

Practical Update on the Building Safety Act 2022

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Over six months has passed since many of the principal measures in the Building Safety Act 2022 (BSA) came into force on 1 October 2023 in what was one of the most comprehensive reforms of building safety legislation in the last 50 years. Our previous alert published on 2 February 2023 provided a summary of the main changes introduced by the new regime.

Participants in the property sector have now become well-acquainted with the requirements of the BSA and procedures for best practice are now emerging, along with some potential areas for difficulties. This note looks at the practicalities of registration of higher risk buildings, some areas of complication when identifying duty-holders under the BSA and the role of the managing agent in assisting with compliance. It also clarifies an area of concern relating to second staircases. The publication of the amendments to Approved Document B, clarifies that, from 30 September 2026, all residential buildings over 18 metres high must have two staircases.

REGISTRATION WITH THE BUILDING SAFETY REGULATORS

One of the key changes introduced by the BSA is the requirement for registration of a higher risk building with the Building Safety Regulator. Buildings that are at least 18 meters or seven stories high and contain two or more residential units will qualify as higher-risk buildings, subject to a few limited exceptions (hospitals, care homes, secure residential institutions, hotels, and military barracks).

Registration of a higher risk building with the Building Safety Regulator is a precondition to occupation. This caused concerns in the early days of the regime that a delay in effecting the registration of a higher-risk building could either delay occupation or completion of certain transactions where compliance with pre-occupation statutory requirements is a condition precedent to completion. We are pleased to report that in our experience most applications have been dealt with in a timeframe that can be measured in days rather than months, though developers need to ensure that this step is accounted for in their build programmes, especially where any unexpected delays may have ramifications on the completion of transactions or stabilisation of the asset.

DIFFICULTIES IDENTIFYING THE PRINCIPAL ACCOUNTABLE PERSON

A potential difficulty when registering a higher risk building with the Building Safety Regulator is that the principal accountable person will need to be identified and named on the application form before

an application can be lodged. To recap on the roles of the accountable person and the principal accountable person:

- Any person who holds a legal estate in possession of any common parts or who is under a repairing obligation in relation to any part of the common parts will be an accountable person in relation to a higher-risk building. The repairing obligation must either be imposed by statute or arise by virtue of being a party to a lease, which becomes important when we turn to the role of the managing agent later in this note.
- Where there are multiple accountable persons, the principal accountable is the person who owns or has a legal obligation to repair the structure and exterior of the building. While there can be many accountable persons, there can only be one principal accountable person.

The identity of the principal accountable person is often evident for simpler ownership structures, though determining who fulfils this role can become complex in more convoluted ownership structures. As an example, the owner of a building may wish to create a structure under which a management company is responsible for the repair and maintenance of the structure of a building, though the building owner may be required to step-in to assume responsibility for repairs in case of default by the management company (and may have its own obligations under a headlease to keep the structure in repair). In these circumstances, the building owner may be keen to ensure that the management company is registered as the principal accountable person so that the onerous burden of compliance can be passed to the management company, though under the letter of the legislation this role may fall on the building owner regardless of their intentions.

A dispute as to the identity of an accountable person or a principal accountable person may be referred to the First-Tier Tribunal by any interested party, though questions of interpretation risk delaying the registration and hence occupation of higher-risk buildings. Parties to a development will therefore need to consider the identity of accountable persons at an early stage when creating more complex ownership structures in order to make sure that parties do not find themselves forced to accept onerous statutory duties against their intentions. The First-Tier Tribunal recently made its first decision as to the identity of an accountable person in *Octagon Overseas Limited and others v Mr Sol Undsorfer* and practitioners will be interested to see further cases emerge to provide much-needed assistance in resolving interpretative questions about the legislation.

THE ROLE OF THE MANAGING AGENT

Many building owners rely on managing agents appointed under a property management agreement to meet their statutory and maintenance responsibilities. A building owner may expect that the managing agent will discharge the statutory duties falling on accountable persons and principal accountable persons under the BSA as a part of their role. Here, a contrast needs to be drawn between the position under the BSA and under fire safety regulation, as a contractually appointed managing agent will not be an accountable person under the BSA (but may well be a responsible person under the Regulatory Reform (Fire Safety) Order 2005).

This means that while a managing agent can assist a building owner in meeting its obligations under the BSA, a building owner cannot delegate its statutory duties under the BSA. The consequences of a breach of these statutory duties will fall on the building owner even if the breach arose due to underperformance by the managing agent. The penalties for breach can be severe (including significant fines and potentially prison sentences) so building owners need to ensure they take an active role in ensuring their managing agents properly assume and fulfil the duties they are expected to take on under the property management agreement.

To ensure they fulfil their statutory duties, building owners who are accountable persons should raise questions about compliance with the requirements of the BSA at an early stage when appointing managing agents and thoroughly review a managing agent's credentials for taking on a role that includes ensuring BSA compliance. Market practice regarding compliance with these obligations is still emerging, so there is scope for disagreement as to what exactly the role of the managing agent should be in assisting with compliance with the BSA. As always, building owners should be clear about their expectations at an early stage in the tendering process to avoid surprises during negotiations with managing agents (such as requests for additional fees for assisting with compliance with duties under the BSA). The contractual documentation will need to allocate responsibilities clearly to ensure there is no uncertainty as to who exactly is required to take action to fulfil which duties to ensure no duties fall through the cracks, especially where there are multiple accountable persons.

BUILDING SAFETY ACT - ISSUE OF SECOND STAIRCASES

One particular area of concern relating to the BSA has been the position relating to the requirement for second staircases in tall residential buildings as developers were faced with uncertainty surrounding the technical requirements for second staircases to be built in tall residential buildings. The publication of the amendments to Approved Document B, clarifies that, from 30 September 2026, all residential buildings over 18 metres high must have two staircases.

The government had initially consulted on a requirement for second staircases in new residential buildings over 30 metres in December 2022; and there was some uncertainty as to when that took effect. The government then confirmed in July 2023 that the height limit would in fact be 18 metres (which is in line with the threshold for a "higher-risk building" under the BSA, but they didn't issue any further guidance. This caused a huge amount of uncertainty with some schemes even being put on hold. In March 2024, the long-awaited amendments to Approved Document B: Fire Safety were published. This states that residential buildings over 18 metres in height should have more than one common stair. The guidance confirms that interlocked stairs (otherwise known as scissored or stacked stairs) count as one stair. The changes do not take effect until 30 September 2026.

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