



**PART THREE: SANCTIONS FOR BREACH OF OCCUPATION REQUIREMENTS UNDER THE BSA**

In this latest of a series of articles of the BSA, we explore the enforcement of the occupational obligations of the BSA.

**WHO IS THE ENFORCEMENT AUTHORITY?**

The Building Safety Regulator (“**BSR**”), part of the Health & Safety Executive, is required to enforce part 4 of the BSA and the regulations made under it.

**CRIMINAL OFFENCES**

Part 4 of the BSA creates a mix of criminal and civil offences for non-compliance. Most of the management obligations are criminal offences which potentially attract a prison sentence or a fine (or both) for the Principal Accountable Person (“**PAP**”) and the Accountable Person (“**AP**”). The meaning of these terms was explained in part 2 of this series.

Obligation	BSA provision	PAP	AP	Criminal liability
Pre-occupation building regulation certificate	Section 76		X	X
Occupation without registration with the Regulator	Section 77	X		X
Registration of the building with the Regulator	Section 78	X		X
Duty to apply for building assessment certificate	Section 79	X		X
Duty to display building assessment certificate	Section 82	X		X
Assessing safety risks and safety case reporting	Sections 83 & 85	X	X	
Safety management systems	Section 84		X	
Mandatory Occurrence Reporting	Section 87	X	X	X
Golden Thread Documents	Section 88		X	
Provision of information etc on change in AP	Section 90		X	X
Engagement with residents	Section 91	X	X	
Complaints, Contravention and Compliance	Section 93	X		

**BUT I WON'T BE PERSONALLY LIABLE, WILL I?**

Under part 4, where a body corporate commits a criminal offence, it is possible for certain individuals (such as a director, manager, secretary and/or partner) to be deemed to have committed that offence too and that person (as well as the body corporate) is liable.

## COMPLIANCE NOTICES (OR NOT!)

The BSA sets out a procedure whereby the BSR can issue a compliance notice to an AP if the AP may have contravened a duty under part 4 of the BSA or any regulations made under it. That notice will indicate the steps to be taken by the AP and a required timeframe to remedy the contravention (or avoid it occurring). A contravention that puts the building or those in the building in imminent danger can be subject to an urgent action notice. Non-compliance with the notice enables the BSR to prosecute for breach.

The BSR can prosecute without following the compliance notice procedure in the case of a serious building safety breach by the AP that places people in or near the building at a significant risk of death or serious injury.

## OTHER NOTIFICATIONS

When a compliance notice is served, the BSR must take reasonable steps to notify:

- the local authority;
- the fire and rescue authority; and
- the Regulator of Social Housing (if relevant).

There is an element of "name and shame" here. Alleged contraventions can easily become public knowledge which could cause reputational harm for those involved but it could also cause problems in the event of a future sale or letting of the relevant building.

## SPECIAL MEASURES ORDERS

A special measures order ("**SMO**") is an order appointing a "special measures manager" to carry out the functions of all APs for a building. An SMO can be made if a tribunal is satisfied that there has been a serious failure, or a failure on two or more occasions, by an AP to comply with their duties under part 4. If the tribunal makes an SMO, the functions of any AP pass to the special measures manager.

## APPEALS

Anyone that has received a compliance notice may appeal.

## WHAT TO DO NEXT?

The obligations in the BSA and the regulations apply from 1 October 2023 so APs are urged to seek urgent advice. In addition to being within the scope of the BSA and the associated plethora of regulations, any building may also be subject to other legislation and statutory duties, such as the Regulatory Reform (Fire Safety) Order 2005. APs have an abundance of administrative obligations to ensure safety compliance to get to grips with – some of which have criminal liability attached. There are also various twists, turns and exceptions at every stage of the BSA so please make contact with us for further advice. If your property is in Wales, please contact us for further information, as this note relates to buildings in England.

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