


New provisions for higher-risk residential buildings now in force

 31 March 2023

On 23 March 2023, the next phase of the Building Safety Act 2022 (BSA) (Commencement No. 4) became law. This commencement will bring into force provisions that are relevant for all persons involved in the construction of higher-risk residential buildings (HRRB), from initial design to management of the building.

One such provision is section 39 of the BSA, which is considered to be one of the more far-reaching provisions of the Act. Section 39 states that ‘a person who contravenes a provision of building regulations, or a requirement imposed by virtue of any such provision, commits an offence.’

This will put all persons involved in the construction and management of HRRBs at risk of criminal prosecution. Liability may also extend to any company officer (as per section 40 of the BSA) who allows an offence to be committed with their consent or as a result of their negligence.

Below is a table of some of the key provisions coming into force this April. For a full list of all provisions coming into force in the latest commencement, please [click here](#).

What date does the provision come into force?	Section and Duty	Is this relevant to me now and how do I comply?
6 April 2023	Section 24 – Providing false or misleading information to regulator	<p>A person commits an offence if they provide false or misleading information to the BSR relating to:</p> <ul style="list-style-type: none">• compliance with a building regulation; or• an application made and for the purpose of avoiding enforcement action, <p>if that person knows or is reckless as to whether the information provided is false or misleading.</p> <p>Those whose responsibility it will be to collate and submit the application to register their HRRBs, safety case reports and maintaining the “golden thread of information”, will need to ensure full compliance with this provision, as a person guilty of this offence may be liable for up to two years imprisonment.</p>
6 April 2023	Section 39 – Breach of building regulations	<p>A person who fails to comply with a provision of building regulations, or a requirement imposed by that provision, commits an offence.</p> <p>As mentioned above, it is believed that this will be a strict liability offence, meaning those who commit this offence may be liable for criminal prosecution.</p>

What date does the provision come into force?	Section and Duty	Is this relevant to me now and how do I comply?
6 April 2023	Section 73 - Meaning "principal accountable person"	<p>The "principle accountable person" (PAP) or the "accountable person" (AP) for a HRRB will be the person who owns or has responsibility for the building. They will be responsible for the structure and exterior of the building or are under a repairing obligation in relation to the structure and exterior of the building.</p> <p>The PAP/AP could be the building owner, i.e. the landlord, or could also be a person who may not own the building but instead has a "relevant repairing obligation", meaning they could be the building management company, the developer or the contractor.</p> <p>More information on the PAP/AP can be found here.</p>
6 April 2023	Section 89 - Provision of information etc to the regulator, residents and other persons	<p>The Secretary of State may require the AP for a HRRB to give specific information to the BSR, another AP for the building, residents, owners or any other prescribed person. In particular the BSR may specify when the information must be given, the way in which it must be given, the form in which the information must be given and the standards in which it must be given.</p> <p>PAPs and APs will want to ensure that the information they hold on the buildings they are responsible for is up-to-date and compliant at all times. This "golden thread" of information is a key element of the BSA. More information on the "golden thread" can be found here.</p>

This 4th commencement is a considerable step up in the phased implementation of the BSA. Developers and management companies will need to pay close attention to ensure they are compliant. Full implementation of the BSA is expected to have taken place by October 2023.

If you have any questions about the latest commencement or anything on building safety, please reach out to the team at Browne Jacobson.

Key contact



Stephanie McGarry

Partner

stephanie.mcgarry@brownejacobson.com

+44(0)115 908 4113

Rachel Lyne

Partner



rachel.lyne@brownejacobson.com
+44 (0)121 237 4584

Related expertise

Services

- Construction all risks
- Criminal compliance and regulatory
- Real estate