

Proposed building safety act

Accountable Person duties (updated)

What is an Accountable Person?

Every occupied **Higher Risk** building must have an **Accountable Person**. The **Accountable Person** must be a named person/entity.

There could be multiple **Accountable Persons** in which case there would be a **Principal Accountable Person** – the party that holds the legal estate.

The **Accountable Person** is “accountable” for building safety, in particular the safety of residents, visitors, guests, and staff within the **Higher Risk** building.

With the decision by UKGov (March 2022) to remove the mandatory requirement of the **Building Safety Manager** role, whilst leaving the responsibilities intact, it will be for the **Accountable Person** to determine how best to discharge those responsibilities.

The **Accountable Person** always remains accountable for discharge of these responsibilities.

What are the duties of an Accountable Person?

The duties of the **Accountable Person** include:

- Registering the **Higher Risk** buildings with the **Building Safety Regulator** (i.e. HSE) before occupation or, if occupied, within a prescribed period of time.
- Apply for and renew the **Building Safety Certificate** – without which the building cannot be occupied.
- Receive and maintain the **Golden Thread** of building information – without which the **Building Safety Certificate** cannot be granted or renewed, and the building cannot be occupied.
- Produce and maintain the **Safety Case Report** for the **Building Safety Regulator**.
- Establish and monitor the **Residents’ Engagement Strategy**.
- Establish and monitor the **Residents’ Complaints Procedure**.
- Discharge the responsibilities previously proposed of the **Building Safety Manager**.
- Conducting assessments of building safety risks and further assessments at regular intervals when a previous assessment becomes invalid as a result of change or resulting from direction of the **Building Safety Regulator**.
- Manage and mitigate building safety risks, as identified through the assessment process.
- Establish and operate a mandatory “occurrence” reporting system to the regulator.
- Co-operate with the Responsible Persons (under the Regulatory Reform (Fire Safety) Order 2005).
- Establishing and maintaining, as required, the **Building Safety Charge**.

What could happen if the Accountable Person fails to discharge their duties?

Whilst several of the duties could be adequately discharged by a reasonably skilled administrator, there are a number of duties that suggest that the **Accountable Person** should be somebody with a sound technical understanding of building construction and residential building operation (or have access to trusted advisory services in this regard). In particular:

- Receive and maintain the **Golden Thread** of building information without which the **Building Safety Certificate** cannot be granted or renewed, and the building cannot be occupied.
- Produce and maintain the **Safety Case Report** for the **Building Safety Regulator**.
- Discharge the responsibilities previously proposed of the **Building Safety Manager**.
- Conduct the assessments of building safety risks.
- Manage and mitigate building safety risks.

The draft **Building Safety Bill [2021]** – published 5th July 2021 – notes that the **Accountable Person** may be criminally liable for failure to discharge their responsibilities with sanction of up to two years imprisonment or a fine or both.

What skill-set and experience should the Accountable Person have?

The intent of these new regulations is that the **Accountable Person** is “accountable” for building safety.

UKGov decision in March 2022 to remove the mandatory requirement for a named **Building Safety Manager** for each building whilst retaining the associated duties of that role, means it is the for the **Accountable Person** to determine how best to discharge those responsibilities. The **Accountable Person** could:

- Discharge the duties themselves; or
- Discharge the duties as part of a **Property/Facilities Manager** role; or
- Retain a dedicated **Building Safety Manager**; or
- Discharge the duties through a combination of the above.

At the time of writing, it is currently unclear as to whether the competency certification requirement for the previous mandatory requirement for a dedicated **Building Safety Manager** is to be retained.

If retained, a certificate of competence though does not mean that it is guaranteed that the associated responsibilities will be appropriately discharged.

It is extremely important to recognise that it remains the **Accountable Persons’** duty to ensure that these responsibilities are discharged competently (see Appendix A for list of required competencies).

Due to the extensive nature of the competencies required it is understood that a single person may be unlikely to be competent in all the required competencies.

It is the overriding responsibility of the **Accountable Person** to ensure that specialist support is provided, as and when required.

Accordingly, it is for the **Accountable Person** to recognise areas of potential weakness in these competencies and to deal in a timely manner to ensure those areas of weakness are remediated – through training or support or both. This may require timely allocation of additional budget to be made available by the **Accountable Person**.

This strongly suggests that the **Accountable Person** should also understand building safety as, ultimately, failures in building safety as a direct result of shortfalls in these competencies may result in the criminal prosecution of the **Accountable Person** not the **Building Safety Manager**. Accordingly, it is highly doubtful that an **Accountable Person** who is merely an administrator would have the necessary skills, expertise, and experience to recognise areas of weakness in the competencies plethora of technical and commercial competencies.

It would therefore be wise for the **Accountable Person** to have access to appropriate skilled and experienced resource to ensure that building safety is a priority. Should that resource not be made available to the **Accountable Person** to enable them to discharge their duties then the **Accountable Person** could be placed in an untenable position. Due to the absolute requirement to make resource available as and when required, one would consider that the **Accountable Person** would be of seniority within an organisation with some budgetary control and responsibility. Possessing of appropriate skills and experience relevant to the duties, or able to procure those skills and experience through allocation of timely resource.

It is important to note that the British Standards Institution (BSI) has now published for consultation their views on the competencies required of the previous mandatory role of the dedicated **Building Safety Manager** through **PAS 8673:2021** (see Appendix A for list of competencies).

BSI Flex 8670 Version 3.0: 2021 sets out the competency assessment based on the prospective **Building Safety Manager’s** skills, knowledge, experience, and behaviours in relation to buildings (construction and operation).

Lead construction advisory services

HAALO Ltd possess the skills, expertise and experience in both construction and operational management disciplines to independently advise those persons that will be **Accountable Persons** under the proposed Building Safety Act.

The HAALO team



Peter Bowe

Peter has over 30 years' experience delivering high value infrastructure projects and services in the UK, Europe and the Middle East. Over his career, Peter has predominantly worked in securing and delivering high value PFI/PPP partnership transactions in the Private Rental, Education, Healthcare, Central Government and Defence sectors. Peter has personally delivered programmes exceeding £3.5bn in contract values ranging from £50m to £500m.

Notable relevant achievements:

- Lead Construction Advisor to Pension Insurance Corporation.
- Group Board Director & Managing Director of UPP Construction. Delivery of 38,000 units of university student residential accommodation under DBOFM PPP
- Delivery of Garden Halls, Bloomsbury – DBOFM PPP - multi award winning University student residential accommodation and ancillary services.
- Successful pursuit of £50m value protective remedial construction works. Successful delivery of first tall buildings residential ACM remedial replacement scheme, post-Grenfell disaster
- Headed the provision of the £500m operational service delivery of the redevelopment of the Ministry of Defence Headquarters, London as part of the successful DBOFM PPP scheme.
- Established multi-country operational support services for technology focussed blue chip clients across EMEA.



Ben Sedgewick

With over 20 years of hands-on practical experience in delivering technical and commercial project management solutions on PPP, Infrastructure and development transactions, Ben has gained a deep understanding of managing risk and applying control tools to successfully develop, implement and execute project strategies.

Notable achievements include:

- Lead Construction Advisor to Pension Insurance Corporation.
- Construction Director for UPP, responsible for the on-time and to budget delivery of circa 4,500 student rooms across the UK.
- An experienced PPP advisor acting for Developers, consortiums, local authorities, and funders with the provision of Technical Due Diligence, construction monitoring, bid and transaction management, and providing employer's agent and independent certifier roles.
- Education experience include advisory services on Newham & Enfield Schools PPP, Cornwall Schools PPP, East Leake PPP and Mid Beds Schools PPP.
- Higher Education DBFO Projects include Cartwright Gardens and Eleanor Rosa House (University of London), Westfield Court (University of Hull), East Park (University of Exeter). Ben has provided technical and transaction management services on projects involving over 12,000 student beds in the UK;
- Country Director for Sweett Group (now Currie & Brown), developing and implementing a new business in Thailand, providing project management, quantity surveying and construction management services to local and international investors.



Appendix A

The previously understood mandatory role of the **Building Safety Manager** was to possess competences in each of the following competence areas:

- a) governance;
 - a. legal framework
 - b. compliance
 - c. roles, responsibilities and accountabilities
 - d. golden thread of information and safety cases
 - e. due diligence and evidence
 - f. information management
- b) leadership and teamwork;
 - a. ethical behaviour
 - b. leadership
 - c. communication and engagement
 - d. teamwork and motivation
 - e. delegation and empowerment
 - f. lessons learnt
- c) building systems and safety;
 - a. building design and construction
 - b. building structure, fabric and materials
 - c. interactions of systems and components
 - d. building safety and protection
 - e. fire management and systems
- d) building operations;
 - a. occupational health & safety
 - b. servicing and supplies
 - c. inspection, testing, maintenance, repairs and minor construction works
 - d. procurement
 - e. performance management
 - f. evacuation and emergency response

- e) risk management;
 - a. issue management
 - b. hazard and risk identification
 - c. risk assessment
 - d. risk response
 - e. risk profiling
 - f. insurance and indemnity
- f) change management.
 - a. Managing change
 - b. Time and resource planning
 - c. Cost management
 - d. Project management
 - e. Stakeholder management
 - f. Human resource management

Within these competence areas, a **Building Safety Manager** was to possess the following core competences:

- 1) behaviour;
- 2) fire safety, structural safety and public safety;
- 3) managing building safety;
- 4) knowledge management and communication; and
- 5) buildings as systems, building systems and construction products.

Appendix B

Relevant Definitions (as taken from the draft **Building Safety Bill** (“**draft Bill**”), published on 5 July 2021, or where referenced in the definition.

Accountable Person – *The meaning is provided at Part 4, clause 69 of the draft Bill, provided in part only, as follows:*

69 Meaning of “accountable person” etc

- (1) In this Part an “accountable person” for a higher-risk building is—
 - (a) a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or
 - (b) 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.
- (2) A person is not an accountable person for a higher-risk building by virtue of subsection (1)(a) if—
 - (a) the person holds a legal estate in possession in the common parts or any part of them (“the relevant common parts”), and
 - (b) each long lease of which the person is lessor provides that a particular person, who does not hold a legal estate in any part of the building, is under a relevant repairing obligation in relation to all of the relevant common parts.
- (3) In this Part, any reference to the part of a higher-risk building for which an accountable person is responsible is to such part of the building (including all of it) as is determined by or in accordance with regulations.
- (4) For the purposes of this section— “common parts”, in relation to a building, means—
 - (a) the structure and exterior of the building, except so far as included in a demise of a single dwelling or of premises to be occupied for the purposes of a business, or
 - (b) any part of the building provided for the use, benefit and enjoyment of the residents of more than one residential unit (whether alone or with other persons);“long lease”: for the meaning of “long lease” see section 123;
“possession”: a reference to “possession” does not include the receipt of rents and profits or the right to receive the same;
“relevant repairing obligation”: a person is under a relevant repairing obligation in relation to anything if the person is required, under a lease or by virtue of an enactment, to repair or maintain that thing.
- (5) The Secretary of State may by regulations amend this section (other than subsection (3) or this subsection).

Building Safety Regulator – *The meaning is provided at Part 2, clause 2 of the draft Bill, provided in part only, as follows:*

PART 2

THE REGULATOR AND ITS FUNCTIONS

The regulator and its general functions

2 The building safety regulator

- (1) In this Part “the regulator” means the Health and Safety Executive.
- (2) Schedule 1 contains amendments of provisions of the Health and Safety at Work etc Act 1974 that relate to the regulator.

Building Safety Risk – *The meaning is provided at Part 4, clause 59 of the draft Bill, provided in part only, as follows:*

Meaning of “building safety risk”

59 Meaning of “building safety risk”

- (1) In this Part “building safety risk” means a risk to the safety of people in or about a building arising from any of the following occurring as regards the building—
 - (a) the spread of fire;
 - (b) structural failure;
 - (c) any other prescribed matter.
- (2) Before making regulations under subsection (1)(c), the Secretary of State must consult—
 - (a) the regulator, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (3) But the regulator need not be consulted if—
 - (a) the regulations give effect to a recommendation made by the regulator under section 60, or
 - (b) the Secretary of State has under section 61 asked the regulator for its advice in relation to a proposal to make the regulations.

Higher Risk building – *The meaning is provided at Part 4, clause 62 of the draft Bill, provided in part only, as follows:*

Meaning of “higher-risk building”

62 Meaning of “higher-risk building” etc

- (1) In this Part “higher-risk building” means a building in England that—
- (a) is at least 18 metres in height or has at least 7 storeys, and
 - (b) contains at least 2 residential units.

Principle Accountable Person – *The meaning is provided at Part 4, clause 70 of the draft Bill, provided in part only, as follows:*

70 Meaning of “principal accountable person”

- (1) In this Part the “principal accountable person” for a higher-risk building is—
- (a) in relation to a building with one accountable person, that person; (b) in relation to a building with more than one accountable person, the accountable person who holds a legal estate in possession
 - (b) in the relevant parts of the structure and exterior of the building.
- (2) For the purposes of this section—
- (a) the reference to “the relevant parts of the structure and exterior” of a building is to its structure and exterior except so far as included in a demise of a single dwelling or of premises to be occupied for the purposes of a business;
 - (b) the reference to “possession” does not include the receipt of rents and profits or the right to receive the same.
- (3) Subsection (1)(b) is subject to section 71(2) (powers of tribunal where more than one accountable person holds legal estate in possession in the relevant parts of the structure and exterior of the building).

Residents’ Complaints Procedure – *The meaning is provided at Part 4, clause 93 of the draft Bill, provided in part only, as follows:*

93 Complaints procedure operated by principal accountable person

- (1) The principal accountable person for an occupied higher-risk building must as soon as reasonably practicable after the relevant time establish and operate a system for the investigation of relevant complaints.
- (2) The Secretary of State may by regulations make provision about the establishment and operation of complaints systems under this section.
- (3) The regulations may in particular make provision—
- (a) about the way in which complaints may be made;
 - (b) about the period within which a complaint must be considered and dealt with;
 - (c) requiring the principal accountable person to refer a complaint to the regulator.

Residents’ Engagement Strategy – *The meaning is provided at Part 4, clause 91 of the draft Bill, provided in part only, as follows:*

Engagement with residents etc

91 Residents’ engagement strategy

- (1) The principal accountable person for an occupied higher-risk building must—
- (a) as soon as reasonably practicable after the relevant time prepare a strategy (a “residents’ engagement strategy”) for promoting the participation of relevant persons in the making of building safety decisions;
 - (b) review the strategy at prescribed intervals, and revise it if they consider it necessary or appropriate to do so.
- (2) “Building safety decision” means a decision by an accountable person for the building that—
- (a) is about the management of the building, and
 - (b) is made in connection with the performance of a duty of the accountable person under, or under regulations made under, this Part.
- (3) The strategy must include information about—
- (a) the information that will be provided to relevant persons about decisions relating to the management of the building,
 - (b) the aspects of those decisions that an accountable person will consult relevant persons about,
 - (c) the arrangements for obtaining and taking account of the views of relevant persons, and
 - (d) how the appropriateness of an accountable person’s methods for promoting participation will be measured and kept under review.
- (4) As soon as reasonably practicable after the strategy is prepared or revised, each accountable person for the building must give a copy of the strategy to—
- (a) each resident of the building who—
 - (i) is aged 16 or over, and
 - (ii) resides in a residential unit in the part of the building for which the accountable person is responsible;
 - (b) each owner of a residential unit in that part of the building.

Responsible Persons – as per Article 3 of the **Regulatory Reform (Fire Safety) Order 2005**

Meaning of “responsible person”

3. In this Order “responsible person” means—
- (a) in relation to a workplace, the employer, if the workplace is to any extent under his control;
 - (b) in relation to any premises not falling within paragraph (a)—
 - (i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or
 - (ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.

Safety Case Report – *The meaning is provided at Part 4, clause 85 of the draft Bill, provided in part only, as follows:*

85 Safety case report

- (1) The principal accountable person for an occupied higher-risk building must as soon as reasonably practicable after the relevant time prepare a report (a “safety case report”) containing—
 - (a) any assessment of the building safety risks made under section 83 by an accountable person for the building, and
 - (b) a brief description of any steps taken under section 84 by an accountable person for the building.



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