



The Building Safety Act's new framework for higher-risk buildings begins to take shape

Ten months have passed since the Building Safety Act received Royal Assent. Attention now turns to the wave of new regulations to be passed to implement the new framework for higher-risk buildings.

The Building Safety Act – A landmark piece of legislation

Introduced in response to the Grenfell Tower tragedy and [Dame Judith Hackett's final report](#), the Building Safety Act 2022 ("BSA") hit the statute books last year. The BSA represents the most far-reaching reform of regulation across the construction and residential property sectors in living memory. It mostly applies to England only, although certain parts apply to Scotland, Wales and Northern Ireland.

We produced a detailed [Overview of the BSA](#) soon after it received royal assent. This briefing is the first in a new series of alerts that will look at specific aspects of the BSA. We also encourage you to look out for details of our upcoming webinars on the BSA.

The areas that the BSA covers and the ills it intends to cure are wide in scope and diverse in nature. The ambit of the legislation includes remedies for historical building safety and cladding defects, as well as creating what is referred to as a "more stringent" regulatory regime for higher-risk buildings. This will apply throughout the building's operating life, and aims to deliver improved accountability, risk management and the assurance of safety for those living in such buildings.

In addition, the BSA amends, among other legislation, the Defective Premises Act 1972, the Health and Safety at Work etc Act 1974, the Building Act 1984, the Landlord and Tenant Act 1985 and the Regulatory Reform (Fire Safety) Order 2005.

The BSA – Substantial parts of the legislation are still to come into force

The BSA is more than 250 pages long, with accompanying Explanatory Notes that run over 400 pages. This does not include the raft of secondary legislation to be passed, which will provide the regulatory detail required to bring parts of the Act into effect.

With the BSA now enacted, it is easy to lose sight of the fact that its various provisions are being brought into effect over a protracted period of time (the intended dates for the implementation of some parts still unknown), such is the magnitude of the legislation. It is not helpful that the Implementation Timeline has not been updated by the Department for Levelling Up, Housing & Communities ("DLUHC"), the Government department behind the BSA: the last incarnation of the [timetable](#) is somewhat out of date as it was published on 5 July 2021, however it does illustrate DLUHC's intended phased implementation.

The more stringent regulatory framework for higher-risk buildings

The BSA will transform the law relating to the design and construction of all buildings and the operation of higher-risk residential buildings. The definition of a 'higher-risk building' ("HRB") is set out in the legislation. It is worth noting that the definition of an HRB during its design and construction phases is not identical to the definition that applies in the occupation phase, however, the starting point is that the building:

- is at least 18 metres in height or has at least 7 storeys; and
- contains at least 2 residential units

The new overarching framework for HRBs is itself comprised of two interlinking regimes:

- a regulatory regime that applies to HRBs during their procurement stage (from planning through design and build, to completion of construction) which will involve a new, more prescriptive and intricate building control approval process (Part 3 of the BSA deals with this new building control regime for HRBs and wider changes to the Building Regulations for all buildings); and
- a regulatory regime that will apply to “occupied” HRBs which will encompass a detailed scheme that will require completion certificates before occupation, the formal registration of HRBs, the assessment of building risks and the issuance of new building assessment certificates and safety case reports, reporting to the new statutory regulator, keeping certain prescribed information about the building, engagement with residents, new duties on owners and residents, and other measures (Part 4 of the BSA imposes new duties in relation to the management of building safety risks in occupied HRBs)

The new Building Safety Regulator

Central to the new overarching framework for HRBs is the role of the [Building Safety Regulator](#) (“BSR”) which is being set up within the Health & Safety Executive (HSE) with extensive new powers of regulation, inspection and enforcement. The BSR’s three main functions include:

- overseeing the safety and standards of all buildings
- helping and encouraging the built environment industry and building control professionals to improve their competence
- leading the implementation of the new framework for HRBs

The HSE webpage [Setting up the new BSR](#) informs us of what is due to happen this year:

- Work is well under way setting up the new BSR within the HSE
- The registration of existing occupied HRBs is due to open in April
- The BSR becomes the new building control authority for all HRBs in England in October
- The registration deadline for existing occupied HRBs will be in October
- From October, developers must apply to the BSR for building control approval before commencing work on any HRB

A tsunami of secondary legislation

While the overall direction is set by the BSA, the devil is in the detail and that detail is still being refined: we await the publication of the secondary legislation which will implement the powers in the statute.

The bullet points above summarise the developments that are expected to occur between April and October this year. Given the volume of the secondary legislation (which, together with the BSA regulations that have already come into force – which can be found on [DLUHC’s BSA: secondary legislation page](#) – will exceed 100 pages), it would be reasonable to assume that the Government will give industry a minimum of six months in which to upskill and get up to speed. This would mean that the full suite of regulations would be published by Easter, which is now just a few weeks away.

In addition, next month, the HSE will host its first ever [Building Safety Regulator Conference](#). Our expectation is that the supporting secondary legislation will be published around the time of the conference.

DLUHC Consultations on the framework for HRBs

Last year, DLUHC ran two consultations that were focused on the new framework for HRBs. These consultations addressed two salient parts of the overarching framework – the design and construction of all buildings, and the occupation of HRBs. All of the consultations are available online: [DLUHC BSA consultations](#)

The first consultation set out Government plans to reform the building control system and procedures for all building work. The second consultation concerned the new requirements for the operation and occupation of HRBs specifically.

It is important to note that the new framework will extend to all HRBs in England, whenever built. The way in which the provisions are implemented through the secondary legislation will shape the industry and the role of professionals and their professional bodies for many years to come. The new regulations will have significant implications for professional practices, contracting, manufacturing and those who own, operate, manage and maintain buildings.

The definition of HRBs

The BSA empowers the Secretary of State (DLUHC) to supplement the definition of an HRB in the BSA “by regulations”.

DLUHC recently published [The Higher-Risk Buildings \(Descriptions and Supplementary Provisions\) Regulations 2023](#) (“HRB – Definitions Regs”), the purpose of which is to refine the definition of an HRB, thus clarifying which buildings will fall within the scope of the new framework.

In the Explanatory Notes to the draft HRB – Definitions Regs, the Government states that:

- there are around 13,000 existing buildings that will fall within the definition of an HRB (being at least 18 metres in height or with at least seven storeys, and having at least two residential units), and therefore will be subject to the in-occupation regime and
- on average, an estimated 500 new buildings that meet the definition will be built each year and be subject to the new regime for design and construction.

The HRB – Definitions Regs are expected to come into force on Thursday 6 April. Aspects of the draft regulations worth noting are:

- Care homes and hospitals are included within the design and construction regime to ensure that HRBs that may be occupied by those who are unable to evacuate quickly, or without assistance, are designed and built in accordance with the new regime. However, whilst they are included within the definition of an HRB during the design and construction phase, they are not included in the in-occupation part of the new regime on the basis that care homes and hospitals are regulated as workplaces through the Regulatory Reform (Fire Safety) Order 2005, and are therefore already subject to duties placed on those in control of these buildings to make sure the premises are safe.
- Certain types of building are excluded from the definition of an HRB altogether: hotels, secure residential institutions (prisons) and military premises are excluded from both the design and construction and in-occupation regimes. The rationale for excluding hotels and secure residential institutions from both of the new regimes is that they are also already regulated by the Fire Safety Order, and hotels generally have a higher level of detection and alarm systems, multiple routes of escape, clear signage, emergency lighting to assist evacuation and benefit from 24/7 staffing. Similarly, military premises are also excluded as they are subject to their own specific fire safety requirements.
- The draft regulations also indicate that the 18 metres height definition will be based on the height from ground level on the lowest side of the building to the top of the floor surface of the highest occupied storey of the building.

Accountable Persons and the Principal Accountable Person

In relation to the in-occupation phase of an HRB, the BSA creates two new dutyholders – the Accountable Person (AP) and the Principal Accountable Person (PAP). Those who own or are responsible for managing an HRB will need to appoint a PAP.

The PAP's main duties are:

- To register the HRB with the BSR
 - The register is expected to open in April
 - The registration process is subject to secondary legislation being in place.
- When directed by the BSR, to apply for a building assessment certificate and to display it in the HRB
- To carry out a risk assessment and prepare a 'safety case report'
 - This report has to be provided to the BSR and the PAP then needs to keep it updated (ensure that it is complete, accurate and sufficient)
- To manage and maintain the important information necessary for managing the building safely – what is commonly referred to as 'the golden thread of information'
- To develop a resident engagement strategy and complaints procedure
- To report certain occurrences (such as fires) to the BSR

APs are the people legally responsible for repairing the common parts of a building, for example the exterior and structure of the building or corridors or lobbies. An AP may be an individual, a partnership or a corporate body and there may be more than one AP for any one building: where there is more than one AP for a building, the AP that owns or is under obligations to repair the exterior and structure of the building will be recognised as the PAP.

Keeping information about HRBs

In addition to the HRB – Definitions Regs, also expected (stated) to come into force on Thursday 6 April are the recently published draft [Higher-Risk Buildings \(Key Building Information etc.\) \(England\) Regulations 2023](#) ("HRB – Key Information Regs").

Context

In relation to HRBs, the HRB – Key Information Regs set out:

- what constitutes "key building information"
- the duties relating to the submission of key building information; and
- how to determine for which parts of an HRB an AP is responsible under Part 4 of the BSA.

By way of background, Dame Judith Hackitt's report set out that there were extensive flaws with the existing building safety system, the transparency of information and inadequate audit trails of information throughout the life cycle of a building.

The HRB – Key Information Regs will place new requirements on those responsible for HRBs to provide the BSR with key building information. The Government is requiring this information so that the BSR can carry out an initial triage of the potential risk levels in the existing 13,000 HRBs across England. The information will also support the BSR in its oversight of HRBs, in monitoring trends across HRBs in England and deciding what further action might need to be taken to address any identified risks.

When is an HRB 'occupied'?

The threshold is very low. An HRB is occupied if there are residents of more than one residential unit in the building. If a building has many unoccupied residential units, the BSA (and the requirement to register the HRB with the BSR) will apply once two or more residential units are occupied.

What is 'key building information'?

This includes information relating to:

- the principal use of the HRB, any ancillary building, outbuilding and any storey below ground level
- the 'subordinate use' of the HRB ("any use other than the principal use"), except in respect of a residential unit in the HRB, and also of any ancillary building, outbuilding and any storey below ground level
- whether there has been any change to the principal use of the HRB since it was built
- in relation to the external wall of the HRB and any insulation in that wall, the materials used in the composition and what percentage of the whole each component material constitutes
- in relation to the roof of the HRB, the main material used in the part of the roof that provides a waterproof covering, whether there is a separate layer of insulation and
- whether the roof plane is pitched or flat or a combination of both
- the types of fixtures attached to the external wall and roof and materials from which they are composed
- the type of structural design of the HRB and the main material used in the structure of the HRB
- the total number of staircases, the number that serve all floors, and the number of storeys below ground level

- the energy supply to the HRB and energy storage system within it
- the type of evacuation strategy that is in place and
- a list of the fire and smoke control equipment within the HRB and where it is located

When must the 'key building information' be submitted?

The PAP will be required to submit relevant information to the BSR within 28 days of an application being made for registration of an occupied HRB. The BSR must also be updated whenever the key building information changes, within 28 days of the PAP becoming aware of the change.

HRBs in Wales

The scale of the high-rise landscape in Wales is not comparable to England. There are approximately 150 high rise residential buildings in Wales, with around 4 to 5 additional high rise buildings being built each year.

Towards the end of last year, the Building Safety Act 2022 (Commencement No. 2) (Wales) Regulations 2022 brought into force various sections of the BSA that empower the Welsh Government to define the term "higher-risk building". The definition of HRBs in Wales will be separately defined in regulations to be issued by the Welsh Government.

Recently, the Welsh Government launched its [Welsh Consultation: proposed definition of higher-risk building](#). The document states that work on secondary legislation to facilitate the implementation of the BSA in Wales is underway. It also sets out the proposals for defining "higher-risk building" for the reform of the design and construction phase of the new building safety system. Earlier this week, the Welsh Government published the draft [Building Safety \(Definition of Higher-Risk Building\) \(Design and Construction Phase\) \(Wales\) Regulations 2023](#). The definition will apply to the design and construction phase and for any works to existing buildings that require building regulation consent. The reform of the building safety regime during the occupation phase is being taken forward separately; the categories of buildings coming within that regime may be different.

Implications

The ball has started to roll, both in England and Wales. The Welsh consultation closes on Friday 12 May. In England, we expect the secondary legislation and guidance to appear in the next couple of months.

The key message at this stage is "*Information, information, information!*" The implications for APs and the PAP for existing HRBs is that they need to develop their strategies regarding the collation of key building information as soon as possible and also to focus on policies governing document management, information gathering and records retention.

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