

## Insights

# BSA 2022: REGISTER OF HIGHER-RISK BUILDINGS OPENS - JULY 2023

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The website provided by the Health and Safety Executive (HSE) to allow higher-risk residential buildings to be registered with the Building Safety Regulator (BSR) has been launched together with guidance (which applies in England) on how to complete the application.

This article focuses on the regime that applies to England and provides a reminder of the key things to know about building registration and the upcoming changes to the building registration regime.

Practitioners should note that on 3 July 2023, the HSE published an ebulletin indicating that registration applications and all key building information (KBI) for existing higher-risk buildings "must be completed on the HSE online registration portal by 1 October 2023". This does not accord with regulation 20 of the Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023), which provides that KBI must be submitted within 28 days of registration, or with the HSE's initial guidance that KBI could be submitted within 28 days of applying to register the building or by 30 September 2023, whichever was longer. However, it is important to be aware that the HSE guidance on timeframes has changed. The practical reality of this updated guidance indicates that if an application to register a building is made on 29 September 2023 then KBI must be submitted by 1 October (not 28 days after 29 September).

## WHICH BUILDINGS NEED TO BE REGISTERED AND BY WHEN?

### EXISTING OCCUPIED BUILDINGS

From 6 April 2023, subject to certain exclusions, all occupied higher-risk residential buildings which are at least 7 floors or at least 18 metres in height and contain at least two residential units must be added to the register by 30 September 2023.

From 1 October 2023, the Principal Accountable Person (PAP) will commit an offence if a higher-risk building is occupied but not registered. A PAP guilty of such an offence risks a fine, imprisonment or both.

### NEW BUILDINGS

From 1 October 2023, new buildings "completed" after this date must have a relevant "completion certificate" or "final notice" and must be registered before the building is occupied.

The problem with this is that the terms "completed", "completion certificate" and "final notice" can mean different things in the construction industry and it's a pity the guidance doesn't clarify exactly what it means. In the absence of commentary to the contrary on what these terms may mean, the best thing to do is to look to the legislation, the Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations 2023 (Regulations) that underpin the guidance. From this we can deduce the following:

### **Meaning of "completed"**

The Regulations define "completed" (in section 1(3)) as:

- "(a) in the case of a newly built higher-risk building, 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."

### **Meaning of "final notice"**

While the Regulations don't define "final notice" they do refer to "final certificate". This is defined as the "final certificate" given by an approved inspector to the local authority where they are satisfied that work to which an initial notice relates has been completed (section 51, Building Act 1984).

### **Meaning of "completion certificate"**

"Completion certificate" is defined in section 1(3) as:

- "(a) a certificate issued in accordance with regulation 17 (completion certificates) of the Building Regulations 2010;
- (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, or
- (c) a certificate issued under an equivalent provision of byelaws made under section 61 of the Public Health Act 1936."

## **HOW TO REGISTER AND WHO SHOULD DO IT?**

The PAP should register the building or can authorise in writing a person to do so on its behalf, for example, a managing agent or legal representative. A fee of £251 is payable on registration.

For help on working out who should be the PAP, see [this government guidance](#).

## WHAT INFORMATION IS REQUIRED TO REGISTER?

In summary, for each building:

- The number of floors at or above ground level.
- The building height in metres.
- The number of residential units (a unit is a place where someone can live, for example, a flat, apartment, maisonette or room in student accommodation) (whether occupied or not).
- The year it was originally built, or if the exact year is unknown, a range can be provided.
- Building name, address and postcode.
- Names and contact details of the PAP and any other Accountable Person(s).
- If the building was completed in 2023, the name of the building control body that issued the completion certificate/final notice together with the relevant reference number. For buildings completed before 2023, the applicant should take "all reasonable steps" to submit the completion certificate or final notice information.

If the building is made up of more than one high-rise residential structure then this information must be provided for each structure.

## WHAT NEXT?

A little confusingly, the guidance refers to the next step as being the submission by the PAP (or a person acting on its behalf) of "structure and safety information". This is the information commonly referred to as "key building information" or KBI.

Prior to the launch of the website and accompanying guidance, it had previously been thought (in line with [regulation 20](#) of the [Higher-Risk Buildings \(Key Building Information etc.\) \(England\) Regulations 2023](#)) that such information would need to be submitted within 28 days of registration (see our previous insight, "[BSA 2022 – the Accountable Person regime and key building information](#)"). Therefore, the prudent advice had been to be sure all information was to hand before starting the clock with registration.

However, the website and guidance appear to give PAPs more time to submit this information suggesting that PAPs can submit this information within 28 days of applying to register the building or by 30 September 2023. whichever is longer.

This is a smart move by the BSR, recognising that as this is a new process it is sensible to give everyone a bit more time to get it right (albeit technically, the Regulations do not provide for this). The guidance doesn't say it, but absent any announcements to the contrary, it's probably sensible to assume that after 30 September, the deadline will revert to the statutory 28 days.

**Since this article was written, the HSE has amended its guidance and published further information suggesting that registration applications and all KBI for existing higher-risk buildings must be completed on the HSE online registration portal by 1 October 2023 (see above for more information).**

## FINAL THOUGHTS

If they haven't already started doing so, landlords should review their portfolios and note which existing higher-risk buildings need to be registered. For each building, they should:

- Identify the Accountable Person(s) and the PAP.
- Collate and prepare the necessary information and agree who will submit it to the register (will it be the PAP or someone on its behalf?).
- Ensure existing buildings are registered by 30 September 2023.

Those in the process of acquiring an existing building that will require registration, or those assuming responsibilities in relation to such a building, should:

- Check that the building has been (or is in the process of being) registered and that all safety and structure information has been (or is in the process of being) collated in time for the 30 September 2023 deadline.
- Identify who is or will be the PAP and the Accountable Person(s).

Remember that should any of the registration information change on acquisition then the register will need to be updated by the PAP within 28 days of it becoming aware of the change.

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This article was first published by Practical Law Construction.

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