

Building Safety in Brief

The new building safety regime for higher-risk buildings

Background

- The Building Safety Act (BSA) became law on 28 April 2022, allowing for secondary legislation to follow with more detail
- A key consultation on implementing the new building control regime ran July to October 2022 (Consultation) and the Consultation Response was published in August 2023
- Following the Consultation and Consultation Response, secondary legislation in the form of The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (HRB Procedure Regulations) and The Building Regulations etc. (Amendment) (England) Regulations 2023 (BR Amendment Regulations) came into force on 1 October 2023
- Both of these Regulations change the building safety regime for higher-risk buildings (HRBs) (where building regulations apply and with some limited exceptions)
- This factsheet gives a high-level overview of key ways in which the new building safety regime impacts HRBs during the design and construction phase. This factsheet applies to England only.

New Gateways 2 & 3

There are three Gateways:

- Gateway 1 takes place at the planning stage
- Gateway 2 takes place before works start
- Gateway 3 takes place when works are complete.

Gateway 1 has been in force since 2021. Gateways 2 and 3 came into force on 1 October 2023.

The HRB Procedures Regulations provide that (subject to limited exceptions) Gateways 2 and 3 apply to (new) “HRB work” and “work to existing HRBs”.

- “HRB work” includes construction of an HRB, work to an existing non-HRB causing it to become an HRB, and work to an existing non-HRB undergoing a material change of use to become an HRB
- “work to existing HRBs” covers works to HRBs which are not “HRB work”, and are either Category A or Category B works, with Category A being the higher risk of the two.

For simplicity, this factsheet summarises the new Gateway 2 & 3 process for “HRB work” which we’ll call “new HRBs”. So, be aware that there are separate or additional requirements not set out here, including for “work to existing HRBs” (which differ depending on whether the works are Category A or B), for staged work, and for partial completion.

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What's an HRB?

You can find out more about what an HRB is in our factsheet [here](#).

New “dutyholders”

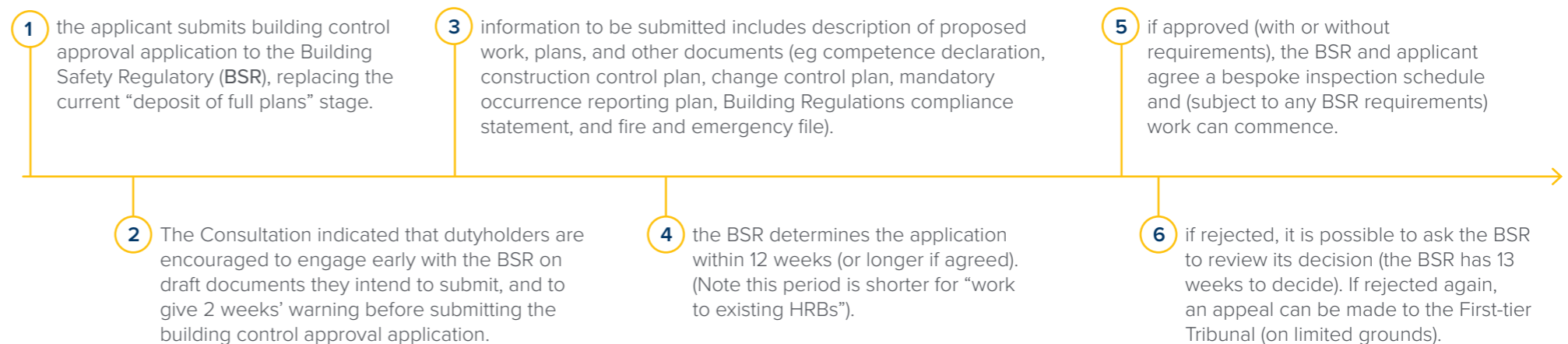
The BSA introduces “dutyholders”, and the BR Amendment Regulations provide more legislative detail.

For HRBs and non-HRBs, dutyholders will be the Client, Principal Designer, designers, Principal Contractor and contractors (on the face of it similar to the CDM Regulations, but with a focus on building regulations compliance). There are duties they must all comply with (eg managing and monitoring work, cooperating, and ensuring competence); and separate duties depending on their dutyholder role (eg Client or designer).

Additionally, dutyholders for HRBs will have extra obligations (eg the Client must appoint the Principal Designer and Principal Contractor before any Gateway 2 application is made).

Gateway 2 overview (new HRBs)

Before building work commences:



Gateway 2 hard stop It is a criminal offence to commence building work without BSR approval

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Between Gateways 2 & 3 - new Change Control

Between Gateways 2 and 3 is the construction phase for HRBs.

For this phase, the HRB Procedures Regulations have introduced a new change control process - if dutyholders want to deviate from the original Gateway 2 approval, they must determine if the change is a “controlled change”, and if that controlled change is a “major” or a “notifiable” change:

- **major** – requires a change control application to the BSR (6 weeks to determine or longer if agreed). The change is not permitted without BSR approval and no BSR decision is deemed refusal
- **notifiable** – requires notification to the BSR. The change may not be made until that notice is given. After notice, the change can be made without waiting for the BSR to approve, but this work will be “at risk”.

Major changes - eg change to external height or width of the building, or to its structural design or structural loading, or to its external wall.

Notifiable changes - eg change to the construction control plan or change control plan, or to the layout of a flat or residential room in the building.

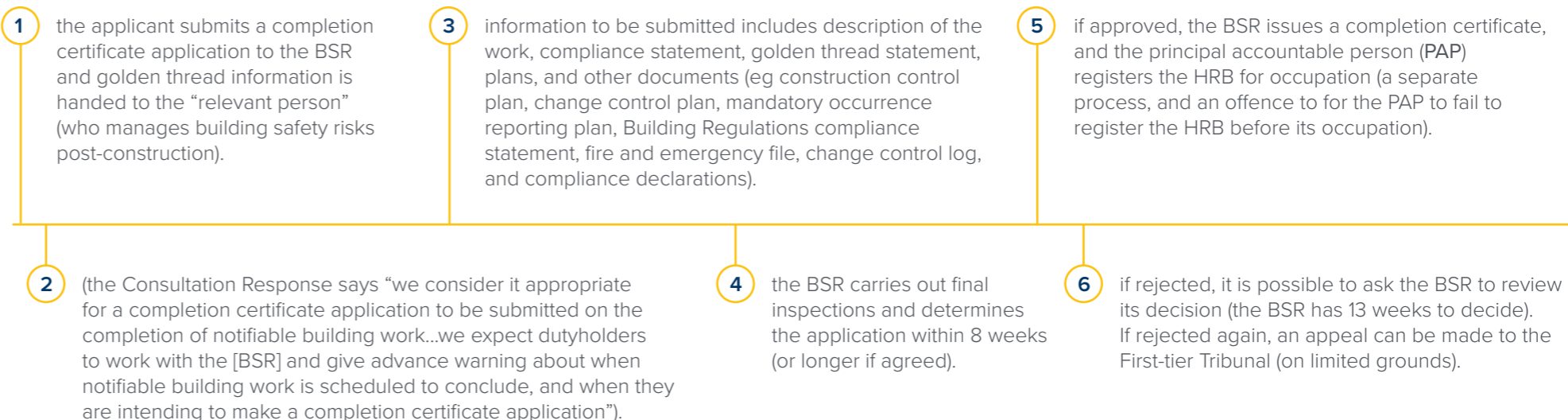
A change control log is also maintained recording “controlled changes” to the project, which includes major and notifiable changes (including why the change is proposed, whose advice was sought and a summary of any advice provided).

What’s the golden thread?

You can find out more about the golden thread in our factsheet [here](#).

Gateway 3 overview (new HRBs)

When the building work on the HRB is complete:



Gateway 3 hard stop a criminal offence for an accountable person to allow occupation of a residential unit in a new HRB without the BSR completion certificate.

Other points to note

- Even with Gateway 2 approval, notice must be given to the BSR at least five working days before works start
- Notification must also be given to the BSR within 5 working days after the work is “commenced” (“commenced” has a specific meaning for the purpose of lapse of building control approval)
- There are complex transitional provisions for where initial notice has been given to a local authority and accepted, or full plans have been deposited with a local authority and have not been rejected, in both cases before 1 October 2023 - with works to be “sufficiently progressed” by 6 April 2024 (“sufficiently progressed” has a specific meaning for the purpose of the transitional period)
- There are other changes to the building safety regime which apply to both HRBs and non-HRBs - for more, see [here](#). For more information on building safety, visit our [Building Safety Hub](#).

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