



Higher-risk buildings' – New duties concerning 'Key Building Information'

The new building safety framework that is being introduced under the [Building Safety Act](#) ("Act") and which is beginning to take shape attaches particular importance to the creation and collation of information.

One of the many features of the new legislation is the introduction of a regulatory framework for higher-risk buildings ("HRBs") in England which is comprised of two interfacing and interlinking regimes which place duties on certain defined persons during both the design and construction stages of a project as well as the occupation phase of the completed HRB.

Last month, the [Higher-Risk Buildings \(Key Building Information etc.\) \(England\) Regulations 2023](#) ("KBI Regulations") came into force. These require those responsible for HRBs to provide the new [Building Safety Regulator](#) with specific information about those buildings.

New Building Safety Regulator a landmark moment for building safety

Established in response to London's Grenfell Tower fire, the new regulator aims to protect high-rise residents from unsafe building practices in England. Its three main functions are:

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

Providing information to the Building Safety Regulator

Dame Judith Hackitt's report identified extensive flaws within the existing building safety system, the lack of transparency of information and inadequate audit trails of information throughout the lifecycle of a building. A key

feature therefore of the new framework is its focus on transparency and the monitoring of building information throughout the building's lifecycle.

The [KBI Regulations Explanatory Note](#) (and a copy of the Government's response to the consultation on the KBI Regulations can be found [here](#)) states that the Government's main reasons for requiring those responsible for HRBs to provide the Regulator with key building information are to enable the Regulator to carry out an initial triage of the potential risk levels in the existing 13,000 HRBs across England and the information obtained will also support the Regulator 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.

The Government has fired the starting gun

The Regulator requires all existing HRBs in England to be registered, with a named person responsible for maintaining their safety. As we explained in our previous briefing [The new framework for HRBs begins to take shape](#), the Act introduces two new roles – accountable persons (AP) and principal accountable persons (PAP). It is the PAP who will be required to register HRBs within six months from April 2023.

The KBI Regulations

In relation to HRBs, the KBI Regulations 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 Act.

Regulations 3 to 18 specify the information to be provided. Regulations 19, 23 and 24 introduce a requirement for the PAP, or a person authorised on behalf of the PAP, to submit

the information to the Regulator in an electronic format. Regulations 20 to 22 specify when the information needs to be submitted. The PAP will have to submit the information within 28 days of submitting an application for registration of that higher-risk building. In addition, the PAP will be required to notify the Regulator of any change to the key building information within 28 days of becoming aware of the change.

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 Act (and the requirement to register the HRB with the BSR) will apply once two or more residential units are occupied.

What is the ‘key building information’ that has to be provided?

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 the 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, and
- the total number of staircases, the number that serve all floors, and the number of storeys

Reminder – APs and the PAP

<p>APs</p>	<p>Subject to limited exceptions, the AP will be any person or entity with a legal estate in possession of any part of the common parts of the HRB or any person or entity that has a repairing obligation in relation to the common parts of the HRB.</p> <p>Each AP will be required to perform a number of duties in relation to the part of the HRB for which they are responsible. These include:</p> <ul style="list-style-type: none"> • regularly assessing building safety risks • preventing a building safety risk from materialising, or reducing the severity of any incident resulting from such a risk • keeping prescribed information and copies of documents in accordance with set standards, and • providing a copy of the residents’ engagement strategy to all residents, as far as is reasonably practicable
<p>PAP</p>	<ul style="list-style-type: none"> • The PAP will be any person or entity with a legal estate in the relevant parts of the structure and exterior of the building or any person that has the relevant repairing obligation in relation to the structure and exterior of the HRB. • Where there is only one AP in the HRB, that AP will automatically become the PAP. • Where there is more than one person or entity that may fit the description of a PAP or where a person or entity requires clarity of their obligations in relation to an occupied HRB, an application can be made to the First Tier Tribunal for a determination. • The PAP is responsible for performing several key duties that include: <ul style="list-style-type: none"> ○ registering the HRB before occupation ○ providing the key building information within 28 days of submitting the application for registration of the HRB ○ applying for a ‘Building Assessment Certificate’, and displaying it in the building ○ preparing a ‘Safety Case Report’, and updating it as required ○ maintaining the ‘Golden Thread’ of information ○ developing a resident engagement strategy and complaints procedure, and ○ setting up a ‘Mandatory Occurrence Reporting’ system

Taking action now

PAPs must take urgent action, particularly in relation to the duty to register existing HRBs with the Regulator. In order to assist those affected by the new regime, including in relation to the registration of HRBs, the Government has launched its [Making Buildings Safer campaign](#), which is aimed at the owners and managers of HRBs in England.

A transitional period is now in place during which HRBs that are already occupied can be registered before 30 September 2023. It is important to note that any PAP who fails to register an occupied HRB before the end of September this year will have committed an offence.

Our Construction and Property teams are presently advising clients on the new duties and in relation to registration and the new regulations. We encourage any clients who are concerned to contact us for tailored advice.

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