

Explanatory Memorandum to The Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023

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

Minister Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Julie James
Minister for Climate Change

5 December 2023

PART 1

1. Description

1.1 The Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023 introduce provision to implement some of the changes to the Building Act 1984 brought about by the Building Safety Act 2022.

1.2 The Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023 provides for the registration of building inspectors and building control approvers and provides details about the establishment of registers and enforcement sanctions against them.

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

2.1 The regulations will come into force on 1 January 2024, this will commence the registration process for the building control profession, although in practice enforcement of the regulations will not commence until 6 April 2024 when the full new regulatory regime will come into force.

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. 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 implementation of the 2022 Act.

3.3 The 2022 Act received Royal Assent in April 2022 and brought forward a package of legislative changes in relation to building safety. For Wales, the 2022 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 Section 42 of the 2022 Act amends the 1984 Act by inserting a new Part 2A. The overall purpose of Part 2A is to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control, changing and modernising the existing legislative framework.

3.5 The Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023 are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 Part 3 of the 2022 Act includes provisions for the registration of building inspectors (individuals, to be known as Registered Building Inspectors ("RBIs") and building control approvers (currently known as approved inspectors ("AIs") and to become Registered Building Control Approvers ("RBCAs"). The introduction of this registration regime will better regulate and improve competence levels in the building control sector, addressing an issue highlighted by the Hackitt report.

4.2 Subordinate legislation will bring about changes to the current building control system. A registration system will be created and building control professionals and private sector building control organisations will be required to register in order to perform building control work in Wales.

They will be regulated and monitored as part of this system and required to meet set standards. Once registered, if these standards do not continue to be met sanctions, including deregistration, can be applied.

4.3 The Regulations have been developed and created in conjunction with the Building Safety Regulator in England and through public consultation, so consistency is applied across the industry, addressing another criticism raised by Hackitt.

4.4 These regulations set out the requirements for registrations and the detail of how and when a sanction can be applied.

4.5 The standards and the competence frameworks that will support the registration and sanctions regime have been developed through a series of stakeholder and public consultations. The government response to these consultations will be published prior to the coming into force date of these regulations.

4.6 The regulations also provide grounds for appeals against certain decisions which are detailed within the Act.

5. Consultation

5.1 A formal consultation was carried out in the process of developing the Regulations. The Building Regulations Advisory Committee for Wales (“BRACW”) have been consulted and a workshop with key industry stakeholders was undertaken for the regulation of the building control profession. There has also been consultation with the building control bodies in both the private and public sector.

5.2 An 8 week consultation ran from 17 February 2023 to 12 May 2023 on the draft proposals for the Regulations. 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”).

5.3 In order to improve the consultation process the key stakeholders who would be affected by the Regulations were invited to a pre-consultation workshop to help develop the proposals.

5.4 This consultation covered all matters relating to both the Regulations and the Building Control Profession (Fees and Charges) (Wales) 2023.

5.5 There was broad agreement to all of the proposals in the consultation.

5.6 The consultation documents and a summary of the responses are available at: <https://www.gov.wales/regulation-building-control-profession-and-building-control-bodies>

5.7 Before making regulations under section 1 of the Building Act 1984, the Welsh Ministers are required to consult with the Building Regulations Advisory Committee for Wales (“BRACW”), in accordance with section 14(7) of the Building Act 1984. A formal consultation was carried out in the process of developing the Regulations. BRACW have been consulted and a workshop with key industry stakeholders was undertaken in relation to changes in respect of the regulation of the building control profession.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

6.1 This impact assessment relates to The Building (Building Control Profession) (Registration, Sanctions and Appeals) (Wales) Regulations 2023, however the assessment considers the impacts of reforming the building control profession more widely rather than just considering the impacts of the registration, sanctions and appeals.

6.2 Three options are assessed within this Impact Assessment:

- Option 0: Do nothing
- Option 1: Implement package of options proposed at consultation stage and take forward the introduction of registration of building control.
- Option 2: Implement package of options proposed at consultation stage and take forward the introduction of registration through a Wales only system.

6.3 **Option 0: Do Nothing**

Under the “Do nothing” option, the policies listed under Option 1 would not be implemented. Under this option, all the new measures including registering building inspectors and building control approvers would not occur, approved inspectors would remain registered with the Construction Industry Council Approved Inspectors Register, and the introduction of the associated building control changes would not take place.

6.4 **Option 1: Preferred Option: Implement package of options proposed at consultation stage, and take forward the introduction of registration of building control through the BSR.**

6.4.1 The package of options consulted upon included:

- Setting the registration period at 5 years for registered building control approvers.
- Setting the registration period at 4 years for registered building inspectors.
- Requiring registered building inspectors to carry out restricted functions and activities.
- Delegating the majority of functions under Part 2A of the 1984 Act to the Building Safety Regulator (BSR) to administer regulation of the RBI and RBCAs in Wales, this would include registration, maintenance of the register and undertaking sanctions/ enforcement action for RBIs and RBCAs, but not local authorities which would have their own separate monitoring process.
- That charges for registration will be calculated on a cost recovery basis.

6.5 **Option 2: Implement package of options proposed at consultation stage, and take forward the introduction of registration through a Wales only system.**

6.5.1 This option was discounted as it was made clear by the industry that the preferred option was to have one system for registration across Wales and England for both economic and practical reasons.

7. Risks

7.1 There may be an unintended consequence related to the requirement to register as a RBI with regard to capacity issues within the construction sector. This is because RBCAs will need to have sufficient numbers of RBIs, with a Class 2 or above qualification, to sign off on restricted activities. If these inspectors do not have the required competence levels, this may cause building projects to stall. This is expected to be low risk.

7.2 Welsh Government Officials have been working closely with the building control sector, the BSR and Third-Party Verification of Competence scheme providers to mitigate against this risk, and evidence from existing schemes suggests the risk is currently being mitigated. Welsh Government, however, recognises that sufficient capacity in the profession is dependent on existing building surveyors and prospective RBIs receiving Third Party Verification of Competence and successfully registering as RBIs by 6 April 2024.

8. Costs and benefits

8.1 These Regulations implement measures committed to in the 2022 Act. All these measures were considered against 'do nothing' options and determined as essential to achieve all the above aims. These Regulations are essential to implement the 2022 Act and define its operation. This includes reform of the building control sector in April 2024, which includes ending AIs' registration with Construction Industry Council Approved Inspectors Register, introducing RBCAs and RBIs. All these measures – as set out through primary and secondary legislation – have been assessed and discussed extensively with stakeholders. We have concluded that the aim of the reforms could not be achieved through voluntary or non-legislative measures, or by the current regulatory system for approved inspectors and the wider industry.

8.2 The costs detailed below outline the policy proposal which was the preferred option. During the latest consultation on the matter there was an almost full response in favour of having a single system for the registration of building control profession across Wales and England.

8.3 The industry was concerned that two separate systems would be more costly, with inspectors and bodies having to pay twice, have increased regulatory burdens and have the potential to add additional confusion and complexity.

8.4 The additional costs of the system will fall directly to the building control industry, but it is likely that these costs will be passed back to developers through the industry's charging regimes.

8.5 It should be noted that although there will be one system for administrative purposes the registers for Wales and England are independent and regulations apply separately to each administration.

8.6 The registration system has already been established for England and therefore the majority of the set up costs have been absorbed by UK Government and will not be passed to Wales. However there is likely to be some small costs for set up of the Welsh elements which are being absorbed by the Building Safety Programme. These costs have not been included in the RIA as they have been included as part of the policy development work– we have estimated this at approximately £80k.

Direct benefits

8.7 The direct benefits of the policy will be increased oversight of building control profession and improved competency among building inspectors.

Non-Monetised benefits

8.8 It is anticipated that increased competency of the profession will result in improved oversight of building works and in turn, fewer defects in the built environment which will result in health and safety benefits.

8.9 It is also likely that improved competency of building inspectors will improve confidence that buildings have been constructed to the required standards and are safe to live in and occupy. This will benefit the occupiers of new buildings.

8.10 However, the proposals considered in this assessment do not require inspectors to develop additional new skills beyond those that the inspectors currently have. Therefore, it has not been possible to quantify the benefits of improvements in the building control profession as a result of the policy proposals set out in this assessment in isolation of other proposed changes to improve the regulated building activity.

8.11 The analysis considers the costs over a 10-year policy period.

Present value

8.12 All costs and benefits are presented in 2023 prices, in 2024 present values using discount rates for health and non-health impacts as set out in the Green Book.

9. Assumptions used in the cost benefit model

9.1 The proposed policy applies to all current and future RBIs (formerly building inspectors) in Wales. This includes both those that are employed by local authorities and those that work for Building Control Approvers (formerly Approved Inspectors).

9.2 The assumptions and estimates have been developed with extensive expert input from external consultants with industry experience from the Adroit Consortium who also consulted with the Health and Safety Executive and obtained information from the Welsh Government and the Construction Industry Council Approved Inspectors Register.

9.3 The cost model is only considering costs to RBIs as it is assumed based on current practices that all RBCAs will be registered in England and there will be no additional costs to work across both administrations.

9.4 The cost of undertaking restricted functions and activities would be in line with current costs, the only difference being that individuals will now need to be registered to prove their competence in order to undertake these functions/activities.

Number of Approved Inspectors

9.5 Table 1 shows the estimated number of approved building inspectors that will be registered in Wales. This includes those who are employed by local authorities and an estimate of the number of building inspectors based in Wales that are employed by AIs.

Table 1: Estimated Number of Building Inspectors in Wales		
Organisation	Number of Building Inspectors	Source
Local Authority	211	Welsh Government
Approved Inspectors (Building Control Approvers)	197	Consultant Estimate (based on the proportion of building inspectors that are employed by Approved Inspectors in England – 48% of all inspectors)

9.6 In addition to those currently working as building inspectors, the analysis also included an estimate of new building inspectors that will enter the profession over the next 10 years (and the number that will leave the profession at the same time).

Table 2: Estimated number of new building Inspectors p.a.		
	as % of current number of approved inspectors	Source
Number of new approved inspectors p.a.	3%	Assumptions in England IA (typical annual churn of staff)
Number of approved inspectors leaving the sector p.a.	-3%	Consultants' assumption – i.e. assuming no net change in the number of approved inspectors

9.7 There are two stages to the process of registering as an RBI. Firstly, the competence of the building control inspector will be verified by a third party. Secondly, the Building Inspectors will register with the Regulator.

Competency Verification

9.8 The costs of third party verification are set out in table 3 based on information published by the Building Safety Competence Foundation, an organisation set up by LABC.

Table 3: Building Inspector Verification of Competence Costs		
	Cost per building inspector	Source
Cost of initial certification	£600	
Surveillance costs (Yr2)	£225	

Re-verification (Yr4)	£600	Building Safety Competence Foundation ¹
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9.9 In addition to the fees charged for competency verification, it is anticipated that building inspectors will take time to prepare for the competency verification and the subsequent check at year 2. Table 4 sets out the assumed amount of time per inspector required to prepare for the competency checks.

Table 4: Building Inspector Verification Time per Inspector		
	Hrs per Building Inspector	Source
Hours per building inspector – initial certification	20	Estimated time required to prepare for verification of competency (DLUHC IA)
Hrs per building inspector – 2yr competency check	7.5	DLUHC IA

9.10 Table 5 sets out the hourly rate used to estimate the cost of the time required by building inspectors to undertake the training and application. This rate is an average between employment costs (salary rates plus on-costs) and charge out rates. This blended rate reflects that it is likely that inspectors will undertake training during time that could be spent undertaking paid work for their employer.

Table 5: Building Inspector Hourly Rate		
	Blended hourly rate	Source
Hourly rate for building inspector time	£79	Average rate between employment costs (salary + oncosts) and industry charge out rate – reflecting the cost of employing building inspectors

9.11 Table 6 sets out the results of multiplying the number of hours by the hourly rate. This provides an estimate of the time cost per inspector to prepare for the verification of competency assessments.

Table 6: Building Inspector Time Cost per Inspector		
	Time cost per inspector	Source
Time cost – initial certification	£1,580	Calculation
Time cost – yr 2 competency check	£593	Calculation

9.12 Those with the necessary skills, experience and qualifications will be verified as competent. The analysis assumes that 70% of applicants will be successful based on the estimates provided in the DLUHC IA².

9.13 For those that are not successful, it is assumed that a proportion will leave the profession (part of the 3% assumed to leave the profession per annum) and the others will be registered as trainee inspectors (who are not required to have their competency verified) and will re-apply for registration as RBIs the following year.

Table 7: Verification pass rates		
	% of applicants	Source
Successful applications	70%	DLUHC IA
Unsuccessful applications	30%	DLUHC IA

Registration of Building Inspectors

¹<https://www.thebscf.org/competence-validation/#:-:text=By%202023%20all%20levels%20of,the%20scope%20of%20certification%20sought>

² <https://www.legislation.gov.uk/uksi/2023/906/impacts>

9.14 Building Inspectors that are verified as competent will be able to register as RBIs. The cost of this registration process is set out in Table 8 below and is based on the information published by the BSR³:

Table 8: Building Inspector Registration Costs		
	Cost per building inspector	Source
Prepare application for registration	1 hr	DLUHC IA
Registration fee	£336	BSR Schedule of Fees and Charges
Annual maintenance fee	£216	BSR Schedule of Fees and Charges
Re-registration	Every 4 years	Policy

Familiarisation

9.15 It is anticipated that all building inspectors will spend time reading the guidance. The analysis assumes an average of 1 hour each per inspector.

Table 9: Familiarisation Time		
	Time per building inspector	Source
Time per inspector to read the policy guidance	1 hr	Consultants Estimate

Calculations

9.16 Table 10 sets out the estimated number of inspectors registering as RBIs each year based on the assumptions as set out in section 5.

Table 10: Number of Registered Building Inspectors

	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10
Number of initial applicants	408									
initial applications - new entrants (3%)		12	12	12	12	12	12	12	12	12
drop out rate (3%)		12	12	12	12	12	12	12	12	12
Reapplications		110	24	11	7	6	5	5	5	5
success rate (70%)	286	86	26	16	13	13	12	12	12	12
failure rate (30%)	122	37	11	7	6	5	5	5	5	5
number of registered building inspectors	286	371	397	401	402	403	403	403	403	403
number of trainee inspectors	122	37	11	7	6	5	5	5	5	5
total number of inspectors	408	408	408	408	408	408	408	408	408	408
re-registration (every 4 years)					273	73	13	4	275	74

9.17 Table 11 shows the results of applying the costs per inspector set out in section 5 to the number of inspectors set out in Table 6.1 to estimate the costs of the policy.

Table 11: Cost of the Policy

	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5
inspectors to read guidance	£32,242				
training costs to prepare for competency verification	£644,848	£174,109	£38,691	£17,411	£443,075
cost of competency verification	£244,879	£73,464	£22,039	£13,958	£175,603

³ <https://www.hse.gov.uk/building-safety/assets/docs/charging-scheme.pdf>

training to prepare for yr 2 competency checks	£0	£0	£169,273	£50,782	£15,235
cost of yr 2 competency checks	£0	£0	£64,281	£19,284	£5,785
cost to prepare registration application	£32,242	£9,673	£2,902	£1,838	£23,121
Registered Building Inspector registration fee	£137,132	£41,140	£12,342	£7,817	£98,337
Registered Building Inspector annual maintenance fee	£0	£61,709	£80,222	£83,131	£24,939
	£1,059,101	£360,094	£389,749	£194,221	£786,095

	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10
inspectors to read guidance					
training costs to prepare for competency verification	£125,184	£29,817	£14,749	£442,276	£124,945
cost of competency verification	£54,885	£18,669	£12,947	£175,299	£54,794
training to prepare for yr 2 competency checks	£9,649	£169,991	£50,997	£15,299	£9,668
cost of yr 2 competency checks	£3,664	£64,553	£19,366	£5,810	£3,671
cost to prepare registration application	£7,226	£2,458	£1,705	£23,081	£7,215
Registered Building Inspector registration fee	£30,735	£10,455	£7,250	£98,168	£30,684
Registered Building Inspector annual maintenance fee	£68,398	£81,435	£83,495	£25,049	£68,431
	£299,741	£377,379	£190,510	£784,982	£299,407

10. Results

10.1 The present value of the costs over 10 years of the policy are set out in the table below. These costs are presented in 2023 prices, a base year of 2024 and using an annual discount rate of 3.5%.

	Present Value Cost
Familiarisation Costs	£ 32,242
Policy Costs (10yr PV)	£ 4,155,986

10.2 These reforms require both primary and secondary legislation. The primary legislation was delivered through the 2022 Act and the secondary legislation is being delivered through a package of secondary instruments, which this instrument is one.

10.3 The new regime will start to be operational from April 2024, although registers will open in January 2024.

10.4 Welsh Minsters will work with the BSR to designate or delegate functions for the oversight and regulation of the building control profession from January 2024.

10.5 AIs will be able to register as RBCAs from January 2024, with this becoming mandatory from April 2024. Transitional arrangements will be made for AIs and any 'in-flight' work.

11. Competition Assessment

Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

11.1 This policy is likely to have impacts on AIs or prospective RBCAs due to the mandate to register. AIs or prospective RBCAs will need to register to continue to operate.

11.2 The impact of registered building inspectors' registration and familiarisation costs is likely to be proportionate to the size of the AI or prospective RBCAs, and hence this is unlikely to have a significant disproportionate impact.

11.3 Existing building control professionals, both public and private, will need to register to operate as registered building inspectors and prospective RBCAs will need to register to enter the market. Both will need to familiarise themselves with, and meet, the requirements for registration, and subsequent auditing, including in regard to competence. They will also need to familiarise themselves with the procedural changes to the building control process introduced by these Regulations.

11.4 RBCAs working as small businesses, or as sole traders, may face a comparatively higher burden in registering and meeting their requirements to do so. There may also be a comparatively higher burden familiarising themselves with procedural changes introduced by the building control sector reforms, including the changes to charging brought about by these Regulations. This could impact the number of small and micro businesses (including sole traders) continuing to operate as private sector building control inspectors in the market. However, any exemption for small or micro businesses (including sole traders) would mean an unacceptable dilution of the competence necessary for a building inspector to operate effectively.

11.5 Cost recovery through costs such as registration for registered building control approval, audit, and inspection fees, may have an impact on small and micro businesses. These costs are likely to differ to those needed to register with CICAIR, which could have disproportionate impacts on those with low turnover rates due to impacts on their cash flow, should these charges be increased. This could therefore impact a small and micro business' decision to register as an RBCA.

11.6 Given potential changes in the cost of registration, a significant increase would have an impact on the number of small and micro businesses continuing to operate in the market. This would result in fewer choices for developers to choose as their building control approver and could result in both a reduced supply of building control approvers and worsened market competition outcomes. A future impact assessment on the charges will provide a further up-to-date assessment on these impacts.

11.7 However, the requirement to register as an RBCA is not unique to small or micro businesses. Any exemption for small or micro businesses would involve an unacceptable compromise of the high standards of competence that is necessary for a building control body to demonstrate.

12. Post implementation review

12.1 The 2022 Act 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.

12.2 This IA will be reviewed at 5 years, unless circumstances highlight a need for review earlier.