

Draft Regulations laid before Parliament under section 120A(7)(b) of the Building Act 1984 and section 168(6)(b) of the Building Safety Act 2022, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2023 No.

BUILDING AND BUILDINGS, ENGLAND

The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023

Made - - - -

Coming into force

6th April 2023

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 120A(2) and (3) and 120D(2), (3) and (4) of the Building Act 1984 (“the 1984 Act”)(**a**), and sections 65(2) and (3) and 168(2) and (3) of the Building Safety Act 2022 (“the 2022 Act”)(**b**).

In accordance with section 120E(1)(c) of the 1984 Act and section 66(1) of the 2022 Act, the Secretary of State has consulted the Health and Safety Executive(**d**) and such persons as the Secretary of State considers appropriate.

In accordance with section 120F(2)(e) of the 1984 Act the Secretary of State has asked the Health and Safety Executive for advice under section 120H(1)(f) of that Act and in accordance with section 67(2) of the 2022 Act the Secretary of State has asked the Health and Safety Executive for advice under section 70(1) of that Act.

In accordance with section 120F(3) of the 1984 Act and section 67(3) of the 2022 Act the Secretary of State has carried out a cost-benefit analysis and published it(**g**).

In accordance with section 120A(7)(b) of the 1984 Act and section 168(6)(b) of the 2022 Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

(a) 1984 c. 55. Section 120A was inserted by Schedule 5 to the Building Safety Act 2022 (c. 30) (“the 2022 Act”) and section 120D was inserted by section 31 of that Act.

(b) 2022 c. 30.

(c) Section 120E was inserted by section 31 of the 2022 Act.

(d) The Health and Safety Executive is “the regulator”. See the definitions of “the regulator” at section 126 of the Building Act 1984 and section 115 of the 2022 Act.

(e) Section 120F was inserted by section 31 of the 2022 Act.

(f) Section 120H was inserted by section 31 of the 2022 Act.

(g) The cost benefit analysis is available at <https://www.gov.uk/government/publications/the-higher-risk-buildings-descriptions-and-supplementary-provisions-regulations-2023-cost-benefit-analysis>. A paper copy can be requested by writing to the Building Safety Programme in the Department of Levelling Up, Housing and Communities at 2 Marsham Street, London, SW1P 4DF.

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 and come into force on 6th April 2023.

(2) These Regulations extend to England and Wales.

(3) In these Regulations—

“the 1984 Act” means the Building Act 1984;

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

“building” has the meaning given in regulation 4;

“care home” means a care home within the meaning of section 3 of the Care Standards Act 2000(a);

“ground level”, in relation to a building, 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

(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;

“His Majesty’s forces” has the same meaning as in the Armed Forces Act 2006(b);

“hospital” means a building which—

(a) is a hospital within the meaning of section 275 of the National Health Service Act 2006(c), and

(b) has at least one bed intended for use by a person admitted to the premises for an overnight stay;

“residential unit” means—

(a) a dwelling, or

(b) any other unit of living accommodation;

“secure residential institution” means an institution used for the provision of secure residential accommodation, including as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre or secure local authority accommodation;

“structure” means a roofed construction with walls;

“visiting force” has the same meaning as it does for the purposes of any provision of Part 1 of the Visiting Forces Act 1952(d).

Specified descriptions of building under section 120D of the Building Act 1984

2. The following descriptions of building are specified for the purposes of section 120D(2)(b) of the 1984 Act—

(a) a building which contains at least two residential units;

(b) a care home;

(c) a hospital.

Application of regulations 4, 5 and 6

3. Regulations 4, 5 and 6 apply for the purposes of section 120D of the 1984 Act and section 65 of the 2022 Act.

(a) 2000 c. 14.

(b) See section 374 of the Armed Forces Act 2006 (c. 52).

(c) 2006 c. 41.

(d) 1952 c. 67. See section 12 of that that Act.

Meaning of “building”

4.—(1) Subject to paragraph (2), where a structure is not attached to any other structure, that structure is a “building”.

(2) Subject to paragraph (5), where a structure that is not attached to any other structure contains one or more independent sections, each independent section is a “building”.

(3) Subject to paragraph (4), where two or more structures are attached, that set of structures are a “building”.

(4) Subject to paragraph (5), where two or more structures that are attached contains one or more independent sections, each independent section is a “building”.

(5) Paragraphs (2) and (4) do not apply while a building is being constructed or proposed to be constructed.

(6) An “independent section” is a section that—

(a) has access, which can be reached from anywhere in the section, for persons to enter and exit the wider building; and

(b) either—

(i) has no access to any other section of the wider building; or

(ii) only has access to another section of the wider building which does not contain a residential unit.

(7) “Access” means a doorway, archway or similar opening but does not include a doorway, archway or similar opening intended for exceptional use including emergency use or use for the purpose of maintenance.

(8) The “wider building” means—

(a) in relation to a section of a structure that is not attached to any other structure, that structure;

(b) in relation to a section within two or more structures that are attached, that set of structures.

(9) Where a section is a “building” pursuant to paragraphs (2) or (4), any plant room containing equipment for the provision of services to that section is to be considered as part of that building.

(10) The rule in paragraph (9) does not apply to the reference to “building” in sub-paragraphs (i) and (ii) of section 73(1) of the 2022 Act and in section 73(2) of that Act.

Determining height of a building

5.—(1) Subject to paragraph (2), the height of a building is to be measured from ground level to the top of the floor surface of the top storey of the building (ignoring any storey which is a roof-top machinery or roof-top plant area or consists exclusively of roof-top machinery or roof-top plant rooms).

(2) Where the top storey is not directly above the lowest part of the surface of the ground adjacent to the building, the height of the building is to be measured vertically from the lowest part of the surface of the ground adjacent to the building to the point which is a horizontal projection from the top of the floor surface of the top storey of the building (ignoring any storey which is a roof-top machinery or roof-top plant area or consists exclusively of roof-top machinery or roof-top plant rooms).

Storeys

6.—(1) Subject to paragraph (2), when determining the number of storeys a building has the following is to be ignored—

(a) any storey which is below ground level;

(b) any storey which is a roof-top machinery or roof-top plant area or consists exclusively of roof-top machinery or roof-top plant rooms; and

- (c) any storey consisting of a gallery with an internal floor area that is less than 50% of the internal floor area of the largest storey vertically above or below it which is not below ground level.

(2) Where a section is a building pursuant to regulation 4(2) or (4), any storey directly beneath the building which is not below ground level is to be counted in determining the number of storeys the building has.

(3) A storey is treated as below ground level if 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.

Exclusions from the definition of “higher-risk building”

7.—(1) For the purposes of section 120D of the 1984 Act a “higher-risk building” does not include a building of a description specified in paragraph (2).

(2) The following descriptions of building are specified for the purposes of paragraph (1)—

- (a) a building that comprises entirely of—
 - (i) a secure residential institution;
 - (ii) a hotel;
 - (iii) military barracks;
- (b) a building that contains living accommodation provided by the Ministry of Defence (either alone or in combination with other accommodation);
- (c) a building that contains living accommodation (either alone or in combination with other accommodation) for—
 - (i) His Majesty’s forces;
 - (ii) any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(a).

8.—(1) For the purposes of section 65 of the 2022 Act a “higher-risk building” does not include a building of a description specified in paragraph (2).

(2) The following descriptions of building are specified for the purposes of paragraph (1)—

- (a) a building that comprises entirely of—
 - (i) a care home;
 - (ii) a hospital;
 - (iii) a secure residential institution;
 - (iv) a hotel;
 - (v) military barracks;
- (b) a building that contains living accommodation provided by the Ministry of Defence (either alone or in combination with other accommodation);
- (c) a building that contains living accommodation (either alone or in combination with other accommodation) for—
 - (i) His Majesty’s forces;
 - (ii) any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964.

(a) 1964 c. 5. Designations can be made under section 1(1).

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

Name

Minister of State

Date

Department for Levelling Up, Housing and Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations determine which buildings will be subject to the new more stringent safety regime established by the Building Safety Act 2022 (“the 2022 Act”). They do so by supplementing and completing the definitions of “higher-risk building” at section 120D of the Building Act 1984 (“the 1984 Act”) (inserted by section 31 of the 2022 Act) and section 65 of the 2022 Act. The 1984 Act makes provision about the design of, and building work carried out in respect of, “higher-risk buildings”. The 2022 Act makes provision about safety management in occupied “higher-risk buildings”.

Regulation 2 specifies descriptions of building considered “higher-risk buildings” for the purpose of section 120D of the 1984 Act.

Regulation 4 defines “building”. It sets out the circumstances in which structures that are joined will be considered one “building” and also the circumstances in which a section of a wider structure or set of structures will be considered a “building” for the purpose of the new regime.

Regulations 5 and 6 set out how the height and number of storeys of a building is to be determined.

Regulations 7 and 8 exclude certain types of building from the definition of a “higher-risk building”. The same types of building are excluded for both parts of the new regime apart from care homes and hospitals which are excluded from the definition of “higher-risk building” in the 2022 Act but not in the 1984 Act.

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

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