

EXPLANATORY MEMORANDUM TO
THE BUILDING SAFETY (REGISTRATION OF HIGHER-RISK BUILDINGS AND
REVIEW OF DECISIONS) (ENGLAND) REGULATIONS 2023

2023 No. 315

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 is to specify the requirements for the registration of higher-risk buildings with the Building Safety Regulator. It sets out provisions that the Building Safety Regulator and principal accountable persons must follow in relation to the registration regime and the review of decisions made by the regulator. It also sets out the registration fee to be charged.
- 2.2 Higher-risk buildings are defined under Part 4 of the Building Safety Act 2022 (the Act) and The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 which were 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 77 of the Act makes a requirement to register higher-risk buildings with the Building Safety Regulator. A principal accountable person is guilty of an offence if it allows a higher-risk building that is not registered to be occupied. If convicted, the principle accountable person could be subject to a fine or imprisonment or both. The offence will not come into force until 1st October 2023, at the earliest, to allow for a period of voluntary registration.

- 6.2 Section 78 of the Act gives powers to the Secretary of State to make regulations about principal accountable persons applying to register their higher-risk buildings. The section includes powers to prescribe the form and content of the application to register, information that must accompany an application, the way in which that information should be given to the Building Safety Regulator and the circumstances and the process for withdrawing buildings from the register.
- 6.3 Section 78 also provides that the Building Safety Regulator must publish the register if it agrees to register the building. It gives powers to make regulations about information to be contained in the register, how information is updated and the procedure for removing buildings from it.
- 6.4 Regulation making powers in relation to fees and charges are provided for under section 28 of the Act.
- 6.5 Powers under section 168 (4) provide for the way in which anything is to be given to the Building Safety Regulator is specified in a direction made, and published by, the Building Safety Regulator.
- 6.6 Section 25 of the Act provides that prescribed decisions of the Building Safety Regulator are subject to review by prescribed persons. It enables the Secretary of State to set out the procedure and timings for the review of a decision, along with the information required in a notice which triggers a review.
- 6.7 This is the first use of these powers. This instrument will come into force on 6 April 2023 so that the principal accountable person can register their building with the Building Safety Regulator from that date.
- 6.8 The draft Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 were laid in Parliament for debate on 19 December 2022. These draft regulations set out the detailed specifications for the buildings which will be in scope of the regime and are intended to come into force on 6th April 2023.
- 6.9 The draft Higher-Risk Buildings (Key Building Information etc) (England) Regulations 2023 were laid for debate in Parliament on 23 January 2023. These draft regulations set out the key building information which needs to be submitted to the Building Safety Regulator, 28 days after an application for registration has been made, and the parts of a building for which accountable persons are responsible in relation to their Part 4 duties under the Act.
- 6.10 Further regulations to implement the new regime of registered higher-risk buildings will be laid in Parliament in due course and are anticipated to come into force for 1st October 2023.

7. Policy background

What is being done and why?

- 7.1 The Act introduced various requirements to strengthen oversight of, and protections for, residents in high rise buildings, and established the Building Safety Regulator to administer and enforce the new regime to drive up the safety and standards. These regulations are part of these reforms and, alongside the commencement of the relevant provisions of the Act, introduce new registration requirements on those responsible for higher-risk buildings. The dutyholder responsible for the building will be one or more 'accountable person' for the building. One of the accountable persons for the

building will also be the principal accountable person, who has additional duties under part 4 of the Act.

- 7.2 Under the Act the principal accountable person¹ must register their higher-risk building with the Building Safety Regulator before it is occupied by residents. Failure to do so, without reasonable excuse, is a criminal offence. The registration information enables the Building Safety Regulator to gather pertinent information about residentially occupied higher-risk buildings so that they can gather intelligence to inform their regulatory approach with regard to the duties on dutyholders set out in Part 4 of the Act.
- 7.3 The government wants to ensure that administrative processes for communicating with the Building Safety Regulator are adaptable and can be easily updated by the Building Safety Regulator. The detail of such procedural matters will therefore be set out in a direction issued by the Building Safety Regulator as opposed to in regulations. Regulation 2 enables the Building Safety Regulator to make a direction about the way in which the application for registration, any updating of registration information or documentation, and a request to withdraw a registration application is to be provided to it. Regulation 2 also enables the Building Safety Regulator to set out how a request to remove a building from the register is to be given and the way a notification for the review of a decision must be given. The direction must be published by the Building Safety Regulator, and the expectation is that a direction will require information to be submitted to the Building Safety Regulator electronically through a web portal.
- 7.4 To ensure transparency and accessibility to information about buildings, the requirements about content of the register is set out in regulation 3. The register must contain all the registration information, the building control certificate where required, the building assessment certificate² and if necessary, a special measures order³. Regulations 4 and 5 provide for the principal accountable person updating the Building Safety Regulator of this registration information and for the Building Safety Regulator to update the register. Whilst registration is carried out once, changes in circumstances, for example a change of the principal accountable person if the building is sold, may occur. The regulations provide for how these should be promptly submitted to the Building Safety Regulator once the changes in circumstances become known to principal accountable persons.
- 7.5 For the building to be removed from the register, it must either not be occupied or no longer meet the definition of a higher-risk building as per the definition at section 65 of the Act and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023. Regulations 6-9 set out the procedural circumstances in which the Building Safety Regulator may remove a building from the register and procedural steps the Building Safety Regulator must take following a decision to remove it. Furthermore, these regulations set out the circumstances in which the principal accountable person must make a request for the removal of their building from the register and how to do so.

¹ Defined by section 73 of the Building Safety Act 2022.

² The principal accountable person will be required to apply for a building assessment certificate as per section 81 of the Building Safety Act 2022 and regulations made under section 81 (6).

³ A building can be put into special measures by the Building Safety Regulator as detailed in section 102 and schedule 7 of the Building Safety Act 2022.

- 7.6 Regulation 10 places a duty on the principal accountable person (as defined by section 73 of the Act) to provide certain information and documentation as part of their application to register, along with the registration fee. As per section 77 of the Act, it is an offence for a principal accountable person to allow an unregistered building to be occupied. This ensures that the principal accountable person comes forward with the required information for registration as detailed in the instrument. Regulation 15 ensures that there is a single point of contact for registration matters where the principal accountable person or person making the application on behalf of the principal accountable person is not an individual and includes provisions to require that a nominated individual is named in the registration application. Regulations 11 – 13 and 16 include provisions detailing the information to be submitted about the accountable persons, authorised persons and the building.
- 7.7 Within the residential management sector, it is common practice for managing agents to manage buildings on behalf of freeholders, head lessees and resident management companies who are responsible for the repair and maintenance of the common parts of the building. We want to ensure that such companies can support the principal accountable person in meeting their registration duties and submit applications on their behalf. We have included provisions so that authorised persons such as managing agents could submit the registration application on behalf of the principal accountable person. It is important to note, however, that accountability for meeting the duties under Part 4 of the Act remains with the principal accountable person and accountable persons, and this cannot be delegated to others. Regulation 14 requires a principal accountable person to provide confirmation that, as appropriate, such a person is authorised to act on their behalf and the name and address of any person they authorise to submit the registration application on its behalf.
- 7.8 The new building safety regime will apply to all new and existing higher-risk buildings, and therefore transitional arrangements have been provided in relation to building control information that will be submitted during the registration application process. Regulations 17-19 set out information to be submitted about building control. This differs depending on when the building first becomes a higher-risk building (was ‘completed’) and includes a copy certificate being provided for some buildings.
- 7.9 The Building Safety Regulator is operating on a cost recovery basis and therefore the costs of administering the registration system are to be recovered from the principal accountable person. Regulation 20 sets out that a £251 fee is payable with the application for registration; without it the Building Safety Regulator must not register the building. Regulations 20 and 21 detail these requirements and regulation 20 (3) gives the Building Safety Regulator a discretion to refund the fee, in whole or part, where an application is withdrawn.
- 7.10 The register should be accurate and up to date, only containing current information for higher-risk buildings. The Act and the instrument allow for the withdrawal of an application to register a building. Regulation 22 sets out the circumstances in which the withdrawal of an application may be made to the Building Safety Regulator.
- 7.11 The instrument provides for a right of review for certain decisions made by the Building Safety Regulator and a number of these are in relation to the registration regime. Where a decision of the Building Safety Regulator is challenged by a person prescribed in regulation 23(2) this gives the Building Safety Regulator an opportunity to review the original decision, taking into account any new information that may be available, and to change that decision or not further to the review.

- 7.12 Regulation 23 prescribes the types of decisions⁴ that can be subject of a review and supplements provision made at section 25 of the Act. The instrument provides that the way in which persons must give notice to the regulator requiring it to carry out a review of its decision may be set out in a published direction as provided for under regulation 2.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.13 This is a new legislative requirement. No such requirements on the registration of higher-risk buildings have existed in England before.

Why is it being changed?

- 7.14 Dame Judith Hackitt 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 response, the Building Safety Act makes provision which ensures that there will be identifiable accountable person(s) who must come forward and make themselves known to the Building Safety Regulator, through the process of applying to register the building for which they are responsible. The accountable person will be responsible for the proactive management of fire and structural safety in occupied higher-risk buildings. We estimate there are approximately 14,000⁵ existing high rise residential buildings which will be subject to the new building safety regime. However, there is no single database detailing these buildings and which owner is responsible for the fire and structural safety of these buildings. This is particularly the case for some complex tall buildings where there are multiple entities involved with different legal interests in the building.

- 7.15 This instrument supports accountable persons in complying with their Part 4 duties, by ensuring the effective management of fire and structural safety risks within occupied higher-risk buildings. If accountable persons do not comply, they will be liable to enforcement action by the Building Safety Regulator, which could result in a fine or imprisonment. This is to incentivise them to comply with their new duties.

What will it now do?

- 7.16 The Building Safety Regulator has a statutory duty to keep the safety and standards of buildings under review, to advise the government on building safety issues and to make informed decisions to guide the regulatory regime (under section 5 and 7 of the Act). Registration will provide necessary data to enable the Building Safety Regulator to perform its regulatory role. The Building Safety Regulator will be able to use the information gathered from registration to build up intelligence about the higher-risk buildings and target its assessment of fire and structural safety within these buildings.
- 7.17 The instrument will come into force on 6 April 2023 and the principal accountable person can provide the information from this date. From 1 October 2023, it will be an offence for occupied higher-risk buildings not to be registered with the Building Safety Regulator and the Building Safety Regulator will be able to commence

⁴ Decisions include; not to register a building, to remove a building from the register, to refuse to remove a building from the register, to refuse an application for a building assessment certificate, and a decision to give a direction for assessment of building safety risks.

⁵ This figure will differ from other recent publications due to a new approach for estimating the growth in the building stock

enforcement provided for under the Act, supported by further regulations that are planned to come into force for 1st October 2023. Also from this date, the Building Safety Regulator will be able to enforce the requirement that key building information must be provided within 28 days of the application for a building to be registered, in accordance with the Higher-risk Buildings (Key Building Information etc) (England) Regulations 2023.

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 amend another instrument and does not consolidate legislation.

10. Consultation outcome

10.1 A public consultation was conducted between 20 July and 12 October 2022 (Consultation on the new safety regime for occupied higher-risk buildings: <https://www.gov.uk/government/consultations/consultation-on-the-new-safety-regime-for-occupied-higher-risk-buildings>). Responses were from a range of different people and organisations across the sector including building owners, fire and rescue authorities, local authorities, housing associations and residents.

10.2 There were 88 responses to the section of the consultation which specifically focused on registration. Feedback was largely positive with 6 out of 9 questions having over 70% of respondents in agreement with the proposals. The main concerns raised were about the information to be provided alongside an application to register an existing higher risk building.

10.3 There were 42 responses to the section of the consultation which focused on reviews of decisions. 76% supported the proposals. Of the 7% that disagreed, objections were raised with regard to the length of time a review could take and that the types of decisions that could be subject to review was too narrow.

10.4 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 reflect the requirements brought in by this statutory instrument. The guidance will ensure that the process is clear for principal accountable persons, who will be required to apply to register their higher-risk building or to review a registration decision.

12. Impact

12.1 The impact on business, charities or voluntary bodies is low. The instrument will impact those individuals and organisations which are responsible for high-rise residential buildings.

12.2 The impact on the public sector is low. The instrument will impact local authorities and other public bodies which are responsible for higher-risk buildings.

- 12.3 The estimated total net present social value (NPSV) of the registration policy is - £7.2m, with an equivalent annual net direct cost to business of £620,000. The cost is related to the time taken to collect information and submit this in the registration application and payment of the registration application fee.
- 12.4 The registration application fee is £251.
- 12.5 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

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 the regulations burden on small businesses as the cost burden of these regulations is deemed to be low.

14. Monitoring & review

- 14.1 Section 162 of the Building Safety Act 2022 includes a requirement for an independent review of the adequacy and effectiveness of all provisions made under Part 4 of the Act (including these regulations) within 5 years of Royal Assent. A review must therefore be conducted by April 2027.

15. Contact

- 15.1 Cynthia Brathwaite at the Department for Levelling Up, Housing and Communities. Email: cynthia.brathwaite@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 Lee Rowley MP, Parliamentary Under Secretary of State for Local Government and Building Safety at the Department for Levelling Up, Housing and Communities, can confirm that this Explanatory Memorandum meets the required standard.