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Building Safety Act 2022 Where are we now?

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Agenda

Where are we now?

The BSA
and SIs

The
Regulator

New obligations

Dutyholders

Gateways
and Golden
Thread

Commercial and legal considerations

Managing
Risk /
Financing

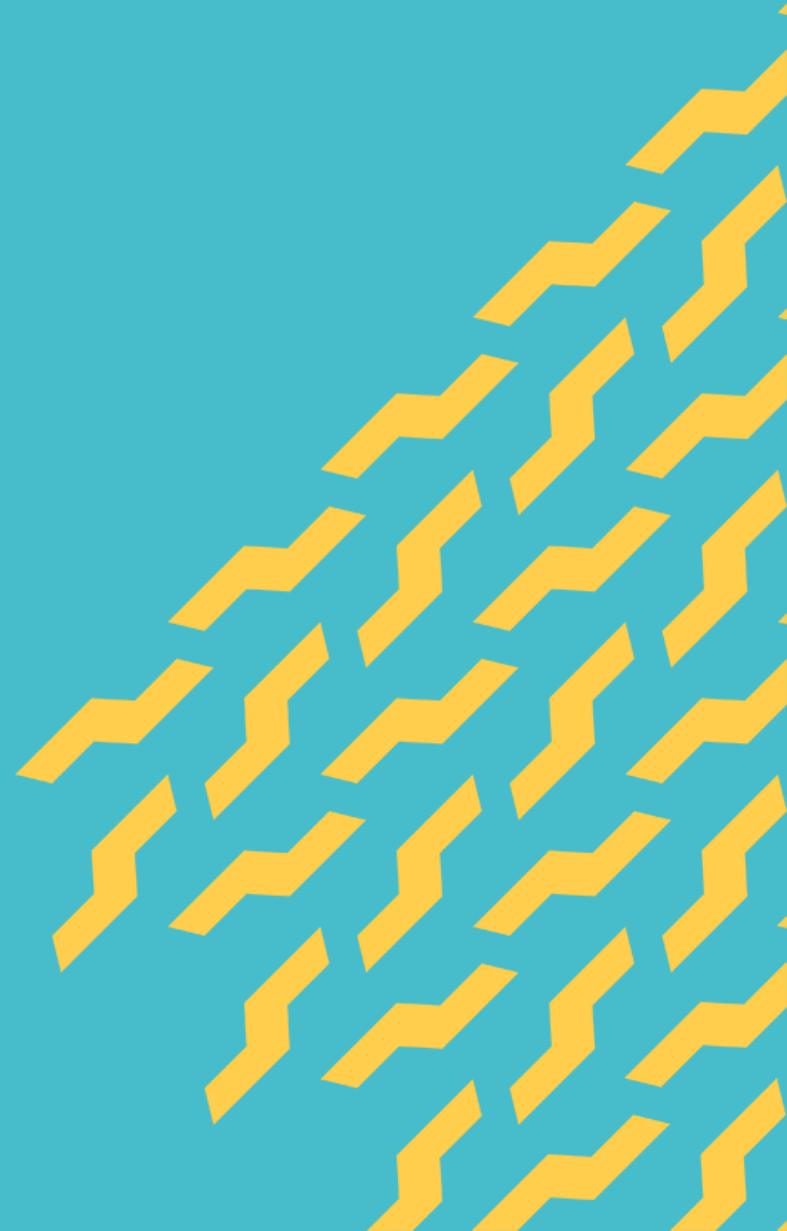
Case law
update

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Where are we now?



The Building Safety Act 2022

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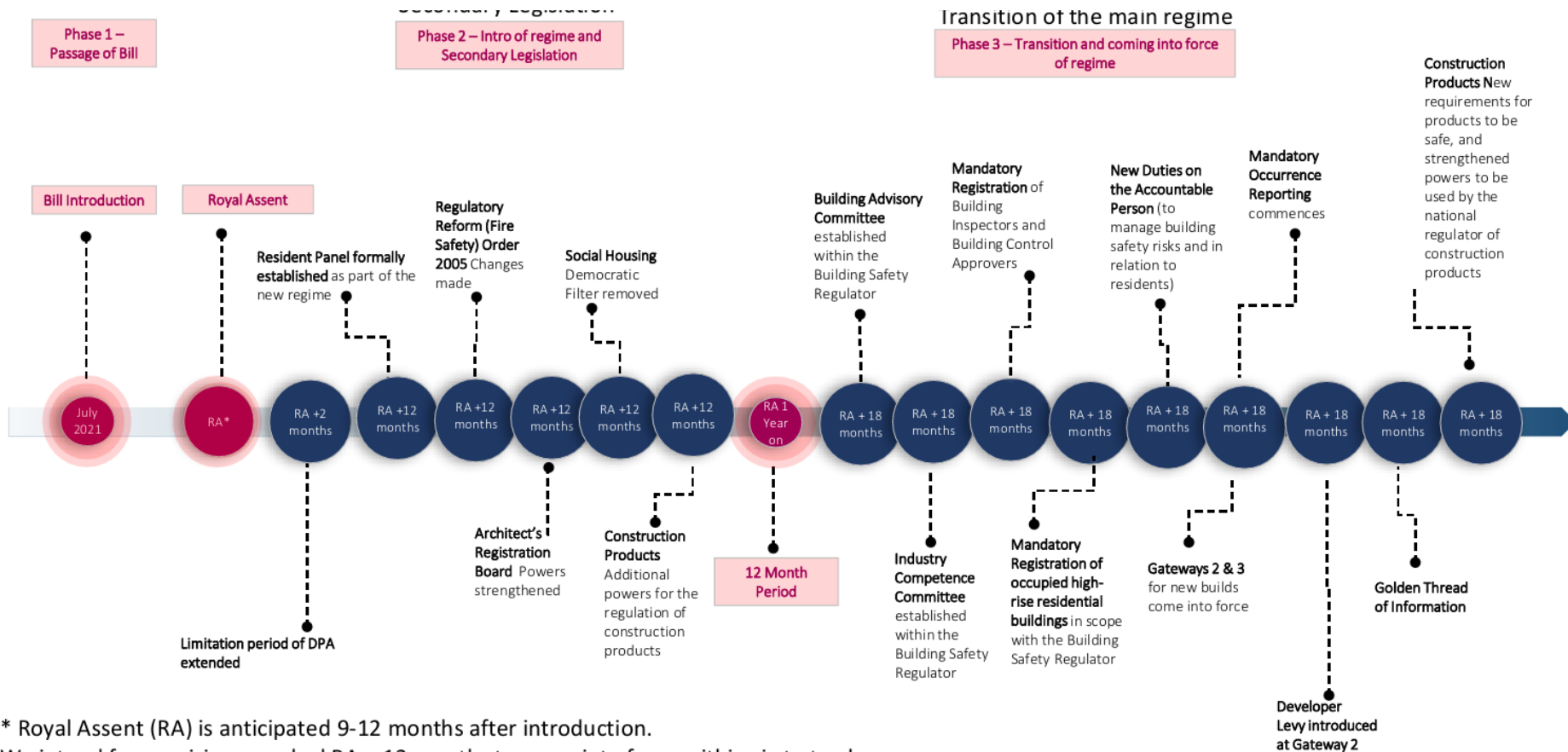
Building Safety Act 2022

2022 CHAPTER 30

An Act to make provision about the safety of people in or about buildings and the standard of buildings, to amend the Architects Act 1997, and to amend provision about complaints made to a housing ombudsman. [28th April 2022]

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Implementation



* Royal Assent (RA) is anticipated 9-12 months after introduction.
We intend for provisions marked RA + 12 months to come into force within six to twelve months of Royal Assent.

The Building Safety Regulator

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- Part 2 of the BSA creates a new regulator.
- The Building Safety Regulator (“BSR”) sits as part of the Health and Safety Executive.
- BSR states it will have 3 main functions:
 - Overseeing the safety and standards of all buildings.
 - Helping and encouraging the built environment industry and building control professionals to improve their competence.
 - Leading implementation of the new regulatory framework for high-rise buildings.
- Concerns over resourcing for new regime especially for buildings under construction.

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The New Regulatory Regime

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The Building Safety Act 2022 amends the Building Act 1984 to:

















- Create powers to prescribe requirements on those who procure, design, plan, manage and undertake building work; and
- Introduce new enforcement powers for building control authorities.

The secondary legislation came into force on 1st October 2023. If you:

- Plan to build a new higher-risk building;
- Create one through change of use or alteration / extension; or
- Plan to undertake building work to an existing HRB,

you will, subject to the transitional provisions, be subject to the new regulatory regime.

Buildings Regulated by the BSA

Building type (in England)	Regulated during construction?	Regulated during occupation?
Less than 18m / 7 storeys regardless of use		
18m / 7 storeys or more, and:		
Residential with at least two dwellings or other units of living accommodation (inc. student accommodation)		
Hospital or care home		
Hotel		
Military barracks		
Comprises entirely of a secure residential institution		
Mixed use building with two or more dwellings or other units of living accommodation		
Commercial, or is a building with only one dwelling		

The Transitional Provisions

Not all higher-risk buildings will fall under the ambit of the new Regulator during construction

In order for transitional provisions to apply:

- Initial notice before 1 October 2023 and accepted or full plans have been deposited with a local authority

AND

- HRB work must be “**sufficiently progressed**” within six months of the new regime coming into force on 6 April 2024.

THEN: old regime applies.

IF NOT: Project must go through the BSR and Gateways etc apply.

- **Definition of “Sufficiently progressed” for new HRBs:** “*When the pouring of concrete for the permanent placement of the trench, pad or raft foundations, or the permanent placement of piling for that building has started.*”
- For work to existing buildings: When the work has started.

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New Obligations



Dutyholders

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- New regime intended to improve accountability throughout the development life cycle- applies to all building works, not just 'higher-risk' building works.
- Dutyholders: Client, principal designer, designers, principal contractor and contractors.

General Obligations:

A client must make suitable arrangements for planning, managing and monitoring a project (including allocation of sufficient time and other resources) so as to ensure compliance with the relevant requirements.” (Section 11A)

Dutyholders – Contractor

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- A Principal Contractor is required on any project with more than one contractor.

The Principal Contractor should:

- Plan, manage and monitor the works.
- Co-operate with the client, Principal Designer and others.
- Make arrangements to monitor the building work (with records) to ensure that the work complies all relevant requirements of the buildings regs; and
- Ensure that all working on the project co-operate, communicate and co-ordinate works with client, PD and others.
- Manage flow of information to make sure correct recipients receive appropriate information.

The client, principal designer and principal contractor can be the same individual/organisation, subject to having appropriate competency requirements.

Dutyholders – Designer

- The Principal Designer should:
- Plan, manage and monitor the design works during the design phase.
- Co-operate with the client, Principal Contractor and others.
- Make arrangements to monitor the building work (with records) to ensure that the design, if built would comply with all relevant requirements of the buildings regs; and
- Ensure that all working on the project co-operate, communicate and co-ordinate works with client, PD and others.
- Manage flow of information to make sure correct recipients receive appropriate information.
- Not start work unless satisfied client is aware of their duties for the building works to be carried out.

If client fails to appoint a principal designer then it must carry out the role itself.

The New Gateways

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- Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 and Building Regulations etc. (Amendment) (England) Regulations 2023
- Change to the application process and information required, **not** building regulations.
- Ensure building safety risks considered at each stage of HRB's design and construction.
- Buildings subject to the new regime:
 - Construction of a new HRB;
 - Work to an existing building that causes it to become a HRB;
 - Change of use that causes it to become a HRB;
 - **Not** existing HRBs

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The New Gateways

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GATEWAY 1

- Introduced on 1 August 2021
- New requirements introduced to planning system - Amendments to Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)
- New changes:
 - HSE statutory consultee before permission granted for development involving a HRB
 - Fire statement to be included in relevant planning permission applications
 - Helps to inform effective decision-making by local planning authorities

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The New Gateways

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GATEWAY 2

- New changes:
 - When? Prior to construction work beginning on HRB or a “stage of work”
 - What? Application to be provided to Building Safety Regulator for approval of work
 - Hard-stop – Construction cannot begin until BSR satisfied that dutyholder’s design meets Building Reg functional requirements & any requirements specified are fulfilled & BSR notified of start date
 - 12-week time limit from date application received or longer as agreed
 - Consultation requirement
 - Must approve unless invalid, insufficient detail or would contravene Building Regs or 2023 Regs (eg golden thread)

The New Gateways

GATEWAY 3

- New changes:
 - When? Building work on HRB has been ‘completed’
 - What?
 - Application for a completion certificate in relation to HRB work, a stage of HRB work or work to an existing HRB must be made to the BSR
 - BSR will assess whether work carried out in accordance with Building Regs
 - All *golden thread* documents and information to be handed to the ‘relevant person’
 - Hard-stop – building cannot be registered with BSR or occupied until Gateway 3 completed

The New Gateways

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GATEWAY 3 Cont.

- 8 weeks for BSR to determine application – includes inspection requirement
- Consultation requirement
- If building is to be occupied before completion of the work, application for partial completion certificate must be made
- BSR must approve if satisfied, after taking all reasonable steps, that:
 - the work complies with all applicable requirements of Building Regs;
 - documents are complete and accurate; and
 - golden thread information provided to relevant person

Construction and change

- **Major Changes:**

- Egs: material change of use, intro or removal of a car park, change in height or width, change to structural design or loading, change to external walls, change to active or passive fire protection measures, change to layout of dimensions of common areas, replacement of construction product with lower classification re fire, change to number of flats / residential or commercial units.
- Works NOT commenced until change control application is granted by the regulation.
- BSR to notify results of application within 6 weeks OR longer period agreed in writing.

- **Notifiable Changes:**

- Egs. Change to CCP / ChCP, change to layout of flat, changes to internal walls, changes to construction product with higher classification.
- Works can be started once the BSR is notified of the change.

The Golden Thread

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- Must be kept in a secure electronic format, readable and “*intelligible*”.
- The client must set up the golden thread or appoint someone to do so.
- Must be kept accurate and up to date.
- Must be made available on request from a principal designer or principal contractor.
- Must use, as far as is reasonably practicable, language, terminology and definitions which are consistent.
- Gateway 2 application documents must be included before construction commences.
- Further documents created throughout the project must be included as soon as practicable.

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Sanctions for Non-Compliance

Offence	Scope of Power	Penalty	Reference
Providing false or misleading information to BSR	Criminal offence Triable as an either way offence	Unlimited fine 1 year imprisonment (magistrates) 2 years imprisonment (crown)	Section 24 BSA22
Contravention of building regulations	Criminal offence Triable as an either way offence No time limit	Unlimited fine Fine for each day the contravention continues (£200)	Section 35 BA84
	Compliance notice Must be served within 12 months	Unlimited fine 1 year imprisonment (upon summary conviction - magistrates)	Section 35B BA84
	Stop notice		Section 35C BA84
Failure to comply with compliance and stop notice	Criminal offence	2 years imprisonment (upon indictment - crown)	Section 35B & C BA84
Removal of offending work	Time limit extended to 10 years	Notice to remove contravening work Chargeable work	Section 36 BA84

Directors and managers can also be found liable for any of the criminal offences mentioned.

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Commercial and Legal Considerations



Managing Risk

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How do you price the risk and the time required to comply with the new obligations?

What about PI insurance?

Ensure the supply chain is back-to-back with the main contract in respect of limitation periods, PI insurance, warranties etc.

Do you need to make specific amendments to the contract suite?

Bury your head in the sand?

The inclusion of: the BSA 2022, any secondary legislation (including in draft), consultations, or proposals published by the Government etc.?

Specific amendments to deal with new regime, for example, interim PC dates, liability for delays in approvals, time and not money etc.?

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Financing

- The BSA and secondary legislation impact on areas funders are typically interested in, for example:
- Control over the borrower's activities.
- Risk profile of the borrower, for example liability for historic defects and future liabilities including:
 - Are the correct steps are being taken now to comply with BSA 2022 obligations.
 - Is the borrower now an Accountable or Principle Accountable Person.
 - Is the borrower subject to higher costs of doing business.
- Funders may ask to see example trade contracts and evidence of compliance with obligations/mitigation of risk.
- New financing and amendment and restatement.

Case Law Update: *URS v BDW*

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- Claims can be brought for inherent design defects which have not caused physical damage.
- The cause of action accrues on practical completion of the building.
- Duty on design professionals to take care against the risk of economic loss caused by the construction of a building with a negligent design.
- Responsible builders who rectify defective work can recover the relevant costs despite no obligation to remedy.
- DPA applies to all persons and developments.



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Case Law Update: *URS v BDW*

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- Claim can be brought even though C no longer has a proprietary interest in the building.
- Contribution claims can be brought under the Civil Liability (Contribution) Act 1978 without a formal claim against a third party being established. No need to wait.
- Retrospective time limits provided for in BSA can be used by those in ongoing litigation.



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Case Law Update: *Waite v Kedai Ltd*

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- BSA creates a free-standing regime concerned with removing a “relevant defect”.
- Tribunal will assess whether the relevant defect creates BSR in light of current knowledge.
- Applicants need only establish a prima facie case for the Tribunal to consider.
- Decision heavily informed by expert evidence, Tribunal’s own experience & expertise.
- Remediation orders should be “sufficiently precise”.
- Remedial work needs to comply with current Building Regs and satisfy PAS 9980:2022.



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**Thank you.
Questions?**



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