

Insights

BSA 2022 – THE ACCOUNTABLE PERSON REGIME AND KEY BUILDING INFORMATION

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UPDATE: On 26 March 2023 the government made the final version of The Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023. These will come into force on 6 April 2023. No substantive changes have been made to the draft Regulations discussed in this Insight and so the content remains correct.

A key concept introduced by Part 4 of the Building Safety Act 2022 (BSA 2022) is the Accountable Person (AP). Required in relation to every occupied higher-risk building, the AP is the “dutyholder” who has responsibility for the fire and structural safety of the building during occupation.

Part 4 provides an overarching skeleton framework for identifying the AP and the duties they will be required to undertake. However, much of the detail of Part 4 remains to be filled out by secondary legislation, the content of which will largely depend on the government’s response to the consultation on the new safety regime for occupied higher-risk buildings (Consultation). While the Consultation itself gives a sense of how the AP regime will operate it is of course no substitute for the actual legislation.

Given much government messaging suggests that the AP will have duties from April 2023 onwards (for example, see the HSE website), it is therefore welcome that the government has published (part of) a response (Response) to the Consultation together with draft regulations, the Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023 (Regulations) that concern the parts of the building for which an AP is responsible and key building information sections. The Regulations have been laid before Parliament and are due to come into force on 6 April 2023.

This blog takes a closer look at the key takeaways from the Response and the Regulations beginning with a short recap on the AP.

ACCOUNTABLE PERSON – A RECAP

ACCOUNTABLE PERSON

In simplest terms, the AP will normally be the organisation or person who owns or has responsibility for the building.

PRINCIPAL ACCOUNTABLE PERSON

Often there may be more than one AP for different parts of the building. Therefore, the concept of the “Principal Accountable Person” (PAP) has been created.

Where a building has more than one AP, the AP responsible for the structure and exterior of the building will be the PAP. When buildings have a single AP, that entity or person is the PAP.

DUTIES

Core, overarching duties of the PAP include:

- Preventing a building safety risk happening; and
- Reducing the seriousness of an incident if one happens.

These overarching duties translate into a number of ongoing obligations that need to be undertaken on a day to day basis. Practical Law’s *practice note* on managing building safety risks in occupied higher-risk buildings sets out what we know about these obligations so far.

KEY TAKEAWAYS FROM THE RESPONSE AND THE REGULATIONS

As noted above, the concept of AP, while perhaps obvious for a building with one freeholder, is not always so obvious in complex ownership structures. The Response and the Regulations provide further detail, and additional government guidance is promised.

KEY POINTS

No liability if no control: The Response makes clear that freeholders will not be made responsible for fire and structural safety for premises for which they have no direct control.

Multiple APs – who is responsible for what?

- Buildings with only one AP (regulation 26). If a higher-risk building only has one AP and it is a commonhold association, it is responsible for the common parts of the building, any commonhold unit, any balcony and any other part of the building to which the Regulatory Reform (Fire Safety) Order 2005 (RRO 2005) does not apply.

However, if the AP is not the commonhold association, then it is responsible for the common parts of the building, any residential unit, any balcony and any other part of the building to which the RRO 2005 does not apply.

- Regulations 28 and 29 clarify that in cases where there is more than one AP, an AP is responsible for the part of the common parts of the building for which they hold a legal estate in possession or a repairing obligation. While an AP who holds a legal estate in possession or a repairing obligation in relation to any part of the exterior of the building is responsible for any balcony attached to that part of the exterior.
- Regulation 30 provides that where an AP has the right to let or lets a residential unit in the building, it is responsible for that unit.

If a residential unit is let under a long lease, the AP responsible for the unit is either the lessor in relation to the long lease, or where, by virtue of *section 72* of the BSA 2022 the lessor in relation to the long lease is not an AP, the AP responsible for the part of the common parts that adjoins or is nearest to the main entrance door of the unit.

- Co-operation is key: In the scenario where there are multiple APs, the Response emphasises that co-operation is fundamental. The BSA 2022 places a duty on APs to cooperate and coordinate, both with other APs and persons who are responsible persons under the RRO 2005, to work together to maintain the fire and structural safety of a building (section 109) to ensure that safety arrangements across the whole building are compatible.
- Engagement with residents required: The Response states that the AP will be required to engage with residents via its residents' engagement strategy and provide advice about fire and structural safety. Where necessary, it can use contravention notices under section 96 of the BSA 2022 to compel residents within units to cease any behaviour that leads to contravention of Part 4 duties. Guidance will be published to support APs in relation to this.

KEY BUILDING INFORMATION – WHAT, HOW, WHEN?

What?

After a building has been registered with the Building Safety Regulator (BSR), to help the BSR advise government on trends across higher-rise buildings it needs to collect data to carry out this analysis.

Therefore, PAPs will be required to provide the BSR with key building information about their building.

Interestingly, the government has decided that some of the information that it originally proposed as mandatory will now only be optional. For example, the type and date of significant building work carried out in a higher-risk building, or whether the building followed a certain code or standard to ensure the fire safety of the building. Apparently, this is because of feedback on cost implications and because such information often may not exist.

The Regulations sketch out what key building information should be provided (regulations 3 to 18) and guidance will be published to clarify the exact information required, which is good because the Regulations are sketchy at best.

How?

Regulation 24 provides that key building information must be submitted in electronic form. The Response explains that the BSR will create an online tool to make data entry of the key building information as easy as possible for dutyholders and it seems clear from regulation 25 that a website will be set up by the BSR to allow such information to be uploaded.

When?

Regulation 20 provides that the PAP must provide the key building information to the BSR within 28 days of the registration application while the Response provides that:

"...key building information needs to be submitted as early as possible from April..."

UPDATING KEY BUILDING INFORMATION

Regulation 21 provides that the PAP must notify the BSR of any change to key building information within 28 days of becoming aware of the change. Regulation 22 sets out how this process should work where there is more than one AP. Regulation 23 provides that a submission or notification about key building information may be made by a person authorised by the PAP.

The government has said it is still considering the concerns raised about requiring residents to inform the PAP when they commission notifiable building work in their property and will respond on this in due course.

CONFIDENTIALITY?

The Response clarifies that the BSR plans to publish the key building information, subject to exemptions on data that may have privacy or security implications.

KEY BUILDING INFORMATION DIFFERENT FROM THE GOLDEN THREAD

The Response makes clear that key building information is different from the golden thread of information.

The golden thread is for those responsible for higher-risk buildings to ensure the right people have the right information at the right time, to support compliance with building regulations and safe management of these buildings during occupation. However, key building information is for the BSR to undertake the analysis outlined above.

FINAL THOUGHTS

The Consultation covered numerous topics:

- Registration
- Certification
- AP(s) and the PAP
- Safety case approach and the safety case report
- Mandatory occurrence reporting
- Residents' voice and duties on residents
- Golden thread contents
- How the golden thread is managed and stored
- Duties on the AP(s) and the PAP to share information
- Appeals
- Enforcement
- Key building information

As we have seen, this Response and Regulations only cover a small part of what PAPs and APs need to know to properly carry out their role.

Presumably, therefore, we can expect to see a tidal wave of secondary legislation and government guidance over the next few weeks, together with new websites to enable data to be uploaded. If April 2023 really will be the starting line for the new regime, there is a lot to cover in very little time.

This article first appeared on the [Practical Law Construction blog](#) dated 22 February 2023.

MEET THE TEAM



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