



Legal Update

AOSH / IOSH Bristol and West Branch

12 January 2023

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A PURPOSE-LED PROFESSIONAL SERVICES
BUSINESS WITH LAW AT THE CORE

Agenda

- Brexit
 - Retained EU Law (Reform and Revocation) Bill
 - Product safety
- Mental Health
- Building and Fire Safety
- Inquests and Public Inquiries



BREXIT

The Retained EU Law (Revocation and Reform) Bill

- Recent history
 - June 2016 - Referendum
 - March 2017 - UK Govt invoke Article 50
 - June 2018 - European Union (Withdrawal) Act 2018
 - January 2020 - UK's withdrawal from the EU
 - December 2020 - Retained EU Law created
 - September 2022 - The Retained EU Law (Revocation and Reform) Bill introduced to HoC

The Retained EU Law (Revocation and Reform) Bill

- Aim – ‘take back control’ / benefits of Brexit
- ‘Sunset’ clause – 31 December 2023
- Retained EU law ‘dashboard’ / substance and status reviews
- Relevance to H&S
 - 58 H&S regulations identified
 - Covering key areas relating to health and safety management, work at height, lifting operations, asbestos and CDM
- HSWA 1974
- Bill progress

The Retained EU Law (Revocation and Reform) Bill

- Options to avoid the ‘sunset clause’
 - Postpone revocation to June 2026
 - Replace existing regulations
- Conclusions
 - Depends on DWP decision making and progress with Substance and Status Reviews
 - General consensus of H&S regulations being ‘fit for purpose’ – move to preserve?

Product Safety

- UKCA mark became mandatory from 1 January 2022
- Replaces the CE and reversed epsilon for products placed on the GB market
- Applies to most goods (electronics and personal protective equipment)
- Extended Deadline - 31 December 2024
- Reviewing of the wider product safety framework pending
- Reducing the burden of compliance
- Construction Product Deadline - 30 June 2025



MENTAL HEALTH

Mental Health

HSE Statistics

- 914,000 cases in 2021/22
- Rise of 11.2% from 2020/21
- 2,750 per 100,000 workers
- 17m working days lost – 18.6 days per case.
- New cases fell by 17.5% from 451,000 in 2020/21 to 372,000 in 2021/22
- Higher than average industries: public administration and defence, health, social work and education.

Mental Health

Recent developments

- November 2021 - HSE Working Minds Campaign
- May 2022 - HSE Strategy 2022-2032
- September 2022 - WHO / ILO guidelines published

Mental Health

Horizon-spotting – 2023 and beyond

- Increased judicial activism of Coroners

“A generation ago, we used to think only about the risks to construction workers and people working in manufacturing plants. But now, office based mental-health issues are more recognised. Employers should be aware of the pressure they may be putting people under by imposing demanding targets on individuals who may be isolated and deprived of the camaraderie of having supportive workmates around them”.

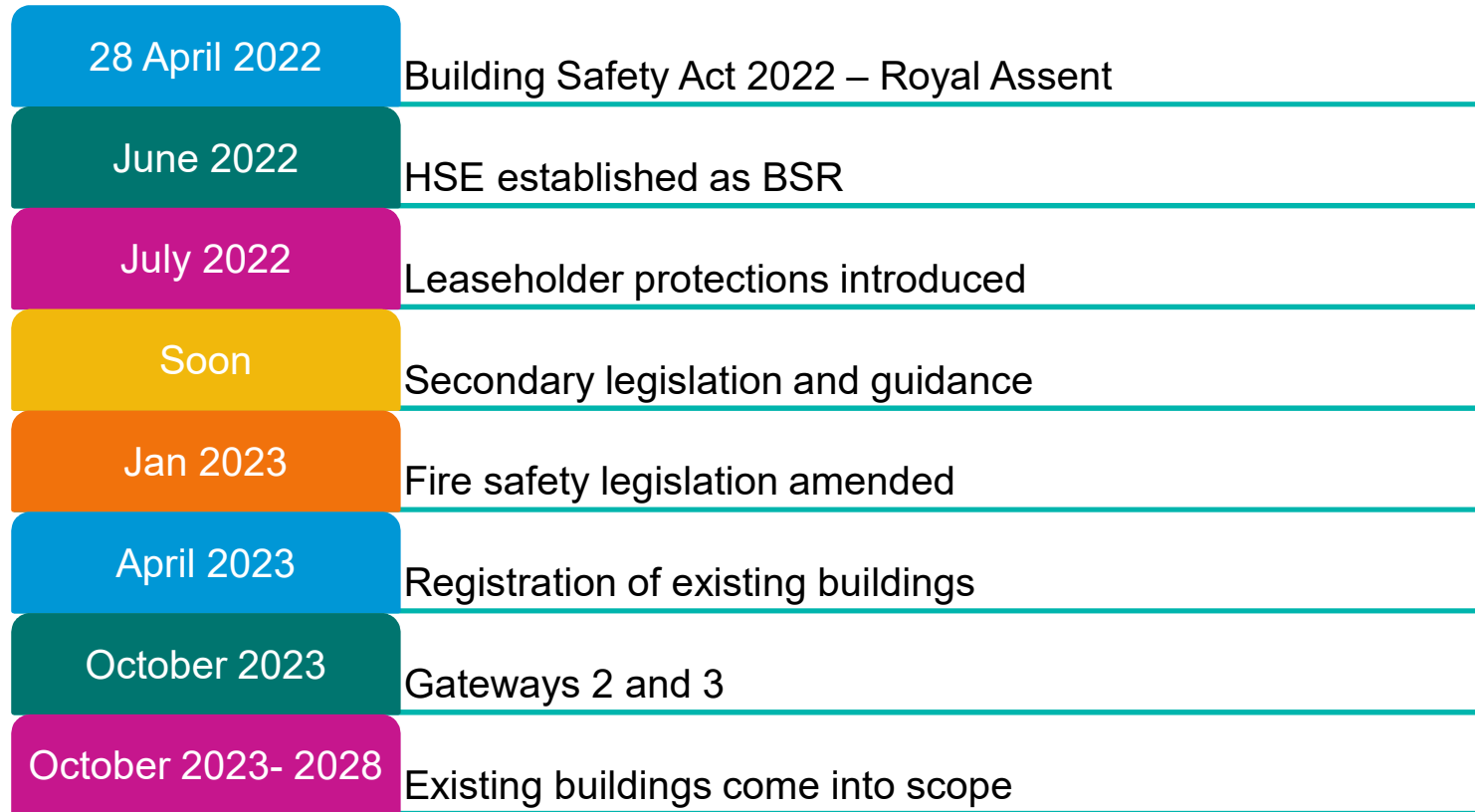
HM Senior Coroner for South Yorkshire

- RIDDOR 2013 – amendments to the reporting requirements
 - APPG report

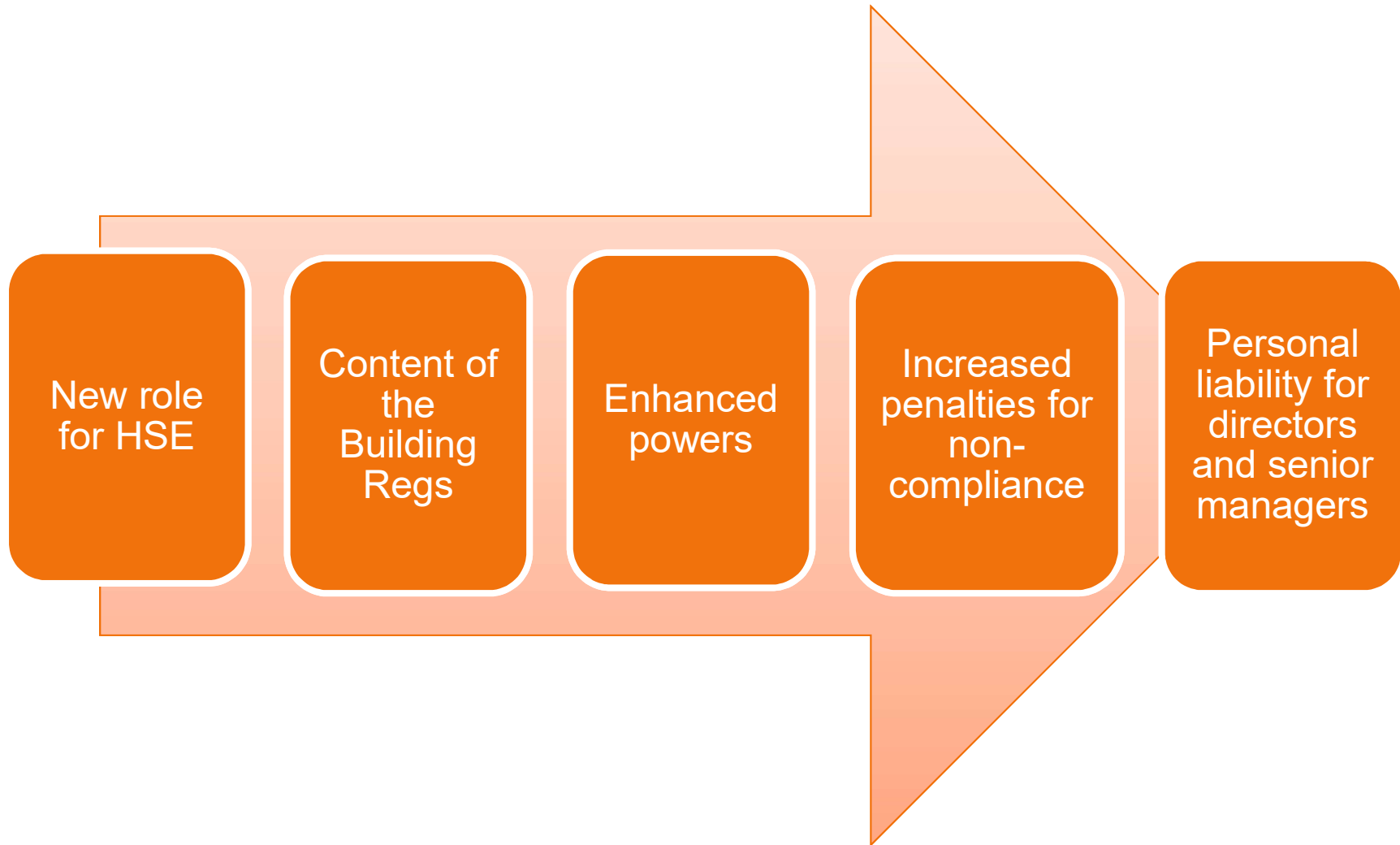


BUILDING AND FIRE SAFETY

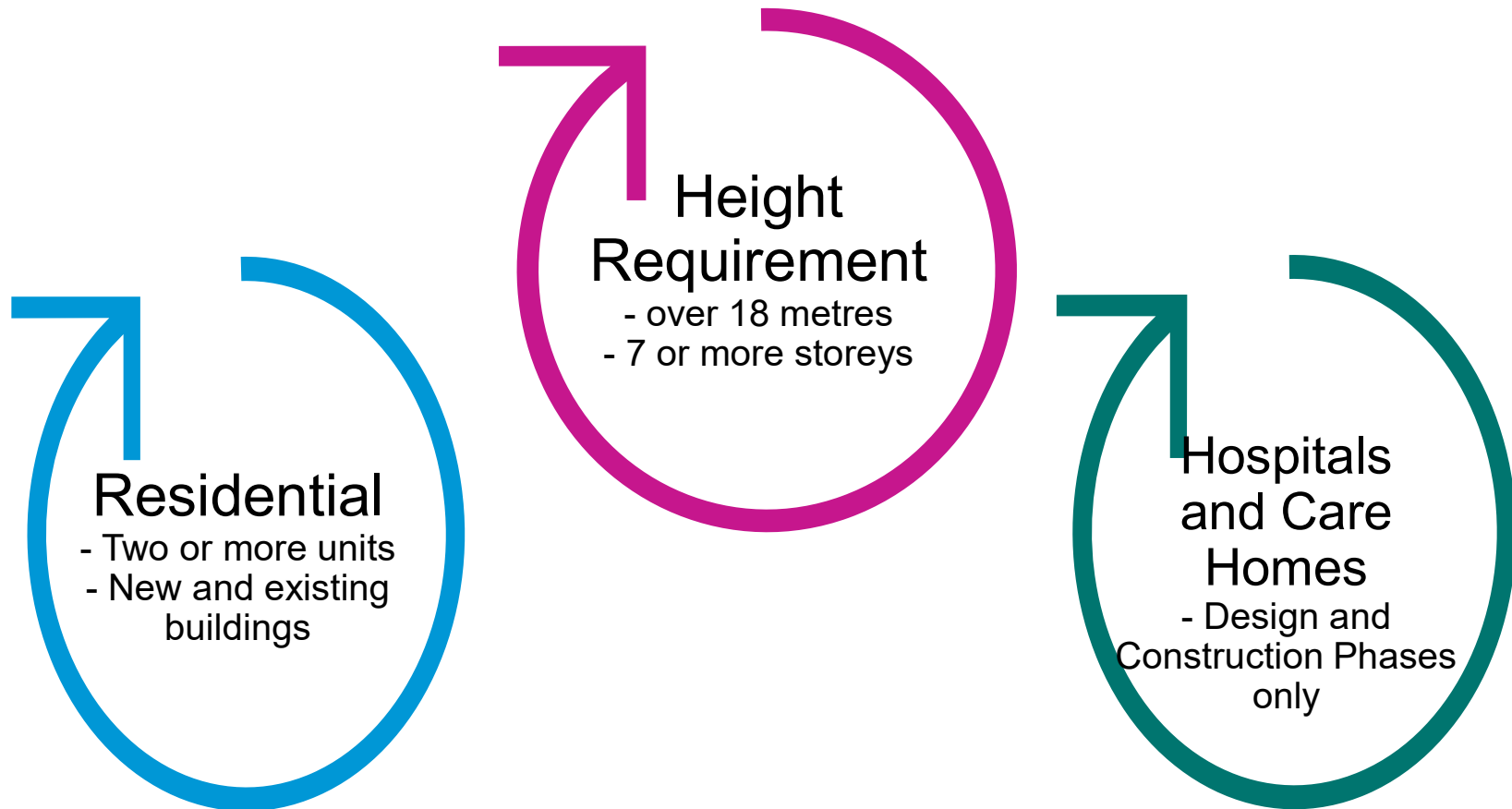
Timeline



Building Safety Regulator (BSR)



High-Risk Buildings



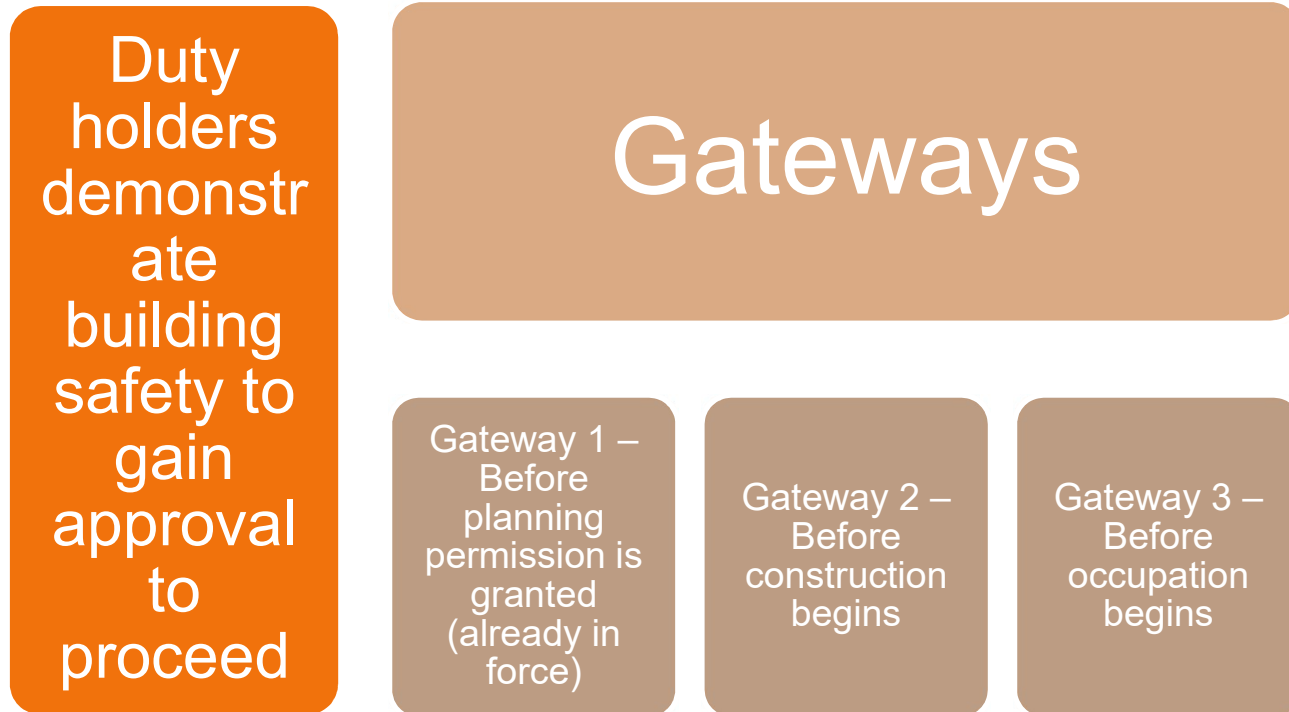
Dutyholder Regime

These Regulations are made under Building Act 1984 – not the Health & Safety at Work etc. Act 1974

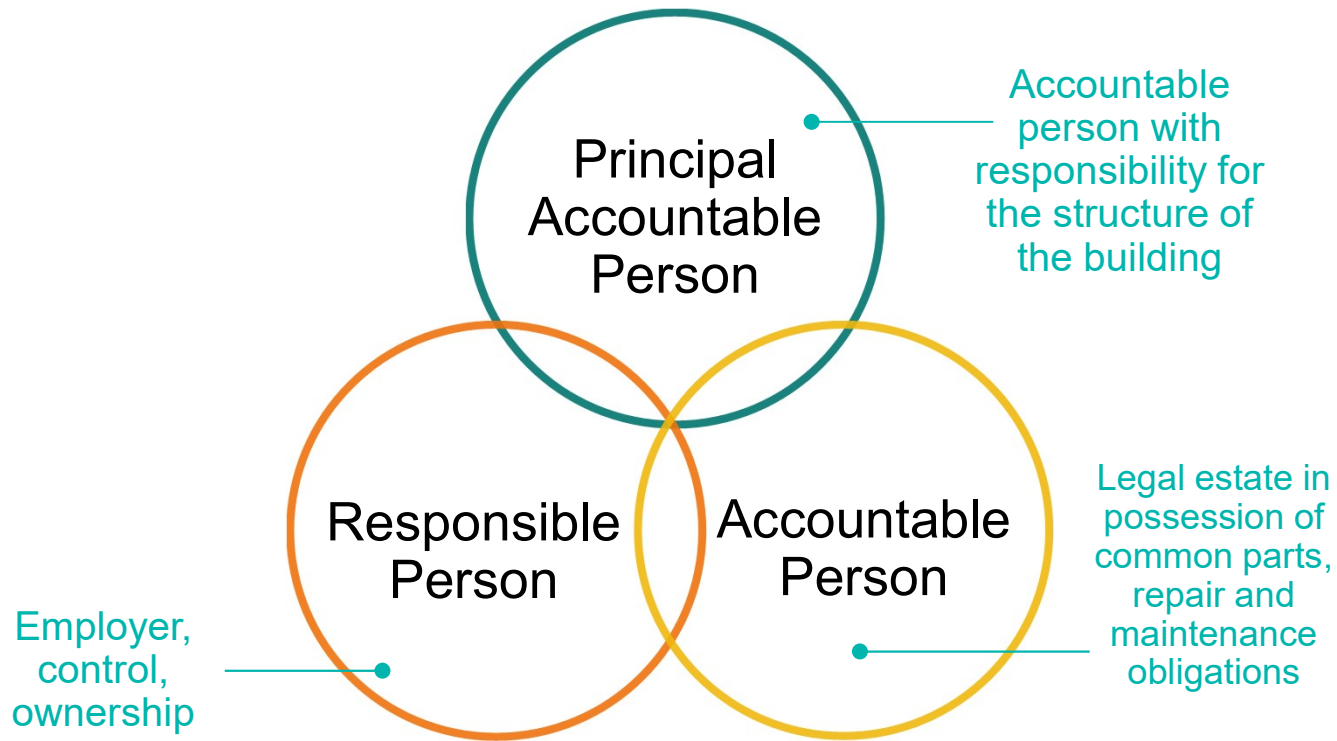
They do not apply to work exempt under Schedule 2 of the Building Regulations 2010

Do not apply to an individual intending to carry out building work on the dwelling where they live where work does not require building notice or deposit of full plans

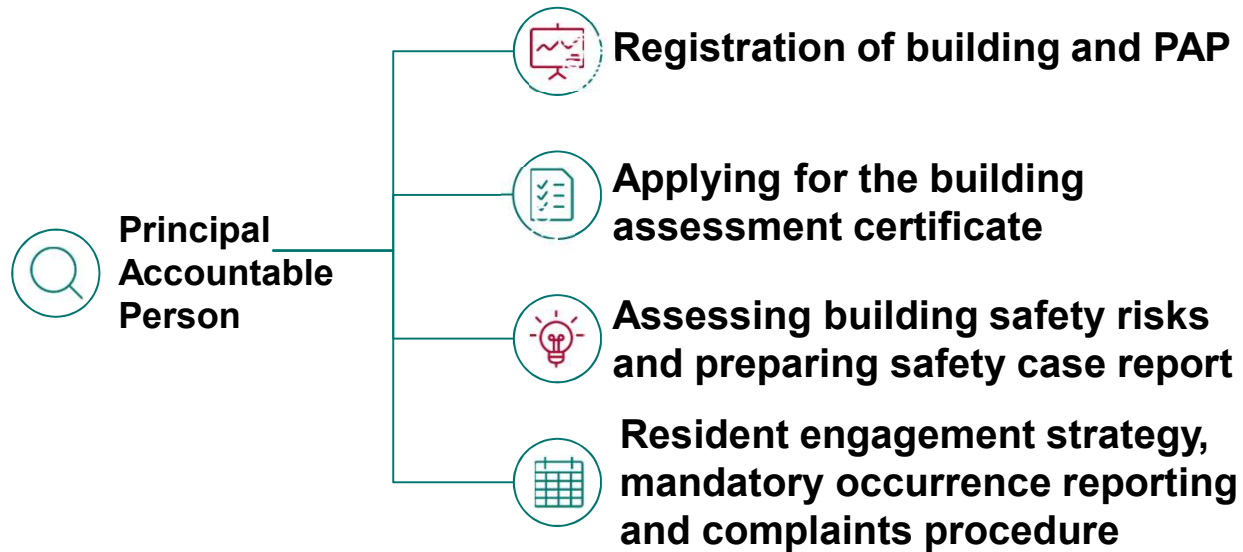
Gateway System – Overview



Occupation Phase



Duties - Principal Accountable Person





INQUESTS AND PUBLIC INQUIRIES

Background

- Examples of recently concluded / ongoing public inquiries
 - Grenfell Tower Fire Inquiry
 - Manchester Arena Inquiry
 - Covid-19 Inquiry
 - Leveson Inquiry
 - Mid Staffordshire NHS Trust
 - Death of Alexander Litvinenko
 - Independent Inquiry into Child Sexual Abuse
 - Infected Blood Inquiry
- Inquest into the death of Aawab Ishak

Inquests

- Fact finding investigations
- Who, where, when and how
- Possible jury
- Article 2
- Interested Persons
- Conclusions, including suicide, misadventure or an open conclusion.
- Prevention of Future Death (PFD) Reports
- Protection from self-incrimination

Public Inquiries

- Matters of ‘public concern’
- Purpose: establish the facts, find out what happened, why, who is accountable and establish lessons learnt.
- Commissioned by a Minister under Section 1, Inquiries Act 2005:

“A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that: (a) particular events have caused, or are capable of causing, public concern, or (b) there is public concern that particular events may have occurred.”

- ‘Public concern’ - large scale loss of life, serious H&S issues, failure in regulation, other events of serious concern.
- Statutory or Non-Statutory
- Chair Appointed
- Terms of Reference

Public Inquiries (cont'd)

- Core Participants
 - status
 - legal rights
 - disadvantages
- Evidence
- Publicity
- Findings and recommendations

Inquests vs Public Inquiries

- Main differences:
 - Fact of death
 - Scope of investigation
 - Apportionment of blame

R (Morahan) v HM Coroner for West London and Others

- Court of Appeal decision which emphasised distinction between the two sets of proceedings:

“An inquest remains an inquisitorial and relatively summary process. It is not a surrogate public inquiry. The range of coroners’ cases that have come before the High Court and Court of Appeal in recent years indicate that these features are being lost in some cases”.

Questions?



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