

**Explanatory Memorandum to the Building Safety Act 2022
(Commencement No. 5 and Consequential Amendments) (Wales)
Regulations 2024**

This Explanatory Memorandum has been prepared by Building Regulations policy officials and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Building Safety Act 2022 (Commencement No. 5 and Consequential Amendments) (Wales) Regulations 2024.

Julie James MS
Cabinet Secretary for Housing, Local Government & Planning
04 April 2024

PART 1

1. Description

- 1.1 These Regulations are subordinate legislation which implement some of the changes to the Building Act 1984 (“BA84”) brought about by the Building Safety Act 2022 (“BSA22”).
- 1.2 The Building Safety Act 2022 (Commencement No. 5 and Consequential Amendments) (Wales) Regulations 2024 (“the Regulations”), in relation to Wales:
 - commence section 49(1) and (2) of the BSA22,
 - amend the Regulatory Reform (Fire Safety) Order 2005 (“the 2005 Order”) in two places to include references to registered building control approver,
 - amend the Building (Approved Inspectors etc.) Regulations 2010 (“the 2010 Regulations”) to change references to approved inspectors to “approvers”,
 - amend the Energy Performance of Buildings (England and Wales) Regulations 2012 (“the 2012 Regulations”) to change references to approved inspectors to registered building control approvers.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 The Regulations amend the 2005 Order, the 2010 Regulations and the 2012 Regulations, all of which are England and Wales regulations. Therefore, the amended Regulations will not be bilingual. These amendments are being made now for the purpose of ensuring that the new building control regime can operate effectively from 6 April 2024. There is an intention to make new Wales only regulations to replace the 2010 Regulations, which will be bilingual.

3. Legislative background

- 3.1 Following the Grenfell Tower tragedy, the UK Government appointed Dame Judith Hackitt to lead an independent review of building regulations and fire safety in England. In her 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.
- 3.2 Our own Building Safety Expert Group developed a ‘Road Map to Safer Buildings in Wales’ which applied the Hackitt report recommendations to Wales. These proposals were built on in the White paper: Safer

Buildings in Wales, which set out how we planned to address the issues in the design and construction and occupation stages. The White paper explained that changes to the design and construction regime in Wales would be brought forward through the BSA22.

- 3.3 The BSA22, which received Royal Assent in April 2022, brought forward a package of legislative changes in relation to building safety. For Wales, the Act contains, amongst other provisions, legislative changes to establish new design and construction processes, oversee the competence of those who operate in the system, and other improvements to support the construction of safer buildings generally, and also makes specific provision in relation to higher-risk buildings.
- 3.4 The overall purpose of these amendments is to ensure that the regulatory framework continues to apply, where appropriate, as private sector building control transitions from Approved Inspectors (“AIs”), under the previous regime, to Registered Building Control Approvers (“RBCAs”) under the new regime.
- 3.5 The Welsh Ministers make the Regulations by exercising the powers conferred on them by sections 167(1) and (2)(a) and section 170(4)(b)(vi) of the BSA22.
- 3.6 The Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1 The Regulations are part of a suite of new legislation which overall is intended to drive up standards and safety across the built environment while providing clarity to industry on its responsibilities and duties.
- 4.2 The BSA22 made a large number of changes to the BA84, and therefore those changes are being implemented in phases. The new

building control regime (full implementation of the BSA22) is planned to be in place in April 2025.

- 4.3 Section 43 of the BSA22 amends the BA84 to transfer the functions of private sector building control from AIs, under the previous regime, to RBCAs under the new regime.
- 4.4 The Regulations are intended to flow this change through to the secondary legislation that makes provision for a private sector building control system, the 2010 Regulations.
- 4.5 This is to ensure continuity in regulation for private sector building control as they transition to the new building control regime.
- 4.6 This is achieved by amending references to “approved inspector” in the 2010 Regulations to be “approver”.
- 4.7 An earlier amendment to the 2010 Regulations inserted the definition of “approver” into regulation 2. “Approver” means a registered building control approver within the meaning of section 58N of the BA84.
- 4.8 Where the term “approved inspector” has been left in the 2010 Regulations these are related to the ongoing regulation of AIs during a period of transition to the new regulatory regime, due to end on 1 October 2024.
- 4.9 The Regulations also make similar consequential amendments to the 2005 Order and the 2012 Regulations.
- 4.10 The Regulations also commence section 49 of the BSA22 in order to make amendments to section 50 of the BA84. This will enable RBCAs to deal with Plans Certificates under the new regime. Plan certificates were previously dealt with by AIs.
- 4.11 There are existing transitional provisions, in regulation 4 of the Building Safety Act 2022 (Commencement No 4, Transitional and Saving Provisions) (Wales) Regulations 2024, that ensure AIs can continue to operate, under certain circumstances, for the duration of the transitional period from 6 April 2024 to 1 October 2024.
- 4.12 The Regulations cross refer to this provision in a new transitional provision that ensures that the amendments being made here to the

term “approved inspector” do not apply to those AIs who are continuing to operate during the transitional period.

5. Consultation

- 5.1 There is no statutory duty to consult in respect of the Regulations. However, in line with the Welsh Government’s policy on consultation, the suite of new legislation has been subject to consultation.
- 5.2 BRACW have been consulted and a workshop with key industry stakeholders was undertaken in relation to changes in respect of the building control profession.
- 5.3 A formal consultation was carried out in the process of developing the suite of new legislation. Consultation document ‘Regulation of the Building Control profession and Building Control bodies’¹ was published on 21 April 23 which sought the public consideration of the proposals for these provisions. The consultation was drawn to the attention of a wide audience of key stakeholders such as AIs, Local Authority Building Control Bodies and professional bodies such as Chartered Association of Building Engineers (CABE), Royal Institute of Chartered Surveyors (RICS), and the Chartered Institute of Building (CIOB).
- 5.4 An 8-week consultation ran from 21 April 2023 to 16 June 2023 on the draft proposals for the suite of new legislation. There was targeted engagement with stakeholders prior to the consultation being published.
- 5.5 The consultation received 11 responses from a range of stakeholders including those in the categories of Designer/Engineer/Surveyor, AIs, Local Authority Building Control, Professional bodies and other interested parties. The summary of consultation responses was published in October 2023 (document WG48357)².
- 5.6 Responses have been taken into consideration when drafting the suite of new legislation, though no responses were received that were specific to the provisions in these Regulations.

6. Regulatory Impact Assessment (RIA)

- 6.1 As this instrument makes amendments to update subordinate legislation and the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation, an RIA is not required. This is in line with the policy set out in the Welsh

¹ [Regulation of the Building Control profession and Building Control bodies \(gov.wales\)](#)

² [Summary of Responses and the Government Response for the consultation on the Regulation of the Building Control profession and Building Control bodies](#)

Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.

7. Post implementation review

- 7.1 The BSA22 included a statutory requirement on the Secretary of State to appoint an independent person to carry out a review of the regulatory system every 5 years, the first reviewer is to be appointed within five years of royal assent, although the same statutory requirement was not applied to Wales it is recommended that the Welsh Ministers adopt a similar approach.
- 7.2 As such, an Impact Assessment of the changes to the building control profession will be commissioned and reviewed at 5 years unless circumstances highlight a need for review earlier.