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Welsh Government

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Consultation Document

Regulation of the Building Control profession and Building Control bodies

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

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Overview	This consultation seeks views on the proposed Regulation of the Building Control profession and Building Control bodies.
How to respond	<p>You can email your response to the questions in this consultation to: enquiries.brconstruction@gov.wales</p> <p>If you are responding in writing, please make it clear that you are responding to the consultation on:</p> <p>“Regulation of the Building Control profession and Building Control bodies”</p> <p>Written responses should be sent to:</p> <p>Regulation of the Building Control profession and Building Control bodies Building Regulations, Welsh Government, Cathays Park, Cardiff, CF10 3NQ</p> <p>When you reply, it would be useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> - 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
Further information and related documents	Large print, Braille and alternative language versions of this document are available on request.
Contact details	<p>For any enquiries about the consultation please contact the Welsh Government Building Regulations team by emailing: enquiries.brconstruction@gov.wales</p> <p>For further information: Building Regulations Welsh Government Cathays Park, Cardiff, CF10 3NQ Telephone: 0300 062 8144</p>

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Introduction

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.
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 Building Safety Act 2022.
3. The Building Safety Act 2022 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.
4. The Building Safety Act 2022 provides the Welsh Ministers with the power to make secondary legislation such as regulations, which will set out much of the procedural and administrative detail of the changes, including the new regulatory regime for higher-risk buildings (HRB). Through secondary legislation, Welsh Ministers will be able to make provision to drive up performance and safety across the built environment while providing clarity to industry on its responsibilities and duties.
5. We have worked with a wide range of stakeholders, including from both local authority and private sector building control representatives, to develop these reforms and will continue to work with the sector on ensuring the new system operates effectively in practice.

The purpose of this consultation

6. Part 3 of the Building Safety Act 2022 includes provision about the registration of building inspectors (individuals, to be known as Registered Building Inspectors (RBI)) and building control approvers (currently known as approved inspectors (AI's) and to become Registered Building Control Approvers (RBCAs)) to better regulate and improve competence levels in the building control sector.

Building Control Bodies
<ul style="list-style-type: none">• Local Authority Building Control• Registered Building Control Approvers Approved Inspectors to become Registered Building Control Approvers

Building Inspectors
<ul style="list-style-type: none">• Individuals who work for a building control body

7. 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 also need to meet set standards to register and once registered if these standards do not continue to be met sanctions, including deregistration, may be applied. The standards and the competence frameworks that will support them are being considered through a series of separate consultations, which can be found on the [Welsh Government consultation pages](#).
8. This consultation covers a broad range of issues, which arise from the provisions contained in the Building Safety Act 2022 and seeks feedback on the changes we are proposing to the Building Control regime in respect of the regulation of building inspectors and building control approvers and associated matters. It covers the following:
- **Transition process for move from the AI to RBCA registration regime (section 43 of Building Safety Act 2022)**
 - Higher-risk building work and RBCAs (section 46 of Building Safety Act 2022)
 - Non higher-risk building work
 - Transition periods

- **The Registration System (section 42 of Building Safety Act 2022)**
 - Principles of delegation
 - Registration length
 - Registration fees
 - Appeals process/timeframe.
 - Improvement notices
 - Notification of local authority as a result of enforcement.

- **Restricting the functions and activities of RBCAs and local authorities exercisable without involvement of an RBI (section 44 of Building Safety Act 2022)**

- **Changes to forms and notices (and linked processes)**
 - Cancellation of Initial Notices (section 50 of Building Safety Act 2022)
 - New Initial Notices (section 51 of Building Safety Act 2022)

- **Information gathering (section 52 of Building Safety Act 2022)**

- **Further amendments to the AI regulations**

Transition process for AI regime ending and moving to the RBCA registration regime

9. The Building Safety Act 2022 provides for RBCAs to take over from AIs by repealing section 49 of the Building Act 1984 and making other amendments to the 1984 Act which are set out in Schedule 4 to the Building Safety Act 2022. We intend for the current approved inspector regime (subject to transitional provisions) to end on day one of the new RBCA registration regime. From this point, an approved inspector will not legally be able to submit a new initial notice or supervise any new work. They will have had to successfully register as a RBCA in order to continue taking on new work however we propose that there be a transitional period following the ending of the approved inspector regime so that, in specific circumstances, approved inspectors can continue to oversee existing projects.
10. This consultation seeks views on the provisions we need to make in regulations to support the following changes in Building Control in Wales:
 - All buildings inspectors will need to be registered.
 - All AIs will need to be registered as RBCAs should they wish to continue to practice as a private Building Control Approver.
 - All new higher-risk building work will, from the date these changes are introduced, only be able to be overseen by the local authority building control authority.

The majority of proposals in this consultation paper are designed to support the transition from the current regime to the new regime. Where we refer to the “new regime” in this consultation we are referring to the new requirements around registration for RBCIs and RBCAs (and the phasing out of the approved inspectors), the restrictions on the choice of building control authority for higher-risk building work, the new restricted activities and functions, and associated provisions.

11. To ensure a smooth transition to the new regime, we are proposing to make transitional provisions (which are explained in further detail in the following paragraphs) to address the following scenarios:
 - Where an approved inspector overseeing higher-risk building work does not become an RBCA (paragraph 13)
 - ‘In-flight’ higher-risk building work (paragraphs 14-22)
 - Where an approved inspector overseeing non-higher risk building work registers as An RBCA (paragraph 23-24)

- Where an approved inspector overseeing non higher-risk building work does not become a RBCA (paragraph 25-27)

Higher-risk building work

12. As outlined in the White Paper consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings ([Safer Buildings in Wales: A consultation \(gov.wales\)](https://gov.wales)), the Welsh Government intends to introduce a more stringent regulatory regime in design and construction for new high-rise residential buildings, care homes and hospitals which are 18 metres or more in height, or at least seven storeys ('higher risk buildings') and for work to existing higher-risk buildings¹. This new higher-risk building regime will be overseen by local authorities in Wales, who will be the building control authority for all higher-risk building work. Once the new higher-risk building regime is in force, an RBCA will not be able to be the building control authority for work relating to higher-risk buildings, except where transitional provisions apply.

Where an approved inspector overseeing higher-risk building work does not become an RBCA

13. We are proposing that AIs who do not successfully register as a RBCAs or choose not to register will no longer be able to supervise higher-risk building work from the first day that the new regime begins. Due to the high-risk nature of the work, we do not think it is appropriate, even for a transition period, for an AI to continue supervising their existing higher-risk building work if they have not met the competence requirements of the regulatory authority and successfully registered as a RBCA under the new regime. Any AIs overseeing existing HRB work when the new regime comes into force must be registered as a RBCA by the date on which registration becomes compulsory (which is due to be April 2024) in order to continue with that work (and must also meet the conditions set out in paragraph 14 below). AIs will have a number of months (currently six months is planned) to register as a RBCA before registration becomes compulsory and we consider this is sufficient time for AIs to register should they wish to continue overseeing an ongoing higher-risk building work.

Should the AI decide not to register or be refused registration, the project will be reverted to the local authority.

'In-flight' higher-risk building work.

14. Under the new regime, transitional arrangements to support the regulatory changes being made are proposed. For these transitional arrangements to apply to an individual building, we propose that developers would need to meet the following conditions:

- Have submitted and have had accepted or deemed to have been accepted an initial notice by the day the new regime comes into force.

¹ The definition of "higher-risk building" is to be set out in regulations, consultation available [here](#).

- Have commenced building work on the individual building within a six-month transition period (“the transition period”) from the day of the commencement of the new regime.
 - The approved inspector shown on the initial notice must be registered as an RBCA by the time the regime begins in order to be able to continue over seeing the work and they must be the same legal entity.
15. Where an initial notice has been submitted and accepted or deemed to have been accepted before the new regime come into force but building work is not commenced during the transition period, we propose to provide in regulations that initial notices relating to higher-risk buildings overseen by an RBCA would cease to be in force at the end of the transition period.
 16. Where higher-risk building work has commenced but the initial notice is subsequently cancelled, for any reason, during, at the end or following the end of the transitional period, we propose that this work will transfer to the local authority, and cannot be transferred to another AI or RBCA as no new initial notices for higher-risk building work can be issued after the commencement of the new regime. From this point it will only be the Local Authority who can oversee higher-risk building work unless the criteria related to the transitional provisions for higher-risk building work and the new RBCA registration regime have been met.
 17. In addition, we propose to use section 53(2) of the Building Act 1984 to make provision in 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 the local authority to properly oversee higher-risk building work subject to an initial notice that fails to commence within the transitional period.
 18. We propose making transitional provisions to provide that if an initial notice for higher-risk building work has not been accepted or has not been deemed to have been accepted before the new regime comes into force then the work will fall under the new regime .
 19. With regard to Approved Inspectors overseeing existing higher-risk building work when the new regime come into force, we propose that these entities must be registered as an RBCA by the time the regime begins in order to be able to continue over seeing the work and that they must be the same legal entity. We propose to make provision so that AIs and RBCAs will not be able to submit new initial notices for higher-risk building work once the new regime has come into force.
 20. In summary, we are proposing that for any AIs that are not registered as a RBCA before the first day of the new regime their initial notices for higher-risk buildings will be cancelled when that regime commences.

21. Where the AI has registered as an RBCA but building work does not commence during the transition period, any initial notices related to higher-risk building work will be cancelled at the end of the transition period. After this point a new building control application will need to be made to the local authority as building control authority for higher-risk buildings. We propose to achieve this by making transitional provisions in relation to initial notices that include higher-risk building work which:
- cancel all initial notices for higher-risk buildings issued by AIs who are not registered as a RBCA on the date of commencement of the new regime,
 - cancelling initial notices that have not been accepted or deemed to have been accepted before the start of the new regime, and
 - cancel initial notices where work has not commenced before the date the transition period ends.
22. We propose that RBCAs will be able to continue to have oversight of higher-risk building work included in an initial notice to completion when:
- The initial notice has been accepted or deemed to be accepted by the date the new regime commences, and
 - Building work has commenced or commences within the transitional period, and
 - They have the relevant competence to undertake such work through their registration.

Non higher-risk building work

Where an approved inspector becomes an RBCA

23. The current AI registration regime will come to a close when the new RBCA regime, currently planned for April 2024, comes fully into effect. We propose, where an Approved Inspector becomes an RBCA that the initial notices of the AI are treated as the initial notices of the RBCA provided that the following conditions (paragraph 24) are met. In practice, this would mean that the RBCA can continue overseeing existing non-higher risk building work as normal.
24. The conditions are:
- An approved inspector has registered as a building control approver by the time registration becomes a mandatory requirement (due to be six months after the register opens, opening of the register is currently planned for October 2023),
 - Their registration covers the specific work with which they wish to continue, and
 - The RBCA is the same legal entity as the AI.

Where an AI overseeing non higher-risk building work does not become an RBCA.

- 25.** We considered transitional provisions should be made for cases where an AI has not registered as a RBCA by the start of the new regime being in force. In these circumstances, we consider a six-month transition period (“the transition period”) is sufficient for the remaining cases. We propose that this six-month transition period will start on the first day of the new regime and will help to minimise disruption to the market and impact on local authorities and provide additional time for any AIs in this situation to take steps to either achieve RBCA registration or wind down any remaining cases and exit the market.
- 26.** During the six-month transition 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 an RBCA 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 local authority who would be the building control authority for higher-risk building work.
- 27.** 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 conditions (detailed in paragraph 24 above) 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 an RBCA has submitted a new initial notice for this work and the notice is accepted. We are proposing that during the six-month transition period an approved inspector will be able to cancel its initial notice and a new RBCA can submit a new initial notice for that work.

Registration

Current Arrangements

28. There is already a register of Approved Inspectors in Wales operated by Construction Industry Council Approved Inspector Register (CICAIR). Currently CICAIR operate the register of AIs for both England and Wales. There are 2 Approved Inspectors with registered business addresses in Wales. There are 85 AIs with registered business addresses in England (around 50% operate across both England and Wales). Those who are currently registered on the CICAIR register will need to register on the new system to become a RBCA in order to continue operating, as AIs are being replaced by RBCAs (with some transitional provisions proposed as detailed in section 3 above).
29. For building inspectors, currently there is no single registration process in place. The majority of building inspectors are members of professional bodies and are required to meet set standards as part of those memberships but there is no requirement to register and no consistency between these membership arrangements.
30. At present local authorities have 211 inspectors in Wales, this is 6% of the total Local Authority inspectors across England and Wales (3408).

Powers

31. The Building Safety Act 2022² establishes a new registration and oversight regime to provide consistency across the building control sector, this is done by introducing Part 2A into the Building Act 1984 ("Part 2A"). Under Part 2A the Welsh Ministers must set up and maintain a register of building inspectors ("RBI's") and a register of Registered Building Control Approvers (RBCA's). Similar powers in England will be exercised by the HSE in their role as the Building Safety Regulator (BSR).
32. As well as setting up the registration system, Part 2A covers the establishment of a new system of oversight for RBIs and RBCAs. This new system requires the Welsh Ministers to set the standards needed to register and makes provision for sanctions when these standards are not met.

Registration - Principles of delegation

33. We are investigating how the Welsh Ministers functions under Part 2A will be conducted. We are considering entering into an agreement for the functions to be carried out by another body, rather than by the Welsh Ministers. For the

² Section 42 of the Building Safety Act 2022 inserts Part 2A into the Building Act 1984. Section 58C within Part 2A

purposes of this consultation, we will refer to this as the “delegation” of the Welsh Ministers functions under Part 2A.3.

34. There are two reasons for this proposed delegation, the first being that the setting and overseeing of operational standards for building control authorities are areas of common interest with England that in our view would benefit from a consistent approach for both RBCAs and RBIs across England and Wales. This would be beneficial for the industry, who would be required to work to the same/ similar standards. It would also recognise the common working practices and systems in the two nations and would assist in employment flexibility.
35. Secondly given the small number of Approved Inspectors who currently operate in Wales and will likely register as RBCAs, the establishment of any self-funded register set up solely for registration in Wales would be unlikely to be economically viable.
36. As such it is proposed that the Welsh Ministers delegate the majority of functions under Part 2A 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 (see exception to this in paragraph 38 below). The BSR will undertake these same functions for England, the BSR is the Health and Safety Executive.
37. We consider that this delegated approach will ensure consistency between the nations and prevent the need to fund a separate body for Wales only.
38. It is proposed that the Welsh Ministers will oversee the monitoring, oversight and sanctions for local authorities (and not delegate these functions to the BSR). This is because of the powers available to Welsh Ministers in relation to local authorities and is consistent with our relationship in other areas of local authority performance. It should be noted however that local authorities will be subject to the new rigorous requirements in having to comply with the Operational Standards Rules for building control bodies and seek the advice of an RBI before carrying out certain building control activities/ functions.
39. Throughout this consultation document where we refer to the “the regulatory authority” we mean the Welsh Ministers or a body carrying out functions on their behalf.

Registration length

40. The new registration powers require the registration of the building control profession for a specific period of time and that Welsh Ministers must prescribe how long a registration period for an RBI and RBCA must be. In this

³ The actual detail/ nature of any delegation/ agency agreements will be considered in more detail in due course.

section, we are seeking views on the proposed registration periods for both RBIs and RBCAs.

41. The registration period for private sector approved inspectors is currently set at five years. We propose to keep this registration length the same going forward for RBCAs to provide consistency and continuity for the sector. The proposal therefore is to set the registration length for RBCAs at five years. We consider this is reasonable to ensure there is appropriate regulatory oversight of RBCA and that they continue to meet the required standards.
42. 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. Details of the activities and decisions that require registration as a building inspector are included in a section 5 of this consultation.
43. We wish to minimise the impact on the profession and therefore want to avoid a very short registration period such as building 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. It should be noted that during the term of registration building inspectors will also be subject to continuous professional development reviews.
44. We also think it is helpful to have the RBI registration run on a different cycle to that of RBCAs. This would reduce the potential for resourcing issues that may occur if there is a need to administrate the re-registration of RBCA and RBIs at the same time.
45. We propose a registration length of four years for RBIs.

Registration fees

46. CICAIR, who currently operate the register of AIs for England and Wales, are able to charge for registration under section 49 of the Building Act 1984. This helps ensure the cost of undertaking the registration is covered by the person applying. The amendments by the Building Safety Act 2022 will replace these current provisions. Under new section 105B of the Building Act 1984 the Welsh Ministers may prescribe in regulations the amount of the fee or charge, or for the amount of a fee or charges to be determined in accordance with the regulations (or determined in accordance with a published scheme). The regulations can also make provision about the principles to be embodied in any scheme.
47. We are proposing that fees will be charged for the registration for RBIs and RBCAs. As we propose to delegate the majority of functions under Part 2A, if

this delegation proceeds, the fees in relation to those functions would be payable to that body rather than the Welsh Ministers.

- 48.** When making provision in respect of fees due consideration will continue to be given to the principles in Managing Welsh Public Money⁴. We propose that the full costs of the registration regime will be covered through fees and charges to ensure that those subject to it bear the costs. We propose a proportionate approach where those whose activities need the highest level of intervention and oversight will pay the highest cost. We propose to make regulations which will provide that the levels of fees and charges are determined in accordance with a scheme, which will be made and published to ensure transparency and to take account of the different circumstances for registration.
- 49.** We are proposing that fees will be calculated on a cost recovery basis, based on:
- ensuring that, taking one year with another, the fees and charges payable under the charging scheme as far as possible equate to the costs incurred by the regulatory authority in performing the chargeable functions.
 - any fee or charge payable under the regulations must be calculated in accordance with the charging scheme.
 - the charging scheme is made publicly available.
- 50.** We propose that a fixed amount will be payable for registration fees and for the annual maintenance fee. In relation to the carrying out of other functions we propose that an hourly fee will be charged based on the actual time taken for the function to be carried out. If a third party assists the regulator in undertaking their functions, then the costs of the third party will be added to the charges that are payable by the person (legal entity) that is subject to the investigation/ disciplinary action etc.
- 51.** The fees and charges will cover the costs of running the registration system. The fees and charges will be applied at the following points:
- The application to register a person as a building inspector and maintenance of the register under new section 58C of the Building Act 1984 (amendment brought in by section 42 of the Building Safety Act 2022).
 - Fees will be applied at the time of application (including any re-registration) and include initial administrative costs, assessment costs, system running costs, and successful applications will be subject to an annual maintenance fee applied for ongoing administrative costs, monitoring and updating of the register.

⁴ [Managing Welsh public money | GOV.WALES](#)

- the registration of a person as a building control approver and maintenance of the register under section 58O of the Building Act 1984, (amendment brought in by section 42 of the Building Safety Act 2022).
 - Fees will be applied at the time of registration (including any reregistration) and include initial administrative costs, assessment costs, system running costs. and successful applications will be subject to an annual maintenance fee applied for ongoing administrative costs, monitoring and updating of the register.
- Oversight of building control profession/ RBIs – regulatory investigations and enforcement
 - Investigations by the regulator into professional misconduct or any contravention of the code of conduct for RBIs, including taking the necessary enforcement or disciplinary action (including varying, suspending or cancelling an inspector’s registration) and action in relation to any subsequent appeals.
- Oversight of building control profession/ building control authorities – regulatory investigations and enforcement
 - Investigations by the regulatory authority into professional misconduct or any contravention of the operational standards rules and the professional conduct rules applicable to registered building control approvers, including taking the necessary enforcement or disciplinary action and action in relation to any subsequent appeals and action in relation to any subsequent appeals.
- the inspection by the regulatory authority of an RBCA and a local authority under section 58Z8 of the Building Act 1984, (amendment brought in by section 42 of the Building Safety Act 2022).
- Any prosecution arising from conducting regulatory duties where the tests in the code for crown prosecutors are met, meaning: i) there is sufficient admissible evidence to give a reasonable prospect of conviction; and ii) prosecution is in the public interest.
- Where a prosecution is taken through the courts, costs will be recovered up to the point of laying information. After this, costs will be claimed through the bill of costs submitted to the courts in the normal way.

Appeals process/timeframe.

- 52.** The regulation of the building control profession is an important part of establishing a more robust system as without registration a person or company will be limited in the work they can undertake.
- 53.** The Building Safety Act 2022 inserts requirements for the registration of individuals as RBIs into the Building Act 1984. These requirements mean that individuals in both the private and public sector who wish to be RBIs must meet the same minimum standard criteria to be placed on the register.

- 54.** The new sections provide for the regulatory authority to publish the criteria for registration and to detail the application procedure. It also enables the regulatory authority to grant registration with restrictions (for instance as to the type of buildings on which an inspector can give advice) or subject to conditions (for instance requiring regular training).
- 55.** The regulatory authority must publish a code of conduct for inspectors and set out the procedure to be followed when investigating whether there has been professional misconduct. It also has a power to seek information from inspectors and to take disciplinary action, including varying, suspending or cancelling an inspector's registration.
- 56.** There are similar requirements and powers in relation to building control approvers i.e. the requirement to register, for registration to be subject to restrictions, for the regulatory authority to publish Professional Conduct Rules and to investigate contraventions of those rules and take disciplinary action.
- 57.** Part 2A provides for the right to appeal against certain decisions of the regulatory authority, including:
- Decisions on applications for registration as building inspector (58D)
 - Sanctions for professional misconduct (58I)
 - Interim suspension for suspected serious professional misconduct (58J)
 - Decisions on applications for registration as building control approver (58P)
 - Sanctions for contravention of professional conduct rules (58U)
 - Interim suspension for suspected serious contravention (58V)
- 58.** Where individuals wish to appeal a decision or action by the regulatory authority, we are proposing that the grounds of appeal should be that the regulatory authority'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 decision by the regulatory authority. The RBCA or RBI is able to continue to undertake work until the appeal concludes.
- 59.** The regulatory authority has the power to request further information in respect of applications for registration and must publish a statement of procedure in relation to professional misconduct investigations/ contravention of professional conduct rules investigations. The appeals process is designed to be, fair and transparent where disputes arise over registration or sanctions in regard to building control professionals.
- 60.** Appeals will be to the Magistrates' court, and we propose that on determining the appeal the court may confirm, vary, or quash the decision of the regulatory authority.

Operational Standard Rules - Improvement notices

- 61.** Section 42 of the Building Safety Act 2022 inserts new section 58Z4 into the Building Act 1984 which allows the Regulator to issue an improvement notice to a building control authority (an RBCA or a local authority) if, following an investigation or otherwise, it appears that they have breached the operational standards rules.
- 62.** The purpose of an improvement notice is to direct the building control authority in default 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. The notice has effect for the timeframe specified in the notice or until it is revoked.
- 63.** Regulations can be made to prescribe cases where a copy of the improvement notice or serious contravention notice (as the case may be) and the statement of reasons that has been given to an RBCA must also be provided to each local authority in Wales, however at present we have not identified any situation where we feel this would be necessary so do not propose to make regulations to specify situations at this time.
- 64.** There will be statutory rights of appeal in relation to Operational Standards Rules:
 - Where the regulatory authority issues an improvement notice for contravention of operational standards rules (new section 58Z4 (7))
 - Where the regulatory authority gives a serious contravention notice (where person fails to comply with improvement notice as above) (new section 58Z5 (9))
 - Where the regulatory authority cancels an RBCAs registration where at least one serious contravention notice has been issued and it appears to the regulatory authority that there is likely to be a continuing failure to meet standards/ safety risks - (new section 58Z6 (5))
- 65.** An RBCA approver may appeal to a magistrates' court. Where the affected party wishes to lodge an appeal against the regulatory authority's action, we propose to regulate that the grounds of appeal should be that the regulatory authority's action is erroneous in fact, wrong in law, unreasonable, or procedurally flawed.
- 66.** We also propose that the appeal must be lodged within 21 days of the original decision by the regulatory authority and on determining the appeal, the magistrates' court may confirm, vary, or quash the decision.

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

- 67.** As part of the new registration regime, RBCAs be required to comply with professional conduct rules. These rules will set out the expected behaviour and standards that RBCAs must meet. Separate consultations are being undertaken on the proposed professional conduct rules. In situations where it appears to the regulatory authority that an RBCA may have contravened the professional conduct rules the regulatory authority will be able to investigate the matter. Should their findings support that a contravention has happened, the regulatory authority can issue a sanction, which the Building Safety Act 2022 calls a disciplinary order. These disciplinary orders are orders that:
- require the payments of a financial penalty, i.e., a fine,
 - vary the RBCA's registration,
 - Suspend registration of the RBCA for a specific amount of time,
 - Cancel the RBCA's registration.
- 68.** The regulatory authority can also order a short suspension of the building control approver's registration of up to three months while investigating the suspected breach if the contravention of the professional conduct rules is so serious that if the contravention is determined to have occurred it is likely that an order would be made to cancel the RBCA's registration. This is set out in new section 58V of the Building Act 1984.
- 69.** 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 Wales.
- 70.** RBCAs can work across Wales 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, for example, not accepting initial notices submitted to them. We consider information about current registration status for building control approvers to be important information to help local authorities make these decisions.
- 71.** 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 to prescribe that the regulatory authority should send a copy of a disciplinary order to every local authority in Wales in the following circumstances:
- A variation of a RBCA's registration,
 - A suspension of registration for a specified period,
 - A cancellation of registration from a specified date,
 - An interim suspension order where a serious (within the meaning of new section 58V(1)(b) contravention is suspected.

72. We are not proposing to require the sending of a copy of a disciplinary order to every local authority in the following circumstances, as it does not impact on registration and whether a local authority should accept an initial or other notice:

- An RBCA is required to pay a financial penalty.

Restricting the functions and activities of RBCAs and Local Authority Building Control

- 73.** Welsh Government wants to establish clearer accountability and statutory responsibilities. These apply while buildings are being designed, built, and refurbished.
- 74.** Section 44 of the Building Safety Act 2022 makes amendments to the Building Act 1984 that enable the Welsh Ministers to make regulations to define “restricted activities” and “restricted functions”:
- Local authorities and RBCAs, as the building control authorities, before exercising a restricted function, must obtain and consider the advice of an appropriately RBI before carrying out that function.
 - Local authorities and RBCAs, as the building control authorities, must only carry out restricted activities through using an appropriately RBI.
 - These restrictions will come into force alongside the mandatory registration of building inspectors and approvers currently planned for 1st April 2024 and it is proposed will not be subject to transitional arrangements.
- 75.** Our intention is to prescribe restricted activities and functions to ensure that people who are carrying out certain building control work are adequately skilled and experienced to do that work. An RBI will need to hold registration that aligns with the type of work they wish to carry out – for example, they may hold registration that only allows them to work on domestic building projects. The building control authority, (which will only be able to carry out work that it is registered for) where it has the advice of an appropriately skilled and registered inspector.
- 76.** The proposed functions and activities happen for all building types and therefore this proposal is not limited to higher risk buildings.
- 77.** Functions are decision-making points in the building control process. Our intention with restricted functions is to ensure competent people are involved in and advising on important building control decisions. The building control authority will need to use a building inspector that holds registration that aligns with the type of work they need to advise on.
- 78.** The tables below summarise the activities and functions that we propose will be restricted and categorises them by RBCAs and LA.

Building Control functions/activities proposed to be restricted for Registered Building Control Approvers
Activities
The checking of plans and/or information to which an initial notice relates for compliance with any applicable requirement of the building regulations (e.g. site plans)
The checking of plans and/or information to which an amendment notice relates for compliance with any applicable requirement of the building regulations
The checking of plans to which a plans certificate relates for compliance with any applicable requirement of the building regulations;
The inspection of building work for compliance with any applicable requirement of the building regulations
The scheduling the stages/points for inspection of building work
Functions
Giving of initial notices (BA1984 47)
Issuing plans certificates (or a combined certificate with initial notice) (BA1984 50)
Giving a cancellation notice (in cases of contravention of building regs) (BA1984 52(1)(c))
Issuing final certificates (BA1984 51)
Issuing an Amendment Notice S51A (BA84)
Issuing new initial notices S53(7) (BA84)
Giving a transfer certificate and report (S53B)
Cancellation notices (in cases of project becoming a higher risk building project of building regs) (S52A BA84)

Building Control functions/activities proposed to be restricted for Local Authorities
Activities
The checking of plans and/or information to which a building notice relates for compliance with any applicable requirement of the building regulations (e.g. site plans)
The checking of the application and plans deposited under Regulation 12(2)(b) for compliance with any applicable requirement of the building regulations
The inspection of building work for compliance with any applicable requirement of the building regulations
The scheduling the stages/points for inspection of building work
Functions
Determining a building control approval application
Approving a construction gateway application for a higher risk building ⁵
Determining whether to issue a completion certificate or partial completion certificate application
Issuing of completion or partial completion certificates (BR2010 17, 17A)
Issuing a direction to Relax or Dispense with a requirement S8(4) (BA84)
Decisions on matters relating to the use of short-lived materials s19 & 20 (BA84)
Decisions on matters dealing with the drainage of buildings S21 & S22 (BA84)
Decisions on matters dealing with the provision of water supply (S25)
Tests for conformity with BRegs S33 (BA84)
Deciding if there is a contravention of building regs S35 (BA84)
Giving compliance (S35B) & stop (S35C) notices (BA84)
Giving or withdrawing a S36 notice or the decision on execution of section 36 notices
Giving approval in a staged application so work can progress past a stage.
Determining an HRB change control application
Provision of facilities for refuse S23
Determining the acceptance of an application for a certificate for unauthorised building work (BR2010 18(5))
Deciding, with partially completed work, where the plans are sufficient to show the work will not contravene building regs or when the work needs to be opened up.
Determining the outcome of a regularisation certificate application under regulation 18 of the BR2010
Determining whether to accept or reject an initial notice
Determining whether to accept or reject a transfer certificate and report (S53C)

⁵ For information only – will apply only when new gateway provisions have been brought in.

Changes to forms and notices (and linked processes)

Cancellation of Initial Notices

- 79.** At present, if an Approved Inspector ceases to operate and has not cancelled its initial notices, only the person(s) carrying out the work is then able to do so. This has been a significant problem in transitioning such work to local authority building control.
- 80.** Amendments made by 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 authority. In Wales only local authorities will be able to be the building control authority for higher-risk building work. If after an initial notice is in force, it appears to the RBCAs, local authority or person carrying out work that some or all of the work has become higher-risk building work they must cancel that initial notice (or relevant part of it) under the new duty in section 52A of the Building Act 1984.
- 81.** We are proposing a time limited exception to the above where the work is covered under the transitional provisions and is commenced by the end of the transitional period set out in those provisions. More detail on these proposals is included in paragraphs 14-22 of this consultation.
- 82.** Section 50 of the Building Safety Act 2022 amends section 52 of the 1984 Act to introduce new powers and obligations on the person shown on the initial notice as the RBCA, local authority and person carrying out the work to cancel initial notices and ensure that this process can happen efficiently in the future.
- 83.** The Initial notice must be cancelled in the additional circumstances in the amended section 52 of the Building Act 1984, which include:
- By the RBCA (or Approved Inspector, subject to transitional arrangements)
 - If they become or expect to become unable to carry out their functions with respect to any of the work to which the initial notice relates of any work which initial notice relates
 - as a result of a disciplinary order under section 58U(2)(b) (variation of registration) if they would no longer be able to carry out their functions in respect of the work, 58V (interim suspension for suspected serious contravention) or section 58U(c)(c) (suspension of registration)
 - if they are of the opinion that they are unable to adequately carry out their functions; or,
 - if they are of the opinion that there is a contravention of building regulations and certain circumstances apply.

- By the person carrying out the work if:
 - It appears to the person carrying out or intending to carry out the work that the RBCA is no longer willing or able to carry out his functions with respect to any of that work.
 - By the local authority in circumstances which include:
 - The RBCA is unable to carry out functions of any work to which the initial notice relates as a result of a disciplinary order.
 - certain other orders/ notices apply to the RBCA (including suspensions of registration and serious contraventions notices) are made.
- 84.** Where the local authority proposes to cancel an initial notice as a result of certain disciplinary action, they must notify the RBCA of the proposal by serving a notice in the prescribed form at least seven days before the day on which the initial notice is to be cancelled and have regard to any representations made during that period.
- 85.** Section 50 of Building Safety Act 2022 also allows Welsh Ministers to prescribe circumstances, in addition to those above set out in primary legislation, under which an RCBA, the person carrying out the work or local authority must cancel the initial notice. We do not propose to prescribe further circumstances at present but will keep this under review.
- 86.** To enable the above we propose to make amendments to existing forms and prescribe new forms, our key proposals are to:
- Create a new Building (Approved Inspectors etc) Regulations 2010 Schedule 1 form for local authorities to notify RBCAs of an intended initial notice cancellation and to provide details of the appeal window.
 - Amend the existing Schedule 1 form to allow local authorities to cancel RBCAs' initial notices, and for RBCAs to cancel their initial notices, on the grounds of professional sanctions.

Prescribed form for the cancellation notices as a result of a change of RBCA

- 87.** Where there is a change in RBCAs due to certain disciplinary action against the “outgoing” RBCA, a new initial notice must be given, and in certain circumstances a transfer certificate and a report must then be given.
- 88.** In cases where the “incoming” RBCA does not submit a transfer certificate and report in accordance with section 53B of Building Act 1984 or has its transfer certificate and report rejected by the local authority under section 53C, then section 53D provides that the initial notice must be cancelled in the prescribed form.

- 89.** We propose the form, made via regulations, for the local authority to cancel an initial notice includes the following:
- Name of the incoming RBCA
 - 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:
 - the RBCA has not submitted a transfer certificate and report in accordance with section 53C to the local authority
 - the local authority has rejected the transfer certificate and report
 - Where the local authority has rejected the transfer certificate and report, 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
- 90.** The person carrying out the work can, in accordance with new section 53D of Building Act 1984, 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.
- 91.** 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

New Initial Notices

- 92.** Currently if an RBCA is unable to undertake their function, the work reverts to local authority supervision unless another initial notice has been accepted. Previously when certain Approved Inspectors were unable to secure insurance or went into liquidation the consequential unplanned transfers to the local authorities caused disruptions to clients and some local authorities. Similar circumstances such as this could also arise in the future.

- 93.** The Building Safety Act 2022 by amending the Building Act 1984 introduces a new process to ensure that responsibility of building projects can be transferred from one RBCA to another, should the person carrying out the work wish to continue under the private building control route, whilst ensuring that the work so far completed does not contravene any provision of the building regulations.
- 94.** Amendments to section 53(7) of the Building Act 1984 allows a new initial notice to be given (in relation to work to which the original initial notice related) where:
- An initial notice is cancelled by virtue of certain disciplinary action taken against the RBCA or by virtue of such other provision as may be prescribed.
- 95.** The amendments made by section 51 of the Building Safety Act 2022 to section 52 of the Building Act 1984 allow for additional circumstances to be set out in regulations, when a new initial notice relating to any of the work covered by the original initial notice which has ceased to be in force may be given.
- 96.** We are proposing the following additional circumstance in which a new initial notice may be given where an initial notice cases to be in force:
- Business cessation, including insolvency that leads the RBCA 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 are proposing this as we think it may be unfair for the person carrying out the work to have to rely on the RBCA, whose business is ceasing, to provide a final certificate.
- 97.** Where an initial notice is cancelled as a result of disciplinary action taken against the “outgoing” RBCA (or for another reason if that reason has been included in regulations made by the Welsh Ministers) a new initial notice must be submitted by the RBCA who plans to take on the work within seven days beginning on the day on which the original initial notice ceased to be in force and a new transfer certificate process must be followed (new section 53B of Building Act 1984). Annex 1 contains a flow chart of the proposed periods and actions.
- 98.** 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 in regulations. If an alternative RBCA 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.
- 99.** Where the new initial notice has been accepted by the local authority, and the RBCA determines that the work carried out to date does not contravene

building regulations, the RBCA must submit a transfer certificate and report which must confirm that the work up to the date of the certificate does not contravene any provision of building regulations. Conversely, if the RBCA is unable to determine whether the unfinished work meets building regulations, they must set out why in a notice to the person carrying out or intending to carry out the work and provide a copy of that notice to the local authority.

Cases where a further initial notice may be prescribed.

100. In cases where a new initial notice has been submitted by the incoming RBCA 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. 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 RBCA who submitted the initial notice becomes insolvent and is no longer able to carry out its functions. This is because this situation is beyond the control of a person carrying out the work.

Transfer certificate and report

101. New section 53B provides for the circumstances in which an “incoming” RBCA must give a transfer certificate and report to the local authority. Section 53B provides that a transfer certificate must confirm that the RBCA has determined the unfinished work up to the date of the certificate does not contravene any provision of building regulations and the Welsh Ministers can make regulations to provide that additional information must also be included in the transfer certificate. The transfer report must contain any plans, documents or other information related to the confirmation of the transfer certificate. We propose the transfer certificate must include the 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 RBCA – 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,
- a full breakdown of work undertaken to date and what remains to be done,
- details of the extent of any investigations carried out,
- details of the extent of any investigations which were not possible,

- a summary of what information has been gathered.

- 102.** The transfer certificate and report must be submitted to the local authority within 21 days of the initial notice being accepted (or such other period that may be prescribed in regulations), or within any agreed extension with the local authority.
- 103.** On receipt of a transfer certificate and report the local authority can, within 21 days or such period as may be prescribed in regulations, request more information from the RBCA, by notice, which must also be given to the person intending to carry out the work. We propose regulations are made to allow the local authority 28 days, rather than 21 days, to consider the transfer certificate and report and request additional information.
- 104.** After the transfer certificate and report is submitted to the relevant local authority by the incoming RBCA, it must be either accepted or rejected (on certain grounds) by notice within 21 days or such other period as may be prescribed. During this 21-day consideration period, the local authority may also require, by notice, the RBCA to provide further specified information.
- 105.** When the local authority requests further information, the RBCA must provide the specified information within 7 days, or a such period prescribed in regulations. If this 7-day period falls at the end or after the 21 day (or other prescribed) consideration period, the RBCA has up to the end of the seven days from when the local authority makes the request for further information.

Grounds of rejection for the transfer certificate and report.

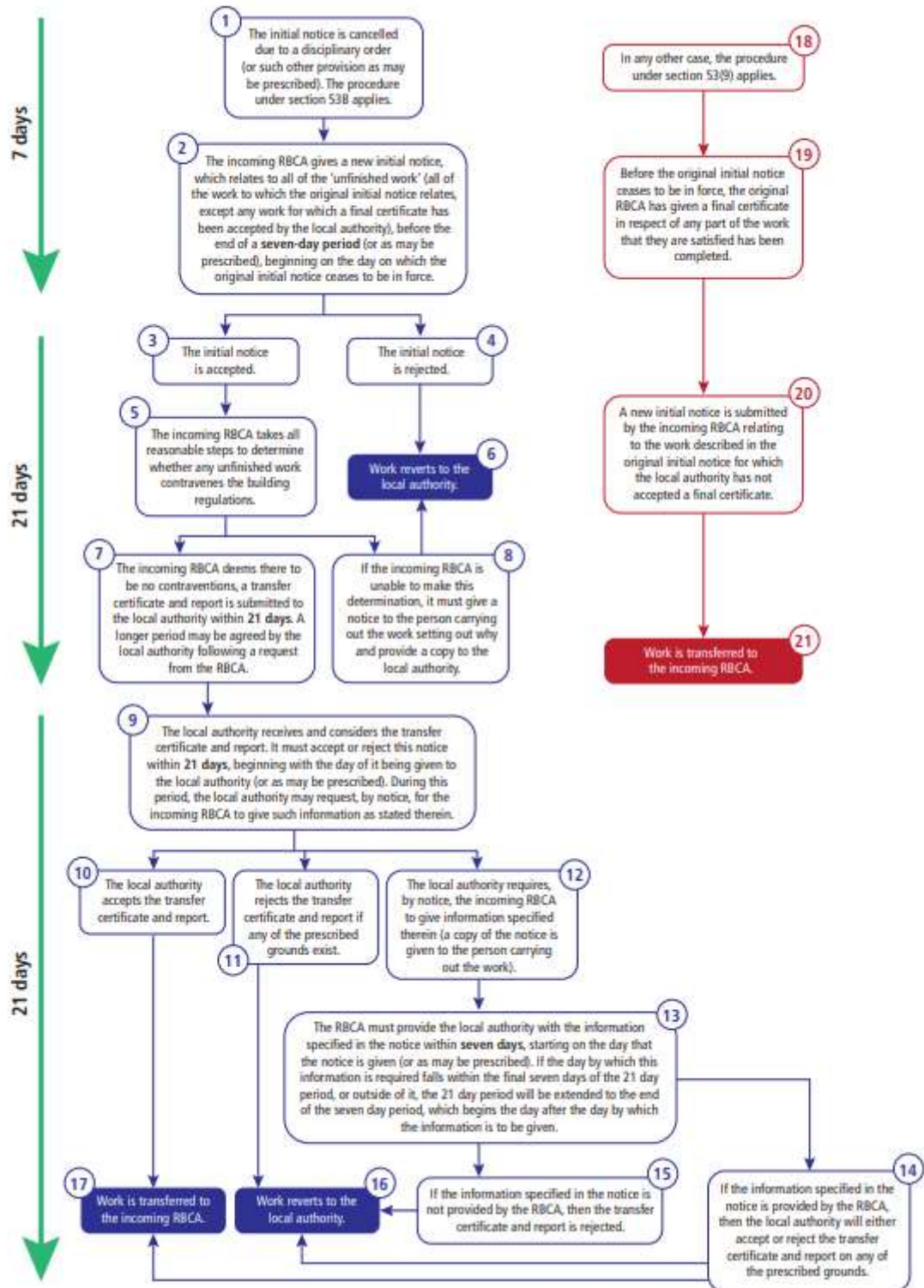
- 106.** The purpose of the transfer certificate and report is for the “incoming” RBCA to demonstrate to the local authority that it has been able to carry out its role of inspecting completed building work and checking plans of the unfinished work, ensuring that the building work complies with building regulations’ requirements, and then confirming to the local authority that it is able to supervise completion of the building work.
- 107.** A local authority may reject a transfer certificate and report, within the prescribed time period, if the RBCA fails to give the local authority any information requested by notice (under new section 53C(4)). We are also proposing that the following grounds be set out in regulations so that a local authority may reject the transfer certificate or report if any of these grounds exist:
- Where a previous initial notice and transfer certificate and report has ceased to be in force by virtue of new section 53D(5) of Building Act 1984
 - 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 required and/ or prescribed information e.g., to demonstrate compliance with the amendments to sections 53B(5) and (6) & 53C(4) of the Building Act 1984 introduced by section 51 of the Building Safety Act 2022.

Information gathering

- 108.** Following previous situations where an Approved Inspector has gone into administration, there have been difficulties in accessing information on projects they were overseeing. This has created problems for the local authority and person undertaking the work in evidencing compliance on the work that has been undertake.
- 109.** Section 52 of the Building Safety Act 2022 makes amendments to section 53 of the Building Act 1984 in order to enable a local authority, where an initial notice has ceased to be in force in certain circumstances, to seek information from the person shown on the initial notice as the RBCA where it has ceased to supervise a project. The section also gives the person carrying out the work a right to receive information from the RBCA, and a power, by notice, to require other information which the replacement for the “outgoing” RBCA may need.
- 110.** We propose to set the time period for which information must be given by the RBCA to 21 days.

Section 51 – RBCA to RBCA transfer process



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

111. 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.) (Wales) Regulations, to reflect the changes brought about by the Building Safety Act 2022 and introduce additional measures to improve the system as a whole.

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

112. 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 RBCA 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.

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

114. 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 RBCA. We also propose that the Public Body's Notice is amended to include the name of the organisation, address, telephone number and email address.

Next steps

115. This consultation will run for 8 weeks. We welcome responses from anyone with an interest in the subject matter of the consultation but assume that the majority of those responding will be working in/ with the building control profession. We are keen for the results of the consultation to be available as soon as possible so as to inform policy development.

116. This consultation will close on 16 June 2023.