



BSA 2022: SI's

No	SI	Title	Dates in force	Summary of Main Provisions
1	711	The Building Safety (Leaseholder Protections) (England) (Amendment) Regulations 2022	20/7/22	<p>One of the original SI's enacted pursuant to the BSA. This, it will be recalled, provides amongst other things, at Reg.2 additional detail to the definition of leaseholder owned buildings, at Reg.4 ensured (correctly) that RCO's could be made in relation to leaseholder buildings but not against their owners and at Reg.5 provided further detail on how to determine the net worth of a landlord group for the purposes of paragraph 3 of Schedule 8.</p> <p>Its central purpose (see Regs 6 and 7) was, perhaps, to define a 'landlord's certificate', when it was required and what information and evidence it should contain; but see now SI 895 below.</p> <p>Although, notably, it will also be recalled that Reg.10 was the regulation which confirmed that paragraph 2 of Schedule 8 (the responsible landlord protection) applies also to non-residential leases.</p>
2	859	The Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2023	21/7/22	<p>The other principal original SI enacted pursuant to the BSA. Firstly, this instrument made the SoS an interested party for the purposes of making s.123 (RO) applications.</p> <p>The other two main functions of this SI were recovery of amounts from other landlords and the leaseholder certificates, as follows:</p>



				<p>(1) To establish the 'cascade' of liability pursuant to which any Landlord (L) who has paid or is liable to pay the cost of a relevant measure but is unable to do so due to the leaseholder protections under Schedule 8 may recover that amount from other landlords, being a responsible landlord or contributing landlord or any other landlord, depending upon which protection applied; and,</p> <p>(2) To define a 'leaseholder deed of certificate', when it is required and the form that it should take.</p>
3	315	The Building Safety (Registration of Higher-risk Buildings and Review of Decisions) (England) Regulations 2023	6/4/23	<p>These regulations are part of the implementation process for Part 4 and the new building safety & accountable person regime for occupied higher-risk buildings (of 18m/7 storeys and at least 2 residential units).</p> <p>They make provision about the register of HRBs held by the building safety regulator and about making an application for registration of an HRB in accordance with ss77, 78 (including the information required, the associated fee and withdrawal of any application).</p> <p>The final part (Part 4) of the regulations, supplements section 25 of the BSA, setting out which regulator decisions may be the subject of a review by the regulator itself under that section (and in turn the subject of appeal under section 26).</p> <p>But see SI 965, amending these by omission of Regs, 20 and 21.</p>
4	126	The Building Safety (Leaseholder Protections) (England) (Amendment) Regulations 2023	9/2/23	<p>Corrects a mis-reference in Reg.3(2) of SI 711. That provided a person is not to be considered as associated with the relevant landlord where they would only be associated by virtue of 121(4),</p>



				<p>(5) or 6(a) of the Act, this has now been corrected to 121(4) and 121(5)(a). The clarification is welcome, as the former reference was obviously wrong.</p> <p>The key point is the purpose of these specific regulations which is to remove a director's personal assets and the assets of any (unconnected) company which happened to share a director from the scope of the definition of 'landlord's group', in particular for the purposes of determining whether a landlord meets the contribution condition under paragraph 3 of Schedule 8.</p>
5	229	The Building Safety Act 2022 (Consequential Amendments and Prescribed Functions) and Architects Act 1997 (Amendment) Regulations 2023	1/4/23	A brief tidying up SI, consequential on the abolition of the Building Regulations Advisory Committee for England (under section 9(3) of the BSA) and the transfer of functions to the BSR (HSE).
6	275	The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023	6/4/23	<p>These important regulations determine which buildings are subject to the new more stringent safety regime established by the BSA.</p> <p>They do so by supplementing and completing section 120D of the Building Act 1984, introduced by section 31 of the BSA, which defines HRBs for the purposes of Part 3 of the BA 1984, AND also section 65 of the BSA which defines HRBs for the purposes of Part 4.</p> <p>The basic definition for Part 3 is of course the 18m or 7 storeys, but these regs add to that. Reg 2. now stipulates that the building must also contains at least 2 residential units, or be a care home or hospital.</p>



				<p>Reg. 7 excludes from the definition of HRBs under section 120D (Part 3) various descriptions of building; principally, a secure residential institution, a hotel, military barracks and MoD accommodation, whilst Reg. 8 excludes from the section 65 (Part 4) definition the same, as well as well as any care home or hospital.</p> <p>Regs. 4, 5 and 6 apply to both Parts 3 and 4 definitions of HRB. Reg 4 detailing what is a 'building' in terms of any detached structure or any independent section (as defined) within a structure or two or more structures that are attached. Regs 5 and 6 contain further detail on determining the height of a building and the number of storeys in a building, ignoring any storey below ground level and any roof-top machinery or plant area or internal gallery/mezzanine with a floor area less than 50% of the floor above or below it.</p> <p>NB. But see the amendments due to be made under Part 5 of the SI laid on 17/10/23.</p>
7	396	The Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023	6/4/23	<p>These regulations apply to Part 4 (complementing 315), they set out what constitutes the 'Key Building Information' in respect of HRBs for the purpose of registration; the duties and provisions in relation to submitting key building information; and sets out how to determine for which parts of an HRB an Accountable Person (AP) is responsible under Part 4 of the BSA.</p> <p>Regs. 3 to 18, detail what is KBI, covering use, materials and structure, energy, emergency planning.</p> <p>Regs. 19 to 23, cover the Key Building Information duties on PAPs and APs. The PAP must provide the KBI to the regulator within 28 days of registration.</p>



				Regs. 26 to 30, actually specify which parts of a building an AP or AP's if there is more than one are responsible for, e.g. common parts, balconies, tenanted flats (not flats on long leases) etc.
8	753	The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023	4/7/23 (day after made)	<p>This is the main SI in support of sections 126, 127, 128 and 129 of Part 5 of the BSA, establishing the 'Building Industry Scheme' to be known as the Responsible Actor Scheme for HRBs (here 11m or 5 storeys containing at least 2 dwellings) and the prohibitions under the BSA. This follows on from Rt Hon M Gove's injunction to developers back in January 2022.</p> <p>The Regs identify the developers who are eligible to be members of the Scheme, and, as a condition of membership, require such developers to enter into and comply with a contract with the SoS to, amongst other things, remediate relevant residential buildings for which they are responsible at their own expense and reimburse to the government amounts paid out by government remediation funds to remediate buildings for which they are responsible (see Chapter 3, Conditions of the scheme and the Self Remediation Terms at Reg.21).</p> <p>Further, Part 3 of the Regs. (nos. 28 to 42) with the Schedule to the Regs. set out the consequences for those persons who end up on the prohibitions list. Supplementing s.128 (prohibition on development) and s.129 (building control prohibitions).</p>
9	908	The Building Safety Act 2022 (Consequential Amendments etc.) Regulations 2023	Per s32	Again consequential upon section 32 (and Part 3) of the BSA (and the substantial changes made thereby to the BA 1984, making the BSR the building control authority for HRBs).



				Consequential amends to the London Buildings Acts and all other similar local Acts, to provide for building control approval for HRBs to be obtained by application rather than deposit of plans.
10	712	The Construction Products (Amendment) Regulations 2022	20/7/23	Another very brief SI, this time amending the Construction Products Regulations 2013 (see Reg.2) and the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 to provide that the SoS is an enforcement in relation to all parts of the UK.
11	895	The Building Safety (Leaseholder Protections etc.) (England) (Amendment) Regulations 2023	5/8/23	<p>Take note. The first few regulations (Regs. 3 to 8) make significant amendments to SI 859. The remainder make wholesale changes to the terms of SI 711.</p> <p>Thus, firstly, reg.3 inserts into the interpretation regulation in SI 859 a definition of 'current landlord' and 'named manager.'</p> <p>Reg. 4 adds the HCA as an interested party for the purposes of s.123 (ROs) and the HCA, RMCs and RTMs as interested parties for the purposes of s.124 (RCOs).</p> <p>Regs. 5 to 7, amend regs 3, 4 and 5 of SI 859 (and the provisions therein for one landlord (L) to recover amounts in respect of relevant measures from other landlords, where those amounts are no longer recoverable by virtue of paras. 2, 3 and 4-9 and 11 of Schedule 8 of the BSA respectively) to make it clear that where there are two or more target landlords their liability is joint and several and that to recover the amount a landlord must give a notice to at least one of them.</p>



				<p>Reg 8 fills a lacuna in the leaseholder deed of certificate procedure (under unamended Reg. 6 of SI 859) by requiring the current landlord to share a copy of any leaseholder certificate with any RMC, RTM or named manager in relation to the building.</p> <p>Then in relation to SI 711, again as from 5/8/23, SI 895 makes substantial changes, Reg. 11 substituting a new form of Landlord Certificate under Reg.6 (SI 711), adding to the list of circumstances in which a landlord must serve a certificate the landlord becoming aware of a new leaseholder certificate, and reducing the extent of the information and evidence to accompany a landlord's certificate depending upon whether or to what extent the landlord admits the different leaseholder protections under Schedule 8 of the BSA.</p>
12	907	Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023	17/8/23	<p>The next major Part 4 Regulations, supplementing the new building safety management regime introduced by that Part of the BSA 2022.</p> <p>Described in its own Explanatory Note as 'largely administrative' this SI makes provision in relation to sections 65 to 87 of the BSA.</p> <p>Reg. 3 makes provision in relation to building assessment certificates, Reg. 4 prescribes the principles upon which any AP must act, Reg.5 makes provision in relation to safety case reports, Regs 8 and 9 relate to the provision of information to the BSR and Regs 10 and 11 provide for the involvement of residents in relation to building safety risks.</p> <p>There is also further detail in relation to the complaints procedures relating to building safety risks (Reg. 12), and the form and content of contravention notices (Reg. 12) which may be served by APs and</p>



				<p>compliance notices (Reg.13) which may be served on APs by the BSR.</p> <p>Reg. 15 creates a right of appeal to the FtT against a decision of the BSR to refuse to remove a building from the register of HRBs.</p> <p>The roll out of these Regs, still depends on the detail to come under the 'Golden Thread'/Information SI laid on Wednesday 17/10/23.</p>
13	906	The Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations	1/10/23	<p>Implements Part 3 of the BSA, which by section 91ZA (just now in force since 1/10/23) provides for the Regulator to be the building control authority for higher-risk buildings in England (18m/7 storeys for the purposes of Part 3). Implements the new regulatory regime for the building control profession under which approved inspectors (AI's) are replaced by registered building control approvers (BCA's).</p> <p>Part 2 sets out the registration period for registered building inspectors and BCA's and the decision of the regulator (as registration/refusal etc.) that can be reviewed and appealed to the FtT following a review.</p> <p>Part 3 amends the Building (Approved Inspectors etc.) Regs 2010, to provide for existing building control by AIs in relation to HRBs to be invalid and taken over under the new regime.</p>
14	909	The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023	1/10/23	<p>Again these regulations are part of a number which implement Part 3 of the BSA. Where 906 disapples the existing procedural requirements for building control approval, these regulations set out the new procedures to apply instead.</p>



				<p>Part 2, sets out the procedures for applying for building control approval in relation to HRBs in place of the existing.</p> <p>Part 3 sets out the procedures that apply if there is any change to any matter (say, a change in the client, principal contractor or designer or any variation of an earlier requirement imposed on a building control approval)</p> <p>Part 4, makes provision for Golden Thread information to be kept in transferable form, to be kept up to date and available in readable format, also for mandatory occurrence reporting during the design and construction phase, and the handover of information on completion of work.</p> <p>Part 5, provides for applications for completion certificates in relation to HRB work or work to an existing HRB.</p> <p>Part 6, sets up the inspection regime for HRB work or work to existing HRB's including powers to the regulator as the BCA to take such steps as it considers appropriate to check compliance, including requiring information, laying open of work, inspections and their recording. It is also provides for the regularisation of unauthorised work, review by the regulator of its decisions and appeals to the FtT in relation to reviewed decisions.</p> <p>Part 7 defines exempt work, provides for stop notices, as well as consequential and transitional provisions.</p>



15	911	The Building Regulations etc. (Amendment) (England) Regulations 2023	1/10/23	<p>Another SI within that set of regulations which implement Part 3 of the BSA, making some significant amends to the Building Regulations 2010.</p> <p>For example, regulation 6 inserts a new Part 2A into the BR that sets out the steps a client in relation to a project must take, including the appointment in most cases of a principal contractor and a principal designer (dutyholders), as well as provisions as to the duties and competence of persons working on the project.</p> <p>Regulation 10, makes provision in relation to the procedure for appeals under the BA 1984, the BSA allowing appeals (to the FtT) from many of the decisions which are now to be made by the regulator e.g. refusing to grant a completion certificate .</p> <p>Regulation 16, makes important provision in relation to compliance notices and stop notices, introduced by new sections 35B and 35C of the BA 1984 (see section 38 of the BSA) and in respect of appeals from these to the appropriate court or tribunal (FtT), their timing and process.</p>
16	992	The Building Act 1984 (Commencement No.3) (England) Order 2023	1/10/23	<p>A further SI allied to those above for giving effect to Part 3 of the BSA. This SI brings into force the changes to section 33 of the BA 1984 made by Schedule 5 of the BSA, enabling the regulator as the new building control authority to require tests to be carried out, as well as sampling, opening up and pulling down of any work to ensure conformity with building regulations.</p>
17	965	The Building Safety (Regulators Charges) Regulations 2023	1/10/23	<p>Provides that the Regulator may recover charges for or in connection with any chargeable functions, defined under Reg 3(2).</p>



				<p>Reg.4 provides for the amounts that the BSR may charge, according to a scheme to be published.</p> <p>Regs. 5 to 10 say who is required to pay the various charges for the performance of chargeable functions, such as applicants for building control approval or persons against whom enforcement action is taken by the BSR.</p> <p>Reg. 11 provides for payment ordinarily within 30 days of request, and Reg. 12 creates an exception to charging where the building work is solely required for disabled persons.</p>
18	1052	Building (Restricted Activities and Functions) (England) Regulations 2023	Laid 29/9/23 In force 6/4/24	<p>Another important step in setting up the new building control regime for HRBs, restricting the building control function to LA BCOs and registered BCAs (building control approvers).</p> <p>Regs 3(1) and 5(1) provide that the two activities which are restricted activities are the checking of plans and the inspection of building work for compliance with Building Regulations.</p>
19	No. yet to be assigned	Higher-Risk Buildings (Keeping and Provision of Information etc.) (England) Regulations	Laid 17/10/23 Affirmative i.e will need to be debated	<p>These Regs will come into force at the same time as section 83 of the BSA. They are the last main component required for the implementation of the Part 4 management duties.</p> <p>Under Part 2, Reg. 4 details the 'Golden Thread information' that an AP must keep pursuant to s.88, Regs 5 to 14 detail the information to be provided to be provided by an AP to the whole range of prescribed persons for the purposes of ss.88, 89, 90 and 92 of the BSA.</p>



				This will enable the preparation of Building Assessment Certificates (the safety case for each relevant building); the anticipated start date for the BSR to invite AP's to apply being April 2024, provided legislative time is found soon for this SI to be passed.
		Commencement Orders		
	2022/ 561	No.1	28/5/22	132 for the purposes of regulations
			28/6/22	2(2), 3 (BSR), 17 and 18, 31, 31, 41, 55, 57, and 130, 131, 132 (BLO's)
			1/10/23	160, housing complaints to housing ombudsman
	2022/ 927	No.2	1/9/23	126 to 129 (Building Industry Schemes etc)
	2022/ 1210	No.3	1/12/22	4 (BSR partially), 9 (building adv cttee partially) and 11 (residents panel)
	2023/ 362	No.4	1/4/23	Part 2 5, 6, 8 and 9 (remainder)
			6/4/23	Part 2 BSR and Part 3 ss 32, 33, 34, 35 (new building control regime BA 1984)
			1/10/23	S160 amends to FSO
	2023/993	No.5	1/10/23	BSR takes over as the new Building Control Authority for HRBs under Part 3
		No.6	Expected shortly	Section 20D?



Falcon Chambers

20 October 2023