

EXPLANATORY MEMORANDUM TO
THE HIGHER-RISK BUILDINGS (KEY BUILDING INFORMATION ETC.)
(ENGLAND) REGULATIONS 2023

2023 No. 396

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department of Levelling Up, Housing and Communities (DLUHC) and is laid before Parliament by the Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of the Higher-Risk Buildings (Key Building Information etc.) Regulations 2023 is to specify key building information that must be provided to the Building Safety Regulator (the Regulator) about higher-risk buildings as required by section 89 of the Building Safety Act 2022 (the Act). The Regulations also set out provisions regarding the parts of a higher-risk building for which an accountable person, as defined by section 72 of the Act, is responsible for in relation to their duties under Part 4 of the Building Safety Act.
- 2.2 Higher-risk buildings are defined under Part 4 of the Act and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 laid in Parliament on 19 December 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Local Government and Building Safety Lee Rowley MP, has made the following statement regarding Human Rights:
“In my view the provisions of The Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 89 of the Act gives the power to the Secretary of State to make provisions requiring an accountable person for a higher-risk building to give prescribed information to the Building Safety Regulator, and other persons specified in section 89(1) including any prescribed persons. This instrument introduces requirements to

submit information (the key building information), stipulates what the information is, specifies when this information should be submitted and to whom.

- 6.2 Section 74 gives the Secretary of State a power to make regulations as to the parts of a higher-risk building for which an accountable person is responsible in so far as their Part 4 statutory obligations. This instrument sets out the framework for accountable persons to ascertain which parts of the building it is responsible for and clarifies this beyond the common parts.
- 6.3 This is the first use of these powers. Subject to the completion of Parliamentary scrutiny, we intend that the instrument will commence on 6 April 2023 and so that the principal accountable person can provide the information from this date alongside their application for registration or otherwise within 28 days of submitting that application.
- 6.4 The registration regulations (which are subject to the negative procedure) and accompanying explanatory memorandum will shortly be laid in Parliament and will set out comprehensive details on the information required for registration, the process and timescales.
- 6.5 The Higher Risk Buildings (Descriptions and Supplementary Provisions) Regulations were laid in Parliament on 19 December 2022. These Regulations set out the detailed specifications for the buildings which will be in scope of the regime.

7. Policy background

What is being done and why?

- 7.1 The Act establishes a new more stringent building safety regime for higher-risk buildings. It was a fundamental part of Dame Judith Hackitt's recommendations, as part of the new approach to managing fire and structural safety risks in higher risk buildings as outlined in her Building a Safer Future Report, commissioned by government after the Grenfell Tower tragedy.
- 7.2 The report set out that there were extensive flaws with the existing building safety system. Dame Judith identified serious issues with the transparency of information, and inadequate audit trails of information throughout the life cycle of a building that did not provide reassurance and evidence that a building has been built to be safe and continued to be safe. These Regulations are part of the reforms the government are taking forward under the Act and introduce new requirements on those responsible for higher-risk buildings to provide the Regulator with key building information.
- 7.3 The government is requiring this information so the Regulator can carry out an initial triage of the potential risk levels in the existing 13,000 higher-risk residential buildings. The Regulator will require building assessment certificate applications as a priority for the buildings where, based on the information provided and other sources of intelligence from other regulators, the Regulator assesses the building's potential for a building safety risk materialising to be higher than others.
- 7.4 This information will also support the Regulator in their oversight of higher-risk buildings, and we expect them to use this information in monitoring trends across these buildings within England and considering whether further action to address any identified risks needs to be taken. In this way this data will help the Regulator to fulfil its duties to keep the safety and standards of buildings under review (section 5 of the Act) and to advise Government on potential risks (section 7 of the Act).

- 7.5 Regulations 3 to 18 specify the information required. This includes information about potential risk factors including: use, change of use, the external wall system, the structural design type of the building, the number of storeys and staircases, energy supplies, the evacuation strategy for the building, and whether it is attached to any other building.
- 7.6 Regulations 19, 23 and 24 introduce a requirement for the principal accountable person of a higher risk building, or a person authorised on behalf of the principal accountable person, to submit the information to the Regulator in an electronic format which will be specified by the Regulator. The information needs to be submitted in an electronic format so the Regulator can easily make assessments of building safety risks both now and in the future and advise Government on trends and changes over time across all higher-rise buildings.
- 7.7 Regulations 20 to 22 specify when this information should be submitted. The principal accountable person will have to submit the information within 28 days of submitting an application for registration of that higher-risk building. The principal accountable person must also notify the Regulator of any change to the key building information within 28 days of them becoming aware of the change. This will ensure the information, and any changes to it, are provided promptly to the Regulator. If there is more than one accountable person for a building, then each accountable person is responsible for providing the principal accountable person with information to submit to the Regulator.
- 7.8 Regulation 25 allows the Regulator to mandate further on the way the key building information is given by means of a direction. This direction must be made public. This will assist the sector in understanding the information they must provide and how they must provide it.
- 7.9 Compliance notices in relation to failure to supply information can only be issued from the date that it is mandatory for existing buildings to be registered and the enforcement regime turns on. Existing building can register from 6 April but we only have the power to enforce it from when the regime turns on (expected to be 1 October).
- 7.10 Dame Judith also identified there was ambiguity over who had responsibility for identifying and managing building safety risks and recommended that the government create a clear model of risk ownership. In relation to higher risk buildings, under the Act the accountable person is the person who holds a legal estate in possession or is responsible for the repairing liabilities of the common parts will also have responsibility for Part 4 duties.
- 7.11 These Regulations set out which parts of a higher-risk building an accountable person is responsible for, therefore providing clarity on whom the Part 4 statutory duties are placed for each part of the building. The framework provided will help accountable persons determine who should be responsible if there is any disagreement between parties or if parts of the building have not been demised in the lease.
- 7.12 Section 72 of the Act defines the person who will have responsibility for duties as detailed in Part 4 of the Act. In relation to higher-risk buildings on commonhold land the Act defines the commonhold association as the accountable person. Otherwise, it defines the accountable person as either a person who holds the legal estate in possession of any common parts of the building or as a person who has the relevant repairing obligation in relation to any common parts. The common parts of a building

for the purposes of Part 4 of the Act are defined in section 72 (6). Section 73 defines the principal accountable person with reference to the exterior and structure of the building.

- 7.13 These Regulations also set out which parts of a higher-risk building an accountable person is responsible for, therefore providing clarity on whom the Part 4 statutory duties are placed for each part of the building. The framework provided will help accountable persons determine who should be responsible if there is any disagreement between parties or if parts of the building have not been demised in the lease.
- 7.14 Regulation 26 sets out for which parts of the building a single accountable person is responsible, in relation to their Part 4 statutory duties.
- 7.15 Regulations 27 to 30 set out the framework for determining responsibility where multiple accountable persons are responsible for a building. These clarify responsibilities in relation to parts of the building such as balconies, residential/commonhold units and parts of the building to which the Fire Safety Order does not apply.
- 7.16 Sections 72 and 73 of the Act set out which person/s involved in the ownership or management of a building is an accountable person or the principal accountable person, but they do not detail which parts of the building an accountable person is responsible for in relation to its Part 4 duties.
- 7.17 For freehold and commonhold buildings, where there is only one entity responsible for the repair of the common parts, that person should be responsible for meeting the statutory obligations under Part 4 for the whole building.
- 7.18 For leasehold buildings the accountable person is the person or persons who holds the legal estate in possession or a repairing obligation under a lease of the common parts. For some buildings the lease arrangements may provide for a management company to be responsible for the maintenance and repair of the common parts. A Right to Manage company may also be responsible for the repairing obligation of the common parts. For these buildings the accountable person is the management company or the Right to Manage company.
- 7.19 Where the accountable person has no control over a residential unit – either it is a commonhold unit or a flat held on a long lease, it will only be responsible for mitigating or prevent building safety risks within the flat in so far as they impact on the common parts and other flats. Where necessary the accountable person can utilise contravention notices under section 96 of the Act to compel residents within those flats to take steps to remedy the contravention or cease behaviours which lead to contravention of Part 4 duties. For the avoidance of doubt, the Regulations make provision for determining which accountable person is responsible for a balcony, and other parts of a building, to which the Fire Safety Order does not apply. This is to ensure that we achieve a whole building approach with regards to building safety management.
- 7.20 To achieve this whole building approach, regulations 27 to 30 also assign responsibility for Part 4 duties to a particular accountable person where there is more than one accountable person involved in a leasehold building. This is to ensure that where there could otherwise be ambiguity as to which accountable person is responsible for repairing obligations for parts of a building under a lease, the instrument assigns responsibility to a particular accountable person for each part in relation to the Part 4 duties. For example, regulation 29 sets out that balconies are the

responsibility of the principal accountable person, since it is responsible for the exterior and structure of the building.

7.21 We also want to ensure that there is always an accountable person responsible for all residential parts of a building, so that there is an appropriate person to meet the duties for that part under Part 4. If the lessor of a flat is not an accountable person, regulation 30 (2) (b) makes the accountable person for the common parts which adjoins the front door of the flat responsible for it in relation to the Part 4 duties.

7.22 These Regulations also provide a framework for the First-tier Tribunal Property Chamber to determine, on an application (under section 75 of the Act), which person should be responsible for duties in a particular part of a building and clarify situations where there are multiple persons involved in building ownership.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 We conducted a public consultation between 20 July and 12 October 2022 (Consultation on the new safety regime for occupied higher-risk buildings). There were 63 responses to the ‘key building information’ and 63 responses to ‘the part of a building an accountable person should be responsible’ sections of the consultation. Responses were from a range of different people and organisations across the sector including resident leaseholders, fire and rescue authorities, local authorities, housing associations, fire engineers and software providers.

10.2 Overall, respondents agreed with our approach in the consultation but requested that the Regulations be accompanied with guidance.

10.3 A full government response to the consultation can be found on the webpage linked here: <https://www.gov.uk/government/consultations/consultation-on-the-new-safety-regime-for-occupied-higher-risk-buildings>

11. Guidance

11.1 The Building Safety Regulator will set out guidance, to support meeting the requirements brought in by this statutory instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full impact assessment has not been prepared for this instrument. No significant impact on the private, voluntary or public sector is foreseen. The department has evaluated the total costs on organisations responsible for higher-risk buildings have been assessed at under £5m annually.

- 12.4 The main cost to organisations will be the cost of familiarising themselves with the requirements of the Regulations and then submitting the key building information and keeping it up to date. This cost does not include the cost of collecting this information as that cost is considered as part of the wider new safety case approach for the building as required under sections 83 to 85 of the Act. Further regulations covering these duties will be made in due course and a separate impact assessment will accompany these Regulations.
- 12.5 These Regulations also fall within the Better Regulation Framework exclusion because they relate to the safety of tenants, residents and occupants in buildings.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses as small business can own and manage higher-risk buildings.
- 13.2 No specific action is proposed to minimise regulations burdens on small businesses as the cost burden of these Regulations is deemed to be low.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of section 31 of the Small Business, Enterprise and Employment Act 2015 Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley MP, has made the following statement:

“The regulatory measures in this instrument are within the scope of the periodic review provided for in section 162 of the Building Safety Act 2022, and it would not be appropriate in the circumstances to make provision for a separate review in this instrument”.

15. Contact

- 15.1 Rebecca Thompson at the Department for Levelling Up, Housing and Communities email: rebecca.thompson@levellingup.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Camilla Sheldon, Deputy Director for Regulatory Reform and Stewardship, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley MP, at the Department of Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.