

**EXPLANATORY MEMORANDUM TO**  
**THE HIGHER-RISK BUILDINGS (MANAGEMENT OF SAFETY RISKS ETC)**  
**(ENGLAND) REGULATIONS 2023**

**2023 No. 907**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities (DLUHC) and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of the Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023 is to specify the requirements for the management of buildings safety duties set out in regulations made under powers conferred by Part 4 of the Building Safety Act 2022. It sets out provisions that the Building Safety Regulator (the Regulator), principal accountable persons and accountable persons, residents and others must follow in relation to the in-occupation higher-risk building safety regime.
- 2.2 It sets out provisions on a safety case approach to managing fire and structural safety in higher-risk buildings, duties to engage, consult and provide information to residents, the ongoing management of a digital golden thread of information throughout the building lifecycle and the creation of a mandatory occurrence reporting framework. It also includes provisions on compliance and appeals which enable the Regulator to effectively enforce the new building safety regime, and for persons to resolve disputes with a right of appeal to the First-tier Tribunal for certain decisions.
- 2.3 These Regulations also amend the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 in relation to minor provisions and the requirements for removal of buildings from the register.
- 2.4 G 2.5 Higher-risk buildings are defined under Part 4 of the Building Safety Act 2022 (the Act) and The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 which were laid in Parliament on 19 December 2022<sup>1</sup>.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

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<sup>1</sup>Higher-risk buildings are defined as buildings with at least two residential units which are at least 18 metres in height or have at least seven storeys.

## **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required

## **6. Legislative Context**

- 6.1 These Regulations are part of a group of instruments being laid in 2023, that together underpin the framework and duties set out in Part 4 of the Building Safety Act 2022 for dutyholders: namely, accountable persons, and, where appropriate, specifically for those accountable persons that are also principal accountable persons, and residents.
- 6.2 The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 came into force on 6<sup>th</sup> of April 2023. These regulations set out the detailed specifications for the buildings which will be in scope of the regime, also known as 'higher-risk buildings'.
- 6.3 The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 that came into force on 6th April 2023 set out the requirements for applying for registration, the contents of the register of higher-risk buildings and how to keep registration information up-to-date. They also made provision for review of certain decisions of the Regulator.
- 6.4 The Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023 that came into force on 6th April 2023 set out the high-level information the principal accountable person for each higher-risk building must provide to the Regulator within 28 days of a registration application and how to keep that information up-to-date. They also set out where there are multiple accountable persons for the same higher-risk building which part[s] of the building an accountable person is responsible for.
- 6.5 Further regulations, the draft Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023, will be laid in Parliament in the Autumn. These will specify the information and documents that the accountable persons must keep as the golden thread information. They will also set out the persons whom the accountable persons must provide information to, and what information they must provide; and any exemptions to the requirements to provide information.
- 6.6 These Regulations complement the other regulations by providing administrative processes for building assessment certificates, engagement with residents and resident duties, and appeals. They set out principles for identifying and managing building safety risks and mandatory occurrence reporting. They also set out details regarding compliance notices that may be given by the Regulator to an accountable person in accordance with section 99 of the Act and that will apply in relation to a breach of any duty that is referred to or created in these Regulations. These Regulations provide further detail about the standards in relation to the keeping and sharing of information, the documents and ancillary provisions regarding when information and documents must be provided and the form, and way, they must be provided which directly, further supplementing the Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023. This instrument will come into force on at the same time as the Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations to be laid and debated in Autumn 2023.

- 6.7 These Regulations are a new legislative requirement. No such requirements on management of building safety risks etc in higher-risk buildings have existed in England before.
- 6.8 Part 4 of the Building Safety Act 2022 provides the legislative framework and overarching duties, which together with these Regulations deliver a new regime for residentially occupied high-rise buildings. Some of the key duties, such as registration, carry their own specific offence for failure to comply, without reasonable excuse. However, where accountable persons fail to meet a duty that these regulations together create or underpin, the Regulator will be able to issue a compliance notice. Failure to comply with that notice, without reasonable excuse, will mean that the accountable person has committed an offence for which the maximum sentence is two years imprisonment.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Act establishes a new more stringent building safety regime for higher-risk buildings as part of the new approach to managing fire and structural safety risks in these buildings, and delivers on key aspects of Dame Judith Hackitt's recommendations, as set out in her Building a Safer Future Report (the report), following her Independent Review of Building Regulations and Fire Safety, commissioned by government after the Grenfell Tower fire.
- 7.2 Dame Judith identified that the regulatory system covering high-rise and complex buildings was not fit for purpose. As part of her review, she found that there was ambiguity over who had responsibility for identifying and managing building safety risks and recommended that the government create a clear model of risk ownership. She also found that building owners were not putting in place appropriate risk mitigations nor regularly reviewing fire and structural safety. She stated that there must be clarity about the responsibilities of residents and building owners, with more guidance and information for residents.
- 7.3 The government committed to implementing the recommendations in her report through the Act and associated secondary legislation.
- 7.4 The Act introduced various requirements to strengthen oversight of, and protections for, residents in higher-risk buildings, and established the Regulator to administer and enforce the new regime to drive up safety and standards. These Regulations are part of these reforms and, alongside the commencement of the relevant provisions of the Act, introduce the management of building safety for those responsible for higher-risk buildings. The dutyholder responsible for the building will be one or more 'accountable person/s' for the building. One of the accountable persons for the building will also be the principal accountable person, who has additional duties under part 4 of the Act, for that building.
- 7.5 These Regulations support accountable persons in complying with their Part 4 duties by ensuring the effective management of fire and structural safety risks within occupied higher-risk buildings. If accountable persons do not comply, they will be liable to enforcement action by the Regulator, which could result in a fine or imprisonment. This will incentivise them to comply with their new duties.
- 7.6 Regulation 1 sets out the commencement, citations etc and Regulation 2 sets out definitions contained in the instrument.

### ***Building Assessment Certificates***

- 7.7 Dame Judith Hackitt set out that a “whole building approach” needed to be taken, where the safety of the building is regularly and proactively managed by the dutyholders. The government, therefore, established the requirement for the principal accountable person to apply for a building assessment certificate. To obtain a building assessment certificate the principal accountable person will need to demonstrate to the satisfaction of the Regulator that they are meeting key Part 4 duties as set out within section 81 of the Act.
- 7.8 The duties under section 81 include the assessment and management of building safety risks; the production of a safety case report; duties in relation to mandatory occurrence reporting; provision of information to residents, the Regulator, other accountable persons, owners of residential units and any other prescribed person; and the production of a resident engagement strategy. The assessment ensures that building safety is regularly and proactively managed by the principal accountable person and other accountable persons.
- 7.9 Where the principal accountable person fails to demonstrate that the accountable person/s for the building are meeting these duties in their application, the Regulator can take action either through issuing a notice, detailing the contravention of duty and action/s the accountable person(s) needs to take and within what timescale to obtain an assessment certificate, or refusing to issue the certificate. If the Regulator refuses to issue a certificate, it will work with the principal accountable person and accountable persons to help them comply with the contravened duties whether informally or by using the enforcement tools within the Act, namely compliance notices and ultimately special measures.
- 7.10 Section 80 of the Act sets out the information that is required to be submitted at the time of application for the building assessment certificate. Regulation 3 (1) and (2) sets out the prescribed information to demonstrate compliance with mandatory occurrence reporting duties and provision of information to the Regulator, residents and other persons.
- 7.11 Regulation 3 (3) provides that the Regulator may make a direction as to how to apply for the certificate, including through electronic means via the Regulator’s website. This must be published and made available on its website as provided for in Regulation 3 (4). Regulation 3 (5) details the information required to be submitted with application for the assessment.
- 7.12 Regulation 3 (6) provides details of the information to be included on the certificate and that any certificate may not have effect for longer than 5 years. Regulation 3 (8) details the information about the principal accountable person and the accountable persons which also needs to be displayed alongside the certificate. This information is important in providing assurance to residents about the safety management of the building in which the certificate will be displayed.
- 7.13 Regulation 3 (7) prescribes the detail of a contravention or a refusal notice, which must include: a brief description of the contravention, the period within which the contravention should be remedied (if issued under section 81 (3) (b) of the Act) and information on how to request a review of the decision to issue a contravention or refusal notice. This ensures that any contraventions are remedied, and if not, the residents in the building are aware of any issues which may need rectifying by the

accountable persons for the building. The Regulation also details that such notices must be given to all accountable persons in the building.

- 7.14 Section 82 (1) (a) of the Act requires the building assessment certificate to be displayed in a conspicuous position in the building. Regulation 3 (9) provides that the certificate must be in writing and legible when displayed.

***Management of building safety risks: prescribed principles***

- 7.15 Under the Act accountable persons must take all reasonable steps to manage building safety risks in the part of the building for which they are responsible. The duty to manage building safety risks is focussed on life safety and directly linked to the duty to make a suitable and sufficient assessment of building safety risks.
- 7.16 Steps required to ensure the effective and proportionate management of building safety risks may be wide ranging and varied. They include, but are not limited to, physical barriers built into the fabric or skeleton of the building, engineering controls, administrative measures such as signage, management policies and processes, alarm systems, evacuation strategies and emergency response planning, as well as information provided to residents.
- 7.17 The Act requires accountable persons to act in accordance with prescribed principles when taking steps to manage building safety risks. As recommended by Dame Judith Hackitt, accountable persons are required to ensure appropriate layers of protection are in place for life saving purposes – establishing a holistic system, with numerous barriers, which ensures all reasonable steps have been taken to reduce the potential for an incident involving building safety risks to be realised and to limit the impact of one, should such an event arise.
- 7.18 Prevention principles are commonplace in health and safety law and elsewhere. They provide a framework, often referred to as a hierarchy of controls, to identify and implement practical and procedural measures to reduce risks and deliver safe outcomes.
- 7.19 Regulation 4 (1) sets out the principles accountable persons must follow in their management of building safety risks. These principles relate directly to managing building safety risks in higher-risk buildings, and in addition to general prevention principles mentioned above, they include elements, such as considering the impacts on residents and engaging with them, that are bespoke to the new building safety regime.
- 7.20 While generally ordered from the most effective in terms of risk reduction and management, many of the principles are complementary and they should not be considered in isolation. The principles set out in this Regulation support a number of the duties placed on accountable persons in the Act, for example evaluating building safety risks, ensuring suitable arrangements are in place to manage them and that a system is in place to review, test and maintain the efficacy of the arrangements.
- 7.21 Competence is a key element of effectively managing risks. Regulation 4 (2) requires accountable persons to ensure that persons engaged by them, to assist with compliance with the duties placed on them by the Act, have the relevant competence required to carry out the task assigned to them. It sets out that competence of an individual is measured by their skills, knowledge, experience and behaviours, and for an organisation, by their capability to perform a task satisfactorily.

### *Safety Case Reports*

- 7.22 The regulatory regime for occupied higher-risk buildings, recommended by Dame Judith Hackitt and introduced by the Act, requires accountable persons to demonstrate they are meeting duties to assess and manage building safety risks through a safety case report. The principal accountable person is responsible for producing the safety case report, which must include information from other accountable persons for the same higher-risk building, if applicable. The safety case report must be revised where there is a change in either the assessments made of the building safety risk or the steps in place to manage them.
- 7.23 The safety case report should show that appropriate measures have been introduced to prevent a building safety risk materialising and reduce the severity of any incident should such a risk materialise, including arrangements for the testing, maintenance and implementation of the measures. As such it will be supported and substantiated by wider information known as the golden thread information that we plan will be required by the draft Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023.
- 7.24 The principal accountable person must notify the Regulator when a safety case report is produced or revised. They must then submit the safety case report to the Regulator when directed to do so. It is common practice in such regulatory approaches that the safety case report must meet requirements for minimum content to be included. This approach is being used in this regime so that there will be no set template to be filled out, in part because the specific safety arrangements are bespoke to each individual building.
- 7.25 Regulation 5 (1) sets out the information that must be included by the principal accountable person in the safety case report. The exact level of detail required for each area will depend on a number of factors and needs to reflect the circumstances of each individual building.
- 7.26 The safety case report should be set out in a logical order, that takes the reader on a journey enabling them to understand the building in question and make an informed assessment of the adequacy of risk assessments and measures in place to mitigate and manage building safety risks on an ongoing basis.
- 7.27 As such, the Regulation requires the safety case report to describe the building and the environment in which it is located, give an overview of the key findings of assessments of building safety risks, demonstrate how the steps taken to manage building safety risks meet the requirements of section 84 of the Act, including the emergency arrangements in place to reduce the severity of any incidents involving a building safety risk, and provide a summary of how the safety arrangements are tested and maintained to keep their efficacy.
- 7.28 Regulation 5 (2) requires that the safety case report be stored in electronic form. This aligns with the requirement that the safety case report must be kept as part of the golden thread information and meet the standards required for golden thread of information.
- 7.29 Regulation 5 (3) relate to the notification that must be given to the Regulator when a safety case report is produced or revised. The principal accountable person must include an overview of the changes and an explanation for why they have taken place. Regulation 5 (4) specifies that the Regulator may make a direction as to the way in information must be given to it. This may include a requirement to give information

or documentation via a website. Regulation 5 (5) specifies that if the Regulator publishes a direction under Regulation 5 (4) then they must publish this a direction on their website and make it available for inspection at their principal offices during normal office hours.

- 7.30 The Regulator requires this information in order to determine whether a further review of the amended safety case report is warranted and, therefore, whether they must direct its submission by the principal accountable person. Safety case reports, while dynamic, are not expected to be substantially revised on a regular basis. Revisions should reflect substantial changes to either risk assessments or arrangements in place to manage risks, rather than updates to the testing or maintenance of existing safety features, for example.

*Mandatory reporting requirements*

- 7.31 Dame Judith Hackitt set out in her Report that while mechanisms exist to report safety issues around the structural integrity of a building, there is no coherent approach to reporting issues during the construction or occupation of buildings in scope.
- 7.32 She, therefore, recommended that a system of mandatory occurrence reporting should be set up for higher-risk buildings. The requirement to report should be for key identified dutyholders on a no blame basis. The outputs of these reports (and statistical analysis of this data) should be publicly available. Non-reporting should be regarded as non-compliance and sanctions applied appropriately.
- 7.33 Mandatory occurrence reporting will ensure that the Regulator is able to capture any risks or “near misses” that could have a potential impact on safety, and assess its relevance to other buildings. This will help drive intelligence-led enforcement, promote safety-conscious culture change and improve safety standards and best practice across the built environment.
- 7.34 Regulation 6 (1) prescribes the circumstance for the reporting of mandatory occurrences in the part of the building for which an accountable person is responsible.
- 7.35 Regulation 6 (2) prescribes the information to be provided in relation to the safety occurrence, requiring the accountable person to send a notice with a brief description of the safety occurrence to the Regulator and details of the information which must be provided in a report to the Regulator about the occurrence, including but not limited to whether any persons were injured or killed as a result of the safety occurrence, and details of any recent building works. Furthermore, the reporter must include a description of the measures taken to mitigate or remedy the occurrence.
- 7.36 Regulation 6 (3) states the timeframes for the provision of the notice as soon as reasonably practicable after the safety occurrence, and that the report must be supplied within 10 days of the accountable person becoming aware of the safety occurrence. The regulations impose an obligation to notify the Regulator of safety occurrences that arise only after the provisions come into force. We intend that this information must be retained in the golden thread for 7 years after the reportable occurrence came to the attention of the accountable person<sup>2</sup>.
- 7.37 Regulation 6 (4) makes it a requirement for the principal accountable person to implement a single mandatory reporting system which enables the reporting of

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<sup>2</sup> This requirement is detailed in Schedule 1 of the draft Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023.

incidents and situations to the accountable person, the timely assessment of those situations and incidents to determine whether they are a reportable occurrence and enables the notification and reporting of those occurrences. The principal accountable person must review the effectiveness of this system on a regular basis.

- 7.38 Regulation 6 (5) sets out that a ‘safety occurrence’ is an incident which can affect the structural integrity of a building or lead to the spread of fire, to the extent that it meets the ‘risk condition’, that is that the occurrence could give rise to the risk of significant number of deaths or serious injury to a significant number of people, as defined in section 63(8) of the Act as a ‘major incident’. Guidance will make clear the categories which will be considered a safety occurrence, and that only the most serious safety incidents, which meet the risk condition, will require a mandatory occurrence to be reported to the Regulator.

***Keeping of information and documents***

- 7.39 Dame Judith’s report highlighted that there were significant issues in the “production, maintenance, and handover of building information”, stating “where building information is present, it is often incomplete or held in paper form and is not accessible to the people who need to see it”. This meant there was little or no available evidence that higher-risk buildings had been built to be safe and continued to be safe. To address these issues, Dame Judith recommended the introduction of a ‘golden thread of information’ for all higher-risk buildings, to ensure that accurate building information is securely created, updated and accessible throughout a building’s life cycle.
- 7.40 Regulation 7 (1) and (2) specifies that accountable persons must ensure that both the information and documents kept as golden thread information (required under section 88(1) of the Act and associated regulations) is kept in an electronic format and is secure from unauthorised access. The Regulation also requires that the information and documents are kept in such a manner as to be accessible as soon as reasonably practicable in response to a request from any prescribed person. The prescribed persons are specified in section 89(1) of the Act or regulations made under that subsection. The Regulation also requires that information and documents are only changed in accordance with procedures which record the person who made the change and the date of that change.
- 7.41 Regulation 7 (1) also specifies additional requirements for the information kept as golden thread information. Accountable persons must ensure that the information is held in an electronic format which is capable of holding the information in a way so that the information can be transferred electronically to other persons without the data in it being lost or corrupted. Accountable persons also need to ensure that the information is accurate and intelligible to the intended readers of the data, and any key information needed to understand the data is provided.

***Provision of information to the regulator, residents etc***

- 7.42 Regulation 8 (1) specifies that an accountable person must provide the required information and copies of documents as soon as reasonably practicable after the information or document has been created or updated. This includes the information and documents the accountable person must provide to the Regulator, other accountable persons, the client, the Responsible Person, fire and rescue services and the relevant landlord. The information and documents that must be provided will be



stipulated in the draft Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023.

- 7.43 Regulation 8 (2)-(4) specifies when an accountable person must provide information and copies of documents to a client and provides definitions of various terms including client. The accountable person must provide the information and documents as soon as reasonably practicable after the client gives written notice to the accountable person that a project is taking place in the building, and provide a name, address and email address for the supply of the information and documents. The information and documents that must be provided will be stipulated in the draft Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023. Regulation 8 also defines “client”<sup>3</sup>, “project”<sup>4</sup>, “building work”<sup>5</sup> and “construction phase”<sup>6</sup>.
- 7.44 Regulation 8 (5) specifies that when an accountable person provides information and documents to other accountable persons for the building, the Responsible Person, the client or the local fire and rescue authority, they must provide information and documents electronically and in a format that the recipient can access.
- 7.45 Regulation 8 (6) specifies that Regulation 8(5) does not apply when an accountable person must provide a copy of the contravention notice to the landlord of a resident (if the landlord is the flat owner). This means that when an accountable person provides a copy of the contravention notice to the landlord of a resident (if the landlord is the flat owner) they do not have to provide the information and documents electronically. They should instead follow the requirements for service of documents as set out in section 29 of the Act.
- 7.46 Regulation 8 (7) and (8) specifies when an accountable person must give information and documents to residents of the building and to flat owners (who are not also residents of the building). The information and documents that must be provided will be stipulated in the Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023.
- 7.47 Regulation 8 (7) (a) specifies that if the building is already occupied the accountable person must provide the information and documents to residents as soon as reasonably practicable after the time when the person became an accountable person for the building. If the building is not occupied, the accountable person must provide the information and documents to residents as soon as reasonably practicable after the building becomes occupied. Regulation 8 (7) (b) also specifies that when a new resident moves into the building, the accountable person must provide the information and documents, as soon as reasonably practicable after the accountable person becomes aware that the resident has moved in.
- 7.48 Regulation 8 (7) (c) also specifies that when the information and/or documents that an accountable person has given to a resident or a flat owner become out-of-date, then the accountable person must provide the updated information and/or documents. The

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<sup>3</sup> Client means any person for whom a project is carried out.

<sup>4</sup> Project means a project which includes or is intended to include any building work and includes all planning work, design work, management or other work involved in a project until the end of the construction phase.

<sup>5</sup> Building work has the same meaning as in regulation 3 of the Building Regulations 2010.

<sup>6</sup> Construction phase means the period beginning when any building work on a project starts and ending when that project is completed.

accountable person must do this as soon as reasonably practicable, once they are aware that the information and/or documents are out-of-date.

- 7.49 Regulation 8 (8) specifies that an accountable person must give the information and documents to a flat owner (who is not also a resident of the building) as soon as reasonably practicable after the accountable person becomes aware that the person is the flat owner.
- 7.50 The draft Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023 will stipulate that when an accountable person gives a contravention notice to a resident, they must provide a copy of the contravention notice to the landlord of the resident (if the landlord is the flat owner). Regulation 8(8)(b) stipulates that this must be done as soon as reasonably practicable after the contravention notice has been given to the resident.
- 7.51 Regulation 8 (9) specifies that an accountable person must give information and documents to residents and owners of flats in writing. The Regulation also specifies that the information and documents must be given in a form which allows the residents and owners of flats to understand the content and aims of the information or document given. This includes explanations of technical language used, or with plain English summaries of complex or technical provisions. The Regulation specifies that some of this information and these documents must also be displayed by the accountable person in common parts of the building. The information and documents include: the process for reporting a building safety risk in the building; how to make a relevant complaint; the list of types of further information that a resident can request and the process for making such a request. The Regulation also specifies that the identity and contact details for the following people must be displayed in the common parts of the building: the principal accountable person for the building; any other accountable persons for the building (if applicable); any Responsible Persons for the building; any person the principal accountable person has appointed for residents to contact to request further building safety information.
- 7.52 Regulation 8 (10) specifies that the requirement on the accountable person to ensure certain information is displayed in common parts of the building (as required by Regulation 8 (9)(c) does not undermine the duty on accountable persons to additionally serve the documents directly to residents. Direct service to residents should be in accordance with section 29 of the Act.

***Provision of information etc on changes in accountable person***

- 7.53 Section 90 of the Act and the Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023 require the outgoing accountable person to give information and documents to the new accountable person and stipulate what information and documents should be given. The Act also specifies that this information and these documents must be given after the relevant time and defines the relevant time as when the outgoing accountable person ceases to be responsible for all, or any, part of the building.
- 7.54 Regulation 9 (1) specifies that the information and documents that must be given by the outgoing accountable person to the new accountable person as soon as reasonably practicable after the relevant time (as defined by section 90(1) of the Act).
- 7.55 Regulation 9 (2) specifies that the information and documents must be given in a way that the new accountable person can access. The information and documents must be

given electronically and in such a way that the data is not lost or corrupted. The information and documents must also be intelligible to the recipient, with any key information needed to understand the data being provided at the point of handover.

- 7.56 Section 90 (4) of the Act requires the outgoing accountable person to provide information to the Regulator once they cease to be responsible for the building or any parts of the building. Regulation 9 (3) specifies the information the outgoing accountable person must provide to the Regulator. The information includes: the outgoing person's name; the building or part of the building for which the outgoing person was responsible; the registration number given to the building by the Regulator; and the date that the outgoing person ceased to be responsible for the building or part of the building. The Regulation also specifies that the outgoing accountable person must provide the following details of the new accountable person to the Regulator. This includes the name and contact details of the new accountable person or persons, and a description of the parts of the building for which each new accountable person is responsible.
- 7.57 Regulation 9 (4) specifies that the Regulator may make a direction as to the way in information must be given to it. This may include a requirement to give information or documentation via a website.
- 7.58 Regulation 9 (5) specifies that if the Regulator publishes a direction under Regulation 9 (4) then they must publish this a direction on their website and make it available for inspection at their principal offices during normal office hours.

#### *Residents' engagement strategy*

- 7.59 Dame Judith Hackitt found that residents did not have a strong enough voice in the safe management of their homes and, specifically, that they often did not have the chance to offer their views and participate in the decision-making process. She recommended that the dutyholder should have a strategy (resident engagement strategy) in place to support the principles of transparency of information and partnership with residents. Section 91 of the Act places a requirement on principal accountable persons to prepare such a strategy.
- 7.60 Regulation 10 (1) sets out when the principal accountable person must review the strategy. These instances are: at least every two years, within a reasonable period following a consultation on the strategy, within a reasonable period following a mandatory occurrence report, and within a reasonable period after significant material alterations to the building (unless the impact of the significant material alterations has already been considered as part of a review within the previous two years). Regulation 10 (2) defines "significant material alterations" in this context.
- 7.61 Regulation 10 (3) sets out when principal accountable persons must consult with residents and owners of residential units and other prescribed persons on the content of the residents' engagement strategy. These instances are: when a residents' engagement strategy is first prepared, or when there has been revision to the strategy. If revisions have been made to the strategy as a result of consultation on the contents, the accountable person is not required to consult again on the strategy. This does not prevent the accountable person from choosing to consult again on the strategy if they wish to do so, for example if they believe the revisions made as a result of a consultation, warrant a fresh consultation.

- 7.62 Regulation 10 (4) sets out that, where a building is occupied in stages, the requirement on the principal accountable person to consult on the strategy is met if the consultation is carried out in stages corresponding to the occupation of the building, or at a point where a majority of relevant persons are able to participate.
- 7.63 Regulation 10 (5) and (6) prescribe additional persons with whom the principal accountable person must consult on the strategy and share the final strategy. The prescribed persons are any accountable persons for the building, other than the principal accountable person.
- 7.64 Regulation 10 (7) requires that the principal accountable person must include specific contents in the strategy. The strategy must include a requirement that the principal accountable person inform residents when works resulting from a building safety decision will be carried out, and the purpose of the works. Where works are taking place, arising from a building safety decision, for a period of more than one day that will limit access to any part of a building, or otherwise cause an inconvenience to residents, the principal accountable person must consult relevant persons about the days and times when works are to take place, and how to mitigate disruption to relevant persons from the works. The principal accountable person must then give due consideration to the responses to any consultation. The requirement to consult on building safety works does not apply if works are required on an emergency basis and it would be impracticable to consult the relevant persons. The Regulation sets out that the strategy must also include provision for keeping records of reviews of the strategy, and provision that the principal accountable person must set out in writing to residents how consultations are to be carried out on the residents' engagement strategy and on building safety decisions. This regulation interacts with section 91(1)(d) of the Act, which requires the principal accountable person to act in accordance with the content of the strategy.
- 7.65 Regulation 10 (8) sets out requirements on how consultations under section 91 of the Act must be carried out. These are consultations on the residents' engagement strategy document itself, or consultations on decisions relating to the management of the building that must be held because the principal accountable person has committed to do so as part of the strategy. The consultations must include appropriate and reasonable methodologies which may include digital, postal or in-person events and involve the taking of reasonable steps to ensure that any relevant person likely to be affected by the matter to which the consultation relates, is aware of the consultation. Consultations on decisions relating to the management of the building must be for a reasonable period. Consultations on the residents' engagement strategy itself must be for a reasonable period, but no less than three weeks.

***Requests for further information***

- 7.66 Dame Judith Hackitt identified that residents often have difficulty in accessing information about their building. She recommended that information should be shared in an accessible way with residents and there should be greater transparency of information on building safety.
- 7.67 Section 92 of the Act, alongside the draft Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023, set out the framework for a resident or an owner of a residential unit of a higher-risk building to request certain prescribed information and documents from an accountable person. Regulation 11 sets

out the way in which the information, or a copy of a document, must be given, and the form in which the information must be given.

- 7.68 Regulation 11 (a) requires that the accountable person must give the information in writing.
- 7.69 Regulation 11 (b) requires that the information must be given in a form which allows the recipients to understand the content and aims of the information or document, including where reasonable to do so, explanations of technical language used, or with plain English summaries of complex or technical provisions. This is different to the requirement under regulation 8 (9), as the information residents can request under section 92 is lengthier and more technical than the information that is provided to residents proactively under section 89.

***Principal accountable person's complaints procedures***

- 7.70 Dame Judith Hackitt found that residents did not always know how to raise building safety issues and stated that those responsible for a building's safety should be the first port of call for building safety issues. As such, section 93 of the Act requires the principal accountable person to establish and operate a complaints system for the investigation of relevant complaints. A relevant complaint is defined as a complaint that relates to a building safety risk (as defined in section 62) regarding the building or the performance by an accountable person for the building of any duty under Part 4 of the Act or regulations made under it. Dame Judith Hackitt also recommended that there must be a clear route of escalation to an independent body. Under section 94 the Building Safety Regulator will establish its complaints system, and if complainants are not satisfied with the response they receive under the principal accountable person's complaints system, they may escalate it to the Regulator.
- 7.71 Regulation 12 (1) requires that the principal accountable person's complaints procedure must meet the requirements as set out in the Regulation.
- 7.72 Regulation 12 (2) sets out that the principal accountable person must publish a complaints' policy, and sets out information that must be included in the policy such as what amounts to a relevant complaint, how a complaint can be made, and how it will be dealt with under the system.
- 7.73 Regulation 12 (3)-(20) sets out features that the complaints system must meet. Fundamental features include that any relevant complaint must be dealt with under the system (even if the complainant does not explicitly identify the complaint as 'relevant'), that there must be an appropriate prioritisation process taking account of the level of risk involved, and that complaints must be dealt with in an impartial, fair and timely manner.
- 7.74 Regulation 12 (6) stipulates that the question of whether a complaint meets the definition of 'relevant complaint' should first be determined under the principal accountable person's complaints system. If the complainant is not satisfied with the outcome, they may then escalate the complaint to the Regulator.
- 7.75 Regulation 12 (7) and Regulation 12 (9) state that any person is able to make a complaint and may be assisted by another person to do so. The purpose of these provisions is to ensure anyone, including third parties, such as a contractor working in the building or a visitor, is able to raise building safety concerns, and to improve the accessibility of the complaints system for complainants who need to be supported by another person.

- 7.76 Regulation 12 (8) states that complaints may be made by any reasonable method. This is to ensure that the complaints system is accessible, and that residents' preferences on communication are not inappropriately refused.
- 7.77 As set out in Regulation 12 (11)-(14), complaints must be acknowledged as soon as reasonably practicable, and the complainant must be informed whether their complaint is accepted as a relevant complaint or not. Where it is not accepted as relevant, the complainant must be informed of their right to take the issue to the Regulator. Duplicate complaints from the same complainant that have already been determined, or are under consideration, may be rejected.
- 7.78 Regulation 12 (15) requires that all complaints are dealt with in a timely manner and the complainant must receive information about the timeframe for responding to the complaint and taking action to resolve it. Any changes to those timeframes must also be communicated. Regulation 12 (19) requires that responses to the complainant are in writing and in a form which allows the recipient to understand the content of the information given, including explanations of technical language used, or with plain English summaries of complex or technical provisions. Regulation 12 (20) sets out what must be included in a response to a complaint, including reasons for decisions and detail of action taken, or planned, as a result of the complaint. These provisions are intended to ensure the complainant can understand the communication they receive in relation to their complaint, and that they are kept informed about how their complaint is being dealt with.
- 7.79 Regulation 12 (16) sets out that the principal accountable person must have a procedure for reconsidering the first substantive response to the complainant. This gives the complainant the opportunity to challenge the response, and for the principal accountable person to reconsider their response, before the complaint may be escalated to the Regulator. As set out in Regulation 12 (17), the first substantive response must include details of how to ask the principal accountable person to reconsider the response. The second substantive response (following reconsideration) must include details of how to refer the complaint to the Regulator.
- 7.80 Regulation 12 (18) stipulates that complaints may be escalated to the Regulator where there is a lack of agreement between the principal accountable person and any other accountable person as to the appropriate response to the complaint, providing the complainant consents to the complaint being escalated.

#### *Contravention notices*

- 7.81 Dame Judith Hackitt recommended that residents should have a clear understanding of their roles and responsibilities to help keep their building safe. Section 95 of the Act sets out the duties on residents and owners of residential units. These duties are to not act in a way that creates a significant risk of a building safety risk materialising, to not interfere with a relevant safety item and to comply with a request made by the appropriate accountable person for information reasonably required to perform their duties to carry out an assessment of building safety risks and to manage those risks.
- 7.82 The Act also provides a mechanism for accountable persons to ensure residents comply with their duties. Section 96 of the Act enables an accountable person to serve a contravention notice on a resident, or owner, of a residential unit in the part of the building for which they are responsible, where it appears the person in question has not complied with one or more of the duties under Section 95. Section 96 of the Act also sets out the requirements that contravention notices must fulfil in order to be

valid, a framework for escalation to county court, and gives the Secretary of State the power to make regulations about contravention notices.

- 7.83 Regulation 13 (1) specifies that a contravention notice must contain certain information. This information is in addition to the information required by Section 96 of the Act. The information specified comprises: details of the statutory provision that it is alleged the person in question has contravened, details of previous communication on the matter, any relevant guidance that is issued by the Regulator in relation to the contravention, an explanation of why the accountable person believes it necessary that the person in question takes certain steps, an explanation of any sum required to be paid, details of the principal accountable person's complaints procedure, and contact details for the accountable person who is issuing the contravention notice.
- 7.84 Regulation 13 (2) specifies that contravention notices must be in writing, and in a form which allows the person in question to understand the content and aims of the notice, including explanations of technical language used, or with plain English summaries of complex or technical provisions.

#### *Compliance notices*

- 7.85 Dame Judith Hackitt outlined that the new building safety regime for higher-risk buildings required strengthened enforcement powers to encourage safe buildings from the outset and to hold those who wilfully fail to comply with their statutory obligations accountable. As such, section 99 introduces compliance notices which the Regulator can use during the occupation stage of a higher-risk building. The Regulator can issue compliance notices to accountable persons where they fail to comply with any of the requirements imposed on them in Part 4 of the Act or regulations made under that part. Compliance notices will require the accountable person to take corrective action within a specified period.
- 7.86 Where a breach of a duty by an accountable person places people in or around a building in imminent danger, the Regulator can specify that a compliance notice is an 'urgent action notice'. This differs from a standard compliance notice as an appeal of an urgent action notice will not suspend its effect, and an appeal of a standard compliance notice will suspend its effect. Failure to comply with a compliance notice is a criminal offence and carries a maximum penalty of an unlimited fine and/or two years in prison.
- 7.87 Regulation 14 provides detail on the contents, service and withdrawal of compliance notices. It is important that a notice contains the correct information and the appropriate amount of detail to ensure recipients are able to understand the contravention made and the corrective action required of them. It is also necessary that notices are clear and comprehensible to mitigate the chances of unnecessary appeals in the First-tier Tribunal on the basis that a notice is confusing or misleading.
- 7.88 As such, Regulation 14 (1) specifies the information to be contained in a compliance notice. This includes: a statement that the notice is a compliance notice, the date of service, details of the relevant requirement that has been contravened, details of the nature of the contravention, the building/part of the building in relation to which the breach has occurred, the reasons why a notice is an urgent action notice, the consequences of failing to comply, a statement outlining that the Regulator can withdraw a notice and details of the rights to appeal, apply for an extension of the

compliance period or apply for a direction to suspend an urgent action notice in the First-tier Tribunal.

- 7.89 Regulation 14 (2) states that a compliance notice can only relate to one contravention of a relevant requirement. This means that where there are multiple requirements that have been breached, multiple compliance notices will have to be issued.
- 7.90 Regulation 14 (3) and (4) set out that where a principal accountable person has been issued with a compliance notice, the other accountable persons for the building must be notified by the Regulator by being given copies of the notice. Similarly, where a particular accountable person has been issued with a compliance notice, the other accountable persons and principal accountable person should be notified by the Regulator by being given copies of the notice.
- 7.91 Regulation 14 (5) sets out that the Regulator can withdraw a compliance notice at any time. Where a compliance notice is withdrawn, Regulation 14 (6) requires the Regulator to notify the recipient of the compliance notice that the notice has been withdrawn. This must be done in writing.

#### *Appeals of decisions to refuse to remove buildings from the register*

- 7.92 Dame Judith Hackitt’s Report was clear that at all stages of a building’s lifecycle, there should be ‘a clear and easy route of redress to achieve resolution in cases where there is disagreement’. The Act supports both these concepts with a strong regulatory framework, underpinned by access to justice, by way of right to appeal with prescribed routes.
- 7.93 Accordingly, Regulation 15 creates a further route of appeal to the First-tier Tribunal where a principal accountable person for a building considers that the building should be removed from the register because it is no longer a “higher-risk” building as defined in the under Section 65 of the Act and regulations<sup>7</sup>, and the Regulator has refused to remove the building from the register.
- 7.94 Regulation 15 (2) prescribes that accountable persons, or a person that would be an accountable person, can appeal against a decision not to remove a building from the higher-risk register.
- 7.95 Regulation 15 (3) sets out the grounds of appeal and replicates those under Section 104 (3) of the Act.

#### *Amendment of Regulations*

- 7.96 Regulation 16 makes minor amends to the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023, including making it clearer when the Regulator must give notice to accountable persons about the refusal to remove a building from the register.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

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<sup>7</sup> The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023.



## 9. Consolidation

- 9.1 This instrument amends the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 for the first time. There are no plans to consolidate the relevant legislation at this time.

## 10. Consultation outcome

- 10.1 We conducted a 12-week public consultation between 20 July and 12 October 2022 (Consultation on the new safety regime for occupied higher-risk buildings<sup>8</sup>).
- 10.2 Responses were received online and via email. Responses came from a range of stakeholders including local authorities and registered providers, developers and house builders, fire and rescue authorities, fire engineers, engineering consultants, product manufacturers, institutional investors, representative bodies, and a small number of leaseholders.
- 10.3 Overall, respondents agreed with our proposals as summarised below:
- There were 64 responses to the building assessment certificate section of the consultation. The questions covered various aspects of the certification including the timescales in which a direction should be issued by the Regulator, the processes for applying for an assessment certificate, refusal by the Regulator of an assessment certificate, and the contents of notices to be displayed within the building. On average 80% of respondents agreed with our proposals across eight questions on the proposals. In response to comments, we are including provisions which mean all accountable persons for a building will be given copies of compliance and contravention notices rather than just the principal accountable person or the accountable person who has committed the infraction
  - The section on principles for managing building safety risks and the safety case report received 71 responses in total. The questions posed asked respondents whether they agreed with principles that accountable persons must follow when taking steps to manage building safety risks and detail on the requirements for the safety case reports. Respondents gave positive feedback with 73% agreeing with the proposal. We responded to comments about the lack of competence in the sector by including competency requirements within the prescribed principles on the management of building safety risks.
  - The section on mandatory occurrence reporting received 57 responses. It covered various aspects of the policy including the definition of a safety occurrence, the information to be provided to the Regulator and the timescales for reporting. Across six questions posed, 65% of respondents agreed with proposals. In response to comments, we extended the information that is required to be submitted with a mandatory occurrence report to the Regulator.
  - There were 20 questions posed on section covering the residents' engagement strategy, complaints, contravention notices, and providing residents with building safety information (residents' voice). It covered proposals on what information needs to be provided to residents along with timings and accessibility, contents of the resident engagement strategy including consultation and participation by residents, implementation of a complaints policy system with means to escalate to the Regulator, and the means of compliance for residents with their building safety duties. On average across the 20 questions 67% of respondents agreed with proposals.

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<sup>8</sup> [Consultation on the new safety regime for occupied higher-risk buildings.](#)

However, support ranged widely from 51% to 83% in agreement. In response to feedback, we are including requirements for the principal accountable person to review the resident engagement strategy after a mandatory occurrence report has been submitted to the Regulator, and where significant work has been carried out on the building.

- The section on how the golden thread is stored and managed and the golden thread principles received 55 responses. This section covered that golden thread information should be stored and transferred electronically and should be accessible, accurate, up to date and secure. The golden thread of information should also form a single point of truth and be interoperable, transferrable, and accessible, and that there should be a consistent use of language and terminology as far as is reasonably practicable. On average across eight questions 77% of respondents agreed with proposals.
- The section on enforcement set out proposals on the information to be included in compliance notices and how they should be withdrawn and amended by the Regulator. There were 47 responses to this section and on average across the two questions posed 92% of respondents agreed with proposals.
- The final section of the consultation on review and appeals received 42 responses. This section covered the internal review process and suspension of a direction to manage building safety risks or a decision not to remove a building from the register when an appeal is made to the Tribunal. On average across two questions 85% of respondents agreed with proposals. However, the government decided against implementing the suspensive affect of appeals on the aforementioned decisions. Full details of this can be found in the full government response.

10.4 Overall, feedback was largely positive with on average 72% of respondents agreeing with our proposals. All objections to policy proposals have been considered and our policy position is detailed in the full government response. Where necessary we have amended or omitted provisions in response to respondents' feedback and further policy consideration. Across all policy area respondents commented that comprehensive guidance from the government and the Regulator would be required to ensure accountable persons can comply with the building safety duties imposed under the Act and in Regulations. This guidance will be produced by the Regulator. Furthermore, the government is committed to carrying out a review of regulatory measures provided for in section 162 of the Act 2022.

10.5 A full government response to the consultation is published alongside these Regulations and can be found on the webpage linked here:

<https://www.gov.uk/government/consultations/consultation-on-the-new-safety-regime-for-occupied-higher-risk-buildings>.

## **11. Guidance**

11.1 The Regulator will set out guidance in the Autumn, to support meeting the requirements introduced by these Regulations.

## **12. Impact**

12.1 A full and joint impact assessment has been prepared for this instrument and the Higher Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023 and is submitted with this memorandum and is published on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

- 12.2 It is not possible to separate the impact from these Regulations and the Higher Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations 2023. There will be an impact from both these Regulations on business, charities, voluntary bodies and the public sector. The Department has estimated the total costs of these Regulations and this assessment shows that the estimated equivalent annual cost of the in-occupation regime is £133.5m - £274.2m, with a central estimate of £182.9m. This assessment does not include costs associated with remediating historical safety defects, or of carrying out works to the building to manage building safety risks. These will be building specific and will depend on how the building safety risks for that building have been managed.
- 12.3 We estimate that the annual equivalent cost of the in-occupation regime on the public sector, specifically the Regulator is £29.9m of which, 90% will be recovered from industry through cost recovery as detailed below.
- 12.4 The costs of delivering the new regime for higher-risk buildings in occupation fall initially to the organisations responsible for designing, constructing and managing higher-risk buildings and the Regulator. The Regulator intends to recover most of their costs from industry via cost recovery. Industry can recover costs from leaseholders via service charges for costs relating to managing the safety of higher-risk buildings in-occupation. This element of the impact assessment estimates an average yearly (£184) and monthly (£15) cost to leaseholders over a 15-year period.
- 12.5 These Regulations fall within the Better Regulation Framework exclusion because they relate to the safety of tenants, residents, and occupants in buildings.
- 12.6 The full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses as small businesses can own and manage higher-risk buildings.
- 13.2 No specific action is proposed to minimise the Regulations burden on small businesses as the costs relate to ensuring building safety.

### **14. Monitoring & review**

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of section 31 of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley MP has made the following statement:
- “The regulatory measures in this instrument are within the scope of the periodic review provided for in section 162 of the Building Safety Act 2022, and it would not be appropriate in the circumstances to make provision for a separate review in this instrument”.

### **15. Contact**

- 15.1 Cynthia Brathwaite at the Department for Levelling Up, Housing and Communities email: [cynthia.brathwaite@levellingup.gov.uk](mailto:cynthia.brathwaite@levellingup.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Camilla Sheldon, Deputy Director for Reform, Policy and Legislation within the Safer, Greener Buildings Group at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley MP, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.