

NHS Estates Technical Bulletin (NETB) No. 2024/2

Building Safety Act 2022 (BSA) – application to healthcare buildings

Date of issue: 7 August 2024

Applicability

This NETB applies to all NHS organisations in England.

Objective

The objective of this NETB is to provide guidance to NHS organisations on the application of the Building Safety Act 2022 (the BSA) to healthcare buildings as currently applicable.

Status

This NETB has been reviewed and co-created with the Building Safety Regulator (BSR). It is intended to identify the key changes that NHS organisations should be aware of and is provided for informational purposes only. It is not intended as a comprehensive or definitive guide and legislation and government guidance should always be referred to. It does not constitute any form of legal advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances.

Further information in relation to the above can be found in the [guidance notes](#)¹ referred to below. If you have any specific queries, the BSR can be contacted via <https://www.hse.gov.uk/contact/index.htm>.

Content

This bulletin sets out advice in relation to how the BSA applies to the estate of NHS organisations. Key points to note are:

The BSA introduces duties for the management of and a requirement to register all **occupied** higher-risk buildings (HRBs).

¹ <https://www.gov.uk/guidance/criteria-for-determining-whether-an-existing-building-is-a-higher-risk-building-during-building-work>

Registering such buildings became a legal requirement from 1 October 2023. We recommend that trusts that believe they may have buildings that need to be registered but have not yet been registered seek legal advice as a matter of urgency.

There is now a 3-stage gateway regime in place for obtaining planning and building regulation approval for “building work” (unless scheme work or exempt) for HRBs. See section 2, paragraphs 23-27.

The BSA introduces 2 key new requirements that apply to **all** building work, not just building work involving HRBs. See section 3.

NHS England is responsible for producing standards and guidance for the NHS Estate and ensuring that the information they contain remains up to date and relevant for users. This can involve revising and updating the documents themselves, but this is not the optimum approach in all cases and therefore an alternative approach is needed where such full revision is not appropriate. Where appropriate, NHS Estates Technical Bulletins (NETB) will be issued instead.

NETB need to be considered by all applicable organisations, as noted above, and implemented as required. Boards are responsible for its assessment and application to their organisations.

Background

The Building Safety Act (BSA) received Royal Assent on 28 April 2022. It takes forward government’s commitment to fundamental reform of the building safety system by strengthening the whole regulatory system for building safety, and by ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regime.

Many of the provisions apply to “higher-risk buildings” (HRBs), which can include NHS buildings during both the design and construction phases (if they are “hospitals” or if they contain “residential units”) and occupation (but only if they contain “residential units”). Healthcare buildings have unique fire risks due to their nature and usage; therefore, specific guidance is needed to reflect these.

This NETB covers 2 key areas:

1. existing buildings that need to be registered
2. new builds/refurbishments

It is split into 3 sections:

- Section 1: Building Safety Act 2022 Part 4 – clarification over requirement to register HRBs containing staff accommodation in England
- Section 2: Building Safety Act 2022 Part 3 – undertaking design and construction work to higher-risk buildings in England
- Section 3: Design and construction – new requirements for **all** building work

A list of all secondary legislation issued under the BSA is available at [The Building Safety Act: secondary legislation](#).

Monitoring of implementation

The implementation of this NETB will be monitored in line with overall compliance through the NHS Premises Assurance Model.

Point of contact/feedback

For any queries, please contact the estates and facilities mailbox
england.estatesandfacilities@nhs.net

Section 1: Building Safety Act 2022 Part 4 – clarification over requirement to register HRBs containing staff accommodation in England

1. Part 4 of the BSA introduces duties for the management of and a requirement to register all **occupied** higher-risk buildings (HRBs).
 2. For the purpose of Part 4 of the BSA, an HRB is defined as a “building” that:
 - A. is at or above 18 m or 7 storeys (and therefore meets the **height criteria**)
and
 - B. contains at least 2 residential units (and therefore meets the **use criteria**)
 3. “Residential units” include staff accommodation where staff live permanently for a period of time (not on-call rooms) as well as student accommodation. They **do not** include hospital beds or wards.
 4. Under Part 4, “hospitals” (as defined) are specifically exempt from the registration process. This exemption was included in the legislation as hospitals are regulated as workplaces through the Regulatory Reform (Fire Safety) Order 2005, so they are already subject to duties placed on those in control of these buildings to make sure these premises are safe. Hospitals are also regulated by the Care Quality Commission (CQC), staffed 24/7, have multiple routes of escape, signage and emergency lighting to assist evacuation, and have a higher level of detection and alarm systems than residential buildings.
 5. Any buildings that meet the criteria above (height and residential units) and are occupied should have been registered with the new Building Safety Regulator (BSR) by 1 October 2023. Allowing occupation of unregistered HRBs is a criminal offence. Any trust with unregistered HRBs (that is, buildings that meet the height criteria above and have 2 or more residential units) should register them immediately.
 6. Trusts should note that this definition of an HRB under Part 4 of the BSA is different to the definition under Part 3 for design and construction (covered in Section 2 below and which does specifically include hospitals).
 7. Trusts should refer to the guidance available at [Criteria for determining whether a building is a higher-risk building during the occupation phase of the new higher-risk regime](#) and seek independent advice where required.
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Further guidance on identifying an HRB

8. There are 3 key criteria to consider when determining if a building is an HRB:
 - **Legal definition of building:** How does the building definition in the Regulations apply to my building structure?
 - **Use criteria:** What is my building used for? Does it meet any of the included or excluded categories of building?
 - **Height and storeys:** How do the methods for measuring height and storeys in the Regulations apply to my building? Does my building meet either the 18 m or 7 storey height threshold when measured using these methods?
9. Each of these is considered in further detail below. However, if there are **no residential units** as defined in section 1 paragraph 3 above and in section 1, paragraphs 16-20 below on site, **Part 4 of the BSA will not apply** and Part 4 requirements do not need to be considered any further.

Step 1 – Identifying the “building” or “independent section”?

10. A building can be permanent or temporary. Buildings can be single structures (for example, towers or blocks) or multiple structures that are connected.
11. Where multiple structures are connected, part(s) of the structure can be considered an “independent section” and can be treated under the legislation as a separate “building”. This is important when considering which part of the structure needs to be included for calculating height/storeys (see below).
12. For a structure (or part of a structure) to be an independent section it must:
 1. have its own entrance from and exit to the outside
and
 2. either:
 - a. have no access to any other section (of any height) within the overall structure
or
 - b. only have access to another section (of any height) of the overall structure that does not contain a residential unit (for example, only access to a building used for medical treatment or an office building)
13. For the purpose of bullet 2a and 2b, “**access**” means a doorway, archway or similar opening unless used for exceptional use, including emergency use or for the purpose of maintenance. The BSR has confirmed that by access they mean direct access into the next independent section. Therefore, where there are a number of structures in a row, it is only the adjacent independent sections that need to be considered in determining whether a structure is an independent section.
14. The BSR has advised NHS England that even when an HRB “building” contains multiple attached structures, it is only the structures that contain residential units that have to be registered. Connected buildings (including “hospital” buildings) have to be mentioned as part of the key building information as the registration asks for confirmation of connections, but the rest of the information provided (such as lifts, fire

doors, external wall materials, etc) only has to be provided for the residential structure, not other connected structures.

15. Further guidance on identifying independent sections is provided at Appendix 1.

Step 2 – Use criteria

What is a “residential unit”?

16. A residential unit is a dwelling or any other unit of living accommodation. This includes a flat, a studio flat, a serviced apartment or a house in multiple occupation (HMO). **It does not include a hospital bed or a hospital ward used by patients.**
17. Any buildings containing 2 or more of these residential units, whether on a hospital site or elsewhere, subject to meeting the height criteria, will need to be registered with the BSR, even if another part of the same building is used as a “hospital” or for commercial purposes (such as offices or shops).
18. We are aware that trusts hold a variety of accommodation that is available to staff and visitors (patients’ relatives or visitors) and usually let on assured shorthold tenancies or available for single nights for on-call staff or patients’ visitors/families (sometimes up to a maximum number of nights at any one time). This accommodation can range from flats (where residents have their own bedroom, bathroom, lounge, kitchen, etc), to single rooms (with shared kitchen, living, toilet and bathing facilities), to rooms that are more like those in a hotel (with own or shared bathrooms, but no kitchen or living areas). The existing guidance does not specifically cover the variety of residential accommodation available on hospital sites.
19. As a general guide, where part of a hospital setting, a residential unit would include:
 - flats (where residents have their own bedroom, bathroom, lounge, kitchen, etc) in which someone lives permanently for a period of time (such as key worker accommodation)
 - single rooms with shared kitchen, living, toilet and bathing facilities if someone lives there permanently for a period of time (such as key worker accommodation)
 - accommodation provided for students to live in (even if they have another home elsewhere)
20. A residential unit would not include:
 - on-call rooms or flats that are provided to staff short term, often for only 1 or a few nights
 - rooms or flats available to patients’ visitors when required and provided short term [such as Ronald McDonald House Charities accommodation for relatives of patients (primarily of children), which has bedrooms and then shared lounge, kitchen and play area]²
 - inpatient mental health units providing treatment, even if the patient was at the unit for a long time (these would be a “hospital”)

² NHS England will be working with the BSR to clarify when accommodation made available to patients’ visitors might meet the definition of a residential unit.

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- hospital beds or wards including in single rooms

What is a “hospital”?

21. A “hospital” is defined for the purpose of the BSA as (1) a place that receives and treats those who are ill, convalescing or need medical rehabilitation **and** (2) provides at least 1 bed intended for use by a person admitted to the premises for an overnight stay.
22. If an entire building is a “hospital”, it does not have to be registered. This is because hospitals are exempt from the requirement to register and because beds for patients/hospital wards are **not** considered to be residential units. Therefore, a building that only has beds for patients/wards does not need to be registered, **whatever its height**. It would only need to be registered if it also contains 2 or more residential units (such as staff accommodation).
23. Buildings such as outpatients units, which do not provide overnight accommodation, are not caught by the “hospital” definition but also do not need to be registered as they do not contain residential units. The same would apply to offices, etc.

Step 3 – Measuring height/storeys

24. A building that contains 2 or more residential units only needs to be registered if it is 18 m or above in height and/or has 7 storeys or more (it can, but does not have to, meet both criteria).
25. The height of a building is to be measured from ground level (from the lowest part of the ground touching the building or if relevant the independent section) to the top of the floor surface of the top storey (or the highest parts if it is not horizontal) of the building (ignoring any roof-top machinery or plant rooms).
26. When counting storeys, all storeys are counted including any that are not residential, but any storey below ground level, any roof-top machinery or plant rooms and certain gallery floor/mezzanines can be ignored. Where part of a building is an independent section (as above), any storey directly beneath the building (that is, the independent section) that is not below ground level is to be counted in determining the number of storeys the building (that is, independent section) has.
27. Where several hospital buildings are linked via corridors and built on a sloping site and considered as one building (not independent sections), the height is measured from the lowest point of the building at the bottom of the hill to the top floor of the building at the top of the hill. This can mean “buildings” can be at or above 18 m/7 storeys even when each individual structure is below.
28. Further guidance in relation to measuring height and storeys is available at [Criteria for determining whether a building is a higher-risk building during the occupation phase of the new higher-risk regime](#). Examples are reproduced at Appendix 2.

Who needs to register HRBs?

29. Buildings need to be registered by the principal accountable person (PAP). Despite the word “person” in this phrase, the PAP is usually the organisation (not an individual) that is responsible for the structure and exterior of an HRB. In some cases this may be the trust but in other cases it could be a third-party supplier or a landlord.

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30. The PAP also has ongoing duties for assessing and controlling building safety risks. More information on these duties is available at [Safety in high-rise residential buildings: accountable persons](#).

Conclusion on Part 4 of the BSA

31. Any trust that has a building that meets the height criteria **and** has 2 or more residential units will need to register that building. Where buildings used for one purpose are connected to other parts of the building or to other buildings, the extent of the structure that needs to be registered will depend on whether the relevant part of the structure can be considered to be an “independent section”. Some examples from government guidance but applied to hospitals are included at Appendix 1.
32. We recommend that trusts that believe they may have buildings that need to be registered but that have not yet been registered seek legal advice as a matter of urgency as from 1 October 2023 it became a legal requirement to register the buildings and a criminal offence to allow occupation of an unregistered building.

Section 2: Building Safety Act 2022 Part 3 – undertaking design and construction work to higher-risk buildings in England

1. Part 3 of the BSA has changed the way “building work” (as defined) to HRBs obtains building control approval. If the work being designed and constructed is not “building work” (as defined), it does not require building control approval.³
2. Subsequent legislation has also introduced into the Building Regulations 2010 new requirements that apply to all building work (not just work to HRBs) around competence and new duties around ensuring building regulation compliance (see Section 3 of this note).
3. The changes to how building control approval is obtained applies specifically to buildings that meet the following criteria:
 - A. they are at or above 18 m or 7 storeys (the **height criteria**)
 - and
 - B. they contain at least 2 residential units (such as certain staff accommodation) or **are or contain a hospital** or a care home (the **use criteria**)
4. Further guidance on the legal criteria for determining whether a proposed new or an existing building is considered an HRB is provided below.
5. It is essential that trusts are aware of these changes and comply with the new requirements where they apply for building control approval, particularly as breach of the Building Regulations is a criminal offence.

Identifying “higher-risk buildings”

6. There are 3 key criteria to consider when determining if a building is higher risk:

³ To determine if work is “building work”, trusts should consider Regulation 3 and Schedules 2, 3 and 4 of the Building Regulations 2010.

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1. **Legal definition of building:** How does the building definition apply to my building structure?
 2. **Use criteria:** What is my building used for? Does it meet any of the included or excluded categories of building?
 3. **Height and storeys:** How do the methods for measuring height and storeys apply to my building? Does my building meet either the 18 m or 7 storey height threshold when measured using these methods?

7. Each of these is considered in further detail below.

Step 1 – What is a building?

8. The first step is to identify the extent of the “building”. A building can be permanent or temporary. Buildings can be single structures or multiple structures that are connected.
9. For **existing buildings**, where multiple structures are connected, part of the structure can be considered an “independent section” and can be treated under the legislation as a separate “building”.
10. The test for part of a structure to be an independent section is set out in section 1, paragraphs 12 and 13 above.
11. For a proposed **new building**, even if it contains multiple attached structures, an overall structure cannot be split into independent sections, and is considered 1 building (even when 1 or more attached structures do not meet the height or number of storeys or use criteria). This means an HRB may be a wider development or complex.
12. Where a new building (either single or multiple structures) is being constructed that will ultimately be connected to an existing building, even if the connection is not made until the end of construction, this new building is considered as work (an extension) to the existing building rather than a new building, and so the entire overall structure must be considered a single building. If this new building is not an HRB in itself and will be connected to an existing **non-HRB**, the building control authority will be the local authority. However, if a new building is extending into or being directly connected to an **HRB**, the entire structure (including the new building) will be an HRB. The BSR will therefore be the building control authority while the new building is under construction, although it may be an independent section once complete (which will be relevant for any future building work) subject to meeting the criteria for independent sections above. Further guidance in relation to identifying a “building” for work to existing buildings is available at [Criteria for determining whether an existing building is a higher-risk building during building work](#). Examples are reproduced in Appendix 3.
13. Clarification on work to extend an existing building is available at [Additional Q&A: Changes to the building control process for higher-risk buildings and wider changes to procedural building regulations applying to buildings in England](#).

Step 2 – Use criteria “hospital” and “residential unit”

14. Part 3 of the BSA specifically applies to buildings that are **hospitals** (as defined on section 1, paragraphs 21–23 above) **or** that have 2 or more **residential units** (as defined in section 1, paragraphs 16–20 above). Part 3 of the BSA therefore has a wider scope than Part 4 (which specifically excludes hospitals).

Step 3 – Height/storeys criteria

15. A building that meets either of the use criteria above is only an HRB and only needs to comply with the new procedures for obtaining building control approval from the BSR if it is 18 m or above in height and/or has 7 storeys or more (it can, but does not have to, meet both criteria).
16. Guidance on calculating height and storeys can be found on section 1, paragraphs 24–28 above and at Appendix 2 below.
17. Further guidance in relation to measuring height and storeys is available at [Criteria for determining whether a new building that is being designed and constructed is a "higher-risk building"](#) and [Criteria for determining whether an existing building is a higher-risk building during building work](#). Examples are reproduced at Appendix 2.

Transitional provisions

18. There was a 6-month transitional period from 1 October 2023. This provided that certain works that would otherwise be caught do not have to comply with the new HRB Part 3 requirements. These transitional arrangements applied to ongoing works if (1) a valid application or initial notice for building control approval was in place before 1 October 2023 and remained in force, and (2) work has sufficiently progressed before 6 April 2024.
19. “Sufficiently progressed” is defined as:
 - for new buildings, the placement of permanent trench, pad, raft or piled foundations
and
 - for all other work, the starting of permanent building work as described in an application or notice
20. It does not include site set up, demolition, stripping out works or excavation of trial holes or test piles.

What are the new requirements for HRBs?

21. Building work has to meet the functional requirements contained in Parts A to S of the Building Regulations 2010 (as well as Part T from 1 October 2024). While these are amended from time to time, they are not retrospective and, on the whole, these standards have not recently materially changed. What has changed however are the requirements to ensure and evidence compliance and the procedure for obtaining building control sign off.

The Building Safety Regulator (BSR)

22. From 1 October 2023, the BSR is the building control body for all HRBs. Submissions for building control approval must now be sent to the BSR and work cannot commence until approval has been given (see Gateway 2 below). It is no longer possible to choose to use local authority building control or approved inspectors (who must now be registered as building control approvers) if the work is to an HRB.

The Gateway Regime for building control approval

23. There is now a 3-stage gateway regime in place for obtaining planning and building regulation approval for “building work” (unless scheme work or exempt) for HRBs. The first stage (Gateway 1) is about obtaining planning permission and has been in force for a number of years. Gateway 1 does not however apply to healthcare premises (unless they contain 2 or more residential units). Gateways 2 and 3 came into force on 1 October 2023 and apply to all HRBs (including hospitals), as defined above.
- a. Gateway 2 – Pre-construction stage: Building control application. This replaces the building control deposit of plans stage. A building control application must be made to the BSR. This includes a declaration that competence requirements have been met and a compliance statement setting out how proposed work meets the building regulations. The bulk of this submission will be drawings but proposals must also be sent to cover, among other things, how the work will be controlled to ensure building regulations compliance and how change will be managed. **Construction cannot commence until approval is obtained from the BSR.**
 - b. Gateway 3 – Post-construction stage: Application for a completion certificate. This must include various documentation to evidence that what was built reflects the approved plans and that the requirements of the Building Regulations have been met. It must also include statements from the client, principal contractor and principal designer (explained further below) that the works complied with the Building Regulations. If the work is to an HRB that is a new build (that is, not work to an existing HRB) and contains residential units (such as staff accommodation), it cannot be occupied until a completion certificate has been issued. However, **if the new building does not contain residential units [a hospital (as defined above), outpatient unit or offices for example] it can be occupied before a completion certificate is received so long as it is deemed safe** under other applicable health and safety and fire safety legislation.
24. Further guidance on the above is available at [Building Control: An overview of the new regime](#) and [Managing building control approval applications for higher-risk buildings](#).
25. The requirements of Gateways 2 and 3 could result in some delay to projects. At Gateway 2, the BSR has 12 weeks to decide the application for new buildings and 8 weeks if the work is to an existing HRB. The BSR has 8 weeks for major change applications. Gateway 3 approval may take up to 8 weeks. These timescales can be longer if agreed. It is therefore important that all applications are submitted as far in advance as possible and that they are comprehensive so that the BSR does not have to request further information to be submitted.
26. It is possible to apply for building control approval at Gateway 2 in stages for 1 HRB, but only where it is not viable to provide detailed plans for the whole building or development. Partial completion certificates at Gateway 3 are also possible.
27. While construction is in progress, the BSR will conduct site inspections and must be notified of any major or notifiable changes.

Golden thread

28. The golden thread is a concept around the electronic storage of information about an HRB to ensure that everyone involved in building safety management, whether directly

or indirectly, has access to key details that could help identify, assess and mitigate risks.

29. Information must be obtained and added to this golden thread during any building work to new or existing HRBs, as well as throughout the lifecycle of the building.
30. The information required for the golden thread is set out in The Higher-Risk Buildings (Keeping and Provision of Information, etc) (England) Regulations 2024.

Section 3: Design and construction – new requirements for all building work (not just HRBs)

1. The Building Safety Act (BSA) also inserts Part 2A into the Building Regulations 2010 and introduces 2 key new requirements that apply to **all** building work, not just building work involving HRBs.

Duty holder roles

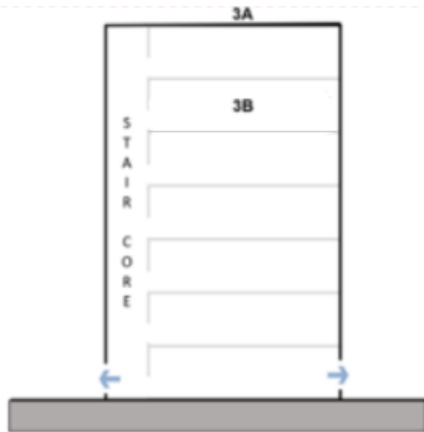
2. Existing duty holders under the Construction (Design and Management) Regulations 2015 who commission, design and undertake building work will have new responsibilities for ensuring that buildings are safe and compliant with the relevant regulations. This includes clients (who will often be trusts), designers, principal designers, contractors and principal contractors.
3. At a high level their new duties will be to plan, manage and monitor their activities, and to work together, to ensure that all building work is carried out in compliance with the Building Regulations. Further details of the duties of each party are set out in Part 2A of the [Building Regulations 2010](#). Trusts should ensure that they have management arrangements in place to plan, manage and monitor any building works.
4. For work to an HRB, the Gateway 2 application must include confirmation of who has been appointed as the principal designer and principal contractor. For other non-HRB work, it should be noted that if a client fails to appoint a principal contractor or principal designer, the client will automatically take on the duties of those other roles.

Competence

5. Any person carrying out any building work or any design work must have, where the person is an individual, the skills, knowledge, experience and behaviours necessary, and where the person is not an individual, the organisational capability, to ensure that building work meets all relevant requirements and to be able to fulfil their duties under the Building Regulations 2010.
6. Anyone appointing a third party to complete design or building work must take all reasonable steps to ensure that the party they are appointing has this required competence.

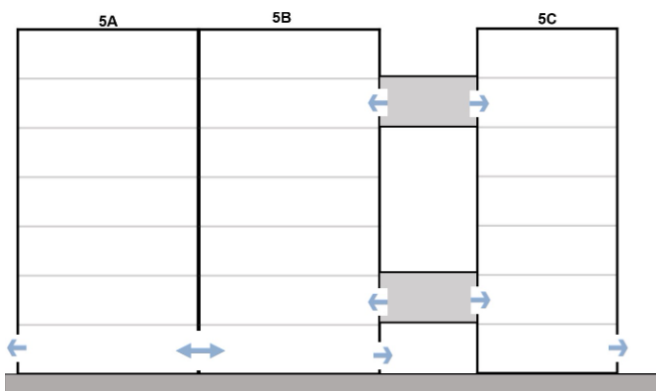
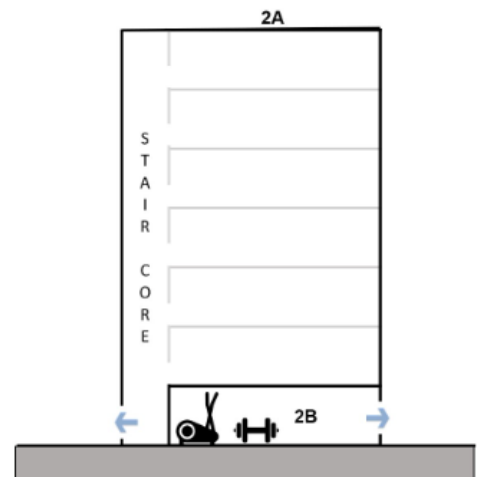
Appendix 1: Examples of buildings versus independent sections (Part 4: Occupation/registration)

See further detail at [Criteria for determining whether a building is a higher-risk building during the occupation phase of the new higher-risk regime](#)



This shows an existing building with more than 2 residential units on level 3B. The building is 7 storeys high. 3B has no separate entrance from and exit to the outside so it cannot be an “independent section”, and so the whole building has to be registered with the BSR as one building.

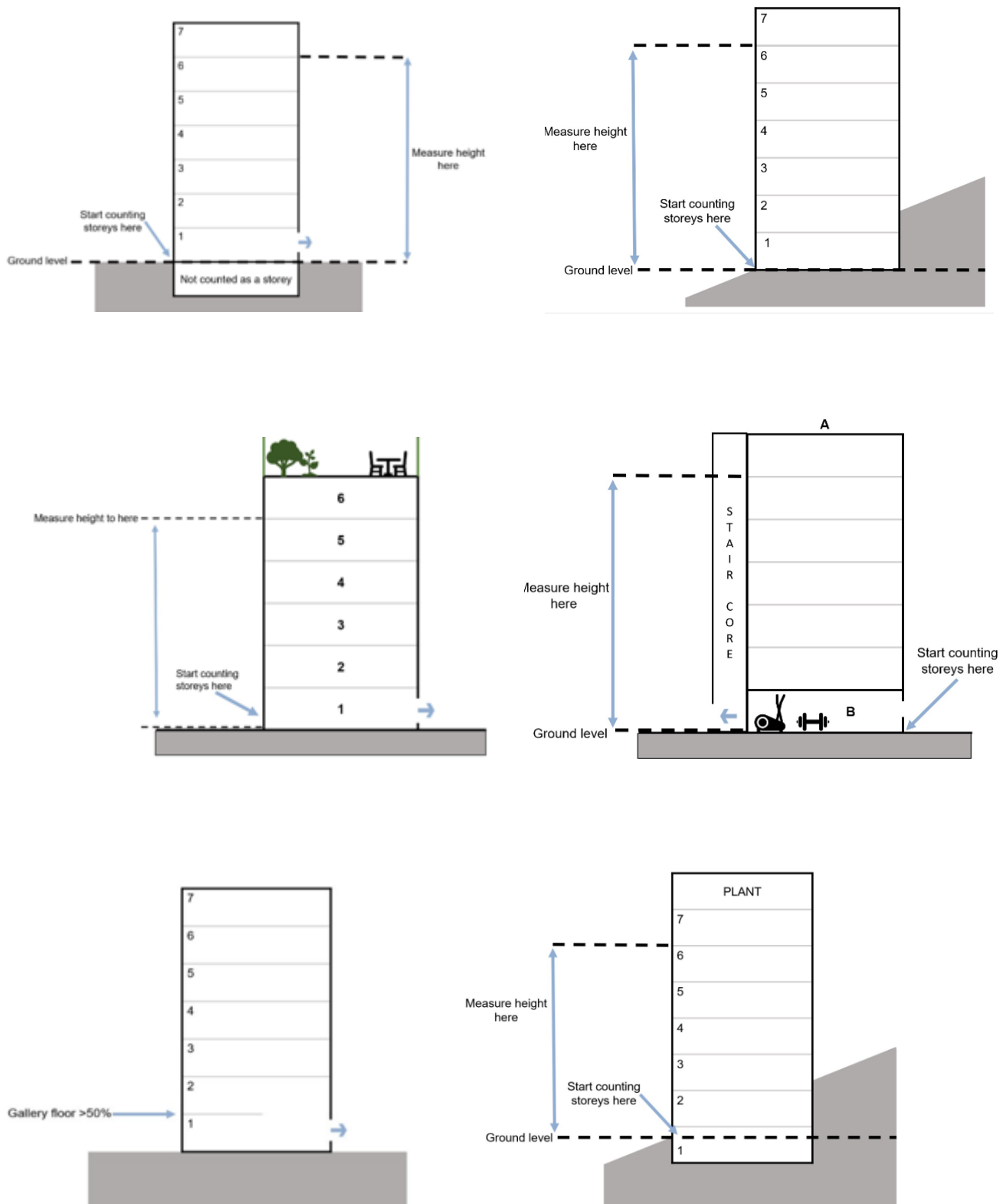
In this example, again a 7-storey existing hospital but with 4 residential units on the top floor and a gym on the ground floor, the gym has its own entrance from and exit to the outside, and no access to any other section. The top floor residential units do not have their own entrance and exit and so must be considered as part of 2A. 2A (including the residential units) and 2B are both independent sections. While 2A would meet the height and use threshold and would be an HRB, 2B would not. 2A would need to be registered (due to it containing residential units) and 2B mentioned within the registration of 2A.

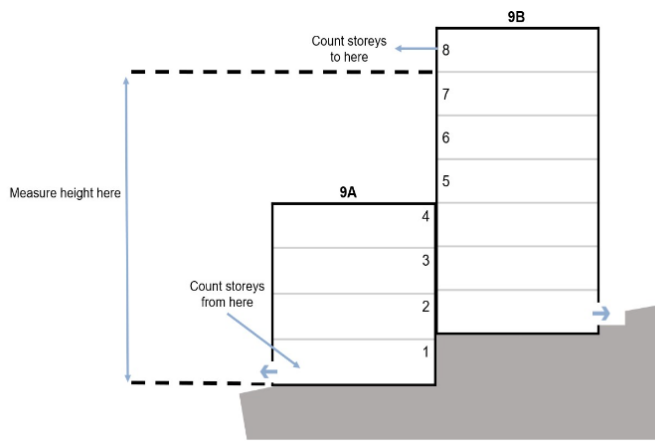


5A, 5B and 5C are all mainly used as existing hospitals but 5A also contains 10 existing residential units. In this example, 5A and 5B would have to be considered as one building as, although 5B does not contain residential units and has its own entrance from and exit to the outside, it is connected to 5A, which does contain residential units. The BSR has advised NHS England however that even when a “building” contains multiple attached structures, it is only the structures that contain residential units that have to be registered and so in this example only 5A has to be registered. 5B would not need to be registered but should be mentioned in the registration of 5A.

Appendix 2: Examples – measuring height and storeys

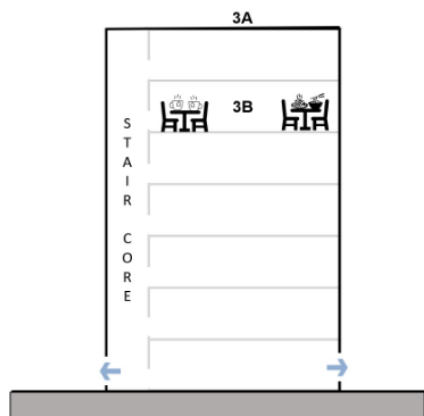
See further detail at [Criteria for determining whether a new building that is being designed and constructed is a "higher-risk building"](#) and [Criteria for determining whether an existing building is a higher-risk building during building work](#)





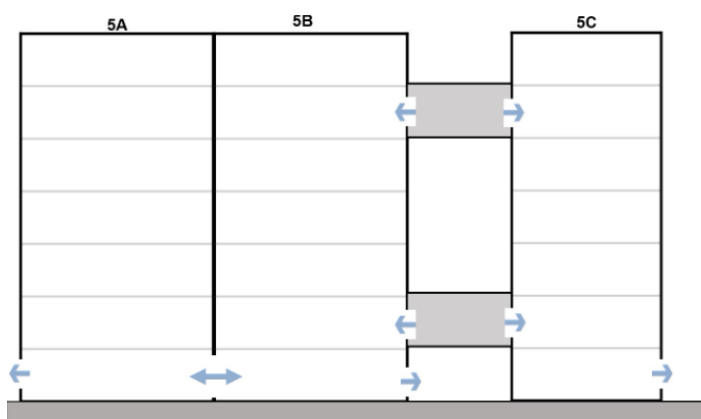
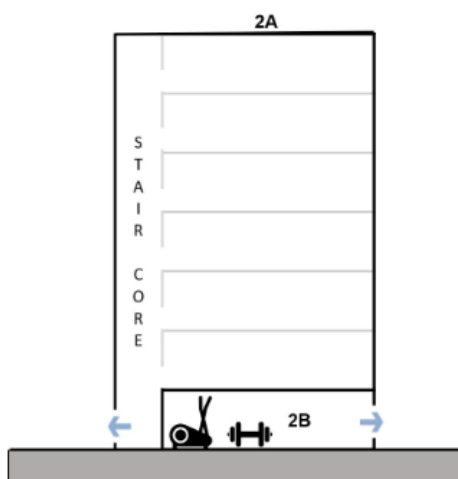
Appendix 3: BSA Part 3 – examples of buildings versus independent sections (existing buildings only – design and construction)

See further detail at [Criteria for determining whether an existing building is a higher-risk building during building work](#)



3A is a 7-storey hospital, so is an HRB. It has a cafe on level 3B. The cafe has no separate entrance from and exit to the outside so it cannot be an “independent section” for building works.

2A is a 7-storey hospital so is an HRB. It has a gym on the ground floor 2B. The gym has its own entrance from and exit to the outside, and no internal access to 2A, so 2B is an independent section for building works.



5A and 5B are both mainly used as hospitals but 5A also contains 10 residential units. In this example, 5A and 5B would have to be considered as one HRB as although 5B does not contain residential units and has its own entrance from and exit to the outside, it is connected to 5A, which does contain residential units. 5C is used as an office building. 5C cannot be considered an independent section as although it has its own entrance from and exit to the outside, the section it connects to (5A and 5B being one building) contains residential units. 5A, 5B and 5C would all therefore be HRBs.