

Building Safety Act Register opens next month: a step-by-step guide to registration

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A new National Register of higher risk buildings in England is due to open in April 2023 (the “Register”). The Register, set up by the new Building Safety Regulator as a consequence of the Building Safety Act 2022 (the “2022 Act”), is due to open for first registrations in April 2023. All existing occupied higher risk buildings in England are to be added to the Register. This is expected to apply to around 13,000 existing buildings. The deadline for all of those buildings to be registered is 1 October 2023.

The 2022 Act is coming in force in a staggered process. Whilst most of Part 4 relating to the occupational phase of buildings is in force, it will really be given effect by secondary legislation – in this case, the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023. These regulations are due to come into force on 6th April 2023, at which point, the requirement to register an existing occupied higher-risk building in England will become law.

What buildings need to be registered?

Part 4 of the 2022 Act deals with the occupation phase of higher risk buildings and defines a higher risk building as a building in England that:

- (1) is at least 18 metres in height or has at least 7 storeys; and
- (2) contains at least 2 residential units.

This includes student accommodation.

The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 provide further clarification and confirm that a higher-risk building does not include a building comprised entirely of a secure residential unit, a hotel, military barracks, or a building that contains living accommodation provided by the Ministry of Defence or the forces.

Who has the responsibility to carry out the registration process?

This falls squarely on the principal accountable person (“PAP”). S.77 of the 2022 Act makes it an offence for the building to be occupied without being registered (for which the PAP will be held liable). The

Government's consultation response regarding the registration and review of decisions published on 14 March 2023 confirms that although an agent can assist in applying to register the building, responsibility for the application, and the accuracy of the information provided, will remain with the PAP. The Government therefore recommend that the PAP carried out its own due diligence to ensure the agent is completing the application accurately and promptly.

As well as the key duty of registering the building for the first time, under the Draft Higher-Risk Buildings (Key Building Information etc.) Regulations 2023, PAPs must also:

- Provide key building information for each higher-risk building for which they are the PAP to the Building Safety Regulator.
- Submit that key building information in electronic form within 28 days of the PAP having submitted an application for registration of that higher-risk building.
- Notify the Building Safety Regulator of any change to the key building information within 28 days of the PAP becoming aware of the change.

Who is the Principal Accountable Person?

Under S.73 of the 2022 Act, the PAP for a higher-risk building is:

- in relation to a building with one accountable person, that person;
- in relation to a building with more than one accountable person, the accountable person who:
 - o holds a legal estate in possession in the relevant parts of the structure and exterior of the building, or
 - o does not hold a legal estate in any part of the building, but is under a relevant repairing obligation in relation to the relevant parts of the structure and exterior of the building.

How is registration completed?

The details of this are still to be published, but so far the indications are that registration will be online through a portal set up by the Building Safety Regulator. It is expected that further detail will be provided. The ultimate aim of this registration process is that the Building Safety Regulator will publish the Register publicly to provide transparency of information and accountability for building owners and managers.

A fee of £251 is payable on application.

What information is to be provided?

The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 set out the content of the registration, which in short, must include Accountable Person details, the PAP organisation type, details of any person making the application on behalf of the PAP, contact details, a description of the building, and building control details, including the building certificate if applicable.

Once the PAP has submitted an application to register an existing Higher-Risk Building, they have 28 days within which to submit the Key Building Information, as set out in the Draft Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023. This includes a range of information from smoke

monitoring equipment to the percentage of materials used on the external walls; roof insulation; staircases and energy supply. Some of this information will not be readily accessible and may require surveys and some investigative works.

What are the timescales for next steps?

The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 were laid before Parliament on 14 March 2023 and are due to come into force on 6 April 2023. PAPs may therefore wish to begin collating the information required in preparation for registration opening in April 2023. Government guidance suggests considering collating:

- The building name, address and postcode
- The building height, in metres
- The number of floors in the building
- The PAP
- The Accountable Person(s)
- Thich parts of the building they are responsible for
- The year the building was fully constructed
- For new builds, confirmation of the completion certificate

The intention is that the Register is only open for existing buildings for the first 6 months. After that, newly constructed properties will be able to be added to the Register. However, if at the end of the initial 6-month period the existing building has not been registered, it will be an offence to allow that building to be occupied.

On the assumption that the Draft Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023 will also come into effect on 6 April 2023 as expected, then it is important to be planning ahead and ready to go, as key building information will be required to be submitted within 28 days of registration. To avoid being caught in a rush to meet that the deadline in October 2023, the first action for any owner, FRI tenant or lender would be to identify if you have a higher-risk building; if so, to identify the Accountable Person(s), then the PAP, and then to get them started on the process of collating the Key Building Information.

In summary, the timeline below sets out the key dates and actions required for registration:

- As soon as possible:
 - Identify Higher-Risk Buildings in occupation
 - Identify Accountable Person(s)
 - Identify PAP
 - PAP arranges Key Building Information to be collated
- From April 2023:

- o Registration for existing occupied High-rise Residential Buildings opens
 - o PAP applies to register building
 - o PAP submits Key Building Information (within 28 days of application)
- October 2023 - Registration deadline for existing occupied buildings.

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