

UK COMMERCIAL REAL ESTATE

Managing Safety Risks in Higher-Risk Buildings: Key Information for Owners of Occupied Buildings

On 16 January 2024, the new regime introduced by the Building Safety Act 2022 for managing **Building Safety Risks in Higher-Risk Buildings** was brought into force. The new regime builds on rules put in place last year which, among other things, required **Higher-Risk Buildings** to be registered with the **BSR**.

HOW IS RESPONSIBILITY FOR BUILDING SAFETY IN AN OCCUPIED HIGHER-RISK BUILDING APPORTIONED?

Under the **Act**, responsibility for building safety lies with the **Accountable Person(s)** and the **Principal Accountable Person** (“**PAP**”).

If there is only one **Accountable Person**, it is responsible for any residential unit (or commonhold unit, if applicable), the common parts of the building, any balcony and any other part of the building to which the **Fire Safety Order** does not apply. It is also the **PAP** for the building.

If there is more than one **Accountable Person**, each one is responsible for the common parts of the building for which it holds a legal estate in possession or a repairing obligation, any balcony attached to those areas, and any residential unit which it has the right to let (on anything other than a long lease). It is necessary to identify which



Accountable Person is the **PAP**: this will often be the freehold owner of the building or the head-lessee.

Special rules apply where the **Accountable Person** is a resident management company, or where a manager is appointed under s.24 Landlord and Tenant Act 1987.

DUTY TO ASSESS AND MANAGE BUILDING SAFETY RISKS

The new regime obliges each **Accountable Person** to assess and manage the **Building Safety Risks** for the part of the building for which they are responsible. This is an ongoing duty, with assessments needed:

- as soon as practicable after the building becomes occupied, or, if later, when a person becomes an **Accountable Person** for the building;

- at regular intervals;
- at any time when an **Accountable Person** has reason to suspect that the current assessment is no longer valid; and
- at the direction of the **BSR**.

The **Accountable Person** must identify and evaluate the hazards within their part of the building, take all reasonable steps to prevent a **Building Safety Risk** materialising and take all reasonable steps to reduce the severity of any incident resulting from such a risk.

The steps must be effectively planned, organised, controlled, monitored and reviewed. The **Accountable Person** must understand the measures being employed and be comfortable that those measures are appropriate and effective.

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THE SAFETY CASE REPORT

The **PAP** is required to prepare a report (“the **Safety Case Report**”) for the building, which brings together information from each of the **Accountable Persons**. This must be done as soon as reasonably practicable after the building becomes occupied or, if later, when he/she becomes the **PAP**.

The **Safety Case Report** should be in electronic form and contain the assessment of the **Building Safety Risks** and a brief description of the steps taken to manage those risks, with an explanation of why those measures were chosen. As soon as reasonably practicable after preparing or revising it, the **PAP** will need to notify the **BSR** and provide a copy if required.

MANDATORY OCCURRENCE REPORTING

The **PAP** is required to establish and operate a “mandatory occurrence reporting system”. This will enable all residents, **Accountable Persons**, and others who use the building to report structural and fire safety occurrences which, if left unremedied, would have the potential to cause a significant number of fatalities or serious injury to a significant number of people. The **PAP** must share information about how the system works with all residents, **Accountable Persons**, other building users and the **BSR** (when required).

The relevant **Accountable Persons** will need to monitor the reports submitted on the system and decide what action is needed. They must report incidents that meet the criteria above to the **BSR**. This should be done by submitting a notice as soon as they can and following up with a report within 10 days of the safety occurrence being identified. Both submissions can be made via the **BSR**'s online portal.

The **BSR** will review the report and determine the severity of the safety occurrence, alongside safety measures which are in place. If necessary, the **BSR** will investigate and decide if any action is required.

KEEPING AND PROVIDING INFORMATION

Accountable Persons are required to keep specified documents (known as “the golden thread information”) about the part of the **Higher-Risk Building** that they are responsible for. The list of documents is extensive, and is beyond the scope of this note, but these include fire-safety and structural information, information about building design and building control, registration documents, and the various documents demonstrating compliance with the **Act**.

The **Accountable Persons** are required to provide the golden thread information to other **Accountable Persons** in the building. They are also required to share documentation with residents, owners of residential units, those carrying out works in the building, **Responsible Persons** and the fire and rescue authority in specified circumstances.

RESIDENTS ENGAGEMENT

The **PAP** must prepare a strategy for promoting the participation of residents and flat owners in building safety decisions. This should be done as soon as reasonably practicable after the building becomes occupied or, if later, when he/she becomes the **PAP**.

The strategy will need to be provided to residents and flat owners, and include information about:

- The information that each **Accountable Person** will provide to residents and flat owners about decisions relating to the management of the building.
- Decisions that the **Accountable Person** will consult residents and flat owners about.
- Arrangements for obtaining and taking account of the views of residents and flat owners.
- How the effectiveness of the engagement strategy will be measured and reviewed.

Residents and flat owners will be able to request copies of documents from the **Accountable Persons** relating to building safety.

The **PAP** is also required to establish complaint procedures which can be used by the residents and flat owners. These should involve a preliminary procedure to be run by the **PAP**, and a subsequent procedure to be run by the **BSR**.

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RESIDENTS' DUTIES

Given the significant and serious duties imposed on **Accountable Persons**, the **Act** also places duties on residents. These are aimed at ensuring that the **Accountable Persons** can do what is required of them.

A resident (aged 16 or over) of a **Higher-Risk Building** or an owner of a residential unit in such a building must not act in a way that creates a significant risk of a **Building Safety Risk** materialising, must not interfere with safety equipment in the common parts, and must comply with an **Accountable Person's** request for information that is needed to carry out its building safety duties.

An **Accountable Person** has the power to give a contravention notice to a resident who breaches these duties and the ability to apply for a court order in certain situations.

An **Accountable Person** can also request access to a property for the purposes of carrying out their duties regarding the assessment and management of **Building Safety Risks**, or seeing if the resident has breached its duties. If necessary, they can apply to Court for an order compelling the resident to allow access.

BUILDING ASSESSMENT CERTIFICATES

The **BSR** will oversee compliance with the new regime via a process referred to as "call in".

Once the **BSR** has notified the **PAP** that a building has been "called in", the **PAP** will then have 28 days to

apply for a **Building Assessment Certificate**. The application process will require the **PAP** to send the **BSR** the **Safety Case Report** and other documentation, for assessment by the **BSR**. The **PAP** will commit an offence if it does not make the application without a reasonable excuse.

It is expected that the **BSR** will start "calling in" buildings in April 2024, and that it will take five years to assess all existing buildings. Priority will be given to those buildings that are deemed to present the greatest danger (in terms of height or other risk factors).

The **BSR** will issue a **Building Assessment Certificate** if it is satisfied that the relevant duties are being complied with. Once issued, the **PAP** will need to display the **Building Assessment Certificate** in a prominent position in the building. All buildings will be re-assessed periodically.

ENFORCEMENT

The **BSR** will be given various powers to ensure compliance with the new regime. These include:

- The power to give a compliance notice to an **Accountable Person**, if the **Accountable Person** appears to have contravened a duty. The notice will require that the **Accountable Person** either remedies or avoids the contravention, and a copy will be sent to the local authority, fire authority and social housing regulator (if applicable). The **BSR** will be able to prosecute the **Accountable Person** if the compliance notice is breached.

- The power to apply to the First Tier Tribunal for an order appointing a "special measures manager" to carry out the functions of all **Accountable Persons** for the building in question. A special measures order can be made if there has been a serious failure, or a failure on two or more occasions, by an **Accountable Person** to comply with their duties.

CONCLUSION

The new regime regarding the assessment and management of **Building Safety Risks** in occupied **Higher-Risk Buildings** is multi-layered and carries serious consequence if breached. Owners of such buildings will need to familiarise themselves with the requirements, to ensure compliance. The **BSR** has published detailed practical guidance regarding many of the steps on its website. Professional advice should be obtained where required.



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GLOSSARY

Accountable Person:	<ol style="list-style-type: none"> 1. An owner of any part of the common parts (“an estate owner”) but not if either: <ul style="list-style-type: none"> • each long lease of which the estate owner is lessor provides that another person (who does not own any part of the building) is under a repairing obligation in relation to the common parts (e.g. a management company); or • the repairing obligations in relation to the common parts are functions of an RTM; or 2. A person who is not an owner of any part of the building, but who is under a relevant repairing obligation in relation to any part of the common parts.
Act:	Building Safety Act 2022
Building Assessment Certificate:	The certificate issued by the BSR in accordance with s79 of the Act and accompanying regulations.
Building Safety Risk:	A risk to the safety of people in or about a building arising from: <ul style="list-style-type: none"> • the spread of fire; • structural failure; • any other matter prescribed in regulations.
BSR (Building Safety Regulator):	The Health and Safety Executive, in its capacity as Building Safety Regulator.
Fire Safety Order:	Regulatory Reform (Fire Safety) Order 2005
Higher-Risk Building:	A Building which is at least 18 metres in height (or has at least seven storeys) and contains at least two residential units. Inc student accommodation. Does not include care homes; hospitals; secure residential institutions; hotels; military barracks and living accommodation for military personnel.
Occupied Higher-Risk Building:	A Higher-Risk Building in which there are residents of more than one residential unit.
PAP (Principal Accountable Person):	If there is more than one Accountable Person , the PAP is: <ul style="list-style-type: none"> • the Accountable Person who holds a legal estate in possession in the relevant parts of the structure and exterior; or • a person who is within the scenario above because of a relevant repairing obligation in relation to the relevant parts of the structure and exterior of the building.
Responsible Person:	The Responsible Person under the Fire Safety Order .
Safety Case Report:	The report containing an assessment of Building Safety Risks , prepared in accordance with s85 of the Act , and accompanying regulations.

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