

The Building Safety Act 2022 (BSA)

Does the BSA Apply to Hotels?

The BSA introduced a rigorous regime focusing closely on “higher-risk buildings” (HRBs), defined as:

- Being at least 18 metres in height or having at least seven storeys
- Containing at least two residential units

Hotels are currently excluded from the definition of an HRB. However, this exclusion only applies where the building is being used solely and entirely as a hotel. This means that, if you own a hotel, the BSA could apply to your building if:

- The accommodation provided is serviced apartments.
- The building provides short term lets.
- The hotel forms part of a mixed-use development/ is located within a building that includes residential units.

Who Is Responsible for Compliance With the BSA?

The person or entity that is responsible for the repair and maintenance of the relevant parts of the structure and exterior of the building will be referred to as the “accountable person.” This will usually be:

- A person who holds a legal estate in possession in any part of the common parts – where the property has been let, the person responsible for the repair works under the relevant lease(s) will be the person responsible for compliance with the BSA.
- A person who does not hold a legal estate in any part of the building but who is responsible for the repair/maintenance of any part of the common parts (for example, a managing company).

Key Responsibilities of the Accountable Person Under the BSA

- Regularly assess the potential risks that could arise from the building as a result of structural failure or the spread of fire to part of the building
- Take reasonable steps to prevent a building safety risk from materialising, or to reduce the severity of any incident that could occur
- Prepare, update and maintain a safety case report for the building and provide a copy of the report to the building safety regulator if required to do so
- Establish a system for reporting any significant incidents or risks to the building (known as a “mandatory occurrence”)
- Provide information to residents, as required, and implement a strategy for promoting participation of any residents/ property owners in building safety decisions
- Keep and maintain the information required under the BSA and associated regulations

Breach of Duties Under the BSA

Failure to comply with the BSA can result in:

- The regulator issuing a compliance notice (a notice that requires the accountable person to do something)
- An unlimited fine
- Criminal prosecution





Construction Considerations

During the construction and development phase, the BSA imposes key obligations and responsibilities on those who are appointed as “duty holders” who will be held responsible and accountable for the safety of the building during the construction phase. This can include:

- The developer(s)
- The person/entity commissioning the work
- The contractor(s)
- The designer(s)

The general responsibilities for each duty holder include ensuring:

- The building work complies with the BSA
- Information related to the works is shared and held securely
- Where necessary, the relevant applications have been made to the building safety regulator and the relevant approvals obtained
- All parties appointed to the project are competent and have the necessary skills, knowledge, experience and behaviours to carry the work they are instructed to do

Combustible Materials Ban

Hotels in England are now banned from using combustible materials in external walls of buildings that are more than 18 metres in height.

Electronic Communications Code 2017 (Code)

Who Are Operators?

Certain companies that have been authorised by Ofcom to exercise rights under the Code. A list of authorised operators can be accessed on the Ofcom website.

Operator Rights

Operators have numerous rights under the Code, but these are the rights we see exercised and disputed most often in relation to HRBs:

- Granting of temporary or permanent rights for occupation or access over land
- Having utilities installed over land
- Granting of a lease, licence and ancillary rights to:
 - Install apparatus on, under or over land and buildings (usually on rooftops of HRBs and hotels)
 - Inspect, maintain, adjust, alter, repair, upgrade or operate apparatus
 - Carry out works on land or buildings for or in connection with the installation, maintenance, adjustment, alteration, repair, upgrading or operation of the apparatus on land or buildings

Who Are Occupiers?

- Landowners (freeholders)
- Tenants under a lease (leaseholders)
- Occupiers under a licence or other agreement (e.g. a farm business tenancy)

Note that some nonoccupiers may still be bound by an operator's code rights.

Occupier Rights

Occupiers can serve statutory notices to:

- Remove an operator situated on their land or building(s) only in limited circumstances, the most common of which are:
 - An occupier intends to redevelop its land or building(s)
 - An operator has persistently failed to make payments under a Code agreement
 - An operator has committed other breaches of a Code agreement
- Force an operator to remove its equipment where its permission to access/remain on land or buildings has come to an end
- Seek compensation under the Code where an agreement is imposed or where agreements under the Code provide for the same

Impact of Operator's Rights on Hotels and HRBs

The presence of telecommunications equipment on a building can present many issues for occupiers, such as:

- Operational constraints, such as restricting any commercial development that the business may wish to carry out and adding complexity to necessary repairs and maintenance, particularly as to rooftop works.
- Health and safety issues. While operators have responsibility for the health and safety of their sites and equipment, occupiers will retain responsibility under the BSA for buildings as a whole and are responsible for holding "the golden thread of information", which may necessitate procuring information from any operators present on a building.
- Competing interests for rooftop space and/or works thereon where space is required for air conditioning and other equipment servicing buildings, particularly where multiple operators are present on one building.
- Given how consideration is determined through Paragraph 24 of the Code, the level of rent that can be obtained from operators for placing equipment on land or buildings is limited.

Overview and Key Contacts

BSA 2022:

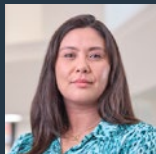
- It is crucial that hotel owners, operators and developers are aware of who holds the responsibility for the various requirements set out within the BSA. These include legal duties, reviewing compliance processes, taking reasonable measures to ensure the competence of all duty holders, ensuring the relevant gateway certificates are obtained and that all important safety information is secured in line with "golden thread".
- Hotels should therefore seek professional legal advice on the implications of the BSA, in order to act decisively with regard to all legal requirements and to demonstrate to investors, guests, employees and customers that building safety is a key priority for the business.

Electronic Communications Code:

- Given the implications of the Code and the extensive rights that are granted to operators, it is crucial that hotels are able to seek legal advice in relation to their rights and when negotiating agreements to provide them with sufficient protections in relation to their building safety and business operations.

Key Contacts

Should you have any queries on any of the issues above, please do contact:



Michelle Adams

Partner, Birmingham
T +44 121 222 3137
E michelle.adams@quirepb.com



Stephanie Hadley

Associate, Birmingham
T +44 121 222 3460
E stephanie.hadley@quirepb.com



Mobeen Amin

Senior Associate, Birmingham
T +44 121 222 3202
E mobeen.amin@quirepb.com



Chloe Ward

Associate, Birmingham
T +44 121 222 3324
E chloe.ward@quirepb.com