

Insights

DRAFT HIGHER-RISK BUILDINGS (DESCRIPTIONS AND SUPPLEMENTARY PROVISIONS) REGULATIONS

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UPDATE: On 6 March 2023 the government published the final version of [The Higher-Risk Buildings \(Descriptions and Supplementary Provisions\) Regulations 2023](#) together with an explanatory memorandum. No substantive changes have been made to the draft Regulations discussed in this Insight and so content remains correct.

On 20 December 2022, the government published the [draft Higher-Risk Buildings \(Descriptions and Supplementary Provisions\) Regulations \(Regulations\)](#) together with the [Government response to the Higher-Risk Buildings \(Descriptions and Supplementary Provisions\) Regulations \(Response\)](#).

The plan is for the Regulations to come into force on **6 April 2023**. The Regulations apply to England.

This Insight takes a closer look at the Regulations and Response.

RECAP

Higher-risk buildings are those buildings that will be required to meet the legal requirements of the more stringent regime for building safety introduced by the Building Safety Act 2022 (BSA).

There are two parts to the new regime:

- the design and construction of new higher-risk buildings and building works to existing higher-risk buildings; and
- the occupation of higher-risk buildings.

The Regulations together with the BSA:

- define which buildings are considered “higher-risk buildings” for **design and construction** under s120D of the Building Act 1984 (inserted by s31 BSA);
- define which buildings are excluded from higher-risk buildings for **occupation** under s65 BSA;

- provide an overall definition for building for both parts of the regime under s120D Building Act and s65 BSA;
- establish how height and the number of storeys a building has is determined for higher-risk buildings.

DESIGN AND CONSTRUCTION REGIME – WHICH BUILDINGS?

Buildings subject to this regime include those which:

- are at least 18 metres in height or at least 7 storeys;
- contain at least two residential units. The Response clarifies that “residential unit” means “a dwelling or any other unit of living accommodation, for example a flat or rooms in a university hall of residence where amenities are shared...”.

Care homes and hospitals **which are 18 metres in height or at least 7 storeys** will also be subject to the new regime.

Buildings excluded from the regime include:

- a building that comprises entirely of:
 - a secure residential institution;
 - a hotel;
 - military barracks;
- a building that contains living accommodation provided by the Ministry of Defence (either alone or in combination with other accommodation);
- a building that contains living accommodation (either alone or in combination with other accommodation) for:
 - His Majesty’s forces;
 - any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(1).

OCCUPATION REGIME – WHICH BUILDINGS?

Buildings subject to this regime include those which:

- are at least 18 metres in height or at least 7 storeys;

- contain at least two residential units (note the Response clarification of this term above).

Buildings excluded from this regime include:

- a building that comprises entirely of:
 - a care home – this has the meaning given to it in section 3 of the Care Standards Act 2000 which provides that an establishment is a care home if it provides accommodation, together with nursing or personal care, for those who are ill, have a mental disorder, are disabled, infirm or who are dependent on alcohol or drugs;
 - a hospital - this means a building which is a hospital within the meaning of s275 of the National Health Service Act 2006 and has at least one bed intended for use by a person admitted to the premises for an overnight stay;
 - a secure residential institution – this 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;
 - a hotel – interestingly this term is not defined in the Regulations although the Response explains that it has been used as it “provides a clearer definition”. However, a hotel can take many forms. Hopefully the promised government guidance (see below) will clarify this definition;
 - military barracks;
- a building that contains living accommodation provided by the Ministry of Defence (either alone or in combination with other accommodation); or
- a building that contains living accommodation (either alone or in combination with other accommodation) for:
 - His Majesty’s forces;
 - any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964.

The government’s rationale for excluding hospitals and care homes is because they are already regulated as workplaces by the Regulatory Reform (Fire safety) Order 2005 (Order) and subject to the local Fire and Rescue Authorities’ and the Care Quality Commission’s inspection regimes. Likewise, the exclusion of hotels and secure residential institutions is because these buildings in

occupation are already regulated by the Order and have additional safety measures in place such as being staffed 24/7 and having a higher level of alarm and detection facilities. This explains the wider exclusions for occupied buildings, as opposed to those in the construction phase.

WHAT'S NEXT?

The Regulations have been laid before Parliament and are subject to the affirmative parliamentary procedure. This means they will be debated by both Houses of Parliament and so may be subject to change. If approved, they will come into force on 6 April 2023.

The government has said that it will publish full guidance once the Regulations are approved by Parliament. According to the Response, "This will be made available before the first parts of the new regime come into force and become legal requirements."

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