5 years?

Response: Yes / No

Q. 10A: If no, please explain why and what your preferred registration length would be.

36. Registration for building inspectors is a new requirement, so there is not a precedent to follow. We wish to minimise the impact on the profession and therefore want to avoid a very short registration period such as inspectors having to re-register annually or every other year. Registration will however need to occur sufficiently frequently to ensure there is appropriate regulatory oversight of building inspectors and that they continue to meet the required standards to operate.

We also consider that it would be helpful for the inspector registration to run on a different cycle to the registration of building control approvers to support the Building Safety Regulator's operations and capacity. We therefore propose a registration length of four years for building inspectors. Outside of the registration period, building inspectors will also be subject to continuous professional development reviews.

Q. 11: Do you agree that registration length for registered building inspectors should be set at four years?

Response: Yes / No

Q.11A: Please explain why you chose yes or no, and if no, what your preferred registration length would be.

2.2 Prescribed cases to notify each local authority of disciplinary orders or interim suspensions

37. As part of the new building safety regime, registered building control approvers will be required to comply with professional conduct rules. These rules will set out the expected behaviours and standards that registered building control approvers must meet. [The HSE published its consultation on the proposed professional conduct rules on 9 January.](https://consultations.hse.gov.uk/bsr/conduct-rules-registered-building-control-approver/) (<https://consultations.hse.gov.uk/bsr/conduct-rules-registered-building-control-approver/>) In situations where a registered building control approver does not meet these standards, and therefore contravenes the professional conduct rules, the Building Safety Regulator, as set out in the Building Safety Act 2022 will be able to investigate the contravention and issue sanctions where

a contravention has happened. The Building Safety Regulator will be able to issue one or more disciplinary orders, which include:

- A financial penalty, i.e. a fine
- A variation to the registered building control approver's registration
- Suspension of registration for a specific amount of time
- Cancellation of registration

38. The Building Safety Regulator can also order a short suspension of the building control approver's registration of up to three months while investigating the breach if the contravention of the professional conduct rules is considered very serious. This is set out in section 58V of the Building Act 1984 (as inserted by section 42 of the Building Safety Act 2022).

39. In this section, we are seeking views on when a copy of a decision on a contravention of the professional conduct rules or an interim suspension (or revocation) should be sent to every local authority in England.

40. Registered building control approvers can work across England and may be overseeing building work in the areas of multiple local authorities. Local authorities will need to be aware of any reasons there may be for not accepting initial notices, or other notices, submitted to them. We consider information about the current registration status for building control approvers to be important information for local authorities as they make these decisions.

41. To ensure local authorities have all the information they need when carrying out their statutory duties as a building control authority, whilst also not sending unnecessary information, we are proposing that the Building Safety Regulator should send a copy of a disciplinary order to every local authority in England in the following circumstances:

- A variation of a registered building control approver's registration; or
- A suspension of registration for a specified period; or
- A cancellation of registration from a specified date; or
- An interim suspension where a serious contravention is suspected;

or

- Where an improvement notice has been issued to a registered building control approver.

42. We are not proposing that the Building Safety Regulator sends a copy of a disciplinary order to every local authority where a registered building control approver is required to pay a financial penalty, but their registration position remains unchanged.

Q.12: Do you agree that a copy of a disciplinary order should be sent to every local authority in these 4 circumstances?

Response: Yes / No

Q12A: If no, which do you disagree with and why?

2.3 Approach to building control profession appeals

Chapter Summary

43. Section 42 of the Building Safety Act 2022 inserts a new Part into the Building Act 1984 about the regulation of the building control profession.

44. The government supports access to justice. The reviews and appeals process is designed to be collaborative, fair and transparent where disputes arise over application or registration in regard of the building control profession.

Registered building inspectors and building control approvers

45. Under the new system, the Building Safety Regulator will establish and maintain two registers.

46. The first will be a register of building inspectors for both the public and private sector who must meet the same minimum standards to be placed on the Building Safety Regulator's register. Registration for building inspectors may be for different types of work and may be subject to conditions. This will enable the Building Safety Regulator to set levels of registration - for example, an individual may need to demonstrate a higher level of training and experience to advise on higher-risk buildings. Registered building control approvers and building control authorities will have to obtain and consider the advice of a registered building inspector before exercising key functions and use an appropriately registered building inspector to carry out certain activities.

47. The second will be a register for private sector building control bodies (currently approved inspectors) who will need to register as building control approvers and meet registration requirements and other criteria. Local authorities will not be required to register with the Building Safety Regulator as they have a statutory building control function under Section 91 of the Building Act 1984.

48. The Building Safety Regulator will be able to publish the criteria for registration and an application procedure. It will also be able to grant registration with restrictions (for instance as to the type of buildings on which an inspector can give advice or that a registered building control approver can oversee) or subject to conditions (for instance requiring regular training).

49. The Building Safety Regulator will publish a code of conduct for inspectors and professional conduct rules for registered building control approvers and set out procedure to deal with professional misconduct. [The Health and Safety Executive published consultations on both on 9 January 2023.] The Building Safety Regulator will also have a power to seek information from inspectors and registered building control approvers and to take disciplinary action, including varying, suspending or cancelling registration.

With regard to:

Application for registration as building inspector (58D)

Sanctions for professional misconduct (58I)

Interim suspension for suspected serious professional misconduct (58J)

Application for registration as building control approver (58P)

Sanctions for contravention of professional conduct rules (58U)

Interim suspension for suspected serious contravention (58V)

50. Where individuals or bodies wish to appeal a decision or action by the Building Safety Regulator, we are proposing that the grounds of appeal should be that the regulator's action is erroneous in fact, wrong in law, unreasonable, or procedurally flawed. We also propose that any appeal must be lodged within 21 days of the original decision by the Building Safety Regulator.

51. The government intends to regulate so that the method by which the appeal must be lodged is as prescribed by the tribunal under rule 26 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules, and on determining the appeal, the tribunal may confirm, vary, or quash the decision.

Internal review by the regulator prior to appeal at the tribunal (section 25)

52. Section 25(9) of the Building Safety Act 2022 provides where the regulator makes a disciplinary order under section 58I or 58U, or an order under section 58J or 58V, of that Act (misconduct of registered building inspector or building control approver) that decision cannot go to an internal review and any appeal must go directly to the tribunal.

53. For 58D (4), where an application for registration as building inspector is refused, the government proposes to make regulations that there is to be an

internal review by the regulator prior to any appeal to the tribunal. This is also the case for 58P (4), where application for registration as building control approver is refused.

Q. 13: Do you agree with the approach to appeals against a decision by the Building Safety Regulator with respect to registration and sanctions as outlined above?

Response: Yes / No

Q13A: Please provide an explanation for your answer.

2.4 Regulation of building control profession (Oversight)

54. Section 58Z4 of the Building Act 1984 (as inserted by section 42 of the Building Safety Act 2022) also allows the regulatory authority (i.e., in England, the newly created Building Safety Regulator) to issue an improvement notice to a local authority or registered building control approver if, following an investigation or otherwise, it appears that they have breached its operational standards rules^[footnote 4].

55. The purpose of an improvement notice is to direct the authority or registered building control approver to remedy the breach as specified in the notice. The improvement notice must be served with a statement of reasons to explain why it has been served.

56. In England, copies must be provided to the Secretary of State. In the case of a registered building control approver, copies must additionally be provided to each local authority. The notice has effect for the timeframe specified in the notice or until it is revoked.

With regard to:

Where the regulatory authority issues an improvement notice for contravention of operational standards rules. (Section 42, Clause 58Z4 (7))

Serious contravention notice (where person fails to comply with improvement notice as above) (Section 42, Clause 58Z5 (9))

Continuing failure to meet standards - registered building control approver may appeal to the tribunal against the cancellation of its

registration (Section 42, Clause 58Z6 (5))**Continuing failure to meet standards: local authorities in England – where there is an appeal against a recommendation of the regulator. (Section 42, Clause 58Z7 (5))**

57. Where the affected party wishes to lodge an appeal against the regulator's action, the government proposes to regulate that the grounds of appeal should be that the regulator's action is erroneous in fact, wrong in law, unreasonable, or procedurally flawed. We also propose that the appeal must be lodged within 21 days of the original decision by the Regulator.

58. The government intends to regulate so that the method by which the appeal must be lodged is as prescribed by the tribunal under rule 26 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules, and on determining the appeal, the tribunal may confirm, vary, or quash the decision.

59. Section 25(9) of the Building Safety Act 2022 provides where the regulator makes these decisions, they are not eligible for an internal review by the regulator.

Q. 14: Do you agree with the approach to appeals against a decision by the Building Safety Regulator with respect to oversight of the building control profession (both public and private organisations) as outlined above?

Response: Yes / No

Q. 14A: Please provide an explanation for your answer.

3. Restricted activities and functions

3.1 Restricted activities

60. Section 44 of the Building Safety Act 2022 inserts new sections 46A and 54B into the Building Act 1984. Those provisions allow regulations to be made which require building control bodies to use a registered building inspector to carry out certain activities. Our proposal for restricted activities is to ensure that people who are carrying out certain building control work are

adequately skilled and experienced to do that work. A registered building inspector will need to be registered in the appropriate class for the type of work they wish to carry out.

61. Restricted activities will apply to local authorities and registered building control approvers. The Building Safety Regulator will not have any restricted activities applied to them, as registered building inspectors will be working within its multi-disciplinary team and expertise will be drawn from across that team.

62. We are proposing that the restricted activities will be:

- For local authorities: where building control applications with full plans (currently 'deposit of plans') are submitted to a local authority under any provision of the Building Regulations 2010, checking of the application and plans for compliance with any applicable requirement of the building regulations;
- For registered building control approvers: where an initial notice, plans certificate or amendment notice is to be given under the Building (Approved Inspectors etc.) Regulations 2010, checking of plans to which the certificate or notice relates for compliance with any applicable requirement of the building regulations;
- For local authorities and registered building control approvers: where an inspection of building work is to be carried out for the purpose of checking compliance with any applicable requirement of the building regulations, the carrying out of that inspection (including scheduling the stages or points for inspections).

Q. 15: Do you agree with the restricted activities set out for local authorities and registered building control approvers?

Response: Yes / No

Q. 15A: If no, please provide an explanation for which you disagree with and why.

Q. 16: Do you think any other activities should be included as restricted?

Response: Yes / No

Q. 16A: If yes, please specify what these are in the free text box.

3.2 Restricted functions

63. Section 44 of the Building Safety Act 2022 inserts new provisions into the Building Act 1984 which also allow regulations to be made which require building control bodies to obtain and consider the advice of a registered building inspector before carrying out a certain function. We proposed that these functions are the decision-making points in the building control process. Our intention with restricted functions is to ensure competent people are involved in and advising on the most significant building control decisions. The building control body will need to use an inspector that holds registration that covers the type of work they are providing advice on.

64. The functions that we intend to set out as restricted will be slightly different for each building control body, due to the different types of work they can oversee. For example, local authorities will have additional restricted functions to cover their statutory functions and the Building Safety Regulator will have functions that align with the new building control regime for higher risk buildings.

Q. 17: From the list below, please tick any functions you **do not** think should be restricted functions for registered building control approvers.

Registered Building Control Approvers

- Submitting initial notices
- Issuing plans certificates or a combined certificate with initial notice
- Giving a cancellation notice in cases of a contravention of building regs under section 52(1)(c)
- Giving a cancellation notice when work becomes higher-risk building work under section 52A(1)
- Determining whether to issue a final certificate
- Submitting an amendment notice under section 51A where there is a variation of work
- Submitting a new initial notice under section 53(7) where the original initial notice ceases to be in force, but no final certificate has been issued.
- Giving a transfer certificate and report under section 53B for a new initial notice where there is a change of registered building control approver.

Q. 17A: For any boxes you ticked, please explain why you do not think the function should be included.

Q. 17B: Are there any functions not included above that you think should

be restricted for registered building control approvers?

Response: Yes / No

Q. 17C: If yes, please specify what these are in the free text box and explain why you think they should be included.

Response: Yes / No / Comment box

Q. 18: From the list below, please tick any functions you **do not** think should be restricted functions for local authorities.

Local authorities

- Determining a building control approval application
- Determining whether to accept or reject a transfer certificate and report
- Determining whether to issue a completion or partial completion certificate
- Issuing a direction to Relax or Dispense with a requirement of the building regulations
- Decisions on matters relating to the use of short-lived materials in sections 19 & 20 of BA84
- Decisions on matters dealing with the drainage of buildings in sections 21 & 22
- Decisions on matters dealing with the provision of water supply in section 25
- Tests for conformity with building regulations in section 33
- Deciding if there is a contravention of building regs under section 35
- Giving compliance (S35B) & stop (S35C) notices
- Giving or withdrawing a section 36 notice or the decision on execution of section 36 notices (removal or alteration of offending work)
- Provision of facilities for refuse under section 23
- Determining an application for a certificate for unauthorised building work under BR2010 regulation 18(5) (regularisation certificate)
- Deciding, with partly completed work (under regulation 19 of Building (Approved Inspectors etc) Regulations 2010), whether the plans are sufficient to show the work will not contravene building regulations or when the work needs to be cut into, when work reverts to a local authority.

Q. 18A: For any boxes you ticked, please explain why you do not think

the function should be included.

Q. 18B: Are there any functions not included above that you think should be restricted for local authorities?

Response: Yes / No

Q. 18C: If yes, please specify what these are in the free text box and explain why you think they should be included.

Q. 19: From the list below, please tick any functions you **do not** think should be restricted for the Building Safety Regulator carrying out higher risk building work.

Building Safety Regulator For Higher-Risk Building Work

- Approving a building control application for a higher-risk building
- Determining whether to issue a completion certificate or partial completion certificate
- Issuing a direction to Relax or Dispense with a requirement in building regulations (section 8(3A))
- Decisions on matters relating to the use of short-lived materials in sections 19 & 20
- Decisions on matters dealing with the drainage of buildings in sections 21 & S22
- Decisions on matters dealing with the provision of water supply in section 25(1)
- Tests for conformity with building regulations in section 33
- Deciding if there is a contravention of building regs under section 35
- Giving compliance (S35B) & stop (S35C) notices
- Giving or withdrawing a section 36 notice, or the decision on execution of section 36 notices (removal or alteration of offending work)
- Giving approval, in the cases where it is required when building control approval was given, so that work can progress past a stage or point.
- Determining the outcome of a regularisation certificate application for a higher-risk building
- Provision of facilities for refuse in section 23
- Determining a higher-risk building HRB change control application

Q. 19A: For any boxes you ticked, please explain why you do not think the function should be included.

Q. 19B: Are there any functions not included for higher-risk building work that you think should be restricted for the Building Safety Regulator?

Response: Yes / No

Q. 19C: If yes, please specify what these are and explain why you think they should be included.

Q. 20: From the list below, please tick any functions you **do not** think should be restricted for the Building Safety Regulator carrying out non higher-risk building work.

For non higher-risk building work under a Regulator's Notice

- Determining a building control approval application
- Issuing a completion or partial completion certificate when a Regulator's Notice has been given to the Local Authority
- Issuing a direction to Relax or Dispense with a requirement
- Decisions on matters relating to the use of short-lived materials in sections 19 & 20 of BA84
- Decisions on matters dealing with the drainage of buildings in sections 21 & 22
- Decisions on matters dealing with the provision of water supply in section 25
- Tests for conformity with building regulations in section 33
- Deciding if there is a contravention of building regs under section 35
- Giving compliance (S45B) & stop (S35C) notices
- Giving or withdrawing a section 36 notice or the decision on execution of section 36 notices (removal or alteration of offending work)
- Provision of facilities for refuse under section 23
- Determining an application for a certificate for unauthorised building work under BR2010 18(5) (regularisation certificate)

Q. 20A: For any boxes you ticked, please explain why you do not think the function should be included.

Q. 20B: Are there any functions not included for non higher-risk building work that you think should be restricted for the Building Safety Regulator?

Response: Yes / No

Q. 20C: If yes, please specify what these are and explain why you think they should be included.

4. Cancellation of initial notices

4.1 Section 46 - higher-risk building work: registered building control approvers and cancellation of initial notices

65. Amendments in section 46 of the Building Safety Act 2022 remove the ability for persons carrying out work on higher-risk buildings to choose their building control body. This is also called 'ending dutyholder choice for higher-risk buildings'. Under the new regime, the Building Safety Regulator will be the only building control authority for higher-risk buildings and the proposals for this new building control regime were subject to separate [consultation \(https://www.gov.uk/government/consultations/consultation-on-implementing-the-new-building-control-regime-for-higher-risk-buildings-and-wider-changes-to-the-building-regulations-for-all-buildings\)](https://www.gov.uk/government/consultations/consultation-on-implementing-the-new-building-control-regime-for-higher-risk-buildings-and-wider-changes-to-the-building-regulations-for-all-buildings). It will not therefore be allowed from the start of the higher-risk building regime for an approved inspector or registered building control approver to submit an initial notice (the initial approval mechanism required in law when employing a registered building control approver to carry out the building control) or amendment notice (the mechanism to vary an initial notice) or for a developer to deposit full plans with a local authority.

66. As it will not be lawful for an initial notice or amendment notice to cover higher-risk building work, any such notice will be void and cannot be relied upon. We propose that initial notices and amendment notices will include a statement under which those signing the notice confirm that none of the work

described in it is higher-risk building work. If after a notice is submitted registered building control approvers, local authorities or persons carrying out work are satisfied that the work has become higher-risk building work they must cancel that initial notice under the new power in section 52A.

67. We are proposing a time limited exception to the above where the work is covered under the transitional provisions and is commenced by the date set out in those provisions. More detail on these proposals is included in section 1.4 this consultation.

68. We now need, through secondary legislation, to set out and amend the forms in the Building (Approved Inspector) Regulations 2010, in particular the forms to be used by local authorities, registered building control approvers and the person carrying out the work to cancel initial notices in cases under section 52A. This is to ensure that such work reverts to the Building Safety Regulator.

69. This section of the Building Safety Act 2022 also provides the power to prescribe the period within which a new initial notice may be given in cases where a tribunal determines on appeal that the relevant part of the original initial notice should not have been cancelled. It should be noted that section 55(2C) provides that if the tribunal decides an initial notice should not have been cancelled then the initial notice is not reinstated. Instead, the developer would need to submit a new notice.

70. Our intention is to:

- Amend the existing initial notice form in Schedule 1 of the Building (Approved Inspectors etc.) Regulations 2010 to include a statement that building work does not contain any higher-risk building(s).
- Create a new 'for information' form in Schedule 1 of the Building (Approved Inspectors etc.) Regulations 2010 for local authorities to deal with situations where initial notices are submitted that contain one or more higher-risk building(s).
- Create three new forms, one each for registered building control approvers, individuals, and local authorities to cancel initial notices when building work includes one or more higher-risk building(s). These forms would each include full cancellation and part cancellation options (as envisaged by section 52A), the latter to deal with cases of mixed sites with higher-risk buildings and non higher-risk buildings where the initial notice only needs to be cancelled in part, not in full.
- Public bodies with a building control procedural exemption under s5 or s54 of the Building Act 1984 will not be able to carry out their own building control on higher risk buildings in future. We will amend the public body notices (equivalent to initial notices) to include a statement that building work does not contain any higher risk building(s). Public bodies and local authorities will be required to cancel public body notices when building

work is or becomes higher risk building work. We also aim to introduce secondary legislation soon to limit ministers' ability to grant future building control procedural exemptions to non higher risk building work only.

Q. 21: Do you agree with our proposed approach?

Response: Yes / No

Q. 21A: Where necessary, please provide an explanation for your answer.

71. Additionally, new section 55(2A), also creates a right of an appeal where a local authority cancels an initial notice. The person carrying out the work or the registered building control approver may appeal to the First-tier Tribunal (in England) on the grounds that the initial notice was not properly cancelled.

72. The government proposes that where affected parties wish to appeal a decision by local authority, we are proposing that the grounds of appeal for the local authority's action in cancelling the initial notice was erroneous in fact, wrong in law, unreasonable, or procedurally flawed. We also propose that the appeal must be lodged within 21 days of the original decision by the Regulator.

73. The government intends to regulate so that the methods by which the appeal must be lodged is as prescribed by the tribunal under rule 26 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules.

74. On determination, it is proposed, that if the initial notice was correctly cancelled, and the works have become higher-risk, the tribunal should notify the applicant and respondent.

75. Finally, the Building Safety Act 2022 stipulates that if the tribunal rules that the notice was incorrectly cancelled, this does not have the effect of reinstating the initial notice, and that the tribunal should inform the affected parties.

4.2 Time limits on lodging an appeal

76. Section 56 of the Building Safety Act 2022 amends the Building Act 1984 so that so certain appeals are transferred from the magistrate's court to the tribunal, and that any appeal of the building control body's decision must be lodged within 21 days. This is to ensure consistency with the Building Safety

Regulator's general approach to appeals.

Q. 22: Do you agree or disagree with the government's approach to appeals?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Q. 22A: Please add comments where you think necessary.

4.3 Section 50 cancellation of initial notices in cases of sanctions

77. The Building Safety Act 2022 will increase standards in the overall building control profession by increasing regulation, registration and competence requirements of those who work in the profession. This includes powers to sanction registered building control approvers for failing to meet these requirements, through suspensions (either for all their work or for certain types of work) and deregistration. Section 50 of the Building Safety Act 2022 provides that in cases where certain sanctions have been issued against a registered building control approver, its initial notices will have to be cancelled. In these cases, registered building control approvers will be blocked from working on some or all their projects, depending on the severity and reach of the sanction imposed and work will revert to the local authority.

78. This section provides that before cancelling an initial notice on these grounds a local authority must give the registered building control approver seven days' notice of the proposed cancellation. It also allows government to prescribe circumstances, in addition to those set out in primary legislation, under which a registered building control approver, the person carrying out the work or local authority must cancel the initial notice.

79. Our intention is to:

- Create a new Building (Approved Inspectors etc) Regulations 2010 form for local authorities to use to notify a registered building control approver of a proposed cancellation of an initial notice. We propose the form would explain to the registered building control approver that in seven days a cancellation will be issued. During this period, the registered building

control approver could make representations if they consider the proposed cancellation is not correct. At the end of this period if no such representation is made and/or agreed with by the local authority, the local authority would proceed to cancel the initial notice.

- Amend the existing Schedule 1 form to allow local authorities to cancel registered building control approvers' initial notices, and for registered building control approvers to cancel their initial notices, on the grounds of professional sanctions.

80. If the person carrying out the work has appointed a new registered building control approver who is able to take over the work, then a new initial notice could be submitted (under section 53(7), subject to complying the new procedure in section 53B to 53E, see below) immediately after the cancellation. The work would otherwise revert to the local authority.

Q. 23: Do you agree with our proposed approach?

Response: Yes / No

Q. 23A: Where necessary, please provide an explanation for your answer.

5. Plans certificates

81. Plans certificates currently allow approved inspectors (and in future, registered building control approvers) to certify that detailed plans for building work are in accordance with all applicable building regulations' requirements. Where a plans certificate is submitted, and not rejected by the local authority, they also provide protection for the developer from enforcement after the work is completed, provided the work is carried out in accordance with the plans certificate.

82. Approved inspectors are responsible for checking that building work described in the plans will comply with all applicable building regulations' requirements, if built in accordance with those plans. Plans certificates can also be issued combined with an initial notice. A local authority can either accept or reject the plans certificate but only on the grounds currently provided in the Building (Approved Inspectors etc.) Regulations 2010.

83. The Building Safety Act 2022 introduces powers for government to make changes to the building regulations to:

- Require a plans certificate to be given in prescribed cases;
- Deal with the consequences of failing to comply with such a requirement; and
- Allow for the ability to submit a plans certificate subject to further plans being inspected by the registered building control approver at a later date.

84. Plans certificates are currently mandatory only when an approved inspector is asked to provide one by their client, and in practice they are estimated to be used in only a small minority of cases.

85. An important part of our reforms is to create a unified building control profession, in response to Dame Judith Hackitt's independent review. Key to achieving this is ensuring that building control processes are as consistent as possible across both the public and private sector, and achieve the aim of increasing building safety. We believe there is potential for greater use of plans certificates for building work to which the Regulatory Reform (Fire Safety) Order 2005 (the 'Order') applies, or will apply on completion of the work, to ensure that registered building control approvers are consistently following a similar process to a local authority full plans application for relevant buildings. This will be limited to non higher risk buildings as building control on higher risk buildings will be carried out by the Building Safety Regulator as opposed to registered building control approvers.

86. Therefore, as announced in the government response to the [Fire Safety Consultation \(https://www.gov.uk/government/consultations/fire-safety\)](https://www.gov.uk/government/consultations/fire-safety), we intend to make plans certificates mandatory for any building work under the building regulations on non higher risk buildings that fall under the Regulatory Reform (Fire Safety) Order 2005 (the 'Order'). Many buildings fall under this Order, but a major category is buildings with common areas such as blocks of flats.

87. This means that in cases of building work falling under the Order, the registered building control approver will have to consider some or all of the plans together and certify to the local authority that the building work will comply with all applicable building regulations' requirements if built in accordance with those plans.

88. Separately, but related, registered building control approvers will continue to be under a duty under Regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010 to consult the fire and rescue authority where building work covers part B of the building regulations (fire) and cannot give a final certificate until 15 days after approaching the fire and rescue authority unless they have expressed their view in the meantime.

89. Other reforms proposed in this consultation, within section 8.2 mean this approach has to be carried out within a prescribed timescale of an initial notice being submitted.

90. Where a registered building control approver does not feel satisfied that they have received all the information they need to issue a plans certificate, they will be able to issue a certificate with a statement confirming that they have inspected full plans or inspected sufficient plans to issue the plans certificate and the client has agreed to provide all further plans for the approver to inspect before the work to which those further plans relate starts. This could include a statement indicating when plans will be provided for inspection before further work starts. This should resolve the issue of an approver being unable to provide a plans certificate where some minor plans have not yet been provided to it. The registered building control approver should then take all reasonable steps to check building work complies with all applicable building regulations' requirements, and provide further information to fulfil the plans certificate process without it being cancelled.

91. Where conditions have not been met, we would expect the registered building control approver to cancel the initial notice, and the work to revert to local authority building control for regularisation or enforcement where necessary. Local authorities will also be able to cancel the initial notice.

92. We are considering the level of guidance that will be necessary to help set out the suggested sequence of events and timings for the plans certificate process. In summary, our intention is to:

- Make plans certificates mandatory for any work – provided it falls under the building regulations – to all non higher risk buildings that fall under the Regulatory Reform (Fire Safety) Order 2005. This includes where the building work results in the building falling under the Order.
- Allow for cancellation of initial notices where a registered building control approver or public body is carrying out building control on a building subject to the Regulatory Reform (Fire Safety) Order 2005 without a plans certificate. This includes cases where a registered building control approver has not approached the fire and rescue service within a prescribed timescale of the initial notice being submitted.
- Allow for cancellation of initial notices related to plans certificates submitted subject to further information to follow but this has not happened.
- Amend the form for plans certificates to include a statement stating the developer has confirmed to the registered building control approver that further plans will be provided for inspection by a specific time before the work relating to those plans is started.

Q. 24: Do you agree that plans certificates should be mandatory for any work to all buildings that fall under the Regulatory Reform (Fire Safety) Order 2005?

Response: Yes/ No

Q. 24A: Please provide an explanation for your answer.

Q. 25: Do you agree that a local authority should be required to cancel the initial notice for a building which falls under the Regulatory Reform (Fire Safety) Order 2005 within a prescribed timescale of an initial notice being accepted, where a plans certificate has not been issued?

Response: Yes/ No

Q. 25A: Please provide an explanation for your answer. If you have answered Yes, please state what an appropriate amount of time, in working days, this would be.

Q. 26: Do you agree with the proposed approach to amending the form for plans certificates in situations when the registered building control approver has been unable to inspect full plans at the time of first issuing a certificate?

Response: Yes/ No

Q. 26A: Please provide an explanation for your answer.

6. New initial notices

6.1 Introduction

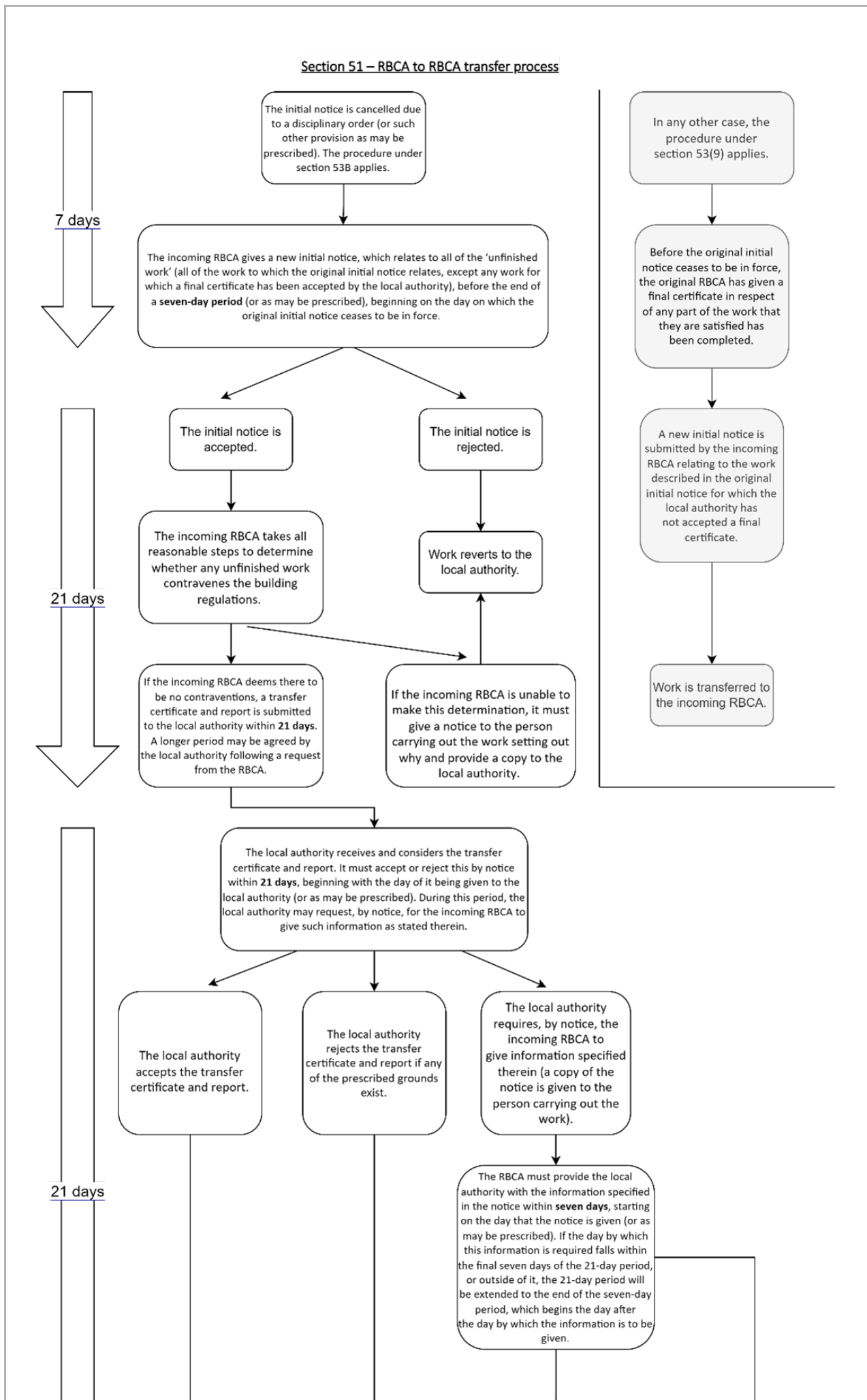
93. Section 53(7) of the Building Act 1984 has allowed a new initial notice to be submitted where the original initial notice has ceased to be in force. The Building Safety Act 2022 introduces a new process for the responsibility of building projects to be transferred from one registered building control approver to another, instead of automatically reverting to the local authority.

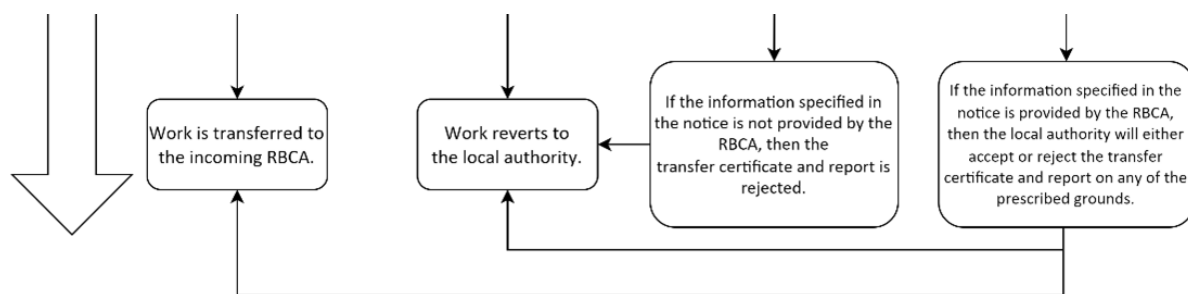
94. This means that a new registered building control approver will be able to take on unfinished work not subject to a final certificate, and ensure that it complies with all applicable building regulations' requirements. This will provide greater flexibility and capacity for the building control system, especially when considering potential unplanned reversions which could arise from disciplinary actions.

95. Where an initial notice is cancelled due to a disciplinary sanction then the procedure in section 53B applies. This imposes a duty on the incoming registered building control approver to submit a transfer certificate and transfer report to the relevant local authority. The transfer certificate and report will enable the incoming registered building control approver, having taken all reasonable steps, including carrying out inspections, to confirm that that the work already completed does not contravene any provision of the building regulations.

96. It will also mean that every incoming registered building control approver has taken all reasonable steps to determine whether any unfinished work contravenes any provision of the building regulations and to confirm this with the relevant local authority to which the transfer certificate and report must be submitted. This may include checking plans for work which is not yet started, as well as carrying out inspections and laying open any work that has already been carried out, where necessary.

97. Where an initial notice is not cancelled for disciplinary sanctions then the procedure in section 53(9) applies, that is that a new initial notice in relation to work described in the original initial notice for which no final certificate has been accepted by the local authority must be submitted. This must not include any additional work.





Section 51 – RBCA to RBCA transfer process

Scenario 1: Initial notice is cancelled due to a disciplinary order (or such other provision as may be prescribed)

The procedure under section 53B applies

The incoming RBCA gives a new initial notice relating to all unfinished work before the end of a seven-day period, or as may be prescribed, beginning on the day on which the original initial notice ceases to be in force

If the initial notice is rejected the work reverts to the local authority

If the initial notice is accepted the incoming RBCA takes all reasonable steps to determine whether any unfinished work contravenes the building regulations

If the incoming RBCA is unable to make this determination it must give a notice to the person carrying out the work setting out why and provide a copy to the local authority. The work then reverts to the local authority

If the incoming RBCA deems there to be no contraventions a transfer certificate and report is submitted to the local authority within 21 days or a longer period if agreed by the local authority

The local authority receives and considers the transfer certificate and report, which must be accepted or rejected by notice within 21 days. During this period the local authority may request for the incoming RBCA to give further information by notice

If the local authority accepts the transfer certificate and report the work is transferred to the incoming RBCA

If the local authority rejects the transfer certificate and report on any of the prescribed grounds the work reverts to the local authority

If the local authority requests further information from the RBCA this information must be provided within 7 days

If the information specified in the notice is provided by the RBCA then the

local authority will either accept or reject the transfer certificate and report on any of the prescribed grounds

If the information specified in the notice is not provided by the RBCA then the transfer certificate and report is rejected and the work reverts to the local authority (End)

Scenario 2: Initial notice is not cancelled due to a disciplinary order (or such other provision as may be prescribed)

The procedure under section 53(9) applies

Before the original initial notice ceases to be in force, the original RBCA must have given a final certificate in respect of any part of the work that they are satisfied has been completed

A new initial notice is then submitted by the incoming RBCA relating to the work described in the original initial notice for which the local authority has not accepted a final certificate

The work is then transferred to the incoming RBCA (End)

6.2 Power to prescribe the period of time a registered building control approver has to submit a new initial notice under section 53B

98. As part of the new transfer process, a new initial notice must be submitted by the incoming registered building control approver once the original initial notice is cancelled. The new initial notice must be given before the end of the period of seven days, beginning with the day on which the original initial notice ceased to be in force, or such other period as may be prescribed. If an alternative registered building control approver does not decide to take on the work and submit an initial notice within this period, the work will automatically revert to the local authority.

Q. 27: Do you believe that a period of seven days is sufficient for an incoming registered building control approver to familiarise itself with any type of project which could fall under this process?

Response: Agree / disagree

Q. 27A: Please provide an explanation for your answer. If you have answered disagree, please outline any changes that you would make and why.

6.3 Power to prescribe additional circumstances where a new initial notice may be given

99. The transfer process also allows for additional circumstances when a new initial notice relating to any of the work covered by the original initial notice may be given.

100. The Building Safety Act 2022 establishes that a new initial notice, under the procedure in section 53B regarding any of the work to which the original initial notice related, may be given only in the case of an initial notice ceasing to be in force by virtue of the registered building control approver being given a disciplinary order by the Building Safety Regulator. We are proposing the following additional circumstance in which a new initial notice may be given:

- Business cessation, including insolvency that leads the registered building control approver to lose the ability to carry out its functions. As cessation of a business is beyond the control of the person carrying out the work, they will be able to submit a new initial notice, rather than s53(9) applying. We think it unfair for the person carrying out the work to have to rely on the registered building control approver, whose business is ceasing, to provide a final certificate.

Q. 28: Do you agree or disagree with the additional circumstance of business cessation for which a new initial notice may be given?

Response: Agree / disagree

Q. 28A: Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

Q. 29: Do you believe that any further circumstances should be added?

Response: Yes / No

Q. 29A: Please provide an explanation for your answer. If you have answered Yes, please explain which additional circumstances you would add.

6.4 Information which the transfer certificate must contain

101. As part of this new process, we are introducing a transfer certificate and report. The incoming registered building control approver must take all reasonable steps to determine whether the unfinished work contravenes any provision of the building regulations (see above). They must then submit the transfer certificate and report to the relevant local authority to demonstrate that they are satisfied that the building work complies with building regulations' requirements. The local authority will then review the transfer certificate and report and decide on whether it is satisfied that the unfinished work is in line with building regulations.

102. To ensure a clear transfer process, the incoming registered building control approver should clearly identify the extent of any building work already carried out at the time the new initial notice has been deposited, confirm the compliance status of the unfinished building work and identify how they have established compliance – for example, by way of exposing a foundation, structural element or by some form of test or calculation.

103. The transfer certificate is to include following information:

- any plan assessment reports
- any correspondence on design/plan compliance
- any matters that had been treated as a condition for design compliance
- any fire service and sewerage company reports
- all inspection records
- all inspection compliance correspondence
- any specialist advice to the registered building control approver – for example structural or fire engineering compliance report(s), any information in relation to work carried out by a person registered with an appropriate Competent Persons Scheme
- any information in relation to domestic electrical work certified as compliant with building regulations by a person registered with a third-party certification scheme
- a full breakdown of building work undertaken to date and what remains to

be done

- extent of any investigations carried out
- extent of any investigations which were not possible
- the information that has been gathered and any outstanding information required to determine compliance
- a schedule of suitably referenced documents gathered by the registered building control approver should also form part of the transfer certificate, together with a report on the status of compliance of any work already carried out.

Q. 30: Do you agree or disagree that the information listed above is sufficient to assure the local authority that unfinished building work, which is not subject to a part-final certificate, does not contravene any provision of the building regulations?

Response: Agree / disagree

Q. 30A: Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

6.5 Consideration of the transfer certificate and report by the local authority

104. After the transfer certificate and report is submitted to the relevant local authority by the incoming registered building control approver, it must be either accepted or rejected by notice within 21 days. During this 21-day consideration period, the local authority may also require, by notice, the registered building control approver to provide further specified information. This information must be given to the local authority within seven days. If this 7 day period falls at the end or after the 21 day consideration period, the registered building control approver has up to the end of the seven days from when the local authority makes the request for further information.

Q. 31: Do you agree with a 21-day consideration period during which a local authority must either accept or reject the transfer certificate and report?

Response: Agree / disagree

Q. 31A: If you do not agree, what time frame do you think would be appropriate for a local authority to consider a transfer certificate and report? Please give reasons for your answers.

Q. 32: Do you agree or disagree with the seven-day period a registered building control approver has to provide information to the local authority, if requested?

Response: Agree / disagree

Q. 32A: If you have answered disagree, please explain what changes you think should be made.

6.6 Grounds of rejection for the transfer certificate and report

105. The purpose of the transfer certificate and report is for the new registered building control approver to demonstrate to the local authority that it has been able to carry out its role of inspecting completed building work and checking plans of the unfinished work, ensuring that the building work complies with building regulations' requirements, and then confirming to the local authority that it is able to supervise completion of the building work.

106. A local authority may reject a transfer certificate and report, within the required time period, if the registered building control approver fails to give the local authority any information requested by notice, or if following grounds exist:

- Where a previous initial notice and transfer certificate and report has ceased to be in force by virtue of section 53D(5) of the Building Safety Act 2022
- Where the unfinished work described in the transfer certificate and report

is not the work to which original initial notice refers

- Where there is already an accepted initial notice and transfer certificate and report in place
- Where there is already a valid building regulations application submitted with the local authority via the regulation 18 (Regularisation Certificate) route
- Where enforcement action under section 35/36 of the Building Act 1984 has been commenced by the local authority following cancellation of the initial notice
- Where a new initial notice has not been given in accordance with section 53(7)(a) or has been so given but has been cancelled
- Where the transfer certificate and report was submitted outside the relevant period,
- Where the transfer certificate and report does not confirm the compliance of any unfinished work
- Where the transfer certificate and report does not include the prescribed information e.g., to demonstrate compliance with section 51 and sections 53B(6) & 53C(4)

Q. 33: Do you agree or disagree that the above list covers sufficient grounds for a local authority to be able to reject a transfer certificate and report?

Response: Agree / disagree

Q. 33A: Are there any grounds included in the list above that you think should be removed?

Response: Yes / No

Q. 33B: If you have answered Yes, please state which grounds you would remove from the list and why.

Q. 34: Are there any grounds that are not in the list above that you think should be included?

Response: Yes / No

Q. 34A: If you have answered Yes, please state which grounds you would

add to the list and why.

6.7 Cancellation notices as a result of a change of registered building control approver

107. In cases where the incoming registered building control approver does not submit a transfer certificate and report in accordance with section 53C, or has its transfer certificate and report rejected by the local authority, then section 53D provides that the initial notice must be cancelled in the prescribed form.

108. We propose the form for the local authority to cancel an initial notice includes the following:

- Name of the incoming registered building control approver
- The work which was covered by the relevant initial notice
- That the officer is authorised to sign the notice
- The name of the local authority under which the officer is authorised to sign the notice
- The date on which the initial notice was accepted by the local authority
- That the work to which this notice refers was specified in the initial notice
- The reason that the initial notice is being cancelled, giving two options:
 - I. the registered building control approver has not submitted a transfer certificate and report in accordance with section 53C to the local authority
 - II. the local authority has rejected the transfer certificate and report
- Where the second option applies, a section for the officer to provide the reason for the rejection of the transfer certificate and report
- name of the local authority officer
- Signature of the local authority officer
- Date

109. The person carrying out the work can also cancel the initial notice while it is in force and before the transfer certificate and report is accepted or rejected by the local authority.

110. We propose the form for the person carrying out the work to cancel the initial notice includes the following:

- Name of the person carrying out the work
- The name of the local authority to which the initial notice in question was submitted

- Date the initial notice was submitted to the local authority
- That the work to be cancelled is specified in the initial notice
- Confirmation that the person filling out the form is the person carrying out the work
- Confirmation that the initial notice is to be cancelled
- Signature of the person carrying out the work
- Date

Q. 35: Do you agree or disagree with the information to be included in the above cancellation notices?

Response: Agree / disagree

Q. 35A: Please provide an explanation for your answer. If you have answered disagree, please explain what additional information you would include.

6.8 Cases where a further initial notice may be prescribed

111. In cases where a new initial notice has been submitted by the incoming registered building control approver under section 53(7)(a) and it ceases to be in force, then section 53D(5) makes clear that another initial notice covering the same work may not be given except in prescribed circumstances. We propose to prescribe the following circumstances where a further initial notice may be issued after a cancellation.

112. Where the initial notice ceases to be in force because:

- the person carrying out the work cancels the initial notice whilst it is in force but before the transfer certificate and report are accepted by the local authority because the registered building control approver who submitted the initial notice becomes insolvent and is no longer be able to carry out its functions. This is because this situation is beyond the control of a person carrying out the work.

Q. 36: Do you agree or disagree that the above categories cover the necessary circumstances for a new initial notice to be submitted?

Response: Agree / disagree

Q. 36A: Please provide an explanation for your answer. If you have answered disagree, please explain what additional circumstances you would include.

Q. 37: Do you believe that additional categories should be added?

Response: Yes / No

Q. 37A: If you have answered Yes, please provide an explanation for your answer.

7. Information gathering – Section 52

113. Section 52 of the Building Safety Act 2022 amends section 53 of the Building Act 1984 to introduce a provision to enable local authorities to have the ability to seek information from a registered building control approver where that registered building control approver's initial notice has ceased to be in force and the local authority needs the information after a project has become the responsibility of the local authority.

114. Under the current system, when a case reverts to the local authority they must be provided with plans, however, there is no explicit duty to provide casework to the local authority or answer questions about the project.

115. Section 53(4A) to (4D) places a duty on registered building control approvers to provide local authorities with information relating to their building work, as well as any other information the local authority may reasonably require, on request. Registered building control approvers will also be under a duty to provide copies to their clients, together with any other information they may have obtained or created in relation to the work during the period in which the initial notice was in force, as well as any other information that the person carrying out the work may, by notice, reasonably require for the purpose of enabling a person other than the outgoing approver to take over its functions. We suggest that such information must be provided by the registered building control approver to the local authority within 21 days of the date of the request.

116. Section 53(4C) requires the registered building control approver to provide the same information to the person carrying out the work within a prescribed period. We propose this period should also be 21 days. As an interested party, the person carrying out the work will also be entitled to receive this information.

Q. 38: Do you agree or disagree with the proposed time period of 21 days for the outgoing registered building control approver to be required to provide this information to the local authority?

Response: Agree / disagree

Q. 38A: Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

Q. 39: Do you agree or disagree with the same proposed time period of 21 days for the outgoing registered building control approver to provide this information to the person carrying out the work?

Response: Agree / disagree

Q. 39A: Please provide an explanation for your answer. If you have answered disagree, please explain what changes should be made.

8. Further amendments to The Building (Approved Inspectors etc.) Regulations 2010

117. As part of these reforms, we are proposing additional amendments to the Building (Approved Inspectors etc.) Regulations 2010, which in due course will be revoked and consolidated in a new set of regulations under the Building (Registered Building Control Approver etc.) (England) Regulations, to reflect the changes brought about by the Building Safety Act 2022 and introduce additional measures to improve the system as a whole.

8.1 Additional information regarding the person carrying out the work to be provided on the initial notice

118. There is currently only limited information about the person carrying out the work that must be provided on the initial notice form. This can mean that the information is not clear, for example where the registered building control approver signs the initial notice on behalf of their client. We propose that more details about the person carrying out the work is included in the initial notice. This will ensure that the information on the form is accurate and a clear audit trail is available for the relevant parties.

119. This will support effective enforcement work in cases where the registered building control approver is unable to continue. It will also help to make clear to the person carrying out the work which type of building control body is being used, particularly where the registered building control approver's client is an agent and not the person carrying out the work.

120. We propose that the initial notice form is amended to include the name, address, telephone number and (if available) email address of the person carrying out the work and the registered building control approver. We also propose that the Public Body's Notice is amended to include the name of the organisation, address, telephone number and email address.

Q. 40: Do you agree or disagree that the above additional information should be included on the relevant forms?

Response: Agree / disagree

Q. 40A: Please provide an explanation for your answer. If you have answered disagree, please state why.

8.2 Registered building control approver's consultation with the fire and rescue authority

121. Regulation 12 of the Building (Approved Inspectors etc.) Regulations 2010 applies where an initial notice (amendment notice, plans certificate or final certificate) is to be given, or has been given, in relation to the erection, extension or material alteration of a building or any part of it to which the Regulatory Reform (Fire Safety) Order 2005 applies, or will apply after the

completion of building work. This also applies in relation to building work in connection with a relevant change of use of a building and Part B of Schedule 1 to the Building Regulations 2010 imposes requirements in relation to the work.

122. Currently, approved inspectors must consult the fire and rescue authority before or as soon as practicable after an initial notice or amendment notice is submitted in relation to proposed work that triggers Part B (fire safety). We intend to improve the consultation process to ensure that consultations take place in a timely manner.

123. We propose to introduce a time period within legislation by which a registered building control approver must consult the fire and rescue authority after an initial notice or amendment notice is submitted, beginning on the day that such a notice is submitted. We would welcome views on an appropriate timescale – for example, whether this should be five, ten or fifteen working days, and whether there are scenarios where longer might be required.

Q. 41: Do you agree that a time period within which consultations with the fire and rescue authority are to take place should be introduced?

Response: Agree / disagree

Q. 41A: If you have answered agree, please state what an appropriate amount of time, in working days, for the registered building control approver to consult the fire and rescue authority would be.

- Five
- Ten
- Fifteen
- Other

Q. 41B: Please provide an explanation for your answer. If you have answered Other, please state what an appropriate amount of time, in working days, for the registered building control approver to consult the fire and rescue authority would be.

8.3 Registered building control approver's consultation with the sewerage undertaker

124. Regulation 13 of the Building (Approved Inspector etc.) Regulations 2010 applies where an initial notice or amendment notice is to be given or has been given in respect of work in relation to which paragraph H4 of Schedule 1 to the Principal Regulations imposes requirements. Currently, approved inspectors must consult the sewerage undertaker before or as soon as practicable after an initial notice or amendment notice is submitted in relation to proposed work. The sewerage undertaker must also be consulted before giving a plans certificate (whether or not combined with an initial notice) and before giving a final certificate.

125. In line with the proposed changes for regulation 12, we propose to introduce a specific time period within legislation by which a registered building control approver is to consult the sewerage undertaker after submitting an initial notice or amendment notice, beginning on the day that such a notice is submitted. We would welcome views on an appropriate timescale – for example, whether this should be five, ten or fifteen working days, and whether there are scenarios where longer might be required.

Q. 42: Do you agree that a time period within which consultations with the sewerage undertaker are to take place should be introduced?

Response: Agree / disagree

Q. 42A: If you have answered agree, please select what you believe would be the appropriate amount of time for the registered building control approver to consult with the sewerage undertaker.

- Five
- Ten
- Fifteen
- Other

Q. 42B: Please provide an explanation for your answer. If you have answered Other, please state what an appropriate amount of time, in working days, for the registered building control approver to consult the sewerage undertaker would be.

About this consultation

This consultation document and consultation process have been planned to

adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 and UK data protection legislation. In certain circumstances this may therefore include personal data when required by law.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the information access regimes and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Levelling Up, Housing and Communities will at all times process your personal data in accordance with UK data protection legislation and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included below.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](https://www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities/about/complaints-procedure) (<https://www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities/about/complaints-procedure>).

Personal data

The following is to explain your rights and give you the information you are entitled to under UK data protection legislation.

Note that this section only refers to personal data (your name, contact details and any other information that relates to you or another identified or identifiable individual personally) not the content otherwise of your response to the consultation.

1. The identity of the data controller and contact details of our Data Protection Officer

The Department for Levelling Up, Housing and Communities (DLUHC) is the data controller. The Data Protection Officer can be contacted at dataprotection@levellingup.gov.uk or by writing to the following address:

Data Protection Officer
Department for Levelling Up
Housing and Communities
Fry Building
2 Marsham Street
London
SW1P 4DF

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

We will collect your IP address if you complete a consultation online. We may use this to ensure that each person only completes a survey once. We will not use this data for any other purpose.

Sensitive types of personal data

Please do not share special category personal data or criminal offence data if we have not asked for this unless absolutely necessary for the purposes of your consultation response. By 'special category personal data', we mean information about a living individual's:

- race
- ethnic origin
- political opinions

- religious or philosophical beliefs
- trade union membership
- genetics
- biometrics
- health (including disability-related information)
- sex life; or
- sexual orientation.

By 'criminal offence data', we mean information relating to a living individual's criminal convictions or offences or related security measures.

3. Our legal basis for processing your personal data

The collection of your personal data is lawful under article 6(1)(e) of the UK General Data Protection Regulation as it is necessary for the performance by DLUHC of a task in the public interest/in the exercise of official authority vested in the data controller. Section 8(d) of the Data Protection Act 2018 states that this will include processing of personal data that is necessary for the exercise of a function of the Crown, a Minister of the Crown or a government department i.e. in this case a consultation.

Where necessary for the purposes of this consultation, our lawful basis for the processing of any special category personal data or 'criminal offence' data (terms explained under 'Sensitive Types of Data') which you submit in response to this consultation is as follows. The relevant lawful basis for the processing of special category personal data is Article 9(2)(g) UK GDPR ('substantial public interest'), and Schedule 1 paragraph 6 of the Data Protection Act 2018 ('statutory etc and government purposes'). The relevant lawful basis in relation to personal data relating to criminal convictions and offences data is likewise provided by Schedule 1 paragraph 6 of the Data Protection Act 2018.

4. With whom we will be sharing your personal data

DLUHC may appoint a 'data processor', acting on behalf of the Department and under our instruction, to help analyse the responses to this consultation. Where we do we will ensure that the processing of your personal data remains in strict accordance with the requirements of the data protection legislation.

5. For how long we will keep your personal data, or criteria used to determine the retention period

Your personal data will be held for two years from the closure of the consultation, unless we identify that its continued retention is unnecessary before that point.

6. Your rights, e.g. access, rectification, restriction, objection

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have your data corrected if it is incorrect or incomplete
- d. to object to our use of your personal data in certain circumstances
- e. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/> (<https://ico.org.uk/>), or telephone 0303 123 1113.

Please contact us at the following address if you wish to exercise the rights listed above, except the right to lodge a complaint with the ICO: dataprotection@levellingup.gov.uk or Knowledge and Information Access Team, Department for Levelling Up, Housing and Communities, Fry Building, 2 Marsham Street, London SW1P 4DF.

7. Your personal data will not be sent overseas

8. Your personal data will not be used for any automated decision making

9. Your personal data will be stored in a secure government IT system

1. High-rise residential buildings, care homes and hospitals which are 18 metres or more in height, or at least 7 storeys.
2. Currently, where an approved inspector has agreed to oversee building work, it must inform the local authority by giving an initial notice. Once an initial notice has been accepted or is deemed to have been accepted, the approved inspector will supervise the project. The local authority however remains the building control authority under section 91 of the Building Act 1984, but has no enforcement powers against work to which an active initial notice relates.
3. Local authority building control will continue as building control authorities under [existing legislation \(https://www.legislation.gov.uk/ukpga/1984/55/part/IV/crossheading/duties-of-local-authorities\)](https://www.legislation.gov.uk/ukpga/1984/55/part/IV/crossheading/duties-of-local-authorities).
4. HSE consulted on the draft operational standards rules in October 2023.

[↑ Back to top](#)



OG

All content is available under the [Open Government Licence v3.0](#), except where otherwise stated

[© Crown copyright](#)