



Pinsent Masons

**Building Safety Act
2022**

**Insurance Institutes
of Sussex and North
Downs**

18 October 2023

Laura White- Senior Associate

A purpose-led professional services
business with law at the core

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Objectives

By the end of this session attendees will be able to....

- Understand the changes to the legislation brought in by the Building Safety Act 2022
- Understand what is required under the various 'Gateway' phases
- Understand what is required under the new role of 'Accountable Person' and 'Principle Accountable Person'.
- Have a better understanding of what will be required moving forwards under the new Building Safety Regulator.

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Agenda

- Timescale of key regulatory developments
- The New Building Safety Regulator- functions, duties and powers
- Building Safety Act 2022
- Construction Phase- Gateways, change control, Golden Thread
- Occupation Phase- Accountable Person and Principal Accountable Person
- Safety case report
- Resident engagement
- Fire Safety Act 2021 and Fire Safety (England) Regulations 2022

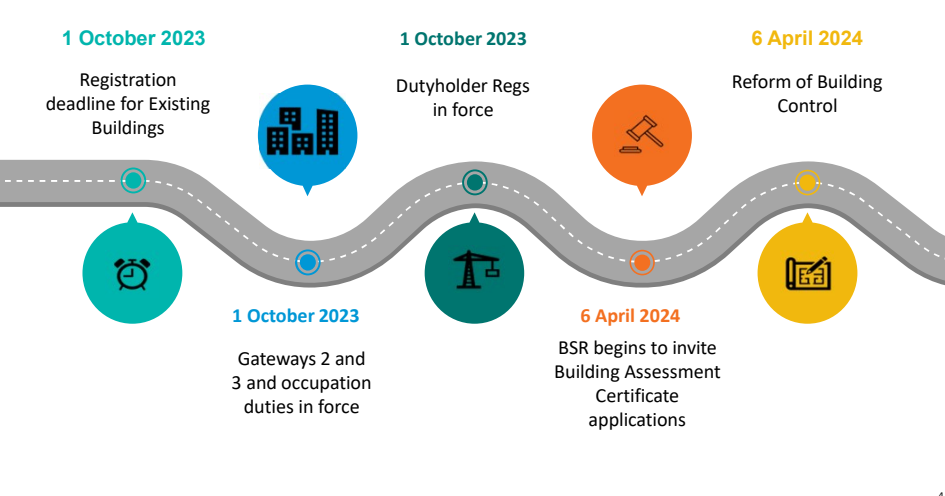


Laura White
Senior Associate

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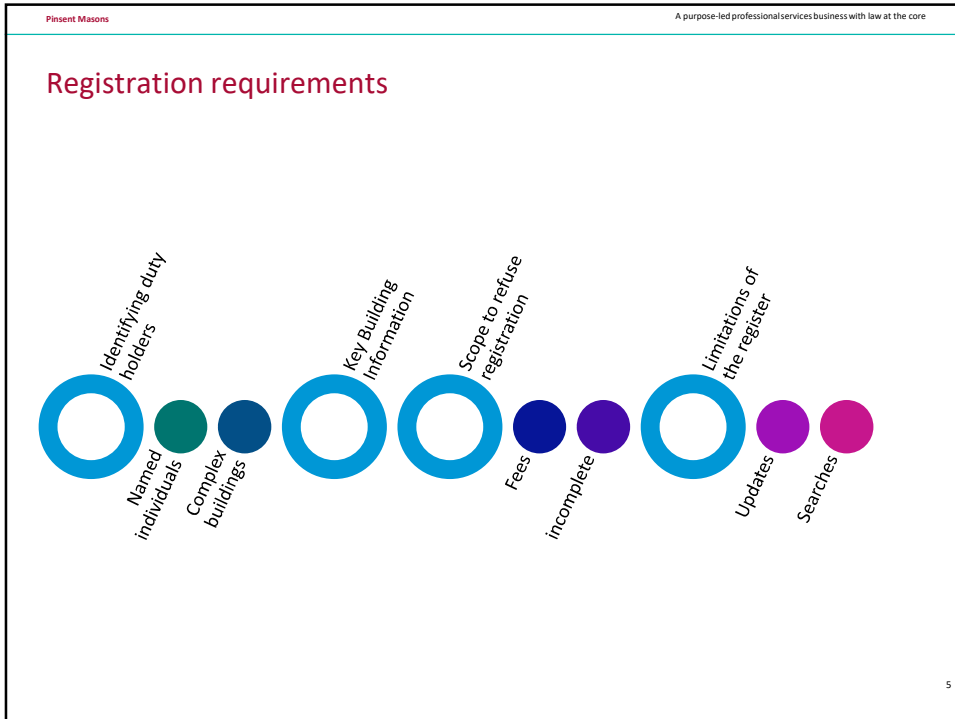
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Key Regulatory Developments

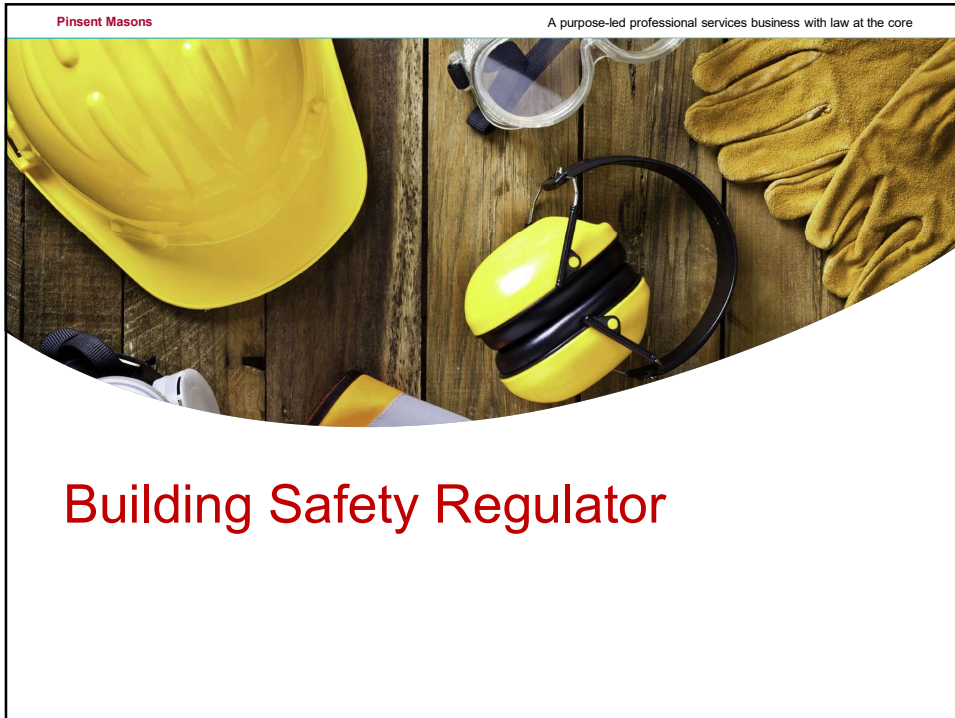


Date	Event
1 October 2023	Registration deadline for Existing Buildings
1 October 2023	Gateways 2 and 3 and occupation duties in force
1 October 2023	Dutyholder Regs in force
6 April 2024	BSR begins to invite Building Assessment Certificate applications
6 April 2024	Reform of Building Control

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Building Safety Regulator Overview

- Creation
- Statutory basis
- Relationship with HSE
- Structure
- <https://www.hse.gov.uk/building-safety/regulator.htm>




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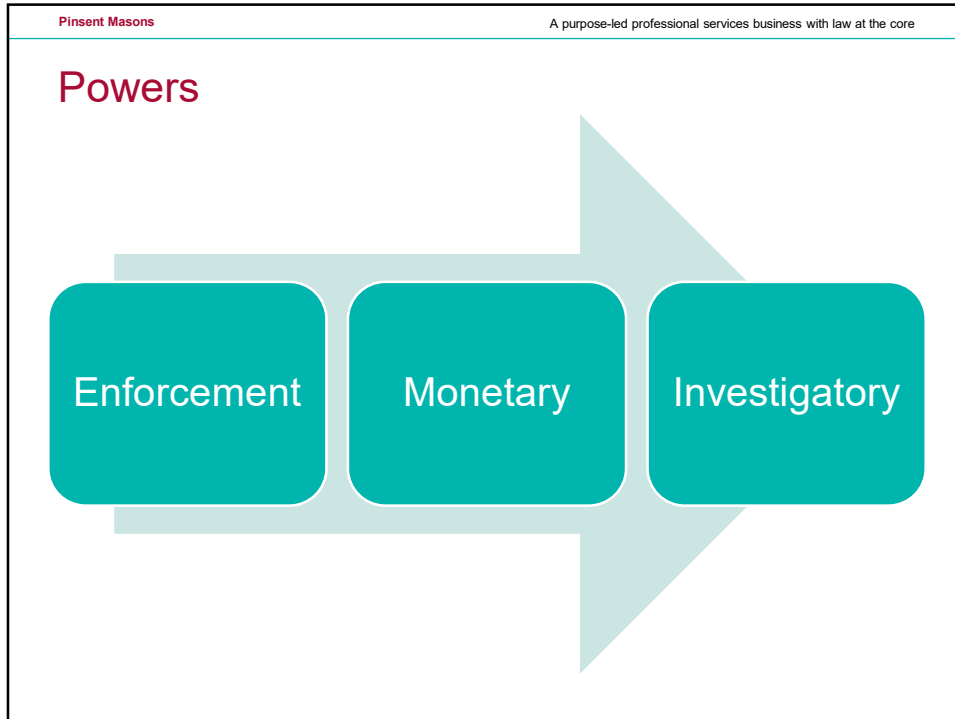
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Functions

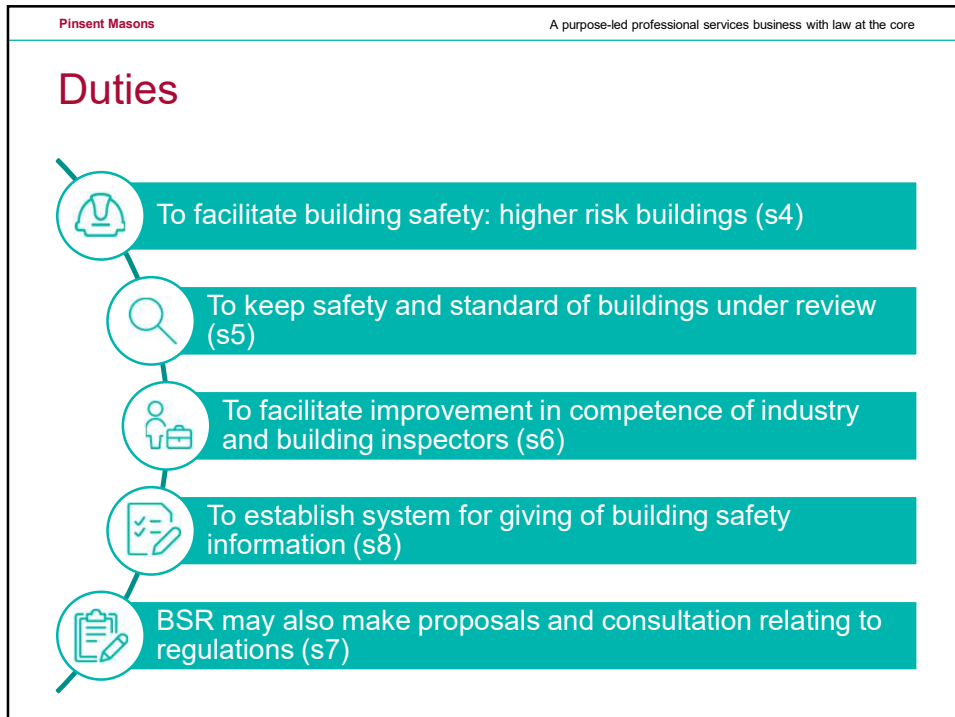
- Overseeing safety and standards of all buildings
- Helping the built environment industry and building control professionals to improve their competence
- Leading implementation of the new regulatory framework for high rise buildings
- [Building safety - HSE](#)



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Enforcement

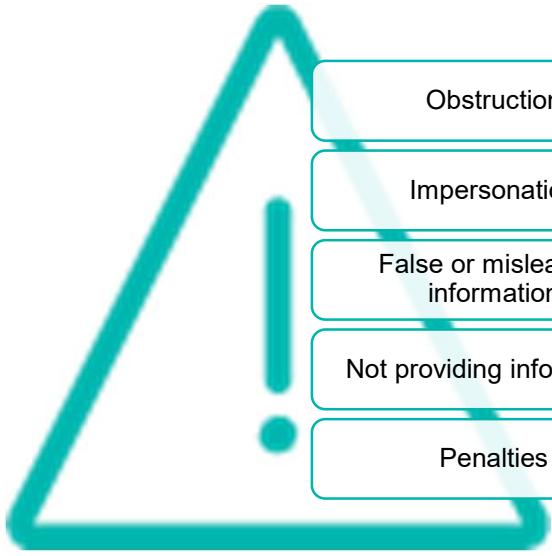
- Targeted
- Consistent and proportionate
- Relationship with existing regulators
- Best practice



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Offences and Penalties



- Obstruction
- Impersonation
- False or misleading information
- Not providing information
- Penalties

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Interaction with Building Control

- Oversight
- Application
- Consultation

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Interaction with Fire Safety



Mandatory reporting

Existing Regulators

Building control authority

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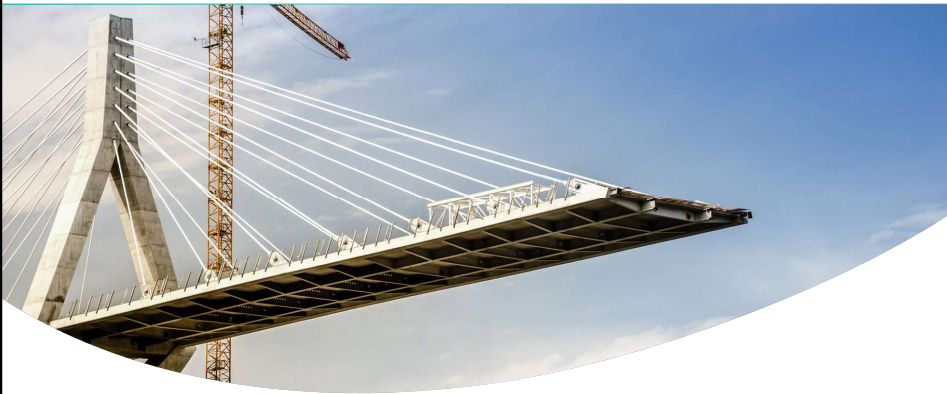
What has BSR done so far?

- Building Advisory Committee
- Interim Industry Competence Committee
- Recruitment
- Sign up for HSE's BSR eBulletin:
- [HSE eBulletin service - Subscribe to HSE's BSR eBulletin \(govdelivery.com\)](https://govdelivery.com)



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Construction Phase

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Definition of a higher-risk building

BSA 2022 - Meaning of “higher-risk building” means a building in England that is at least 18 metres in height or has at least 7 storeys, and contains at least 2 residential units.

It includes multi-occupied residential buildings, mixed use buildings with a residential element, student accommodation and educational accommodation. The design and construction duties will also apply to new hospitals and care homes.


In relation to the **occupation phase** the definition of an occupied building is as follows:

A high-risk building will be occupied when people are living in at least 2 residential units. A residential unit includes a flat or a bedroom in halls of residence.

In relation to the occupation phase, the definition does **not** include hospitals and care settings in occupation. These will continue to be regulated under existing legislation.

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Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023

- Came into force on 6th April 2023
- Reg. 2 - Supplements definition of HRB found in sections Part 3 s.31 BSA 2022 /S.120D of 1984 Act, and Part 4 s.65 of BSA 2022
- Specified descriptions of buildings for HRB for design and construction part of BSA 2022
- Reg 4 – deals with meaning of ‘building’ – broadly defined to allow BSR to consider entire structure or set of structures when being built

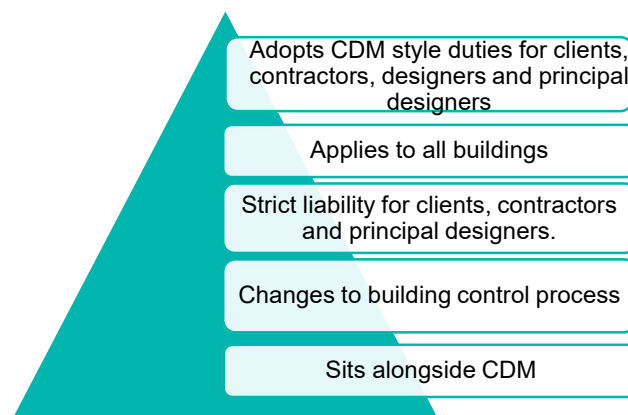
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Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 - continued

- Reg 5 – measure the height of a building i.e. from ground level to top of floor surface of top storey
- Reg 6 – how storeys are to be counted & storeys to be ignored e.g. storeys below ground level and those which are for roof-top plant/machinery
- Reg 7 – exclusions from HRB definition for design & construction part of regime:
 - secure residential institution e.g. prisons
 - hotels
 - military barracks & MOD living accommodation
- Reg 8 – exclusions from HRB definition for in-occupation part of regime:
 - the above plus hospitals and care homes

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The Building Regulations etc. (Amendment) (England) Regulations 2023



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Gateway System - Overview

Duty holders demonstrate building safety to gain approval to proceed

Gateways

Gateway 1 – Before planning permission is granted (already in force)

Gateway 2 – Before construction begins

Gateway 3 – Before occupation begins

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Gateway 1 – Planning Permission

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Regulating Construction

The Building (Higher-Risk Buildings Procedures) (England) Regulations [2023]

- Gateway 2 approvals – 12 weeks**
- Change control**
 - all notifications – change control log (PC duty)
 - Notifiable changes – 14 days notice
 - Major change – application for approval
- Completion Certificate – 12 weeks**
 - Golden thread
 - Client statement - compliance with Building Regulations
 - PC and PD declaration of compliance with Dutyholder Regs

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Gateway 3 – Completion Certificate

Assessment takes place when building work has finished


Accountable Person to receive all documents and information regarding the HRB

Issue of the Completion Certificate

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Golden Thread in the Construction Phase

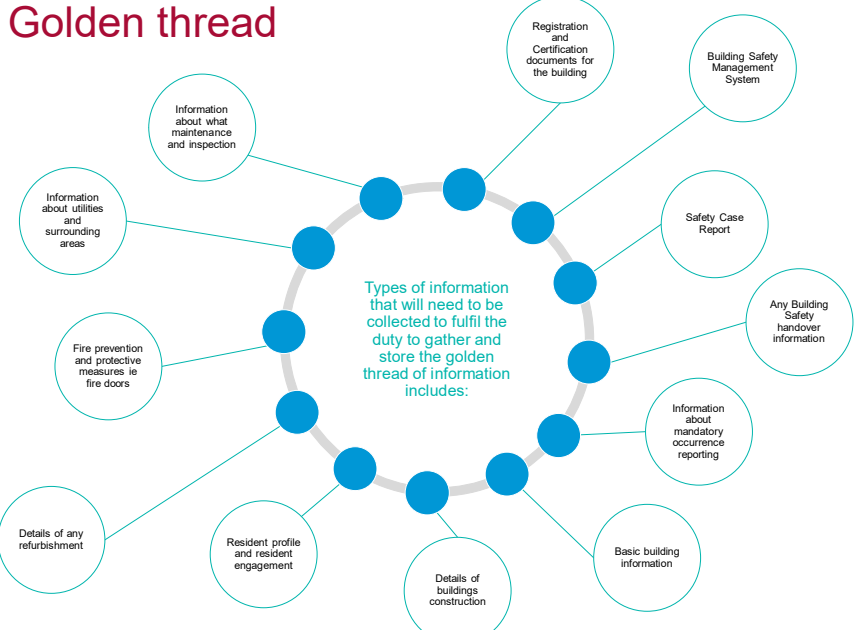


"The golden thread is both the information that allows you to understand a building and the steps needed to keep both the building and people safe, now and in the future."

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Golden thread



Types of information that will need to be collected to fulfil the duty to gather and store the golden thread of information includes:

- Registration and Certification documents for the building
- Building Safety Management System
- Safety Case Report
- Any Building Safety handover information
- Information about mandatory occurrence reporting
- Basic building information
- Details of buildings construction
- Resident profile and resident engagement
- Details of any refurbishment
- Fire prevention and protective measures ie fire doors
- Information about utilities and surrounding areas
- Information about what maintenance and inspection

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Offences – Construction Phase

Contravening a compliance notice or stop notice
Breach of building regulations
Failure to apply for gateway approval
Failure to comply with duty holder regulations
Making a false declaration
Failure to submit mandatory occurrence report
Breach giving rise to risk of death or serious injury
Directors – consent, connivance or neglect

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Occupation Phase

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Who is responsible for the occupation phase?

Principal Accountable Person

- Accountable person with responsibility for the structure of the building

Responsible Person

- Employer, control, ownership

Accountable Person

- Legal estate in possession of common parts, repair and maintenance obligations

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Who is the Accountable Person?

OR

a person who **holds a legal estate in possession** in any part of the common parts (subject the exceptions set out within the legislation)

a person who **does not hold** a legal estate in any part of the building but **who is under a relevant repairing obligation** in relation to any part of the common parts

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Who is the Principal Accountable Person?

The "principal accountable person" for a higher-risk building is defined as:

In relation to a building with one accountable person, that person; and in relation to a building with more than one accountable person:


the accountable person who holds a legal estate in possession in the relevant parts of the structure and exterior of the building; or

a person who does not hold a legal estate in possession in any part of the building but who is under a relevant repairing obligation in relation to the relevant parts of the structure and exterior of the building


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Accountable Person (AP) Duties




Conduct an assessment of fire and structural safety risks for the part of the building they are responsible for and keep under review




Take all reasonable steps to prevent a building safety risk materialising in relation to the part of the building that they are responsible for; and



Reduce the severity of an incident resulting out of that risk arising



Keep and update prescribed information about the part of the building that they are responsible for and provide information to the regulator and others when required








The AP will usually be an organisation or business but it could be an individual

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Principal Accountable Person (PAP) Duties

In addition to their duties as an Accountable Person,
Principal Accountable Person's must:

-  Register the HRBs, apply for a building assessment certificate and ensure the certificate is displayed at the building
-  Prepare the safety case report
-  Comply with mandatory occurrence reporting requirements
-  Prepare a Resident's Engagement Strategy and keep under review
-  Establish a system for the investigation of complaints

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How will the AP/PAP discharge their duties in practice?

Most AP's/PAP's will be organisations rather than individuals and so will need to make arrangements either within their organisation or through a third party to ensure someone with the requisite competence fulfils the duties and deals with maintenance/management of the building.

The Building Safety Manager role has been removed from the legislation but the PAS standards that were produced in relation on competence of BSMs and the building safety alliance are still out there and are a good reference point for those appointing someone to help and ensuring that they have the correct level of experience and qualification.

PAS 8673 relating to building safety managers requires the building safety manager to be competent in each of the following areas: governance; leadership and teamwork; building systems and safety; building operations; risk management; and change management.

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Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023

- **Building assessment certificates**
- **Prescribed principles for building safety risks**
- **Safety case reports**
- **Mandatory reporting requirements**
- **Keeping information and documents**
- **Provision of information to residents and regulator**
- **Residents engagement strategy / complaints procedure**

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Resident engagement

- “At the heart” of the new system
- Resident Engagement Strategy
- Resident duties – access, information and alterations
- Complaints procedure for raising safety concerns

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Safety Case & Safety Case Report

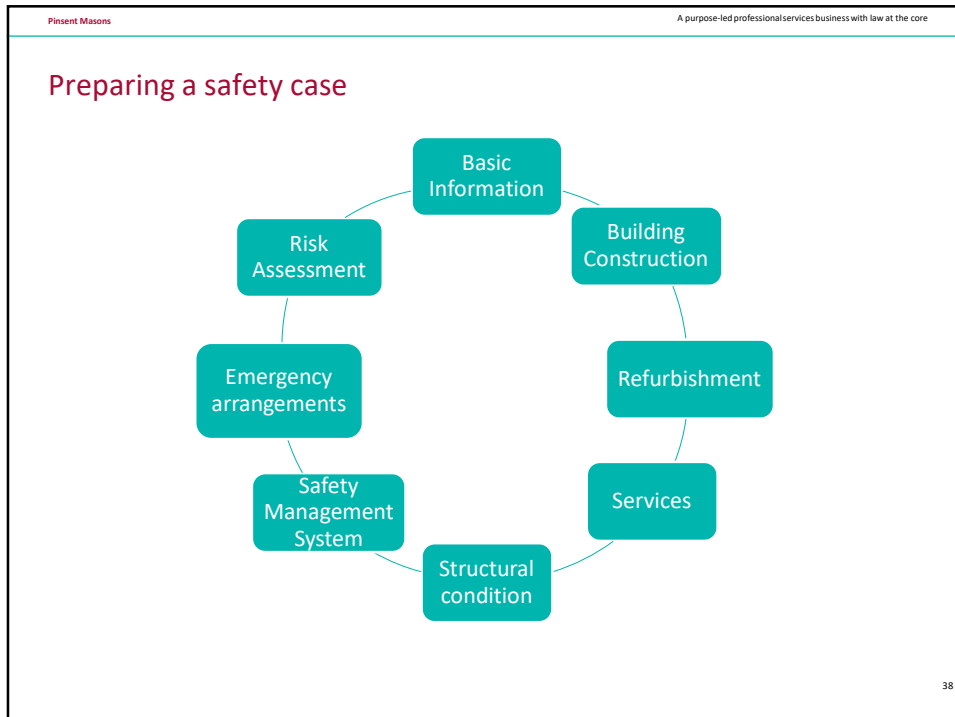
Safety Case

- All Information used to manage the risk of fire spread and structural safety of the building
- Will need to demonstrate the current and ongoing safety of a building

Safety Case Report

- Summarises the safety case
- Identifies the building's major fire and structural hazards and sets out how these risks are being managed

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Safety Case Report

1. Describe the building

2. Include details of the relevant persons

3. Consider major accidents involving fire spread and structural safety

4. Describe the measures in place to mitigate those risks and how these will affect people including:
 - the safety management system
 - emergency arrangements
 - information about reporting occurrences and complaints
 - Resident engagement Strategy

5. Set out how the mitigation measures will work when required

6. Detail any other measures that may be required and

7. Include a process to ensure any modifications to the building that will impact on fire and structural safety will be considered

A Safety Case Report should:

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Applying for a Building Assessment Certificate


BSR will invite you to apply – 28 days to do so

Application process

Consequences of not getting a certificate

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Other Developments

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Fire Safety Act 2021



- Extends existing fire safety legislation for residential buildings
- Risk assessments must be reviewed
- Structure and external walls of the building, including cladding, balconies and windows
- Entrance doors to individual flats that open into common parts

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PAS 9980

Code of Practice

Fire risk appraisal and assessment of external wall construction and cladding of existing blocks of flats

Replaces MHCLG Advice Note

Holistic approach to review

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Fire Safety (England) Regulations 2022

Enhanced enforcement powers Competence of Fire Risk Assessors Identification of Responsible Person Golden Thread

Premises information box Wayfinding signage Risk factors beyond height

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Managing claims risk

The diagram consists of four rounded rectangular boxes arranged in a 2x2 grid, connected by light blue arrows pointing clockwise. The top-left box is blue and contains the text 'Change/ Variations'. The top-right box is green and contains 'Delays/ Extension of Time'. The bottom-left box is pink and contains 'Record keeping – very important!'. The bottom-right box is yellow and contains 'Defective Premises Act claims and limitation periods'.

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By the end of the session, attendees now...

- Understand the changes to the legislation brought in by the Building Safety Act 2022
- Understand what is required under the various 'Gateway' phases
- Understand what is required under the new role of 'Accountable Person' and 'Principle Accountable Person'.
- Have a better understanding of what will be required moving forwards under the new Building Safety Regulator.

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Questions?

