

Draft Regulations laid before Parliament under section 168(6)(a) and (c) of the Building Safety Act 2022, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

BUILDING AND BUILDINGS, ENGLAND

The Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023

Made - - - -

Coming into force - -

6th April 2023

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 74, 89(1) and (2) and 168(2) and (4) of the Building Safety Act 2022⁽¹⁾.

In accordance with section 7(4) of the Building Safety Act 2022, the Secretary of State has consulted the building safety regulator and such other persons as the Secretary of State considers appropriate.

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023 and come into force on 6th April 2023.

(2) These Regulations extend to England and Wales and apply to England only.

(3) In these Regulations—

“the 2022 Act” means the Building Safety Act 2022;

“ancillary building” in relation to a higher-risk building means any structure or section that is attached to but does not form part of that higher-risk building;

“AP” means accountable person⁽²⁾;

“external wall” has the meaning in regulation 2(6) of the Building Regulations 2010⁽³⁾;

“ground level” means—

(a) where the level of the surface of the ground on which the building is situated is uniform, the level of the surface of the ground immediately adjacent to the building, or

(1) [2022 c. 30](#).

(2) See section 72 of the Building Safety Act 2022 Act (“the 2022 Act”) for the meaning of ‘accountable person’.

(3) [S.I. 2010/2214](#). Relevant amendments to regulation 2(6) are made by [S.I. 2018/1230](#) and [2022/603](#).

(b) where the level of the surface of the ground on which the building is situated is not uniform, the level of the lowest part of the surface of the ground adjacent to the building;

“PAP” means principal accountable person⁽⁴⁾;

“storey” includes any gallery floor that is a floor open to the storey below and whose internal floor area is at least 50% of the internal floor area of the largest storey vertically above or below it (excluding any floor below ground level);

“storey below ground level” means a storey where any part of the finished surface of the ceiling of the storey is below the ground level immediately adjacent to that part of the building.

Key building information as prescribed information

2. The prescribed information (“key building information”) is information as set out in regulations 3 to 18.

Key building information: ancillary building

3. Whether the higher-risk building has any ancillary building and whether that ancillary building is a higher-risk building⁽⁵⁾.

Key building information: use

4.—(1) The principal use of—

- (a) the higher-risk building,
- (b) any ancillary building,
- (c) any outbuilding,
- (d) any storey below ground level in the higher-risk building.

(2) “Outbuilding” in relation to a higher-risk building means any permanent or temporary building, whether or not attached to the higher-risk building but not forming part of it, that is used for purposes incidental to the enjoyment of the higher-risk building.

5.—(1) The subordinate use of—

- (a) the higher-risk building, save in respect of a residential unit⁽⁶⁾ in that higher-risk building,
- (b) any ancillary building,
- (c) any storey below ground level in the higher-risk building.

(2) “Subordinate use” means any use other than the principal use.

6. Whether since its construction there has been a change to the principal use of the higher-risk building.

7.—(1) “Use” must be described using the following categories—

- (a) residential (dwellings),
- (b) residential (institutional),
- (c) residential (other),
- (d) office,

⁽⁴⁾ See section 73 of the 2022 Act for the meaning of ‘principal accountable person’.

⁽⁵⁾ See section 65 of the 2022 Act for definition of “higher-risk building”.

⁽⁶⁾ See section 115 of the 2022 Act for definition of “residential unit”.

- (e) shop and commercial,
- (f) assembly and recreation,
- (g) industrial, or
- (h) storage and other non-residential

(2) For the purposes of interpreting the categories in paragraph (1) regard must be had to Table 0.1 “Classification of purpose groups” of Approved Document B (Fire safety) volume 1: Dwellings (2019 edition incorporating 2020 and 2022 amendments) that came into force on 1 December 2022⁽⁷⁾.

Key building information: materials

8. With regard to the external wall of the higher-risk building—
 - (a) a description of the material used in its composition, and
 - (b) if there is more than one material, what percentage of the whole does each material constitute.
9. If there is insulation of the external wall—
 - (a) a description of the material used in the composition of that insulation, and
 - (b) if there is more than one material, what percentage of the whole does each material constitute.
10. With regard to the roof of the higher-risk building—
 - (a) the main material used in the composition of the part of the roof that provides a waterproof covering,
 - (b) whether there is a separate layer of insulation, and
 - (c) whether the roof plane is pitched or flat or a combination of both.

Key building information: fixture on external wall

11. With regard to any fixture attached to the external wall or roof of the higher-risk building—
 - (a) the type of fixture, and
 - (b) the main material from which the fixture is composed.

Key building information: structure

12. With regard to the structure of the higher-risk building—
 - (a) the main material used, and
 - (b) the type of structural design the building has in order to comply with Part A (Structure) of Schedule 1 to the Building Regulations 2010⁽⁸⁾.

Key building information: storeys and staircases

13. The number of storeys below ground level that are in the higher-risk building.
14. In relation to staircases—
 - (a) the number of staircases that the higher-risk building has, and

(7) Copies of the Approved Document are available from <https://www.gov.uk/government/collections/approved-documents>, or RIBA, <https://www.ribabookshops.com/>.

(8) Relevant amendments are made by S.I. 2015/767, 2016/490, 2021/1391, 2021/1392, 2022/564 and 2022/984.

- (b) how many of those staircases serve, as part of the same flight of stairs, the storey at ground level and every storey above it.

Key building information: energy

15. The type of energy supply to the higher-risk building.
16. The type of energy storage system of the higher-risk building.

Key building information: emergency planning

17. A description of the type of evacuation strategy that is in place for the higher-risk building.
- 18.—(1) A list of the fire and smoke control equipment within the higher-risk building, save for that provided by a resident for their own use.
- (2) Where in the building the equipment is located.

Key building information duties

19. The PAP must provide to the regulator⁽⁹⁾ key building information for each higher-risk building for which they are the PAP.
20. The key building information for a higher-risk building must be submitted within 28 days of the PAP submitting an application for registration of that higher-risk building⁽¹⁰⁾.
21. The PAP must notify the regulator of any change to the key building information within 28 days of the PAP becoming aware of the change.
22. If there is more than one AP for a higher-risk building each AP must, for the part of the building for which they are responsible⁽¹¹⁾, provide the PAP with—
- (a) notice and details of any change to the key building information within 28 days of the AP becoming aware of the change,
- (b) if requested by the PAP, key building information as soon as reasonably practicable from the date of request from the PAP.
23. A submission of, or notification about, key building information to the regulator may be made by a person authorised on behalf of the PAP for that building.

Provision of key building information to the regulator

24. The key building information to be provided to the regulator must be in electronic form.

Direction by regulator

- 25.—(1) The regulator may make a direction as to the way in which key building information must be given.
- (2) The direction may include a requirement to give the information via a website address provided for that purpose by the regulator.
- (3) The regulator must publish any direction under this regulation on its website and make it available for inspection at its principal offices during normal office hours.

⁽⁹⁾ See section 2 of the 2022 Act for meaning of “regulator”.

⁽¹⁰⁾ See section 77 of the 2022 Act for the registration requirement in an occupied higher-risk building.

⁽¹¹⁾ See regulations 26 to 30 of these Regulations for provision under section 74 of the 2022 Act.

(4) The regulator may, by a further direction, amend or revoke a direction made under this regulation.

Part of the building for which an AP is responsible: buildings with only one AP

26.—(1) If a higher-risk building has only one AP and the AP is a commonhold association, the AP is responsible for the following parts of the building —

- (a) the common parts of the building,
- (b) any commonhold unit,
- (c) any balcony, and
- (d) any other part of the building to which the Regulatory Reform (Fire Safety Order) 2005⁽¹²⁾ does not apply.

(2) If a higher-risk building has only one AP and the AP is not a commonhold association, the AP is responsible for the following parts of the building—

- (a) the common parts of a building,
- (b) any residential unit,
- (c) any balcony, and
- (d) any other part of the building to which the Regulatory Reform (Fire Safety Order) 2005 does not apply.

(3) The common parts of the building are defined by—

- (a) section 25(1) (definition) of the Commonhold and Leasehold Reform Act 2002⁽¹³⁾ in relation to paragraph (1), and
- (b) section 72(6) of the 2022 Act in relation to paragraph (2)

(4) In this regulation “commonhold association” means as defined under Part 1 of the Commonhold and Leasehold Reform Act 2002.

Buildings with more than one AP

27. If a higher-risk building has more than one AP, the parts of the building for which an AP is responsible is determined by reference to regulations 28 to 30.

28. An AP is responsible for the part of the common parts of the building for which they hold a legal estate in possession or a repairing obligation.

29. An AP who holds a legal estate in possession in or a repairing obligation in relation to any part of the exterior of the building, is responsible for any balcony attached to that part of the exterior.

30.—(1) If an AP has the right to let or (excluding a residential unit let on a long lease⁽¹⁴⁾) lets a residential unit in the building, the AP is responsible for that unit.

(2) If a residential unit is let under a long lease, the AP responsible for the unit is—

- (a) the lessor in relation to the long lease, or
- (b) where, by virtue of section 72 of the 2022 Act, the lessor in relation to the long lease is not an AP, the AP responsible for the part of the common parts that adjoins or is nearest to the main entrance door of the unit.

⁽¹²⁾ [S.I. 2005/1541](#). Relevant amendments are made by the Fire Safety Act [2010 c. 24](#).

⁽¹³⁾ [2002 c. 15](#).

⁽¹⁴⁾ See section 115 of the 2022 Act for the definition of ‘long lease’.

(3) For this regulation, the residential unit is treated as including any garden, yard, garage, outhouse, or other appurtenance that is—

- (a) within the higher-risk building,
- (b) for the use, benefit and enjoyment of a resident of that unit, and
- (c) not a part subject to regulations 28 and 29.

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

Date

Name
Parliamentary Under Secretary of State
Department for Levelling Up, Housing and
Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out what constitutes ‘key building information’ in respect of higher-risk buildings; the duties and provisions in relation to submitting key building information; and sets out how to determine for which parts of a higher-risk building an accountable person (“AP”) is responsible under Part 4 of the Building Safety Act 2022 (“the 2022 Act”).

Regulation 2 sets out what information is prescribed under section 89(1) of the 2022 Act as ‘key building information’.

Regulations 3 to 18 set out what information is ‘key building information’. Amongst other things, it clarifies information that is required in relation to structures that do not form part of the higher-risk building but are attached or an outbuilding of it; information that is required in relation to the use of the building; information in relation to materials used and fixtures in certain parts; and information relating to structure and staircases.

Regulations 21 to 23 set out the duties on a principal accountable person (“PAP”) and AP. These duties include providing or enabling key building information to be submitted to the regulator and keeping information up to date. These regulations also provide a time frame for carrying out the duties by reference to an application for registration or upon the AP or PAP becoming aware of any changes to the information.

Regulations 24 and 27 make provision about the form and way key building information is given to the regulator. Regulation 24 mandates that the information should be submitted in electronic form. Regulation 25 includes provision for the regulator to make a direction specifying in further detail how the information is to be submitted.

Regulation 26 sets out what parts of a higher-risk building an AP is responsible for, for the purposes of section 74 of the 2022 Act, where there the building has only one AP.

Regulations 29 to 30 set out what parts of a higher-risk building an AP is responsible, for the purposes of section 74 of the 2022 Act, where the building has more than one AP. Regulation 28 provides that an AP who holds a legal estate in possession in or a repairing obligation in relation to common part as defined by section 72 of the 2022 Act is responsible for that part of the common parts. Regulation 29 provides which AP is responsible for a balcony on the exterior wall. Regulation 30 makes provision in relation to residential units that are let, or the AP has a right to let, under a long lease as defined by section 115 of the 2022 Act.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary sector or public sector is foreseen.