

Building Safety in Brief

Do you have a “higher-risk building”?

Background

- When the [Building Safety Act 2022 \(BSA\)](#) became law, it outlined what “higher-risk buildings” (HRBs) would be, making it clear that further law could follow on this.
- This further law came into force as the [Higher-Risk Buildings \(Descriptions and Supplementary Provisions\) Regulations 2023 \(Regulations\)](#) in April 2023, setting out what HRBs are in more detail.
- Whether your building is an HRB (or not) is not that straightforward though.

This factsheet provides a high-level overview of what the BSA and Regulations say an HRB is, and highlights points to consider. This factsheet applies to England only.

Why does it matter?

HRBs must be registered with the Building Safety Regulator (BSR) before occupation. It is a criminal offence to allow an HRB to be occupied before it is registered. For HRBs already in existence, registration opened in April 2023 with a deadline to register of 30 September 2023. From 1 October 2023, all new HRBs must be registered before occupation.

What is a “building”?

Regulation 4 of the Regulations goes into detail about the meaning of “building”. (It is helpful to read the [explanatory notes](#) issued with the Regulations.)

In the design and construction phase a “building” can be:

- a single structure, or
- a more complex set of attached structures comprising an overall development (eg a row of terraced dwellings linked to a mixed-use tower).

For a substantial refurbishment, or in the occupation phase, “building” is defined less holistically. You will need to work out whether any particular part of a structure is in fact a “building” in its own right (known as an “independent section” – see following). If you do identify an independent section, the rest of the structure is known as the “wider building”.

Further:

- sections of a “wider building” can also be defined as their own separate building in certain circumstances – in which case they are also called “independent sections”.
- an “independent section” is a section of the wider building that has its own entrance and exit accessible from anywhere in the section, and either:
 1. has no access to any other section of the wider building (eg, from our previous example, the tower is attached to a terrace of buildings, but has no access to the terrace), or
 2. only has access to another section of the wider building that does not contain a residential unit (eg the tower is attached to the terrace, but only has access to a shared basement).

This can be confusing, so the government has published guidance on the [criteria for being a HRB during the occupation phase of the new higher-risk regime](#).

What types of buildings are HRBs?

In very simplified terms, under the Regulations HRBs are buildings that are:

- 18m or seven storeys high or more, and
- have two or more residential units.

Some buildings are excluded from the definition of HRB, including:

- occupied hospitals and care homes – in the design and construction phase, these are HRBs if they meet the criteria above. But, in the occupation phase, they are excluded as they are regulated by the Regulatory Reform (Fire Safety) Order 2005 (**Order**).
- hotels or secure residential institutions (like prisons) – excluded, as they are also regulated by the Order.
- military barracks or living accommodation for military personnel – excluded, as they are subject to their own specific fire safety requirements.

These exclusions apply **only** if the entire building is used for the excluded purpose. If, for example, a hotel which meets the basic height or storeys threshold also contains at least two residential units, then it will be an HRB (in whole or in part depending upon the “independent section” criteria mentioned above) whereas it would not if it was used exclusively as a hotel.

Height measurements and storeys for HRBs?

If you have a type of building that falls into the definition of HRB, how do you check if it’s 18m+? In summary, the Regulations say the correct measurement is based on the height:

- from the ground level on the lowest side of the building (relevant where the ground is sloped)
- to the top of the floor surface of the highest occupied storey of the building.

The Regulations also say that when determining the number of storeys in a building, broadly speaking you ignore the following:

- **basements** – any storey below ground level
- **roof-top plant and machinery** – any storey that is a roof-top machinery or roof-top plant area or consists exclusively of roof-top machinery or roof-top plant rooms
- **gallery floors** – “any storey consisting of a gallery with an internal floor area that is less than 50% of the internal floor area of the largest storey vertically above or below it which is not below ground level”.

Depending on your property, there is also a lot of further information to consider in the Regulations when determining whether you have an HRB or not, so you must review this carefully on a case by case basis.

It’s not all about 18m and seven storeys

11m and five storeys – whether or not you have an HRB, remember that parts of the BSA could capture the construction or refurbishment of buildings of at least 11m or five storeys high too (known as “Relevant Buildings”). In particular, see sections 116 to 125 BSA and Schedule 8, which relate to leaseholder protections.

All buildings – non-HRBs are also caught under the BSA’s scope. Although there will be more obligations around HRBs than non-HRBs, non-HRBs will still be affected (eg under the new dutyholder regime).

For more on building safety, visit our [Building Safety Hub](#) or get in touch.

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