

## **Explanatory Memorandum to the Building (Registered Building Control Approvers etc.) (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 (Registered Building Control Approvers etc.) (Wales) Regulations 2024. I am satisfied that the benefits justify the likely costs.

**Rebecca Evans MS**  
**Cabinet Secretary for Economy, Energy and Planning**  
**03 December 2024**

## **PART 1**

### **1. Description**

- 1.1 These Regulations are subordinate legislation which replaces existing legislation for private-sector building control bodies, namely the Building (Approved Inspectors etc.) Regulations 2010. This is to bring secondary legislation in-line with changes made to the Building Act 1984 (“BA84”) brought about by the Building Safety Act 2022 (“BSA22”).
- 1.2 The Building (Registered Building Control Approvers etc.) (Wales) Regulations 2024 (“the RBCA Regulations”) have the following effect in Wales:
  - revoke the majority of the provisions of the Building (Approved Inspectors etc.) Regulations 2010 (“2010 Regulations”)
  - replace and update provisions in the 2010 Regulations to bring them up-to-date for the new building control regulation regime in Wales
  - make consequential amendments to other regulations

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

- 2.1 None.

### **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 BSA22 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 As part of the consultation on the Regulation of the Building Control Profession and Building Control bodies<sup>1</sup>, Welsh Government proposed to revoke and consolidate the 2010 Regulations in the RBCA Regulations to reflect the changes brought about by the BSA22.
- 3.5 In April 2024 amendments to the 2010 Regulations came into force to allow Approved Inspectors and Registered Building Control Approvers (“RBCAs”) to work under the 2010 Regulations. Amongst other provisions, the amendments allowed 'Approved Inspector' to be read as 'Registered Building Control Approver', allowing either type of organisation to use the forms that are included in Schedule 1 to the 2010 Regulations and provided regulations for the transitional period.
- 3.6 The RBCA 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.
- 3.7 As the BSA22 made a large number of changes to the BA84 and the impact on the industry is large, those changes are being implemented in phases. The new building control regime (full implementation of the BSA22) is planned to be in place by Winter 2025. The full implementation is likely to result in amendments being made to the RBCA regulations.
- 3.8 The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 1(1), 2A, 34, 35, 47(1) to (5), 50(1A), (1D), (4), (6), and (7), 51(1) and (2), 51A(2), (3), (5) and (6), 52(1), (2), (3), (5), (5A) and (7), 52A(1), (2) and (4), 53(2), (4), (4B), (4C), and (7), 53B(5), 53C(3) and (6), 53D(2), (3), (5), 54(1), (2) and (3), 56(1), 58C(5), 58O(4), 58U(4), 58V(4), and 92(2) of, and paragraphs 1, 1A, 1D, 1F, 1H, 1I, 5B, 7, 8 and 10 of Schedule 1 and paragraphs 1, 2, 3, 4 and 5 of Schedule 4 to the BA84 and sections 41 and 167(1) of the BSA22.

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<sup>1</sup> The consultation and the Summary of responses and Welsh Government response can be found here: [www.gov.wales/regulation-building-control-profession-and-building-control-bodies](http://www.gov.wales/regulation-building-control-profession-and-building-control-bodies)

- 3.9 The RBCA Regulations are being made under the negative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

- 4.1 The overall purpose of the RBCA Regulations is to update the provisions for private-sector building control bodies, Registered Building Control Approvers, to be in-line with the wider changes made to the regulation of the Building Control Profession in Wales.
- 4.2 This has been achieved by largely revoking the 2010 Regulations and updating and replacing the provisions from those regulations in the RBCA regulations. See Annex 1 for a table that lists the regulations and their equivalent regulation, where applicable, in the 2010 Regulations.
- 4.3 For the regulations that have equivalents in the 2010 Regulations, the changes that have been made are, in general, consequential of other legislation related to the implementation of the BSA22. Substantive changes are below.
- 4.4 Regulation 3 (Independence of Approvers) does not include 'minor work' as an exclusion from the provision that appraisers must have no professional or financial interest in the work they supervise. This is in line with the Professional Conduct Rules for Registered Building Control Approvers (Wales) 2024.
- 4.5 Regulation 5 (Modification of the 2010 Regulations etc.) amends how Regulation 38 of the Building Regulations 2010 should be read when applied to Registered Building Control Approvers. This is to account for additional circumstances where an initial notice may cease to be in force.
- 4.6 Regulation 17 (Local authority powers in relation to partly completed work) has a new reference to section 53D of the Building Act 1984. This is to account for additional circumstances where an initial notice can cease to be in force.
- 4.7 Regulation 18 (Periods within which information on work to which an initial notice relates must be provided) provides for additional circumstances where information should be provided by an approver to the person carrying out, or intending to carry out, work.
- 4.8 Regulation 23 (Cases where a further initial notice may be given after cancellation of an initial notice under section 53D) provides for additional circumstances where an approver may become unable to carry out, or continue to carry out, their functions.

4.9 Forms 1(W) to 5(W) in Schedule 1 (Forms) have been revised to be in-line with wider changes to Building Control processes. This includes requiring the Registered Building Inspector who advised the approver is named and a statement made that they are registered in relation to the work in the notice.

4.10 Forms 1(W) to 4(W) in Schedule 1 (Forms) have a new paragraph for the approver to state whether the building to which the work in the notice relates will be an FSO building.

4.11 Schedules 2 to 4 that list the grounds upon which a Local Authority may reject one of the above forms have been updated to account for the new form contents.

4.12 It should be noted that there is intentionally no Form 6(W) at this time. We are aware that England have produced Form 6 (Notice of invalid notice or certificate), but in Wales, rejection of an application on the basis that it is invalid, has operated to date by the applicant receiving a notification from the relevant Local Authority. This has worked effectively and we do not foresee a problem with continuing to operate in this way, though we will look to consult on the need for this form in the future. The gap in the numbering of the forms has been left to help those that work in both Wales and England by avoiding forms that have similar uses in each country being numbered differently.

4.13 Transitional provisions have been included in the RBCA regulations to ensure that RBCA's can submit Amendment notices for Initial Notices related to higher-risk building work that were accepted, or deemed accepted, before 6 April 2024.

4.14 There is also provision to ensure that forms submitted to a local authority prior to the RBCA regulations coming into force can still be dealt with under the 2010 Regulations and not be rejected for not being the newer form.

4.15 There are a number of regulations in the 2010 regulations that have not been included in the RBCA Regulations. These are:

Regulation or Schedule	Title
Reg. 3	Designation of bodies to approve inspectors
Reg. 4	Approval of inspectors
Reg. 5	Manner of approval or designation
Reg. 5A	Approved inspector's insurance
Reg. 6	Termination of approval or designation
Reg. 7	Lists of approvals and designations
Reg. 32	Electronic service of documents
Reg. 33	Transitional provisions: interpretation

Reg. 34	Transitional provisions: work already started before 1 <sup>st</sup> October 2010
Reg. 35	Transitional provisions: work for which notification is not required
Reg. 36	Transitional provisions: notice given or plans deposited before 1 <sup>st</sup> October 2010
Reg. 37	Transitional and saving provisions: earlier Building Regulations
Reg. 38	Revocations and consequential amendments
Schedule 7	Revocation of Regulations
Schedule 8	Consequential Amendments

4.16 Regulations 3 to 7 were related to the approval of private sector building control bodies known as Approved Inspectors. These companies are no longer able to oversee building work and have been replaced by Registered Building Control Approvers.

4.17 Regulation 32 permitted documents to be sent digitally under section 94A of the Building Act 1984. This section has been omitted as digital transfer of documents is now considered commonplace and no longer necessary to legislate for.

4.18 Regulations 33 to 38 and Schedules 7 and 8 are related to the inception of the 2010 Regulations and are not required for the new Regulations.

## 5. Consultation

5.1 Before making any regulations under sections 1, 46A and 54B of BA84 the Welsh Ministers are required, by virtue of section 14(7) of BA84, to consult with the Building Regulations Advisory Committee for Wales ("BRACW") and any other person that the Welsh Ministers consider appropriate.

5.2 BRACW have been consulted on the RBCA Regulations. Whilst questions were raised regarding future amendments to the RBCA Regulations, relating to the full implementation of the BSA22, no concerns were raised regarding the current implementation of the RBCA Regulations.

## 6. Regulatory Impact Assessment (RIA)

- 6.1 This impact assessment relates to The Building (Registered Building Control Approvers etc.) (Wales) Regulations 2024 (“the RBCA Regulations”).
- 6.2 Since 6 April 2024, no new organisations can become Approved Inspectors, and existing ones must become Registered Building Control Approvers (“RBCAs”). There was a six-month transitional period for Approved Inspectors who do not do this. By 01 October 2024 Approved Inspectors had to cease supervision of any existing projects.
- 6.3 Whilst the Welsh Government’s intention to revoke the AI 2010 Regulations and restate them as the RBCA Regulations was set out in public consultation, three options have been assessed for the actual implementation:
  - Option 1: Do nothing, continue with AI 2010 Regulations
  - Option 2: Revoke the AI 2010 Regulations and restate as the RBCA Regulations after the transitional period for Approved Inspectors ends
  - Option 3: Delay restating until consultation on wider changes to building control regulations in Wales (commonly known as ‘Phase 2’) is completed

### **Option 1: Do nothing**

- 6.4 Under the “Do nothing” option, RBCAs would be able to continue ‘business as usual’ working under the AI 2010 Regulations. There would not be any limiting effects to their day-to-day work that weren’t already in place prior to the end of the transitional period. This option could be considered disjointed from other changes that have been brought in, i.e. private sector building control organisations have had little option other than to become RBCAs, but in Wales they would be working under the ‘old’ Approved Inspector regulations.
- 6.5 This option would also mean that a number of new provisions brought in under wider changes to the building control regime as part of the implementation of the BSA22 would not be reflected in the regulations that RBCAs must comply with. This would further complicate, and potentially add confusion, to an already complex building control regime.

### **Option 2 (Preferred option): Revoke the AI 2010 Regulations and restate as the RBCA Regulations after the transitional period ends**

- 6.6 This is the logical option, replacing the AI 2010 Regulations since the transitional period came to an end on 01 October 2024. It would be in-keeping with the wider changes to building regulations, bringing an end to the period of Approved Inspectors in building control and would reaffirm the move to RBCAs. From an operational perspective there would be little change on a day-to-day basis for RBCAs, other than to

make the regulations clearer with terms used better reflecting the actual situation in building control. It is anticipated that some amendments will be required to the RBCA Regulations after the Phase 2 consultation is completed, updating them as a result of bringing in further secondary legislation, such as the introduction of 'Dutyholder' roles.

**Option 3: Delay restating until consultation on wider changes to building control regulations in Wales (commonly known as 'Phase 2') is completed**

6.7 Under this option, RBCAs would be able to continue 'business as usual' working under the AI 2010 Regulations and similarly to Option 1, should not experience any new limiting effects on their day-to-day work following the end of the transition period. This option would allow Welsh Government to consult on Phase 2 proposals, including those which will affect the RBCA Regulations. The RBCA Regulations would then be laid without any known future amendments anticipated.

**Risks**

6.8 Taking options 1 or 3 would mean that a number of new provisions brought in under wider changes to the building control regime as part of the implementation of the BSA22 would not be reflected in the regulations that RBCAs must comply with. This would add complication, and potentially confusion, to an already complex building control regime.

6.9 There are potential risks with all three possible options, however moving forward with options 1 or 3 would mean continuing, even if only for a few months, with an approach where regulations drafted to underpin a different regime have been extensively modified within the scope allowed to regulate for a different regime. As the AI 2010 regulations have been extensively modified over time, and some regulations relating to RBCAs included in the AI 2010 regulations this approach makes the statute book difficult to follow; a situation that would worsen over time as Phase 2 work continues.

6.10 If we take option 2, we are using bespoke regulations written with RBCAs in mind, as a clean slate, combining most new regulations into it - but it will need to be amended over time to reflect work completed as part of Phase 2 (including aspects that we plan to consult upon like dutyholders, or the potential removal/restriction of public bodies performing building control functions).

6.11 Our conclusion is that option 2 represents the least risk given the options available.

**Costs and benefits**

6.12 Introducing the RBCA regulations is not anticipated to have a significant effect on costs (direct or monetised) for either public sector

or private sector organisations involved in building control. Each new regulation has been compared to its previous equivalent, the majority of which are in the AI 2010 Regulations, and assessed for cost implications (see table in Annex 1 below).

- 6.13 There are no new fees associated with the regulations and they don't have any impact on existing fees.
- 6.14 It is anticipated that building inspectors will spend some time reading the new regulations, which will be supported by a circular containing a summary. This analysis assumes that each building inspector will need approximately 1 hour for familiarisation.
- 6.15 The regulations will update five existing forms in Schedule 1 to the regulations. These forms are for use by RBCAs and we can assume that they will have some one-off monetised costs for the time required for one of their employees to update them, whether that be by a building inspector or an administrative employee. This analysis estimates that each form will require an hour's work to update and check.
- 6.16 For consistency, this assessment will assume an average hourly rate of £79/hr for time of a building inspector as provided by consultants in previous regulatory impact assessments. Based on the above, the following monetised costs are anticipated:
  - £79 (1 hour) per building inspector to familiarise themselves with the new regulations. This will affect local authorities and RBCAs. Welsh local authorities typically employ between 3 and 16 building inspectors, with an average of 6. Therefore, the average cost to a local authority for familiarisation will be £474 but could be as high as £1,264.
  - £395 per RBCA for the updating of the five forms. This assumes that the work is completed by a building inspector, therefore it would be less if completed by an administrative employee. At the time of writing there were 49 RBCAs registered to work in Wales, so this gives an aggregate one-off cost of £19,355 for the updates.
- 6.17 01 October 2024 marked the end of the transitional regulations relating to Approved Inspectors and they are no longer legally allowed to operate in Wales from this date. Revoking the AI 2010 regulations and introducing the RBCA regulations via options 2 or 3, will reaffirm the message that RBCAs have replaced Approved Inspectors.
- 6.18 Option 2 will deliver an up to date, more accessible set of regulations, and it will also provide a certain level of consistency for those doing

business in both England and Wales. These ongoing benefits are considered to outweigh the one-off costs identified above.

- 6.19 We have carried out the filter test for the Competition assessment. Out of the 9 questions, 6 are definite 'No' answers, suggesting that the regulations are unlikely to have a significant detrimental effect on competition, and therefore we do not need to carry out the full competition assessment. There are approximately 84 Registered Building Control Approvers working across Wales and England, and out of these, the majority are in the micro to small size. It is possible that one organisation may have more than 10% of the market share, but unlikely. The regulations will affect all Registered Building Control Approvers and nothing has been identified that would favour the larger organisations over the smaller, or vice versa.
- 6.20 As part of this assessment, we have consulted with the Building Regulations Advisory Committee Wales (BRACW). No members have raised concerns about costs for the industry arising from the introduction of the RBCA regulations.

## **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.

**Annex 1**

**Table of regulations in the RBCA Regulations and the equivalent regulation in the 2010 Regulations**

Regulation or Schedule	Title in Building (Registered Building Control Approver etc.) (Wales) 2024 Regulations	Equivalent in the 2010 Regulations	Material change from the equivalent in 2010 Regulations
<b>PART 1 GENERAL</b>			
1	Title, coming into force and application	1	n/a
2	Interpretation	2	n/a
<b>PART 2 REGISTERED BUILDING CONTROL APPROVERS</b>			
3	Independence of approvers	9	Removes the exception for minor work from provisions regarding professional and financial interest in the building work being overseen.
4	Functions of approvers	8	Format of regulation changed to improve accessibility, but no new provisions for the approver to ensure compliance with.
5	Modification of the 2010 Regulations etc.	20	Amendment to how Regulation 38 of the Building Regulations 2010 should be read when applied to Registered Building Control Approvers.
<b>PART 3 NOTICES AND CERTIFICATES ETC.</b>			
6	Form, grounds and period for rejecting initial notice	10	No material change.
7	Form, grounds and period for rejecting amendment notice	11	No material change.
8	Consultation with the fire and rescue authority	12	No material change.
9	Consultation with the sewerage undertaker	13	No material change.
10	Form, grounds and period for rejecting plans certificate	14	No material change.
11	Effect of plans certificate	15	No material change.
12	Form, grounds and period for rejecting final certificate	16	No material change.
13	Form of notice under section 51C of the 1984 Act	16A	No material change.
14	Events causing initial notice to cease to be in force	17	No material change.
15	Cancellation of initial notice: forms etc.	18	No material change.

16	Cancellation of initial notice: notice of contravention of building regulations	18A	No material change.
<b>PART 4 TRANSFER OF PROJECTS BACK TO LOCAL AUTHORITY</b>			
17	Local authority powers in relation to partly completed work	19	A reference to section 53D of the Building Act 1984 has been added to account for additional circumstances where an initial notice can cease to be in force.
18	Periods within which information on work to which an initial notice relates must be provided	19A	Now provides for additional circumstances where information should be provided by an approver to the person carrying out, or intending to carry out, work.
<b>PART 5 TRANSFER OF PROJECTS TO ANOTHER APPROVER</b>			
19	Section 53(7): prescribed provision	19B	No material change.
20	Information to be included in transfer certificates	19C	No material change.
21	Period for consideration of transfer certificate and report by local authority	19D	No material change.
22	Grounds for rejection of a transfer certificate and transfer report	19E	No material change.
23	Cases where a further initial notice may be given after cancellation of an initial notice under section 53D	19F	Now provides for additional circumstances where an approver may become unable to carry out, or continue to carry out, their functions.
<b>PART 6 PUBLIC BODIES</b>			
24	Approval of public bodies	21	No material change.
25	Form, grounds and period for rejecting public body's notice	22	No material change.
26	Public body's consultation with the fire and rescue authority	23	No material change.
27	Public body's consultation with the sewerage undertaker	24	No material change.
28	Form, grounds and period for rejecting public body's plans certificate	25	No material change.
29	Effect of public body's plans certificate	26	No material change.
30	Form, grounds and period for rejecting public body's final certificate	27	No material change.

31	Events causing public body's notice to cease to be in force	28	No material change.
<b>PART 7 REGISTERS OF NOTICES ETC.</b>			
32	Register of notices and certificates	30	No material change.
33	Registration periods	n/a *	n/a
34	Contravention of professional conduct rules	n/a *	n/a
35	Interim suspension for suspected serious contravention	n/a *	n/a
36	Appealing a decision made by the Welsh Ministers	n/a *	n/a
<b>PART 8 MISCELLANEOUS</b>			
37	Contravention of certain regulations not to be an offence	31	No material change.
38 – 41	Consequential amendment provisions	n/a	n/a
42	Revocations, transitional and savings provisions	n/a	n/a
<b>SCHEDULES</b>			
Sch. 1	Forms	Sch. 1	<p>Forms 1(W) to 5(W) have been revised to be in-line with wider changes to Building Control processes. This includes requiring the Registered Building Inspector who advised the approver is named and a statement made that they are registered in relation to the work in the notice.</p> <p>Forms 1(W) to 4(W) have a new paragraph for the approver to state whether the building to which the work in the notice relates will be an FSO building.</p>
Sch. 2	Grounds for Rejecting an Initial Notice, an Amendment Notice, or a Plans Certificate Combined with an Initial Notice	Sch. 2	Additional grounds for rejection added based on amendments to forms in Schedule 1.
Sch. 3	Grounds for rejecting a plans certificate or plans certificate combined with an initial notice	Sch. 3	Additional grounds for rejection added based on amendments to forms in Schedule 1.
Sch. 4	Grounds for rejecting a final certificate	Sch. 4	Additional grounds for rejection added based on amendments to forms in Schedule 1.

Sch. 5	Grounds for rejecting a transfer certificate and transfer report	Sch. 3A	No material change.
Sch. 6	Grounds for Rejecting a Public Body's Notice, or a Combined Public Body's Notice and Plans Certificate	Sch. 5	No material change.
Sch. 7	Grounds for Rejecting a Public Body's Plans Certificate, or a Combined Public Body's Notice and Plans Certificate	Sch. 6	No material change.
Sch. 8	Grounds for Rejecting a Public Body's Final Certificate	Sch. 7	No material change.

\* These regulations were originally laid under the Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023. For the sake of ease of use of Building Regulations, those provisions have been revoked and included in the RBCA Regulations.