

Briefing Note - April 2024

BUILDING ASSESSMENT CERTIFICATES



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1 – Overview

This Briefing Note has been produced to summarise the latest guidance produced by the Building Safety Regulator (BSR) with regards to the new process of assessing high-rise building safety and the subsequent issuing of Building Assessment Certificates (BAC) for in-scope residential buildings.

William Martin has established a dedicated team of fire engineering consultants to support clients with meeting their new legal duties, as explained below in our latest Briefing Note.

2 - Recap of main duties

As a reminder, the introduction of the Building Safety Act formed one of the main elements of the government response to the Grenfell tragedy. With regards to issuing BACs, this applies to in-scope occupied buildings, i.e. 18m+ / 7 storeys or more plus at least 2 residential units, and seeks to primarily address the risk of fire spread and structural failure.

The Act identifies the following duty holders:

- Accountable Person (AP) – are those who own or have a repairing obligation for the common parts (or part of) of the building.
- Principle Accountable Person (PAP) – if there is only one AP in a building, they are also the PAP. If there is more than one AP, then it's the one with responsibility for the structure and exterior of the building.

Duty holders are usually corporate bodies rather than individuals (e.g. local authority, limited company etc). Note: Managing Agents will almost never be the AP / PAP.

APs must:

- Assess building safety risks (s.83).
- Manage building safety risks (s.84).
- Keep information about the building – the 'golden thread' (s.88).
- Provide information (s.89).

PAPs must (in addition to AP duties):

- Register the building (s.77).
- Provide key building information (s.89 / regulations).
- Apply for a BAC when invited to by BSR (s.79).
- Display the most recent BAC in a prominent position (s.82).
- Prepare safety case report (s.85).
- Notify BSR if the report is revised (s.86).
- Establish a mandatory occurrence reporting system (s.87(5)).
- Prepare residents' engagement strategy (s.91).
- Establish a complaints system (s.93).

3 – BAC application - when and how

What is a BAC?

A BAC is a document issued by the BSR after it has assessed compliance with specific legal duties and is satisfied that those duties have been met at that particular time. The BAC application / assessment is a snapshot of compliance, however, the duties on APs and PAPs are ongoing.

When and how can I apply?

The BSR aims to begin directing PAPs to apply from April 2024, a process which is predicted to take around five years to work through the existing in-scope buildings.

PAPs will be directed to apply, i.e. they cannot nominate themselves, and when directed, the PAP will have 28 days to submit their BAC application (failing to apply when directed, without a reasonable excuse, is an offence). Applications will be via a government portal – to which required documents may be uploaded as well as filling out information needed as part of the application.

Buildings are currently expected to be reassessed at least every five years, however, some may be sooner – e.g. if an incident raises concerns about how risks are being managed.

There will be a charge for assessing applications (based on an initial application fee plus an hourly rate for the time taken by the BSR Assessor).

When will I be directed to apply?

The BSR will be 'tranching' registered buildings into five groups – for each year from April 2024 and is using height, number of dwellings, and information from registration information to decide which tranche buildings will be in. In the first year, the BSR is likely to include:

- Registered buildings 50 metres or more tall, with 11 or more residential units.
- Registered buildings over 30 metres tall, with 227 or more residential units.
- Registered buildings that have combustible ACM cladding on the exterior.
- Buildings that have a Large-Panel System (LPS) structure built between 1956-1973 that have a gas supply to the building and may not have had reinforcement works.

4 - BAC application - what to submit

Applications must include:

- A copy of the latest safety case report.
- A copy of the residents' engagement strategy.
- Information about your mandatory occurrence reporting system.
- A statement confirming all APs have supplied relevant information and documents to all appropriate persons (BSR, residents, other APs etc).
- Plus, some factual information required by the regulations.
- What if the PAP has interim measures in place when applying?

This will not necessarily be a problem, as the BSR recognises that, especially in the early days, PAPs may have ongoing or outstanding building safety work in their buildings. If this is the case, the safety case report will need to make clear:

- What the PAP intends to do.
- When the PAP intends to do it.
- What measures the PAP has put in place to manage the risk in the meantime.

By doing this, the PAP will be able to assure the BSR that risks at the time of the application are being managed as well as showing what the PAP will do in the future.

5 - Assessing the application

The application will be assessed by a:

- Regulatory Lead.
- Fire Assessor.
- Structural Assessor.

As part of a multi-disciplinary team.

The safety case report will be assessed by all three assessors, while the Residents' Engagement Strategy / Information about the Mandatory Occurrence Reporting system, will be assessed by the Regulatory Lead only.

If the assessors cannot get the assurances they need from the documents submitted, they can:

- Ask for further information / specific documents.
- Arrange a call / meeting (likely remote) to discuss issues.
- In some instances, visit the building – by appointment and focussing on specific issues (not a general inspection).

A note about proportionality Proportionality

The BSR has advised that a “one size fits all” approach is neither possible nor proportionate, and therefore, the measures that PAPs need to have in place and the level of detail required in the demonstration in the safety case report, should be proportionate to the risks in that building. Similarly, the complexity of the management arrangements should be proportionate to both the complexity of the building and the size and resources of the AP / PAP – it just needs to be ‘fit for purpose’.

‘All reasonable steps’

The BSR has then gone on to advise that ‘all reasonable steps’ is similar, but not identical, to familiar terms such as “so far as is reasonably practicable” and as all buildings are different – what is reasonable in one case may not be in other, similar cases and vice versa. The BSR has drafted an approach that identifies a number of factors that the APs (and the BSR) should consider when determining ‘all reasonable steps’, however, overall, it will be a balance between cost (in the widest sense) and benefit – between what’s possible, and what’s reasonable in that particular case.

Assessing the safety case report

The BSR Regulatory Lead will assess the:

- Risk assessment, description of building safety risks, and the steps taken.
- Safety management system (SMS).
- Emergency arrangements.

The BSR Fire Assessor will assess the:

- Basic information about the building.
- Building safety risk assessment.
- Compartmentation.
- Specific prevention and protection measures.
- Management arrangements.

The BSR Structural Assessor will assess the:

- Structural information about the building.
- Large panel system (LPS) Buildings (when appropriate – separate criteria).
- Current structural condition of the building.
- Building safety risk assessment.
- Arrangements for managing ongoing structural integrity.

Assessing the residents' engagement strategy

The BSR Regulatory Lead will assess against the criteria based on the detailed requirements in the Act and Regulations relating to the provision of information, decision-making and promoting participation.

Assessing the information about the mandatory occurrence reporting system

The BSR Regulatory Lead will assess against the detailed requirements in the Regulations relating to a single reporting system for reporting and recording incidents, notification arrangements, accessibility, and reviewing.

6 – Outcome of the assessment

If the BSR is satisfied that all the relevant legal duties have been met, it must issue a BAC which must then be displayed in a ‘conspicuous position’ in the building.

If the BSR is not satisfied that all the relevant legal duties have been met, it must refuse the application and confirm the reasons for the refusal along with details of the required remedial measures.

If what’s wrong can be remedied promptly, the BSR may issue a notice telling the PAP what to do and when by – if the PAP does what is required by the due date, then the BSR can issue the BAC rather than refuse the application.

If the application is refused, the BSR may take enforcement action to ensure what’s wrong is put right, which could be a letter or a compliance notice, depending on what is wrong and how serious it is.

Once the PAP has completed the remedial measures and complied with any notice, the PAP will be directed to apply again for a BAC.

A note on BAC refusal

Refusal of a BAC application does not automatically mean a building is unsafe. The decision on whether to give or refuse a BAC is based on whether the PAP is meeting specific legal duties. Some of those duties do not directly affect the day-to-day management of building safety risks, e.g., if the residents’ engagement strategy did not contain what it had to, the BSR would have to refuse the application, but that doesn’t mean the building is unsafe.

Even if the BSR identifies more that the PAP needs to do, the PAP will often be able to manage the risk in the meantime by putting interim measures in place, to allow more time for permanent measures to be introduced.



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