

Building Safety Act 2022

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Building Safety Act transitional arrangements in England will no longer apply to your project after 6 April 2024 unless you take action

18 March 2023

The Building Safety Act 2022 (**BSA**) introduced significant changes to building control processes in the construction industry and to the building control professions in England.¹ Given the enormity of the changes, the BSA provided for a transitional period between 1 October 2023 and 6 April 2024 to enable clients and their project teams to adapt their building control processes to the new regime before 6 April 2024.

That deadline is fast approaching. With the transitional provisions coming to an end, it is important to review the status of your project to check which building control regime applies and to assess what action you need to take, either to ensure the old regime continues to apply to your project after 6 April 2024 or to effect the transition of the project to the new regime.

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¹ This article covers the provisions in England only. Different arrangements apply to the implementation of the BSA in Scotland and Wales.

The transitional provisions in England

The regulations setting out the BSA's transitional provisions are complex but, broadly speaking, they cover Higher-Risk Buildings (**HRBs**) and non-HRB work and the BSA changes to the building control profession. You can find government guidance in the government's consultation response of 17 August 2023 [Transitional arrangements factsheet at Annex B](#) and its Circular Letter of 1 February 2024: [Building control changes for higher-risk buildings and wider changes to building regulations](#).

Many clients took advantage of the transitional provisions to ensure that the pre-1 October 2023 building control regime regulated by local authorities (the **old regime**) would continue to apply to projects that fell within the scope of the HRB definition under Part 3 of the BSA after 1 October 2023. To stay within the old regime after 1 October 2023, clients had to:

- give an initial notice to the relevant local authority; or
- deposit full plans with the relevant local authority,

in either case before 1 October 2023. If this were done, the works should still be covered by the transitional arrangements, provided that:

- neither the initial notice nor the plans have been rejected;
- approval for the work has not lapsed; and
- the initial notice (if given) has not been cancelled.

We are now nearing 6 April 2024, the end of the BSA's transitional period in England. This means that those projects involving new or ongoing HRB works not due to complete until after 6 April 2024, and subject to the transitional arrangements, will transition to the new, more stringent building control processes under the BSA after 6 April 2024 **unless certain prescribed steps are taken to preserve the transitional arrangements**.

What steps need to be taken to ensure HRB projects remain covered by the transitional provisions?

The transitional arrangements for building works within the scope of the HRB regime, contained in the Building (Higher-Risk Building Procedures) (England) Regulations 2023 (SI 2023/909), set out what needs to be done to ensure HRB works can continue to operate under the old regime. (Note that Schedule 3 of SI 2023/909 covers various project scenarios including: cases where full plans are rejected; cases where building control approval lapses before 6 April 2024; cases of not sufficiently progressed work where an initial notice is cancelled before 6 April 2024; and cases of sufficiently progressed work where an initial notice is cancelled before 6 April 2024.)

For the old regime to continue to apply to the HRB works, the initial notice must have been given to the local authority or full plans must have been deposited with the local authority before 1 October 2023 (and not have been rejected) **and**, before 6 April 2024:

- approval for the work has not lapsed and the initial notice (if given) has not been cancelled;
- the works must satisfy the definition of "sufficiently progressed";
- a notice that the work is to be regarded as "sufficiently progressed" (the **Notice**) must have been submitted to the local authority; and
- where an initial notice was submitted, the approved inspector who gave that initial notice has become a registered building control approver (**RBCA**) (on which, more below).

Failure to take these steps will result in: the transitional arrangements ceasing to apply; the HRB work falling within the remit of the Building Safety Regulator (**BSR**); and the new regime introduced by the BSA applying to the HRB works from 6 April 2024.²

When are the works "sufficiently progressed" and how to serve the Notice?

The following is an outline of the process for serving the Notice of the works being sufficiently progressed on the local authority.

When must the Notice be issued?	No more than five working days after the day the work is to be regarded as "sufficiently progressed", but before 6 April 2024.
When is work to be regarded as "sufficiently progressed"?	<p>For building work to construct a new HRB, when the pouring of concrete for:</p> <ul style="list-style-type: none"> the permanent placement of the trench, pad or raft foundations; or the permanent placement of piling, <p>for that new higher-risk building has started.</p> <p>For building work to an existing HRB, when the building work has started.</p> <p>For building work that consists of a material change of use of an HRB, when the work to effect that change of use has started.</p>
Who issues the Notice?	The "person carrying out the work" must issue the Notice. As this is not defined, it would be prudent for a joint notice to be issued by the developer and the main contractor, otherwise there may be arguments as to whether the correct person issued the Notice.
To whom is the Notice issued?	The local authority for the works. It seems likely that this would be the same building control department of the local authority that received the initial notice or full plans prior to 1 October 2023. Also, where an initial notice has been given to a local authority and has been accepted (or deemed to have been accepted), then a copy of the Notice must also be issued to the approved inspector/RBCA.
What must the Notice state?	<p>There is no prescribed form. The Notice must state that the work is to be regarded as "sufficiently progressed", but it would be prudent to set out key details of the works in the Notice such as:</p> <ul style="list-style-type: none"> a description of the works; a reference to the initial notice issued to, or full plans deposited with, the local authority (as appropriate) to which the Notice relates; confirmation that the work is to be regarded as "sufficiently progressed" for the purposes of SI 2023/909, together with an explanation as to how this conclusion has been reached and supporting documentation (if available). <p>It would also be sensible to ask the local authority to acknowledge receipt of the Notice and confirm that the work is to be regarded as "sufficiently progressed".</p>

² There are various provisions and guidance with regard to how this transition to the BSR's remit is effected which we do not cover in this article.

How many Notices are required?	Where the project involves work being carried out to more than one HRB, a separate notice must be issued in respect of each HRB.
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Note that local authorities must notify the Building Safety Regulator by 6 March 2024 of those HRB projects covered by the transitional arrangements whose works have not sufficiently progressed. This is a requirement for local authorities only and is probably intended to give the BSR some notice of buildings that might be coming under its control after 6 April 2024.

What about non-HRB works?

Remember that the BSA also introduces changes to the building control process for non-HRB work under the Building Regulations etc. (Amendment) (England) Regulations 2023. In summary:

- the old regime continues to apply to non-HRB building works where a building notice was issued or full plans were deposited with the local authority in relation to the work, or work started before 1 October 2023;
- the new regime applies to building work where the deposited plans are rejected by the local authority on or after 1 October 2023;
- if no notice of building work was notified to a building control body before 1 October 2023, a new building control approval application must be made and the new regime will apply; and
- if a building control body was notified before 1 October 2023, but work has not started before 6 April 2024, the new BSA dutyholder and competence regulations, the amendments to regulation 38 of the Building Regulations 2010 and the amendments to regulation 16 of the Building Regulations 2010 that require start on-site and commencement notices will apply to this building work.

Approved inspectors must be registered as RBCAs by 6 April 2024 (what developers need to know)

The transition period covering changes to the building control profession also comes to an end on 6 April 2024 (see the Building Safety Act 2022 (Commencement No. 7 and Transitional Provisions) Regulations 2024/104). By that date, businesses operating as approved inspectors must have registered as an RBCA and, from then, more stringent rules will apply as to what works they can carry out, particularly in relation to HRB works.

Again, the transitional regulatory provisions are complex and cover not only the requirement to register as an RBCA but also, for example, the status of the approved inspector's initial notice, what happens if the building works covered by the notice have not started by 6 April 2024 and so on (see the Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023/906 (SI 2023/906)).

The registration period for RBCAs is five years, after which they will have to apply again for registration. Note that the current registration system operated on behalf of the Secretary of State by the Construction Industry Council Approved Inspectors Register (**CICAIR**) will cease operations in April 2024.

At the heart of the changes to the building control profession is the government's focus on raising competency levels. Applying for registration is not a straightforward exercise. It involves confirming compliance with [the operational standards rules for England \(OSRs\)](#) and the professional conduct rules for England (there are separate rules for Wales). Contravention of the OSRs could ultimately result in RBCA registration being cancelled.

Effecting registration by 6 April 2024 is proving to be an uncomfortable deadline for some building control professionals to achieve. Indeed, industry bodies have been calling for an extension of the deadline for building control professionals to achieve the required competency levels and obtain registration (see, for example, the [LABC letter of 2 February to the DLUHC](#)), to which the government's response has been that it is seeking a "managed transition". At the time of writing, the deadline remains 6 April 2024 in England, although note the Welsh government's announcement on 13 March 2024 that it was extending the deadline for building control registration in Wales (as reported by the [Building magazine](#)).

Registered Building Inspectors (what clients need to know)

The BSA also introduced new registration requirements for individuals working as building inspectors (those who work for building control bodies such as the BSR, local authorities and RBCAs) who must register with the BSR as registered building inspectors (**RBIs**) by 6 April 2024 if they wish to continue to operate. This registration lasts four years, after which RBIs will need to re-register. Registration requirements have been set out by the BSR including the [Code of Conduct for RBIs](#) and RBIs must also follow the [Building Inspectors Competence Framework](#).

On 14 March 2024, Philip White, director of building safety at the HSE, announced a 13-week extension of time to 6 July 2024 for RBIs in England to complete their competency assessment and upgrade their registration class (if applicable) provided they are registered with the BSR and enrolled on one of the available competency assessment schemes by 6 April 2024.

Government guidance on RBIs is available here: [Registered Building Inspectors](#) (last updated 31 January 2024). Other guidance is available such as the Building Safety Competence Foundation's guidance: [Registration of the Building Control Profession](#).

What can clients and project teams do now?

Review the status of your project to check which regime applies and whether it will continue to apply after 6 April 2024. If the new regime applies after 6 April 2024, there will be work to do to effect the transition of the project to the BSR's remit.

For HRB works: Check the status of your project. Do the transitional rules still apply? Will they still apply after 6 April 2024? Are the HRB works sufficiently progressed? Is the initial notice still valid? Have the plans been rejected? Have you served notice of the works being sufficiently progressed? If not, ensure the notice is served in good time before the deadline.

If the works are not sufficiently progressed, the initial notice has lapsed or the plans have been rejected, you will need to familiarise yourself (quickly) with the new regime which includes applications for building control approval (Gateway 2), creation and maintenance of the Golden Thread of information, new change management processes, mandatory occurrence reporting and applications for completion certificate (Gateway 3).

For non-HRB works: Was a building notice issued or full plans deposited with the local authority in relation to the non-HRB work before 1 October 2023? Were the deposited plans rejected by the local authority on or after 1 October 2023? Depending on the answer to those questions, you may need to make a new building control approval application to the local authority, the new regime may apply and you will need to familiarise yourself with the new BSA procedures including the dutyholder and competence regulations and those rules regarding starting on-site and giving commencement notices.

In connection with the changes to the building control profession: To better understand the registration process for approved inspectors, read the outline of action approved inspectors must take to apply to become an RBCA in the Appendix below.

To avoid any project delays arising from this transition in building control roles, check whether building control professionals involved on their projects are registered as required by the BSA, or will be so by 6 April 2024. If not, check that replacement professionals are to be appointed in good time. You might also want to check that the

RBCAs are employing enough RBIs for the works of the correct class and category for the type of building control work on which the RBCA is appointed.

Finally, an important reminder about registering HRBs before occupation

Following completion, and regardless of whether or not the transitional arrangements apply, an HRB must be registered with the Health and Safety Executive before it can be occupied. The application to register can be submitted [online](#) and HM Government has issued a [guidance note](#) ("Applying to register a high-rise residential building") setting out the process and what is required. You can access the high-rise residential building register [here](#).

The BSR has also confirmed it is open for queries on the process and can be contacted [via an online form or by telephone](#).

Contact us

To discuss any of the above, please get in touch with your usual Dentons contact in the UK Construction team or contact [Mark Macaulay](#), [Akin Akinbode](#), [Tasmyn Brittlebank](#), [Roddy Cormack](#), [Bruce Hale](#) or [Jayne Meakin](#).

Appendix: How do approved inspectors become RBCAs?

Who should register and how?

Businesses that carry out building control work can apply by calling 0300 790 6787. The BSR will take the applicant's email address and send an application form, spreadsheet and ShareFile link with instructions on how to complete and upload the application.

When should approved inspectors register?

As soon as possible to give the BSR time to process the application in time for the 6 April 2024 cut-off. From 6 April 2024, approved inspectors will not be able to perform any building control functions, and the role will effectively be replaced by the RBCA. From a developer's perspective, for the transitional arrangements to continue to apply in the case where the approved inspector gave the initial notice to the local authority, the approved inspector must be an RBCA by 6 April 2024.

How long does the RBCA registration last and how much does it cost?

Five years, unless varied, suspended or cancelled by the BSR, and the applicant will need to pay:

- registration charge of £4,494;
- a charge of £124 per hour for the BSR to review the application; and
- an annual maintenance charge of £3,439 (due from the first anniversary after registration).

What must be included in the application?

The applicant business will be asked to provide or confirm details relating to its business, such as its organisational structure, the building control functions carried out and whether other services are offered, whether the business is or was an approved inspector registered with CICAIR, and that the business will comply with the professional conduct and operational standards rules for the countries in which the business is registered. More information about this can be found at [Register your business as a building control approver](#) [with the BSR].