



Building Safety Act 2022 – Practical Implications



As the legal landscape for construction continues to evolve, Harrison Drury are here to help you navigate these changes.

Building Safety Act 2022 (“BSA”)

Most industry professionals are aware of the changes introduced by the BSA 2022 and how they apply to special category ‘Higher Risk’, high-rise buildings. What is less well understood is the ways that the BSA applies to *all* buildings, regardless of their risk status.

The BSA has given rise to multiple pieces of secondary legislation, which apply to all current building projects. Principal among these pieces of legislation is *The Building Regulations (Amendments etc) (England) Regulations 2023*.

It is essential to ensure that you fully understand the requirements of these regulations, as failing to comply with them can have serious consequences, regardless of the risk-status of the building.

Key points

- The BSA originally created a Building Safety Regulator (“the BSR”) who now has responsibility for the oversight of *all* building works, and the ability to hold developers and contractors accountable to health and safety standards. The BSR has also become the new regulator and controller for all building control related issues.
- Statutory duty holders (including the Client, Contractor and Principal Designer) have defined duties in terms of their competence to complete works and comply with the legislation. The BSR has the duty to ensure that all clients and contractors are subject to these duties.
- There is an obligation created to ensure that products used in all buildings are ‘safe’, providing also for a national statutory list of ‘safety critical products’ which will almost certainly require compliance except in specific, exceptional and evidenced circumstances.
- There is a more pro-active approach to the building control approval process, with duty-holders expected to justify design decisions and provide reasons why any particular guidance was followed. There are also more stringent requirements in terms of filing, and an emphasis on Building Control approval being issued before the commencement of works.
- Finally, there is now a wider and more onerous range of sanctions available to the BSR for breaches of these competency standards, including (in appropriate cases) criminal sanctions.



What does this mean?

Reasons to be Careful

The BSA introduces a new criminal offence which can be used to prosecute individual managers and directors of corporate bodies who are complicit in breaches of regulations, or who have some kind of personal responsibility for failure to uphold legal duties.

Examples of situations where individuals can face criminal charges include failures in the management of building safety guidelines, allowing occupation without a completion certificate, and administrative failures relating to the safety assessment of the project.

Individuals found guilty by the courts can face unlimited fines, and/or imprisonment for up to two years, along with a further fine for each day a default continues.

Practical Implications

On a practical level, the BSA and its secondary legislation requires a greater level of collaboration between duty holders on matters of competency and safety, to evidence that collaboration and, importantly to enshrine it in project contracts.

The Client, Contractor and Principal Designer are now required to ensure that:

- There are work systems in place to monitor the competency of any duty holders who have been recommended / appointed / managed, and to ensure that they are meeting the standards expected of them.
- That the product safety regime is being complied with, and that the materials used in the build are appropriate and safe.
- There are work systems in place which ensure that plans, notices and specifications are drafted and filed correctly and in accordance with the new tightened-up requirements, and with an appropriate level of detail which properly demonstrates and justifies the strategies / specifications.

In Summary...

The BSA is a complex and often misunderstood piece of legislation, which was designed to make an impact on the culture of the construction industry. It imposes new obligations, with consequent liability and penalties if something goes wrong. All of these factors need to be considered carefully in the terms of project contracts, sub-contracts and professional appointments to ensure that they are properly protective, up to date and suitable for all parties involved.



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