

The Building Safety Act 2022 (BSA)

The overarching purpose of the BSA is 'greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety'.
The BSA was given Royal Assent on the 28 April 2022 and is being brought into force in stages.



Key – Applicability of rules to:



All Buildings



Higher Risk Buildings



Remediation Order Relevant Buildings



Residential Buildings

Part 2 – the Building Safety Regulator and its functions

Key competencies

Part 2 of the BSA establishes the **Building Safety Regulator (BSR)** who must satisfy the following two objectives:

1. securing the **safety** of people in and around any permanent or temporary buildings in England
2. improving **building standards** in All Buildings

The BSR has three core functions:

1. must encourage improvement in **competence** in the built environment industry and building inspectors
2. a duty to keep safety and standard of All Buildings under **review** and review existing and emerging building standards and safety risks
3. responsibility for implementing and managing a more **stringent regime for Higher Risk Buildings** which includes becoming the **Building Control Authority (BCA)** for all Higher Risk Buildings

Watch Out!

We anticipate the **JCT** will start to publish updated editions of its suite of contracts, likely to address the implications of the **BSA** and other recent legal developments.

Watch Out!

The **BSR's** role is likely to expand and change as its first strategic plan is produced. So make sure to stay live to any updates!

The **BSR** has until **31 January 2024** to publish its first plan, which will then be refreshed every 3 years.

The content of this note reflects the law at the date of publication. This note does not constitute legal advice and is provided on a non reliance basis. Specific legal advice should be taken before acting on any of the topics covered.

Part 3 – Building Act 1984 (BA)

Part 3 of the **BSA**:

intends to bring into force s38 of the **BA** (s38 of the **BA** was passed into law in 1984 but never brought into force) which allows for a civil claim for **compensation to be brought by anyone suffering losses for physical damage** (whether injury or damage to property) caused by a breach in building regulations.

introduces more stringent obligations to **control the design and construction** of Higher Risk Buildings.

introduces new provisions for the regulation of **building control approvers and building inspectors**.

Duty holders



The **BSA** also amends the **BA** to create a new **duty holder** regime for Higher Risk Buildings, whereby **duty holders** will have their own prescribed duties under which they are legally responsible for work and appointments.

Current proposals require that the duty holder will be the client, Principle Designer, Principle Contractor, designers and contractors (similar to **CDM Regulations 2015**).

Definitions of Higher Risk Buildings in the BSA

Part of the BSA	Draft Legislations*	Definition	Excludes
Part 3 Design and Construction phase	Paragraph 7	Buildings with 7+ storeys or 18m+ (there is no pre-requisite for there to be a residential element)	Hotels, secure residential institutions, military barracks, living accommodation provided by the MOD, for HM's forces or any visiting defence forces
Part 4 Occupation phase	Paragraph 8	Buildings with 7+ storeys or 18m+ and 2 or 2+ residential units	As above plus: care homes and hospitals

*The Higher Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023

Top tip

Further details regarding industry **competence** and **duty holders** can be found in the draft **Buildings Regulations** (Appointment of Persons, Industry Competence and Duty Holders England).

Industry competence



The **BSA** amends the **BA** to allow building regulations to set out **competency** requirements for persons working on All Buildings covered by the **Building Regulations** including Higher Risk Buildings.

Notices/inspections



New processes are prescribed by the **BSA** to control a breach of the **Building Regulations** in the design and construction of Higher Risk Buildings including the ability to issue **Stop Notices** (requiring work to be halted until serious non-compliance is addressed) and **Compliance Notices** (where issues must be rectified by a certain date).

Watch Out!

There will be a Government consultation process in order to prescribe the rules and requirements governing the issuance of **Stop Notices** and **Compliance Notices**.

Top tip

Hospitals and **care homes** are excluded from the definition of Higher Risk Buildings in Part 4 of the **BSA** because such buildings are already regulated as workplaces by the **Regulatory Reform (Fire safety) Order 2005 (Order)** and **hotels** and **secure residential institutions** are excluded for the same reason.

Watch Out!

The Higher Risk Buildings (**Key Building Information etc**) (**England**) Regulations 2023 specify key building information which must be provided to the **BSR** about Higher Risk Buildings.

Leves/breaches



The **Secretary of State** is empowered to make regulations to impose **a levy** on applicants for building control approval in respect of new residential developments of all sizes.

Watch Out!

The Government has launched a second consultation on the implementation of the **Building Safety Levy** and the consultation closed on **7 February 2023**. Look out for the Government response!

Part 4 – Higher Risk Buildings



Part 4 contains provisions about the management of building safety risks, (risks to the safety of people in or about the building because of fire or structural failure) for occupied Higher Risk Buildings.

A building is **occupied** when there are residents in more than one residential unit in the building.

Part 4 also imposes obligations on those responsible for repairing the Higher Risk Buildings, such persons are known as the **Accountable Person**.

If there are multiple landlords/ freeholders, the **Principal Accountable Person** will have overall responsibility for the safety of the building.

✓ Top tip

Anyone with a repairing obligation can be an **Accountable Person**.

Normally this will include landlords or superior landlords but if they are not obligated to repair, this could include management bodies like Right to Manage companies.

Check who bears the repairing obligations for your building.

Where there are multiple relevant people, be clear about who the **Principal Accountable Person** is.

Obligations on Accountable Person

Part 4 imposes the below obligations on the **Accountable Person**:

Principal Accountable Person only

- Obtain a **Completion Certificate (Gateway Three)** before occupation. (Section 76)
- Apply to the **BSR** to register the building as Higher risk where applicable. Registration opened **1 April 2023**, you must apply before **October 2023**. (Section 78)



Watch out! Window has just opened!

- Once occupied, prepare a **Safety Case Report** (compiling the assessments of the other **Accountable Person** if applicable) and share it with the **BSR**. (Section 85)
- Operate and maintain a **Mandatory Occurrence Reporting System**, to share prescribed information with **Accountable Person**. (Section 87(5))
- Apply for a **Building Assessment Certificate** within 28 days of the **BSR** notifying you to do so, from **1 April 2023**. (Sections 79(2) and 80(1))
- Display the most recent **Building Assessment Certificate**, any **Compliance Notice** and prescribed information about **Accountable Person** in a prominent place for residents. (Section 82(1))
- Prepare and share a **Residents' Engagement Strategy** with residents of the building. (Section 91(1))
- Set up a system to investigate **complaints** about Accountable Person. (Section 93(1))

All Accountable Person (including Principal)

- When the building becomes occupied or they become an Accountable Person (if later), **assess Building Safety Risks** for the part of the building they are responsible for and take all reasonable steps to prevent and reduce such risks. These reports will be collated into the **Safety Case Report** by the **Principal Accountable Person**. (Sections 83 and 84)
- Record and share prescribed information** about the building with the **BSR** and residents, and keep that information up-to-date. (Sections 88 and 89)
- Respond to **residents' requests** for information promptly. (Section 92(2))
- Duty to **cooperate and coordinate** with each other **Accountable Person**. (Section 90)
- If an **Accountable Person** is aware of a lack of cooperation by another **Accountable Person**, they will have a **duty to report** this to the **BSR**. (Sections 93 and 94)

Watch Out!

The **BSR's** plan for inviting applications for building assessment certificates will be set out in the **BSR's Strategic Plan (due 31 January 2024)**. It's expected to start calling buildings in for assessment around **April 2024**.

Newly built Higher Risk Buildings will likely be invited after occupation. The existing Higher Risk Buildings will likely be called in tranches.

✓ Top tip

The **Accountable Person** can request **entry** into any premises required for the building assessment (with 48 hours' notice), or apply for a County Court order where **access** is required.

Key Dates for your diary:

The following key dates and deadlines are worth diarising to ensure you are up-to-date and BSA compliant.

Date	Event
1 April 2023	<ul style="list-style-type: none"> the Principal Accountable Person can register existing occupied Higher Risk Buildings. the Principal Accountable Person can submit the Safety Case Report to the BSR who, if satisfied the Higher Risk Building is safe to occupy, will grant a Building Assessment Certificate. the Principal Accountable Person must create and implement a Residents' Engagement Strategy and complaints handling mechanism.
30 September 2023	<ul style="list-style-type: none"> Deadline to register existing occupied Higher Risk Buildings.
October 2023	<ul style="list-style-type: none"> Deadline for registering existing occupied Higher Risk Buildings. All new Higher Risk Buildings in development must be registered before occupation. The BSR becomes the building control authority for Higher Risk Buildings. From 1 October 2023, developers must apply to the BSR for building control approval before commencing work on Higher Risk Buildings (Gateway 2). The registers for building inspectors and building control approvers open.
April 2024	<ul style="list-style-type: none"> The BSR can start to ask the Principal Accountable Person of Higher Risk Buildings to apply for Building Assessment Certificates.

Part 5 – other provisions about safety and standards



= buildings at least 11 metres or 5 storeys if those buildings contain at least two dwellings.

Remediation Orders and Remediation Contribution Orders

If there are defects which cause a building safety risk, a **Remediation Order** can be made against a 'relevant landlord' (of a qualifying lease) to remedy that defect in a set timeframe. The works creating the defect must have completed between **28 June 1992** to **28 June 2022**, or in the case of remedial works after **28 June 2022**, to repair the original defect.

Where you may not be liable as a 'relevant landlord', you may still be subject to a **Remediation Contribution Order** and be required to contribute to the costs of remediation works. This Order can be made against corporate entities that are landlords, developers and 'associated persons'.

✓ Top tip

'**Associated Person**' is a wide definition – a company can be associated if it has a controlling interest or shared a director during the relevant period with the liable company.

Watch Out!

Remedial Order: The first remediation order has now been made for 9 Sutton Court Road London in respect of the remediation of building safety defects of a residential block.



Gateways



The **BSA** introduces the Gateway regime, designed to ensure building safety is considered throughout the development lifecycle of a Higher Risk Buildings.

The **BSR** will oversee the Gateway regime and provide the required approvals at each stage.

Gateway	When to apply?	Requirements	Provisions in force?
One	Planning and design.	Fire safety matters must be included in planning applications for Higher Risk Buildings.	Yes. Implemented via the Town and County Planning (Development Management Procedure) (England) Order 2015 (as amended).
Two	Before construction commences.	Principle Contractor and other duty holders must submit a building control approval application to the BSR with full design intentions. Construction cannot begin without this approval. Approval time by the BSR to determine the application estimated: 12 weeks.	No – awaiting the outcome of the draft regulations.
Note:	You must commence construction within 3 years of receiving building control approval, or the approval will lapse.		
Three	After completion of construction.	Submit a Completion Certificate application to the BSR and submit all the Golden Thread information to the accountable person. This must be done before the building is occupied. Approval time by the BSR to determine the application estimated: 12 weeks.	No – awaiting the outcome of the draft regulations.
Note:	A Completion Certificate will not be issued until gateway three is satisfied and the building must not be occupied before this time.		

✓ Top tip

There are industry concerns about the impact of these Gateways on project timescales and budgets, particularly if buildings cannot be occupied for up to **12 weeks after completion**. This can have further impact on funding and insurance on projects.

The “Golden Thread”



The **BSA** requires the maintenance of a **“Golden Thread”** of information to ensure the right people have the right information, at the right time.

In the **BRAC report (Building Regulations Advisory Committee: Golden Thread report 21 July 2021)** it is stated that *“the Golden Thread is both the information that allows you to understand a building and the steps needed to keep both the building and people safe, now and in the future.”*



✓ Top tip

Though the Golden Thread requirements are not yet in force, we recommend gathering the Golden Thread information as soon as possible to satisfy the requirements of Gateways 2 and 3, especially for **older or Higher Risk Buildings**, where information may be less readily available.

For **new builds**, the duty holders must start to collect the relevant information during the design and construction phase.

Golden Thread information will be seen as important evidence of compliance with the **BSA** in the due diligence process in property acquisitions.



BSA: Changes to the scope and duration of liability

Corporate Liability (Part 3 of the BSA)

Where an offence is committed under the **BSA** (apart from those in Part 5) with the consent or connivance of any director, manager or similar officer and the offence is attributable to their neglect, **the person as well as the body corporate commits the offence.**

Building Liability Orders (Part 5 of the BSA)

Building Liability Orders (**BLOs**), extend the liability of a corporate entity to its parent or sister companies so that the original corporate body and another specified body are jointly and severally liable for the relevant liability.

Relevant liability for the purpose of **BLO** means:

- the **Defective Premises Act 1972 (DPA)**
- a breach of s38 of the **BA** or
- a building safety risk via potential spread of fire or structural failure

S38 BA Liability (Part 5 of the Act)

The **BSA** extends the limitation period for civil claims under s38 of the **BA** (which is a breach of a duty imposed by building regulations, so far as it causes damage), from **6 years to 15 years** for damage caused by breach of the building regulations.

✓ Top tip

Property holding companies be aware!!
The Government has stated that its intention is to address the **legal black hole** where developers (set up by to deliver the property) are wound up once the development has been completed, leaving residents or tenants with no recourse. The Government has designed **BLOs** to allow it to recover liability from legal and beneficial owners of property given the context of the wider building safety issues in properties.

The Government assessment concludes that relying upon English common law to address the **legal black hole** is insufficient.



Buildings containing one or more dwellings

New section 2A – Defective Premises Act 1972

The **DPA** (Section 1) applies to works during the initial provision of the dwelling ie new buildings or conversions where such works are “unfit for habitation”.

New: Section 2A of the **DPA** now extends ‘fit for habitation’ to all repairs, extensions or refurbishments of existing dwellings provided such works are done in the course of business (ie does not apply to homeowners doing work on their own residence).

Section 2A of the **DPA** allows for subsequent owners and anyone else with an equitable interest in a property to bring a claim for defective work.

Section 2A came into force on **28 June 2022**.

Top tip

It is important to note that there is a one year grace period to help those with a claim under **s1 DPA** which is perilously close to the limitation deadline when the BSA came into force. This initial period expires on **28 June 2023**.

Limitation period

Residential Property – new builds and refurbishments

For claims under Section 1 and 2A of the **DPA**, the limitation period is now **15 years** for works commenced after **28 June 2022**.

If an interested person already had a claim before that date, the limitation period is extended to **30 years**.

‘New build homes’ are developments in England which create one or more private residential dwellings.

New build home warranties

A developer of ‘new build’ homes will need to provide an insurance backed warranty to the interested party for a now-extended period of at least **15 years** providing that the developer will remedy any specified defect in specified circumstances.

The warranty must be made **before or at the time of selling an interest in a new-build home**.

This may also require a separate warranty to a third party to cover defects of any common parts (eg hallways, foyers, elevators).

Top tip

Provisions governing new home warranties are currently **not yet in force** and are pending secondary legislation to set **minimum standards** for these warranties, which is expected to detail the type of defects covered and levels of cover.



Construction product marking

Post-Brexit, the **UKCA marking** is now available for construction products in England, Scotland and Wales and must be used for new construction products entering the GB market **from 11pm on 31 December 2024**. However, the **European CE** mark will continue to be recognised until **30 June 2025** to minimise disruption.

Separately, the **Code for Construction Product Information (CCPI)** is an independent regime aiming to improve the standards of construction product information and building safety. It is founded on **five ‘acid tests’** that product information must be:

1. clear
2. accurate
3. up-to-date
4. accessible
5. unambiguous

Verified products can display a **CCPI** kite. The **CCPI** is expected to go live in **Summer 2023**.

Watch Out!

Further detail on the construction products regulatory regime and the voluntary **CCPI** will follow in the second half of 2023, so stay alert for updates.



Fire Safety

As part of a ‘whole-system’ approach to managing building safety risks (which includes the spread of fire), the **BSA** amends the **Regulatory Reform (Fire Safety) Order 2005** to improve compliance and strengthen enforcement powers. This duty came into force in **January 2023** with the **Fire Safety (England) Regulation 2022**.

The amendments require all **Responsible Persons** (defined in the 2005 Order) of regulated buildings to record their fire risk assessments in full, as opposed to just recording significant findings.

Responsible Persons:

- have a new duty to **share specified information** about the fire risk assessment with residents
- will have **supplementary obligations for multi-unit residential buildings over 11 metres**
- will be required to undertake **annual checks** of flat entrance doors and quarterly checks of all fire doors in the common parts



The **Fire Safety** regulations impose a number of supplementary requirements in addition to the above for buildings over 18 metres in height.



All residential buildings with one or more dwelling

Defective Construction Products and Cladding

A person who, **after 28 June 2022**:

- fails to comply with a **product requirement**
- makes a **misleading statement** about a construction product they supply or market or
- manufactures an **inherently defective** construction product

will be liable to pay **damages** to interested persons who suffer personal injury, property damage or economic loss if the installation, attachment or application of that construction product makes one or more of the dwellings unfit for habitation.

There is a **15 year limitation** period for these claims.

If the product was a defective **cladding product**, there will be retrospective liability for damage caused before the **BSA** came into force (ie, **before 28 June 2022**) and a **30 year** limitation period.

The **Court or the Secretary of State** can also make **Cost Contribution Orders** against people convicted of failing to comply with the construction product requirements.

The Order requires the person to contribute to the costs (plus interest) of remedial work to make the dwelling fit for habitation again.

Top tip

The National Regulator for Construction Products (**NRCP**) (within the Office for Product Safety and Standards) was set up in **January 2021** to oversee the new enforcement regime.

Watch Out!

The **Secretary of State** can enable the **NRCP** to enter and inspect premises, order the withdrawal of products from the market and impose fines. More detail is to follow in secondary legislation **expected in mid-to-late 2023**.



Offences summary table

The **BSA** includes the following offences which you should be aware of:

Offence	Relevant Part of the BSA	Penalty
Providing false or misleading information to the BSR	Part 2	Maximum of an unlimited fine and/or up to 1 year prison if convicted in the Magistrates Court or 2 years in prison in the Crown court (depending on the circumstances of the case)
Non-compliance with a Stop Notice or Compliance Notice , without a reasonable excuse	Part 3	Maximum of an unlimited fine and/or up to 1 year prison if convicted in the Magistrates Court or 2 years in prison in the Crown court (depending on the circumstances of the case). A further fine may be imposed for each day of non-compliance after the conviction.
Breaches of the Building Regulations	Part 3	Maximum of 2 years in prison and/or a fine. A further fine may be imposed for each day of non-compliance after the conviction
Principal Accountable Person fails to register a Higher Risk Buildings	Part 4	Maximum of an unlimited fine and/or up to 1 year prison if convicted in the Magistrates Court or 2 years in prison in the Crown court (depending on the circumstances of the case). Any fine imposed cannot be recovered from residents
Principal Accountable Person fails to apply for a Building Assessment Certificate within the timescale and without reasonable excuse	Part 4	Maximum of an unlimited fine and/or up to 1 year prison if convicted in the Magistrates Court or 2 years in prison in the Crown court (depending on the circumstances of the case). A further fine may be imposed for each day of non-compliance after the conviction
Principal Accountable Person's failure to display the 'Golden Thread' information, Building Assessment Certificate and any compliance notice in a conspicuous place	Part 4	Maximum of an unlimited fine and/or up to 1 year prison if convicted in the Magistrates Court or 2 years in prison in the Crown court (depending on the circumstances of the case). A further fine may be imposed for each day of non-compliance after the conviction
Principal Accountable Person fails to maintain a mandatory occurrence reporting system to share information with Accountable Person , without a reasonable excuse	Part 4	A fine
Accountable Person , without reasonable excuse, fails to obtain a completion certificate for a Higher Risk Building before the building is occupied	Part 4	Maximum of an unlimited fine and/or up to 1 year prison if convicted in the Magistrates Court or 2 years in prison in the Crown court (depending on the circumstances of the case)
Accountable Person fails to keep the 'Golden Thread' information or to share the information with any new Accountable Person	Part 4	Maximum of an unlimited fine and/or up to 1 year prison if convicted in the Magistrates Court or 2 years in prison in the Crown court (depending on the circumstances of the case)
Non-compliance with Remediation Orders and/or Remediation Contribution Orders	Part 5	Maximum of 2 years in prison and/or a fine for contempt of court
Non-compliance with a Cost Contribution Order for defective construction products	Part 5	Penalties imposed will be determined by secondary legislation
Failure to provide a 'new build' home warranty	Part 5	A maximum fine of £10,000 or 10% of the value of the new build home interest, whichever is greater
Giving misleading information to a fire safety inspector, or failure to comply with their instructions/requirements	Part 5	A fine (and/or 2 years in prison if convicted in the Crown court)

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For more information on The Building Safety Act 2022, which is the central plank in the government's response to the Grenfell Tower disaster, please [see here](#).

