

Safety Case Report Confusion: What is the status of s.85 of the BSA?

- **S.85 of the BSA 2022 imposes an obligation on principal accountable persons to prepare a safety case report**
- **However, this section is currently only in force for the purpose of making regulations**
- **Nonetheless, in light of government guidance, it is sensible for principal accountable persons to prepare case safety reports now**

S.85 of the Building Safety Act 2022 imposes an obligation on the principal accountable person (“PAP”) to prepare a “safety case report” “as soon as reasonably practicable after the relevant time”. “Relevant time” is defined in s.85(4) as (a) the time when the building becomes occupied or (b) if later, the time when the person becomes the principal accountable person for the building.

S.85 is only in force for the purpose of making regulations and not otherwise. So far, no regulations have been made bringing the section into force generally.

That might suggest that safety case reports are not a current problem for principal accountable persons but, as ever with the BSA, things are not quite so straightforward.

First, on 19 September 2023, the Health and Safety Executive published guidance on [Preparing a safety case report](#) which states that “From 1 October 2023 you should prepare a safety case report as soon as possible when: -the building is already occupied or becomes occupied -you become the principal accountable person”. Slightly oddly therefore, the government guidance suggests that there is an existing obligation to prepare the case safety report.

Secondly, s.79 of the BSA imposes an obligation on the principal accountable person for an occupied higher-risk building to apply to the regulator for a building assessment certificate in relation to the building following a direction from the regulator. Under s.79(2) such an application must be made within 28 days of the direction.

Again, s.79 is only in force for the purpose of making regulations but guidance suggests that directions will be made starting in April 2024 (<https://buildingsafety.campaign.gov.uk/making-buildings-safer/prepare-to-register-your-building/>).

S.80(1)(a) of the BSA provides that an application for a building assessment must be accompanied by a copy of the most recent safety case report for the building (unless this has already been provided to the regulator).

Put shortly, it will be very difficult to meet the 28 day application deadline if no steps have been taken in advance in relation to the preparation of a safety case report. As such, steps to prepare these reports should be taken now.



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