

Draft Regulations laid before Parliament under section 120A(7) of the Building Act 1984 and section [140(6)] of the Building Safety [Act 2021], for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

[2021] No. [xxx]

BUILDING AND BUILDINGS, ENGLAND

The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations [2021]

Made - - - - - ***
Coming into force - - - - - ***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 120A(2) and (3) and 120D(2)(b) and (3) of the Building Act 1984(a) and sections [62](2) and 140(2) and (3) of the Building Safety [Act 2021](b).

In accordance with section 120B(3) of the Building Act 1984 and section [63](1) of the Building Safety [Act 2021], the Secretary of State has consulted the building safety regulator and such other persons as the Secretary of State considers appropriate.

In accordance with section 120A(7) of the Building Act 1984 and section [140(6)] of the Building Safety [Act 2021], a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations [2021] and come into force on [date].

(2) These Regulations extend to England and Wales.

(3) These Regulations do not apply to buildings in Wales.

(4) In these Regulations—

“the 1984 Act” means the Building Act 1984;

“the 2021 Act” means the Building Safety [Act 2021];

“building” includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

“care home” means a care home within the meaning of the Care Standards Act 2000(c);

(a) 1984 c.55. Sections 120A was inserted by Schedule 5 to the Building Safety [Act 2021 (c. [xx])] and section 120C was inserted by section 31 of the Building Safety [Act 2021 (c. [xx])].

(b) [2021 c. [xx]].

(c) 2000 c.14.

“ground level”, in relation to a building, means the level of the surface of the ground immediately adjacent to the building or, where the level of the surface of the ground on which the building is situated or is to be situated is not uniform, the level of the lowest part of the surface of the ground adjacent to it;

“hospital” means a building which—

- (a) is a hospital within the meaning of the National Health Service Act 2006(a); and
- (b) has at least one bed intended for use by a person admitted to the premises for an overnight stay;

“residential unit” means a dwelling or any other unit of living accommodation;

“secure residential institution” means an institution used for the provision of secure residential accommodation, including as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital or secure local authority accommodation;

“temporary leisure establishment” means a hotel or similar establishment which offers overnight accommodation for the purpose of leisure.

Building Act 1984: specified descriptions of higher-risk buildings

2. For the purposes of section 120D(2)(b) of the 1984 Act, the following descriptions of buildings are higher-risk buildings—

- (a) a building which contains at least two residential units;
- (b) a care home;
- (c) a hospital.

Building Act 1984: exclusions from the definition of higher-risk buildings

3.—(1) For the purposes of 120D of the 1984 Act, buildings are not higher-risk buildings if they comprise entirely of—

- (a) a secure residential institution;
- (b) a temporary leisure establishment; or
- (c) military premises.

(2) For the purpose of this regulation “military premises” means—

- (a) military barracks;
- (b) a building occupied solely for the purposes of the armed forces; or
- (c) a building occupied solely for the purposes of any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(b).

Building Safety [Act 2021]: exclusions from the definition of higher-risk buildings

4.—(1) For the purpose of Part 4 of the 2021 Act, buildings are not higher-risk buildings if they comprise entirely of—

- (a) a care home;
- (b) a hospital;
- (c) a secure residential institution;
- (d) a temporary leisure establishment; or
- (e) military premises.

(a) 2006 c.41.

(b) 1964 c. 5.

- (2) For the purpose of this regulation “military premises” means—
- (a) military barracks;
 - (b) a building occupied solely for the purposes of the armed forces; or
 - (c) a building occupied solely for the purposes of any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964.

Determining height of a building

5. For the purposes of section 120D(2)(a) of the 1984 Act and section [62](1)(a) of the 2021 Act, the height of a building is to be measured from ground level to the top floor surface of the top storey of the building (ignoring any storey which is a roof-top machinery or plant area or consists exclusively of machinery or plant rooms).

Storeys

6.—(1) For the purposes of section 120D(2)(a) of the 1984 Act and section [62](1)(a) of the 2021 Act, when determining the number of storeys a building has—

- (a) any storey which is below ground level is to be ignored; and
- (b) any mezzanine floor is a storey if its internal floor area is at least 50% of the internal floor area of the largest storey in the building which is not below ground level.

(2) For the purpose this regulation, a storey is treated as below ground level if any part of the finished surface of the ceiling of the storey is below the ground level immediately adjacent to that part of the building.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Address	<i>Name</i>
Date	Minister of State
	Ministry of Housing, Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 3 of the Building Safety [Act 2021 (c.[xx])] amended the Building Act 1984 to provide for the building safety regulator to be the building control authority in England for higher-risk buildings, and gave the Secretary of State powers to make building regulations specifically for higher-risk buildings (“Part 3 regime”). For the purposes of the Part 3 regime a higher-risk building is defined in section 120D of the Building Act 1984 as a building which is at least 18 metres in height or has at least seven storeys, and is of a specified description. This instrument sets out the specified descriptions and otherwise supplements the definition.

Part 4 of the Building Safety [Act 2021 (c.[xx])] established a new regulatory regime for occupied higher-risk buildings (“Part 4 regime”). For the purposes of the Part 4 regime a higher-risk building is defined in section 62 of that Act as a building which is at least 18 metres in height or has at least seven storeys, and contains at least 2 residential units. This instrument supplements that definition.

Regulation 2 specifies the description of buildings to which the Part 3 regime applies as:

- a building which contains at least two residential units
- a care home, or
- a hospital.

Regulation 3 excludes certain types of buildings from the definition of higher-risk building for the purposes of the Part 3 regime. Secure residential institutions and temporary leisure establishments are excluded along with military barracks and buildings that are solely occupied for the purposes of the armed forces or an organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964.

Regulation 4 excludes certain types of buildings from the definition of higher-risk building for the purposes of the Part 4 regime. Care homes, hospitals, secure residential institutions and temporary leisure establishments are excluded along with military barracks and buildings that are solely occupied for the purposes of the armed forces or an organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964.

Regulation 5 explains how the height of a building is to be measured for the purposes of the Part 3 regime and the Part 4 regime.

Regulation 6 explains that storeys below ground level are to be excluded when counting the number of storeys of a building for the purposes of the Part 3 regime and the Part 4 regime and sets out when a mezzanine floor will be considered a storey.

DRAFT