

2023 No. 315

BUILDING AND BUILDINGS, ENGLAND

The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023

<i>Made</i>	- - - -	<i>9th March 2023</i>
<i>Laid before Parliament</i>		<i>14th March 2023</i>
<i>Coming into force</i>		<i>6th April 2023</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 25(1) to (3) and (7), 28(1), (2) and (4), 78(4) and (5), and 168(2) and (4) of the Building Safety Act 2022^(a).

In accordance with section 7(4) of the Building Safety Act 2022, the Secretary of State has consulted the regulator^(b) and such other persons as the Secretary of State considers appropriate.

No consultation by the Secretary of State is required in relation to regulations 20 and 21 of these Regulations because the regulator made proposals for them to the Secretary of State, under section 7(2) of the Building Safety Act 2022.

PART 1

General

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 and come into force on 6th April 2023.

(2) These Regulations extend to England and Wales and apply to England only.

(3) In these Regulations—

“the 2022 Act” means the Building Safety Act 2022;

“AP” means accountable person^(c);

“building certificate” means, in relation to a building—

(a) a completion certificate issued by the local authority for the area in which the building is situated, or

(a) 2022 c. 30.

(b) See section 2 of the Building Safety Act 2022 (“the 2022 Act”) for the meaning of “the regulator”.

(c) See section 72 of the 2022 Act for the meaning of ‘accountable person’.

(b) a final certificate given in accordance with regulations made under section 1 of the Building Act 1984(a) and not rejected by the local authority;

“building control body” in relation to a building certificate, means the local authority or approved inspector who gives the certificate;

“change of use” has the same meaning as in The Town and Country Planning (Use Classes) Order 1987(b);

“completed” in relation to a building means—

(a) in the case of a newly built higher-risk building(c), when the construction of that building is completed;

(b) in the case of a building which was not a higher-risk building when built and which becomes a higher-risk building following a change of use, when the change of use occurs that causes that building to become a higher-risk building;

(c) in the case of a building which was not a higher-risk building when built and which becomes a higher-risk building following works which cause it to become a higher-risk building, when those works are completed;

“completion certificate” means—

(a) a certificate issued in accordance with regulation 17 (completion certificates) of the Building Regulations 2010(d),

(b) a certificate issued in accordance with the equivalent provision of earlier regulations made under section 1 of the Building Act 1984 or section 4 of the Public Health Act 1961(e), or

(c) a certificate issued under an equivalent provision of byelaws made under section 61 of the Public Health Act 1936(f);

“final certificate” has the same meaning as in section 51 of the Building Act 1984(g);

“leaseholder” means a tenant under a lease of a dwelling in a building;

“PAP” means principal accountable person(h);

“the register” means the register of higher-risk buildings(i);

“registration information” means the information described in regulations 11 to 17, 18(1)(a) to (c) and (2) and 19;

“relevant day” means any day other than Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales(j);

“start date” means the day on which section 32 of the 2022 Act (building control authorities) comes into force in relation to England, ignoring any commencement of that section for the purpose only of making regulations;

“transitional building” means a higher-risk building in relation to which section 91ZA(1) of the Building Act 1984(k) does not apply (by virtue of regulations made under paragraph 10 of Schedule 1 to the Building Act 1984) on the day the application for registration of that building is submitted.

(a) 1984 c. 55.

(b) S.I. 1987/764.

(c) See section 65 of the 2022 Act for the meaning of ‘higher-risk building’.

(d) S.I. 2010/2214 as amended by S.I. 2012/3119 and 2016/285.

(e) 1961 c. 64.

(f) 1936 c. 49.

(g) Section 51 has been amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996 (S.I. 1996/1905), article 4.

(h) See section 73 of the 2022 Act for the meaning of ‘principal accountable person’.

(i) See section 78 of the 2022 Act for the meaning of “the register”.

(j) 1971 c. 80.

(k) Section 91ZA was inserted by section 32 of the Building Safety Act 2022. Paragraph 10 was substituted by paragraph 83(8) of Schedule 5 to the Building Safety Act 2022.

Direction to be made by regulator

2.—(1) The regulator(a) may make a direction as to the way in which any of the following must be given to it—

- (a) provision of information with regard to a change to registration information, or copy certificate, to the regulator in accordance with regulation 4,;
- (b) a request made in accordance with regulation 7 to remove a building from the register;
- (c) an application under section 78(1) of the 2022 Act to register a higher-risk building;
- (d) a request made in accordance with regulation 22 to withdraw an application for registration;
- (e) a notice given in accordance with regulation 23 to review a decision by the regulator.

(2) The direction may include a requirement to give the information via a website address provided for that purpose by the regulator.

(3) The regulator must publish any direction under this regulation on its website and make it available for inspection at its principal offices during normal office hours.

(4) The regulator may, by a further direction, amend or revoke a direction made under this regulation.

PART 2

The Register of Higher-Risk Buildings

Content

3. The register must contain the following information in relation to each higher-risk building on the register—

- (a) the registration information,
- (b) any copy certificate required in regulation 18(1)(d),
- (c) the date of issue of any building assessment certificate(b), and
- (d) where applicable, the date that any special measures order(c) is made or discharged.

Updating information

4. The PAP must provide to the regulator, within the period of 14 relevant days beginning with the day that the PAP becomes aware of a change—

- (a) any change to the registration information provided to the regulator,
- (b) any copy certificate required in regulation 18(1)(d) of these Regulations, where a certificate becomes available that is more recent than the one provided to the regulator.

5. The regulator must update the register, as it considers necessary, within the period of 14 relevant days beginning with the relevant day that—

- (a) the regulator receives information or copy certificate pursuant regulation 4;
- (b) the regulator gives a building assessment certificate;
- (c) the regulator receives any information pursuant to regulations made under section 90(4) (provision of information etc on change in accountable person) of the 2022 Act;
- (d) a special measures order is made or discharged.

(a) See section 2 of the 2022 Act for meaning of the “regulator”.

(b) See definition of “building assessment certificate” in section 81(1)(a) of the 2022 Act.

(c) See definition of “special measures order” in paragraph 1 of Schedule 7 of the 2022 Act.

Circumstances for removing a building entry

- 6.** The regulator may remove a higher-risk building from the register where—
- (a) a PAP makes a written request to the regulator in accordance with regulation 7, or
 - (b) there is no request, on the regulator’s own initiative.

Request of PAP to remove a building entry

7.—(1) Where a PAP for a building considers that the building is or will not be occupied or the building is or will not be a higher-risk building, the PAP must make a request to the regulator to remove the building from the register.

(2) With regard to any request that the PAP makes in accordance with paragraph (1) the PAP must include—

- (a) their name, address and contact details,
- (b) an explanation of why the PAP considers that the building is not or will not be occupied or the building is or will not be a higher-risk building, and
- (c) where there is more than one AP for the building, a declaration confirming that all other APs for the building have been sent a copy of the request(a).

Notice of removal of building entry

8.—(1) Where the regulator decides to remove a building from the register (“the removal”) the regulator must, before effecting the removal, give notice of its decision to all APs for the building.

(2) A notice under paragraph (1) may be in electronic form and must—

- (a) be in writing,
- (b) give a summary of the reasons for the removal, and
- (c) inform the recipient of the notice of the right to a review of and appeal against the removal decision(b).

Duty-holders

9.—(1) In relation to regulations 6 and 7, “PAP” includes a person who would be a PAP for the building if the building were a higher-risk building.

(2) In relation to regulation 8 of these Regulations, “AP” includes a person who would be an AP for the building if the building were a higher-risk building.

PART 3

Applications for Registration

Applications for registration

- 10.** An application to register a higher-risk building must—
- (a) contain the information set out in regulations 11 to 17, 18(1)(a) to (c) and (2), and 19,
 - (b) be accompanied by any document required by regulation 18(1)(d).

(a) See section 109 (cooperation and coordination) of the 2022 Act.

(b) See sections 25 and 26 (reviews and appeals) and sections 104 to 107 (appeals etc.) of the 2022 Act.

AP details where there is one AP for the building

11. Where there is only one AP for the building, the details relating to the AP of the building as follows—

- (a) their name;
- (b) an address in England and Wales at which notices (including notices in proceedings) may be served on them;
- (c) their email address;
- (d) their telephone number.

AP details where there is more than one AP for the building

12. Where there is more than one AP for the building—

- (a) confirmation of who is the PAP,
- (b) details for which part of the building each AP is responsible^(a), and
- (c) the details relating to each AP of the building as follows—
 - (i) their name;
 - (ii) an address in England and Wales at which notices (including notices in proceedings) may be served on them;
 - (iii) their email address;
 - (iv) their telephone number.

PAP organisation type

13.—(1) For a PAP that is not an individual, whether the PAP is—

- (a) a local authority within the meaning set out in section 1 of the Local Government Act 2000^(b),
- (b) a private registered provider of social housing^(c),
- (c) a registered provider of social housing^(d),
- (d) a commonhold association as defined by section 1 of the Commonhold and Leasehold Reform Act 2002^(e),
- (e) a resident management company,
- (f) a right to manage company as defined by section 73^(f) of the Commonhold and Leasehold Reform Act 2002, or
- (g) where the PAP is not an authority or body of a type listed in sub-paragraphs (a) to (f), details of the type of organisation that it is.

(2) For the purpose of this regulation, “resident management company” means a body corporate which is party to a lease of a building where—

- (a) the body corporate is limited by guarantee and the members of that body are tenants under leases of dwellings in the building (“leaseholders”), or
- (b) the majority of the shares of the body corporate are held by leaseholders.

(a) See section 74 of the 2022 Act for “part of a building for which an accountable person is responsible”.

(b) 2000 c. 22. Section 1 of the act has been amended by the Local Government and Public Involvement in Health Act 2007 (c. 28) and by the Local Government (Wales) Measure 2011 (c. 4).

(c) See definition of “private registered provider of social housing” at Schedule 1 of the Interpretation Act 1978 (c. 30).

(d) See definition of “registered provider of social housing”, *ibid*.

(e) 2002 c. 15. Section 1 of the act has been amended by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941).

(f) Section 73 has been amended by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941) and by the Finance Act 2003 (c. 14).

Details of person making application on behalf of PAP

14. If the PAP authorises a person to make the registration application on their behalf—
- (a) confirmation from that person that they are authorised by that PAP, to act on that PAP's behalf, and
 - (b) the name and address of that person.

Details of single point of contact

15. If the PAP or person making the application on behalf of the PAP is not an individual, the name and address of the individual who will act as a single point of contact for the PAP for the purposes of the registration application.

Description of building

16. With regard to the higher-risk building—
- (a) the address, postcode and, if applicable, name of the building,
 - (b) the number of residential units^(a) it contains,
 - (c) the height, in metres, of the building as determined in accordance with regulations made under section 65(2) of the 2022 Act,
 - (d) the number of storeys on or above ground level as determined in accordance with regulations made under section 65(2) of the 2022 Act, and
 - (e) the year in which the building was completed.

Building control: for a building completed before start date

- 17.—(1) In relation to a building which was completed before the start date—
- (a) the date of the building certificate for the completed building,
 - (b) the reference number of the certificate, and
 - (c) the name of the building control body who gave the certificate.
- (2) Where the PAP does not hold any of the information in a paragraph (1) they must provide an explanation to the regulator setting out the steps that the PAP has taken to obtain the information.

Building control: for a building completed on or after start date and a transitional building

- 18.—(1) In relation to a building which was completed on or after the start date and is a transitional building—
- (a) the date of the building certificate issued in relation to the building,
 - (b) the reference number of the certificate,
 - (c) the name of the building control body who gave certificate, and
 - (d) a copy of the certificate.

(2) It is sufficient to provide the most recent building certificate where more than one building certificate has been issued for the same part of the building.

Building control: for a building completed on or after start date and not a transitional building

19. In relation to a building which was completed on or after the start date but is not a transitional building—

(a) See definition of “residential unit” in section 115 of the 2022 Act.

- (a) the reference number for the building, issued by the regulator, and
- (b) the date that the building certificate was issued.

Prescribed fee

20.—(1) The regulator may charge a fee of £251 to the PAP in relation to that PAP’s application to register a higher-risk building.

- (2) The fee must be paid at the time an application is made.
- (3) Where an application is withdrawn the regulator may refund the fee in whole or in part.

Effect of failure to pay fee

21. The regulator must not register a higher-risk building unless the fee for the application has been paid.

Withdrawing an application

22.—(1) The circumstance in which an application for registration of a higher-risk building may be withdrawn is where—

- (a) the PAP makes a request to the regulator to withdraw the application regarding the building for which they are the PAP, and
- (b) that request is made in writing and sets out the reason for the request.

(2) In this regulation the PAP includes the person who would be the PAP if the building were a higher-risk building.

PART 4

Review of Decisions of the Regulator

Regulator decision: review

23.—(1) The following decisions of the regulator are prescribed for the purposes of section 25(1)(a) of the 2022 Act—

- (a) a decision not to register a higher-risk building further to an application;
- (b) a decision to remove a building from the register(b);
- (c) a decision to refuse to remove a building from the register;
- (d) a decision to refuse an application for a building assessment certificate(c);
- (e) a decision to give a direction for assessment of building safety risks pursuant to section 83(2)(c) of the 2022 Act.

(2) The persons prescribed for the purposes of section 25(2) of the 2022 Act are—

- (a) in relation to a decision under paragraph (1)(a), (b), (d) or (e) an affected person within the meaning in section 104(4) of the 2022 Act;
- (b) in relation to a decision under paragraph (1)(c), an AP for the higher-risk building (or person who would be an AP for the building if the building were a higher-risk building).

(3) The prescribed period for giving a notice to the regulator is within 21 relevant days beginning with the day on which the decision is made.

(a) Section 25 of the 2022 Act is entitled “review by regulator of certain decisions made by it”.

(b) See section 78(3) of the 2022 Act for provision regarding a decision to remove a building from the register.

(c) See section 81 of the 2022 Act for provision regarding a decision as to whether or not to issue a building assessment certificate.

- (4) The prescribed information to be contained in a notice (“the notice”) is—
- (a) details for the person giving the notice as follows—
 - (i) their name;
 - (ii) an address in England and Wales at which notices (including notices in proceedings) may be served on them;
 - (iii) their email address;
 - (iv) their telephone number;
 - (b) the name and address of any person authorised to give the notice on behalf of a person set out at paragraph (3);
 - (c) the address, postcode, and if applicable, the name of the building to which the relevant decision relates;
 - (d) a summary of the review being sought that—
 - (i) identifies the decision for review, and
 - (ii) sets out the reason for the review;
 - (e) any new information that is available to the person giving the notice, that may have been relevant to the regulator’s original decision and was not available at the time the original decision was made;
 - (f) confirmation that any other AP for the same building to which the decision relates has been given a copy of the notice.
- (5) The period prescribed for the purposes of section 25(7) of the 2022 Act, is within 28 relevant days beginning with the day that the regulator receives the notice.

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

Lee Rowley

Parliamentary Under Secretary of State

Department for Levelling Up, Housing and Communities

9th March 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the register of higher-risk buildings held by the building safety regulator (“the regulator”). These Regulations make provision about making an application for registration of a higher-risk building including the associated fee and withdrawing that application. They also set out further provisions about decisions of the regulator that may be subject to a review under section 25 of the Building Safety Act 2022 (“the 2022 Act”).

Regulation 2 in Part 1 sets out how a direction by the regulator may determine how information is given to the regulator with respect to making or withdrawing a registration application, provision of information updating the register, requesting to remove a higher-risk building from the register or requiring the regulator to carry out a review of its own decision. The direction may require information to be submitted electronically and may be revoked and amended.

Part 2 of the Regulations makes provision about the register of higher-risk buildings. Regulation 3 makes provision for the content of the regulator’s register of higher-risk buildings. Regulations 4 and 5 set out the requirements on the principal accountable person (“PAP”) and regulator in relation to keeping that register up to date. Regulations 6 to 8 set out the procedure for removing a building entry from the register.

Part 3 of the Regulations makes provision about the application for registration of a higher-risk building. Regulations 10 to 17, 18(1)(a) to (c) and (2) and 19 set out the ‘registration information’ to be contained in the application and regulation 18(1)(d) sets out any copy certificate that must accompany an application. The registration information requirements include details about contact

information for each accountable person (“AP”) for that building, a description of the building, and information in relation to building control approvals for that building.

Regulations 20 and 21 make provision for the regulator to charge a registration fee to the PAP at the time the application for registration is made, otherwise the regulator will not register the higher-risk building. Regulation 20 also provides that any refund of the registration fee upon a withdrawal of application, will be at the regulator’s discretion.

Regulation 22 provides for the circumstance in which a registration application may be withdrawn and the procedure for requesting a withdrawal.

In Part 4, regulation 23 supplements section 25 of the 2022 Act. It sets out, among other things, which regulator decisions may be the subject of a review, the persons who can give notice to the regulator requiring the review, the period of time in which the person must send that notice and by when the regulator must notify the outcome of the review. It also sets out what must be contained in the notice sent to the regulator requesting the review.

A full impact assessment of the effect that this instrument will have on the costs to business and is published with an Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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