

BUILDING SAFETY ACT 2022: AN INTRODUCTION



The Building Safety Act 2022 represents a significant shift in the legal landscape for the construction and property sectors. The most important points include:

WHAT IS THE BUILDING SAFETY ACT?



The Building Safety Act 2022 ("the BSA") was borne out of the Grenfell Tower tragedy in 2017. It represents a major reform of the Building Act 1984 and is the most significant piece of legislation for the building industry since then. It has wide implications and seeks to bring about cultural changes to building safety.

The legislation received Royal Assent on 28 April 2022. It is being implemented in stages with certain provisions in force since 28 June 2022, further significant provisions in force by 1 October 2023 and the remainder to be in force by April 2024. There is a transitional period between 1 October 2023 and 6 April 2024 for developments already underway (called "in flight") provided they meet specified criteria.

The BSA increases regulation for existing and future "higher risk buildings" ("HRBs"), and introduces a new Building Safety Regulator, who will oversee all building control for such buildings. It also introduces significant new powers to require parties to remedy historic building safety defects. There are wider implications as the new duty holder roles and responsibilities during construction will apply to all building work.

In addition, the BSA makes a number of amendments to the Defective Premises Act 1972, widening the scope for claims for defects in residential dwellings against the real estate and construction industry.

WHO IS THE BUILDING SAFETY REGULATOR?



The new Building Safety Regulator ("the BSR") which is responsible for building control from 1 October 2023 will have new powers of regulation, inspection and enforcement in relation to all buildings. The BSR will:¹

- Implement the new regulatory regime for "higher risk buildings" ("HRBs"), including by exercising significant powers to enforce obligations under the BSA (e.g., prosecuting individuals as well as corporate bodies);²
- Oversee the safety and performance of all buildings, including by maintaining a register of building inspectors and building control approvers; and
- Assist and encourage competence within the real estate and construction industry, including by issuing codes of conduct for building control bodies and building control approvers.

¹ "Building Safety Regulator: factsheet" (www.gov.uk) (withdrawn 25 July 2022); "Guidance: The Building Safety Act" (www.gov.uk).

² section 40, BSA 2022

WHAT IS A HIGHER RISK BUILDING (HRB)?



The answer to this depends on whether the building is in the design and construction phase or is the "in occupation" phase.

For the design and construction phase an HRB is a building which is at least 18 metres high or has at least 7 stories and has at least two residential units (which is defined as a dwelling or other unit of living accommodation).

It also includes care homes and hospitals but excludes secure residential institutions e.g. a prison; hotels and military barracks/living accommodation. The in occupation phase excludes care homes and hospitals as they have existing care and quality regimes.³

WHO IS AN ACCOUNTABLE PERSON AND A PRINCIPLE ACCOUNTABLE PERSON, AND WHAT ARE THEIR ROLES?



Accountable Persons (APs) and Principal Accountable Persons (PAPs) are new duty holders under the BSA, responsible for managing the buildings safety risks in all existing and new HRBs.

APs are individuals or organisations that own a legal interest in any part of an HRB or have a legal obligation to repair common parts of an HRB.⁴

APs are subject to a number of ongoing duties. These include assessing building safety risks, complying with reporting requirements and ensuring proportionate measures are in place to manage such risks.

Each HRB must have a PAP. Where this is only one AP, that party will automatically be the PAP; where there are different APs for different parts of the building, the PAP will be the one responsible for the structure and exterior of the building.

In addition to their duties as an AP, PAPs have additional ongoing duties, such as to register HRBs with the BSR (by 30 September 2023 for existing HRBs, [from 1 October 2023 for new, refurbished ones that have changed use once the building works have completed](#)); provide key information about the HRB to the BSR; prepare a safety case report for the building, and apply for a building assessment certificate when directed by the BSR.⁵

WHAT ARE THE GATEWAYS?



Three overarching Gateways form part of the new regime governing how HRBs are designed and constructed or created through change of use or alteration/extension as well as plans to undertake work to an existing HRB.

There are three stages to the Gateway regime:

- **Gateway 1** – This Gateway requires fire safety matters to be incorporated into the planning stage for HRBs. The HSE will be a statutory consultee and submission of Fire Statements will be required when seeking planning approval.⁶
- **Gateway 2** – This Gateway requires applicants to submit a building control approval application to the BSR. Detailed information must be provided and must show how the building will satisfy all functional requirements as well as demonstrating how the

³ The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 (legislation.gov.uk)

⁴ section 72, BSA 2022

⁵ "Safety in high-rise residential buildings: Accountable persons" (www.gov.uk)

⁶ Gateway 1 was implemented by secondary legislation and statutory guidance under the Town and Country Planning Act 1990 (not the BSA 2022) and applies to planning applications made on or after August 2021



construction activity will be managed throughout so that what is built is as described in the application and captures evidence to support the Gateway 3 building completion certificate. Any changes to the approved documents must be recorded and subject to a notification to BSR. Major changes will require a fresh application for approval and no work on the change can be undertaken until approved by BSR. HSE has produced a useful guide to Gateways 2 and 3 in which is set out what documents they expect to see for each gateway application or approval.⁷

Staged applications can be made for the whole development if, for example, it is a complex development with multiple elements (although not suitable in all cases). A staged application must include full descriptions of the proposed stages, a timetable for each stage and full details of the first stage. The staged application must show at the outset how the functional requirements of the Building Regulations will be met holistically for the whole development and how the safety systems will interact with one another and meet those regulations.

The BSR has a 12-week time limit to approve an application (8 weeks for works to an existing HRB) but this may be extended by the BSR. The BSR may approve subject to "requirements" they set being met in accordance with the programme for the works. HSE have made clear that the better the application and supporting documents the more straightforward it will be for the BSR to evaluate.

- **Gateway 3** – Once all notifiable building work is complete this Gateway requires applicants to submit an application to the BSR with updated as built plans and other prescribed documents. The building cannot be occupied unless and until the BSR issues a completion certificate. The BSR will deal with valid applications within 8 weeks and will raise any questions they have 10 days after notice is given.⁸

WHAT IS THE 'GOLDEN THREAD OF INFORMATION'?



It was one of the key recommendations within Dame Judith Hackitt's review into building safety in 2017 that there should be a "golden thread of information" running through the entire life cycle of every HRB from design and construction; refurbishment, alteration through to and during occupation, including change of use to create an HRB.

The "golden thread" refers to both the information and documents about the building that evidences that it is safe and the information management processes that ensure the information is accurate, easily understandable and available, and is kept up to date.⁹ The government has indicated that the information and documents must be obtained and stored in a way that meets prescribed standards (e.g. kept up to date and stored digitally).¹⁰

Plans and prescribed documents submitted at Gateways 2 and 3 are examples of building information that need to be stored in the golden thread together with details of any controlled changes and information captured through construction, commissioning and final functional inspections.

⁷ Building Control: An overview of the new regime (hse.gov.uk)

⁸ See the HSE guide referred to in Gateway 2 above and footnote 8

⁹ "Golden thread: factsheet" (www.gov.uk)

¹⁰ Storing building information - golden thread - Building safety - HSE

WHO ARE THE NEW DUTYHOLDERS? ARE THERE ADDITIONAL PENALTIES FOR BREACH OF BUILDING REGULATIONS?



The BSA amends the Building Act 1984 to provide that there will be new dutyholders in respect of all building work to ensure compliance with building regulations. For projects starting after 1 October 2023, the client will need to ensure that the principal dutyholders are in place. The new roles do not apply to buildings "sufficiently progressed" before 6 April 2024.

These dutyholder roles use the same terminology as the Construction (Design and Management) Regulation 2015 (i.e. client, designers, principal designers, contractors and principal contractors) although the roles will not necessarily be carried out by the same persons.

The relevant dutyholders will have duties to have arrangements and systems in place to plan, manage and monitor both the design work and the building work to ensure compliance with building regulations.

There are obligations on dutyholders to ensure that they, and those they appoint, are competent (i.e. have the necessary skills, knowledge, experience and behaviours) to carry out the design work and building work they are engaged to do and only undertake works within the limits of that competence.

The BSA also introduces increased penalties for breach of the building regulations including potential criminal liability which can be passed to directors, officers and managers of bodies corporate to the extent that any breach of building regulations is committed with consent, connivance or attributable to their neglect. This is punishable by up to 2 years in prison and/or an unlimited fine.

WHAT ARE THE IMPLICATIONS FOR HISTORIC BUILDING SAFETY DEFECTS?



The Defective Premises Act 1972 ("the DPA") imposes a duty on persons "taking on work for or in connection with the provision of a dwelling" to "... see that the work which he takes on is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed".

As of 28 June 2022, the BSA extends the limitation period for claims under the DPA from 6 years to 30 years retrospectively where the work was completed before that date. After this date, the limitation period is amended to 15 years from completion of the work. The BSA also expands the right to claim under the DPA in relation to any work undertaken on an existing dwelling, bringing refurbishment works within its scope.

Anyone acting in the course of business who is "providing or arranging for the provision of dwellings or installations in dwellings" is subject to the duty. The duty is owed to anyone for whom the work was done or anyone acquiring a legal or equitable interest in the dwelling. The question of what makes a dwelling not "fit for habitation" is one of fact and degree.

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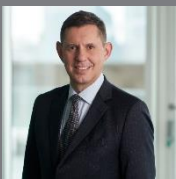
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