



Department for Levelling Up,
Housing & Communities

Building Safety Bill

17 March 2022

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Reform Implementation



- The Bill implements the **recommendations of Dame Judith Hackitt's report** on Building Regulations and fire safety.
- The Bill:
 - Sets up a new **Building Safety Regulator** and paves the way for a new **National Regulator for Construction Products**.
 - Sets out a **new legislative framework for the design and construction of in scope and other buildings**.
 - Sets out a **new legislative framework for building safety for existing high rise residential and other in scope buildings**.
 - Defines which buildings are in scope of the new regulatory regime.
 - Creates powers for a stronger regulatory regime for construction products.
- The Bill was introduced into Parliament in June 2021 and after completing Commons stages passed into the House of Lords on 20 January 2022 where it completed Lords Committee stage on 2 March 2022. Royal Assent is expected in Spring 2022.
- There will be a major programme of **secondary legislation through to 2024** to implement the detailed regime.



The Bill has 161 clauses and 12 schedules and is in six parts

Part 1 – Introduction

Details the structure over five parts and highlights that Bill provisions are intended to secure the safety of people in or about buildings and to improve the standard of buildings.

Part 2 – Regulator & its functions

Establishes a new Building Safety Regulator within the Health and Safety Executive, and provides key powers to enable the regulator to undertake its functions.

Part 3 – Building Act 1984

Deals with amendments to the Act as it applies to England, setting out the provisions for the new regulatory regime during the design and construction phase for buildings in scope and provides for the registration of building inspectors and building control approvers to improve competence levels in the building control sector through better regulation.

Part 4 – Higher risk buildings

Concerned with buildings in scope when they are occupied, defines and places duties on the Accountable Person in relation to building safety risks in their building, including resident engagement.

Part 5 – Other provisions about safety, standards

Detailed provisions requiring arrangements for a New Homes Ombudsman scheme to be available; creates powers to make provision about construction products; strengthens the powers available to the Architects Registration Board; As part of a range of reforms to improve redress, removing, the ‘democratic filter’ requiring social housing residents to refer unresolved complaints to a ‘designated person’ or wait eight weeks before they can access redress via the Housing Ombudsman. Part 5 also cover limitation periods for the Defective Premises Act, the review of the system and introduces provisions related to the Building Safety Charge.

Part 6 – General

Covers general provisions around the commencement of provisions in the bill, as well as covering application to the crown estate, and general provisions relating to regulation.



Building Safety Regulator

- The Building Safety Regulator will be located within the Health and Safety Executive.
- It will have the following roles:
 - **Overseeing the safety and performance of all buildings.**
 - **Promoting the competence of professionals, tradespeople and building control professionals working on all buildings.** This has two elements:
 - **Working with industry to promote** competence of professionals working on buildings,
 - **Improving the competence of building control inspectors,** who assess, inspect, monitor and enforce building regulations across the vast majority of buildings. This includes a registration regime.
 - **The delivery of the new, more stringent regulatory regime for buildings in scope.** This includes acting as the building control authority for all building work on all buildings in scope.
- The BSR will work with **local authorities and fire and rescue authorities** in delivering its role as the regulator and building control authority for in scope buildings. The BSR will be able also to call on the expertise of Approved Inspectors in a support role if necessary.



Higher risk buildings – design and construction: Key definitions

- Higher risk buildings (Part 3 of the Bill) will apply to buildings which meet the definition of **‘higher-risk buildings’** (clause 30).
- “Higher risk building” means a building in England that –
 - (a) is at least 18 metres in height or has at least 7 storeys, and
 - (b) is of a description specified in regulations made by the Secretary of State
- For Wales: a “Higher risk building” means a building that is of a description specified in regulations made by the Welsh Ministers.

<https://www.gov.uk/government/publications/building-safety-bill-factsheets/buildings-included-in-the-new-more-stringent-regulatory-regime-factsheet>



Dutyholders

- To ensure clear **accountability** throughout procurement, design and construction.
- There will be **defined roles**, based on the CDM model i.e. client, principal designer, principal contractor, designers and contractors.
- This will apply to all building work – not just higher risk work
- Dutyholders can be individuals, or an organisation, and can have more than one role in the project.
- They will be responsible for ensuring compliance with the building regulations and have duties to:
 - **Cooperate** with other duty holders.
 - **Communicate** and share information.
 - **Coordinate** work by having **suitable systems** in place to plan and manage the work.
 - **Appoint competent people** with the right skills, knowledge, experience and behaviours for the work.
- **Mandatory reporting** to the new BSR of fire and structural safety occurrences which could cause a significant risk to life safety.
- Draft dutyholder and competence regulations have been published:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/997755/Competence and Dutyholder draft regulations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/997755/Competence_and_Dutyholder_draft_regulations.pdf)



- **Stop/go decision points** to ensure building regulations' compliance is considered at each stage of design and construction for buildings in scope
- **Gateway One** – at planning permission stage. A fire statement is required with the planning application. HSE will be a statutory consultee. These changes have been made and came into effect on 1 August 2021: <https://www.gov.uk/guidance/fire-safety-and-high-rise-residential-buildings-from-1-august-2021>
- **Gateway Two** – before build starts. Equivalent of full plans plus other prescribed documents, including a fire and emergency file, construction control plan, and competence declaration.
- As build progresses, **prescribed changes will need Building Safety Regulator (BSR) approval** whilst other changes must be notified. The BSR will carry out inspections at key stages and the **golden thread** of information must be developed and maintained.
- **Gateway three** – completion certificate application with **compliance declaration and prescribed information on as-built building submitted to BSR** and **golden thread** information handed to the building owner.
- **Gateways two and three are hard stops**, i.e. approval is required before building work starts or the building can be occupied.
- Draft regulations can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1025876/The_Building_Higher-Risk_Buildings_England_Regulations_2022_.pdf



Competence

- Under the Bill, the Building Safety Regulator will establish an **industry-led competence committee** to oversee and support improvement of competence of the sector.

Competence requirements - all buildings

- Anyone carrying out design or building work must be **competent for their role**, or be trained and supervised. This will apply to all building work.
- Those making appointments or permitting anyone to carry out work must take reasonable steps to ensure they meet the competence requirements.
- The **Principal Designer (PD)** and **Principal Contractor (PC)** must be **competent to fulfil their duties**. Where they are organisations, they must designate a competent individual to manage its functions as the PD or the PC.
- The **Client must record the steps** they have taken to ensure the PD and PC are competent. At Gateway 2, they must provide a declaration that they have assessed the competence of the PD and PC.

Competence standards and frameworks

- Competence standards are being developed for key safety-critical sectors such as engineers, fire risk assessors etc and for key roles.



Golden Thread

- The '**golden thread**' of building information is to be created, stored and updated throughout the building's lifecycle.
- Will hold the information needed to:
 - Show that the building was **compliant with building regulations** throughout the design and construction and refurbishment of a building.
 - Identify, understand, manage and mitigate **building safety risks** through out the life cycle of the building.
- The information stored in the golden thread should be **reviewed and managed** so that the information retained, at all times, achieves these purposes.
- The golden thread covers both the **information and documents and the information management processes** (or steps) used to support building safety.
- The golden thread information should be stored as **structured digital information**.
- Many people will need to access the golden thread to update and share golden thread information throughout a building's lifecycle, including but not limited to building managers, architects, contractors and many others.
- The Building Regulations Advisory Committee has published a report on the golden thread:
<https://www.gov.uk/government/publications/building-regulations-advisory-committee-golden-thread-report>



Buildings in Occupation: Key definitions

- The majority of the ‘in occupation’ part of the regulatory regime (Part 4 of the Bill) will apply only to buildings which meet the definition of ‘**higher-risk buildings**’ (clause 64) which are ‘**occupied**’ (clause 70).
- Higher-risk buildings which will be regulated by the new occupation regime are those which are at least **18 metres** in height or have at least **7 storeys** and contain at least two residential units (clause 64).
- ‘Occupied’ is defined as the building being in multi-occupation by residents of two or more residential units (clause 70).
- Draft regulations on this can be found at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/997754/Scope_draft_regulations.pdf



Existing in scope buildings

- An **Accountable Person** will be appointed for existing in scope buildings, responsible for a range of duties, including:
 - **Registering** the building and applying for a **Building Assessment Certificate**.
 - **Managing building safety risks**.
 - Preparing and submitting a **safety report** (safety case) for review by the Building Safety Regulator.
 - Putting in place a **residents engagement strategy**.



Accountable Persons

- The **Accountable Person** is the entity responsible for meeting the statutory obligations for occupied higher-risk buildings.
- The **Accountable Person** is the person who either has the legal estate in possession of, or is under a relevant repairing obligation, for any part of the common parts of the building (clause 70).
- Where there are two or more Accountable Persons, a **Principal Accountable Person** will be determined who will coordinate on behalf of the Accountable Persons.
- The **Principal Accountable Person** is the entity that is the owner of the structure and exterior of the building (clause 72).
- The Secretary of State can, through regulations, define the parts of a high-rise residential building an Accountable Person is responsible for (clause 73)



Registration

- All occupied higher-risk buildings will need to be registered with the regulator.
- The Principal Accountable Person will provide the regulator with key **details of the building** (e.g. address, height, number of flats), and information about the **Accountable Persons**.
- The **regulator** will publish the information from registration in a **national register** of higher-risk buildings. Registration will also provide information to the regulator who will then use this for effective regulation
- **New buildings must be registered before occupation.** Existing occupied buildings will be registered within a six-month transition period



Building Assessment Certificate

- The Principal Accountable Person will need to apply for a **Building Assessment Certificate**, which will be displayed within the building where it can be seen by residents.
- The Principal Accountable Person will need to send certain documents to the regulator, including a copy of the **Safety Case Report**, details about the **Mandatory Occurring Reporting System**, and a copy of the **Resident Engagement Strategy**.
- The regulator will look at the documents and **assess whether the Accountable Persons are complying with their statutory obligations**. The regulator may also send an inspector to the building.
- If the regulator is satisfied that, **at the time of assessment**, the Accountable Persons are managing their building effectively and keeping residents safe, it will issue a Building Assessment Certificate for the building.
- The certificate indicates **compliance at the time of assessment**, but does not give ongoing assurance as to the safety of the building.



Safety Case

- **Assessment of building safety risks:** Accountable Persons are required to make an assessment of building safety risks (spread of fire and structural failure). It must be suitable and sufficient to enable them to meet their duty to manage said risks.
- **Management of building safety risks:** Accountable Persons must take all reasonable steps to manage building safety risks to prevent their occurrence and to minimise the impact should an incident involving the risks occur.
- **Safety case report:** the Report should provide a summary of the assessment of building safety risks and the arrangements in place to ensure they're effectively managed on an ongoing basis.
- **Notification and provision of report to the regulator:** Once a Report has been produced, or updated, the regulator should be notified. The regulator can request the Report be submitted, usually done through the Building Assessment Certificate process.



Residents' Voice

- The Accountable Person will have a legal obligation to ensure residents are informed about, and are involved in decisions that concern the safety of their building.
- The Principal Accountable Person in any building will be required to:
 - Produce a **residents' engagement strategy** that promotes residents' engagement and involvement in decision-making about safety issues.
 - Establish a **complaints system** that ensures residents' safety concerns are heard and dealt with. Residents will also have the ability to escalate complaints to the Building Safety Regulator.
- Residents will be under an obligation to:
 - not act in a way that creates a significant risk of fire or structural failure.
 - not interfere with a relevant safety item.
 - comply with a request by the Accountable Person for information reasonably required to perform their duties to assess and manage building safety risks.



Architects

- The Bill introduces a provision for the **Architects Registration Board (ARB)** to monitor competence of the architects on their Register. The ARB will set the criteria, in conjunction with other relevant bodies (such as the Royal Institute of British Architects) and after consultation with the sector.
- If an architect does not meet these requirements, or is found to be guilty of professional misconduct or serious professional incompetence with regards to the criteria, the ARB will have the power to **remove them from the Register**.
- Architects will have the opportunity to challenge registration decisions through a non-judicial route of appeal to the proposed Appeals Committee.
- The Bill also introduces a power to amend the fee provisions in the Architects Act 1997



Construction Products

- The Bill provides powers so that **all construction products marketed in the UK fall under a regulatory regime**, allowing them to be withdrawn from the market if they present a safety risk.
- After an implementation period, the manufacturers of **safety critical construction products included on the statutory list** will be subject to requirements including the labelling of products, declaring their performance and ensuring that they consistently meet declared performance standards.
- The Bill will give **enforcement powers for all the existing and new parts of the regulatory regime to the Secretary of State**, which will enable us to build up national oversight in central government. Trading Standards' enforcement powers will be extended under the existing regime to the new regulatory requirements.
- The **national regulator for construction products** is being established within the **Office of Products Safety and Standards**, however, DLUHC will remain responsible for construction products policy and our Ministers will remain accountable to Parliament.



Limitation periods

- The Bill will amend the existing **Defective Premises Act 1972** and the **Building Act 1984** by extending the limitation period in which prosecutions may be brought from six to thirty years.(Clause 136)
- The effect of this clause is that **homeowners, leaseholders, freeholders etc. will have much longer periods in which they can bring claims.** Existing legislation provides for six-year limitation periods.
- The limitation period under section 1 of the DPA will be **extended retrospectively to 30 years,** and **prospectively to 15 years.** The limitation periods under new section 2A of the DPA and under section 38 of the Building Act (which will have prospective effect only) will be **extended to 15 years.**
- Subsection (4) ensures that, where the retrospectively extended section 1 DPA limitation period is revived for less than one year, **potential claimants will always have one full year to lodge a claim.** In practice this means that buildings completed between mid-1992 and mid-1993 will always have one full year to bring a claim.
- Subsections (5) and (6) provide safeguards against potential breaches of the European Convention on Human Rights.



Leaseholder Protections

- Leaseholders living in their own home or sub-letting in a building over 11m will be entitled to **protections from historical remediation costs**.
- Where the landlord is **responsible or has links with the developer that is responsible for the defect, or can afford to do so**, they will be required to **pay in full for the historical building safety issues**.
- Where building owners are not linked to the developer and are not able to afford the remediation, some costs can be passed on to leaseholders. The costs will be subject in most cases to **caps of £10,000, or £15,000 for leases in Greater London**, with a **repayment period of up to five years**.
- These caps will **limit how much leaseholders can be asked to pay for non-cladding costs**, after building owners and landlords have exhausted all other cost recovery options, such as litigation under the Defective Premises Act or the proposed new construction products causes of action.
- **Any costs paid out by leaseholders over the past five years will count towards the cap**, meaning some leaseholders will pay nothing more. The amendments also provide that cladding costs cannot be passed on at all.
- **Different caps will be applied to very high-value properties** – those with a value of over £1m but under £2m the maximum permitted charge is £50,000. Those with a value of over £2m the permitted maximum is £100,000.



Routes to redress

- **Remediation orders**, granted by the First-tier Tribunal on the application of an interested person (e.g. regulator, local authority, fire and rescue authority), can require a landlord to remedy building defects.
- **Building liability orders**, granted by the High Court, can **extend a liability for one company to any other associated companies and can make them joint and severally liable for it**. Applications must be part of a claim made under the Defective Premises Act 1972, section 38 of the Building Act 1984 or any other claim which is incurred as a result of a risk from fire spread or structural failure.
- A new **'cause of action'** - allows anyone with a legal or equitable interest in a dwelling, (or in a building containing one or more dwellings) to **bring a civil claim against construction product manufacturers and/or sellers who are directly responsible for a construction product** used in the original construction, or any subsequent works, **causing/contributing to a dwelling being unfit for habitation**.
- New power to make regulations to enable the Secretary of State to serve a **costs contribution notice**, or apply to the court for a **costs contribution order** to be made, against a construction products company, to require them to contribute towards the cost of remediation works. The Secretary of State would be able to use this power following **successful prosecution for non-compliance with construction products regulations**, where the relevant product has caused or contributed to dwellings being **unfit for habitation**.



New Homes Ombudsman

- The Bill includes provision for the **New Homes Ombudsman scheme** for Great Britain which will provide an alternative dispute resolution service to avoid the courts, improve the quality of new build homes and provide redress.
- Secretary of State must make arrangements for a scheme to be available for complaints from new build homebuyers against developers to be investigated and determined by an independent person.
- **Developers will be required to become and remain members of the Ombudsman scheme** through regulations.
- Where there is a well-founded complaint the ombudsman may require developers to provide redress including compensation, and the scheme may, as a last resort, exclude developers from membership of the scheme.
- Secretary of State may set out an **enforcement framework** for the investigation of breaching requirements set out in regulations and for the implementation of civil sanctions in respect of any such breach.
- The Bill also includes provision for a developers' code of practice about the standards of conduct and standards of quality of work expected of members of the ombudsman scheme.



Building Safety Bill Briefing

Thank you

Further Information:

<https://www.gov.uk/government/publications/building-safety-bill-draft-regulations>

<https://www.gov.uk/government/publications/building-safety-bill-factsheets>