Department for Levelling Up,
Housing & Communities

UK Building Regulations and Fire Safety Conference and Exhibition 2022

Implementing the Building Safety Act

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Department for Levelling Up, Housing & Communities

Why are we doing this: the Grenfell Tower Tragedy

Grenfell was the deadliest fire in Britain since the start of the 20th century; 72 lives were lost and 151 homes.

- Within days, it became clear that key factors believed to have contributed to the spread of fire might be widespread.

The Building Safety Programme was established in DLUHC to:

- Ensure residents are safe and feel safe now and in the future;
- Remediate Aluminium Composite Material (ACM) cladding; and
- Reform the regulatory system.

The Department commissioned an Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt.

The Grenfell Inquiry was established - chaired by Sir Martin Moore-Bick (former Court of Appeal judge).

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Developing the new regime

Grenfell Tower Fire
- 14 June 2017

Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety
- May 2018

Building a Safer Future Consultation
- June 2019

Government Response to Consultation
- April 2020

Draft Building Safety Bill Published
- July 2020

Pre-legislative Scrutiny
- September – November 2020

Building Safety Bill Introduced
- July 2021

House of Commons stages completed
- Jan 2022

House of Lords stages completed
- April 2022

Royal Assent
- April 2022

Implementation starts
- From May 2022 to May 2024

Consultations issued and regulations made
- From June/ July 2022 to 2024

Overview – the Building Safety Act 2022

- The Act:
  - Sets up a new **Building Safety Regulator**, a new **National Regulator for Construction Products** and **New Homes Ombudsman**
  - Seeks to improve the **competence and oversight of both industry and regulators** in the built environment sector
  - Sets out a rigorous **new legislative framework for the design and construction and management of occupied high-rise residential buildings**
    - This will include **strengthened enforcement mechanisms and stiffer penalties** (including imprisonment for up to two years) for non-compliance, alongside additional enforcement resource to underpin the enhance regime;
    - **Improve routes to redress** for past wrongdoing of industry actors and introduces new protections for leaseholders from unaffordable costs for historic remediation.
- There will be a major programme of **secondary legislation** through to 2024 to implement many aspects of this regime.

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Key areas of reform

The Government's approach involves six key areas of reform. For all buildings:

A single Building Safety Regulator within HSE to oversee the new regime

A new National Regulator for Construction Products in the Office for Product Safety and Standards (BEIS)

Stronger enforcement and sanctions that deter and punish those who fail to do the right thing

Dutyholders who have clear responsibilities throughout design, construction, occupation and refurbishment

For higher-risk buildings:

A new, more stringent regulatory regime in design and construction, and in occupation for higher risk buildings

Residents who have a stronger voice in the system so that their concerns are not ignored

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Functions of the Building Safety Regulator

At the heart of the Government's reforms is the creation of the first national (across England) **Building Safety Regulator.**

New regulator will have three main functions:

- Leading the delivery of the new, more stringent regulatory regime for higher-risk buildings (residential buildings of 18m+). During design and construction, the BSR will act as the building control body for residential buildings of 18m+ and hospitals and care-homes that meet this height threshold

- Overseeing the safety and performance of all buildings

- Promoting the competence and organisational capability of professionals, tradespeople and building control professionals working on all buildings:

    - Working with industry
    - Improving the competence of building control inspectors and registered building control approvers - includes a registration regime

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Buildings in scope of the more stringent regime

- Buildings included within scope of the new more stringent regime are called **‘higher-risk’ buildings**.
- These buildings will be subject to all the requirements of the new regime and directly regulated by the Building Safety Regulator.
- The Act sets out that during building work, buildings which are at least 18 metres in height or have at least 7 storeys and are of a description specified in regulations will be within scope.
- The Act also sets out that buildings which are at least 18 metres in height, or have at least 7 storeys, and have at least two residential unit will be within scope of the in-occupation part of the new regime.
- The definition will be complete by Regulations which we intend to lay in parliament in the coming months.
- The intention is to exclude certain buildings from the new regime
- And for the design and construction phase of the new regime, define the use criteria for a building to be included.
- They will also provide other technical provisions such as overall definition of a building and a method for measuring the height and number of storeys for higher-risk buildings.
- The regulations are subject to parliamentary scrutiny and approval.

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Buildings in scope of the more stringent regime

The Building Safety Act 2022, together with the regulations, mean that:

- **During design and construction** (including building work in existing buildings), the more stringent regime will apply to building **with at least two residential units, care homes and hospitals which meet the 18 metre or 7 storey height threshold**.

- **During occupation**, the more stringent regime will apply to buildings **with at least two residential units which meet the 18 metre or 7 storey height threshold**.

- This scope is based on objective and measurable risk factors, so that new regime is proportionate to risk.

- The Building Safety Act 2022 also mandates that the Building Safety Regulator oversees the safety and performance of all buildings.

- So, if the required tests for adding a category of building to the definition of higher-risk building are met, then the **BSR can recommend to the Secretary of State that the scope for higher-risk buildings is expanded**.

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What this means for building owners

Design and construction of all new buildings

- Defined roles, based on the Construction, Design and Management Regulations (CDM) model (i.e. client, principal designer, principal contractor, designers and contractors). This will apply to all building work – not just higher risk building work.
- Supported by competence requirements, ensuring those carrying out design or building work are competent or trained and supervised appropriately.

Design, construction and management of higher-risk buildings

- A new building control approval regime with **'Gateways'** - stop/go decision points - that require approval before a dutyholder starts construction and at completion before the building can be occupied.
- A new **'golden thread'** of building information – started during construction, and stored and updated throughout the building's lifecycle, to support the ongoing management of building safety risks.
- There will be **mandatory reporting** to the new regulator of fire and structural safety occurrences which could cause a significant risk to life safety.
- Those who don't meet their obligations may face **criminal charges** and ultimately up to 2 years in prison and an unlimited fine.

What this means for owners of higher risk buildings in occupation

Accountable person will be required to undertake the following key duties:

- **Register** the building with the Building Safety Regulator
- Carry out an **assessment of building safety risks**, and take all necessary steps to reduce / manage the building safety risks
- Produce a **Safety Case** to explain how these prevent a major incident from occurring
- Prepare a **Safety Case report,** setting out how they are managing the building safety risks, and submit it to the Regulator
- Maintain the '**golden thread'** for the building
- Provide the necessary information to apply for a **Building Assessment Certificate**, when requested by the Regulator
- Establish a **resident's engagement strategy** for building safety, as well as a **complaints system**
- Establish a **mandatory occurrence reporting system**

What this means for residents of higher-risk buildings

- Residents in high-rise buildings will have **more say in the safety management of their building,** and more confidence that those working on buildings are competent.
- They will be able **to raise building safety concerns** directly with the owners and managers of buildings, who will have a duty to listen to them.
- If they feel safety concerns are being ignored, **they will be able to raise them with the Building Safety Regulator.**
- There is a new requirement for landlords to ensure that they have explored **all alternative cost recovery avenues**, before they ask leaseholders to contribute to defined remediation works.
- If landlords secure money via these routes, they must reflect this via **a reduction in costs passed on** to leaseholders.

Oversight of the built environment

Building Control

- A **new unified professional and regulatory structure for building control**, including registration of building inspectors and building control approvers, and oversight of competence and performance by the Building Safety Regulator.

- The Regulator will establish **operational standards rules (OSRs)** for local authorities and registered building control approvers, as well as having the power to investigate any body that has failed to meet the rules. The HSE launched a consultation on its OSRs on 30 August which concludes on 25 October.

- The Regulator will **secure compliance through a robust set of enforcement measures** including improvement/serious contravention notices, which will give it the power to intervene and investigate breaches and direct Building Control Bodies to immediately rectify unsafe practices.

- The Regulator will further **hold Building Control Bodies to account through strong enforcement sanctions** which include civil penalties through the justice system.

Implications of strengthening the Fire Safety Order

- **Fire Safety Act**, which commenced in May 2022, requires fire risk assessments to take account of the external walls, flat entrance doors and structure of a residential building.

- **Fire Risk Assessment Prioritisation Tool** (FRAPT) was launched at the same time to provide supporting guidance for Responsible Persons (RPs) to help:
  - Prioritise their buildings for an updated fire risk assessment.
  - Manage fire risk assessor sector demand, as Responsible Persons get their fire risk assessments updated.

- **Fire Safety (England) Regulations 2022**, (come into force in January 2023), will strengthen fire safety in high and medium rise residential buildings by, amongst other things, introducing requirements to:
  - **regularly check fire doors** and **key fire-fighting equipment;** and
  - **share fire safety information with FRSS and residents.**

- Home Office are developing **new guidance** to support delivery of these reforms and revising current guidance to reflect the law changes.

Leaseholder Protections

- On 10 January, Levelling Up Secretary of State Michael Gove announced a reset on the government's approach to building safety – **protecting leaseholders and holding developers to account**
- Through the Building Safety Act 2022, Parliament passed a law to ensure that **those who built defective buildings take responsibility for remedying them**, that the **industry contributes to fixing the problem**, and that **leaseholders are protected in law from extortionate bills for historical safety defects**
- The **leaseholder protection provisions came into force on 28 June 2022,** with new financial protections for leaseholders in buildings above 11 metres or five storeys with historical safety defects
- The accompanying **secondary legislation came into force on 21 July 2022,** providing further detail on how the measures in the Act will work and ensuring that the full range of leaseholder protections have their full effect
- The Department has published **guidance for leaseholders on gov.uk** which explain the implications of the leaseholder protections in the Building Safety Act 2022, along with a tool to enable leaseholders to determine whether they will have to pay to fix historical safety defects:
  - https://www.gov.uk/guidance/building-safety-leaseholder-protections-guidance-for-leaseholders
  - https://www.gov.uk/check-building-safety-costs

Leaseholder Protections

How the leaseholder protections will work in practice

- Historical safety defects in **any building above 11 metres or five storeys owned by the developer who built or refurbished it**, or by a landlord associated with that developer, must be fixed by them
- Landlords (excluding social housing providers) **with a net worth of more than £2 million per relevant building** must not pass on any costs relating to historical safety defects to qualifying leaseholders
- **Qualifying leaseholders** (who reside in their own property or have no more than three UK properties in total) **are protected from all unsafe cladding remediation costs**
- **Qualifying leaseholders** whose property is valued at less than £325,000 in Greater London or £175,000 outside Greater London **are protected from non-cladding costs and interim measures (including waking watch costs)**
- Any contribution required from **qualifying leaseholders** for non-cladding defects and interim measures is **firmly capped and spread over ten years**. This will ensure that the majority of leaseholders will have to pay no more than £15,000 in Greater London and £10,000 outside Greater London
- **Costs already paid out in the last five years will count** towards the cap, but leaseholders will not be reimbursed for costs already paid
- We have included **anti-avoidance provisions** – remediation orders, remediation contribution orders and meeting remediation costs of insolvent landlords – to ensure that those who become liable to pay do so

Leaseholder Protections

Other building safety schemes providing protection to leaseholders

- **Forty-nine major developers have now pledged** to fix (or pay to fix) life-critical fire-safety defects on all buildings 11 metres and over in height that they developed or refurbished.

- The Department is in an advanced stage of negotiations with developers to turn that **developer pledge** into a legally binding contract

- Where a developer cannot be identified or has not yet agreed to pay for its own buildings of 18 metres and above, funding will be made directly available to pay for cladding system repairs and remediation - the **Building Safety Fund** has re-opened for new applications

Construction Products

- The Building Safety Act provides new powers so that **all construction products marketed in the UK will 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 Act also provides **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.

- National Regulator for Construction Products is being established within the Office of Products Safety and Standards, to provide **stronger oversight at a national level**.

Holding Industry to Account

- New powers for the Secretary of State to **restrict irresponsible developers** from building new homes.

- **A Building Safety Levy,** expected to raise an estimated £3 billion over 10 years, to fund the cladding removal on buildings 11-18m where the developer cannot be traced or fails to cover the costs upfront.

- **Enhanced legal options** for building owners, allowing them to pursue developers, contractors and manufacturers for shoddy construction works and defective products where homes have been made unhabitable from the past 30 years.

- **Extra powers for the courts** in England and Wales to go after associated companies. This means businesses who have hidden behind shell companies within their corporate structures can now be pursued to pay.

Since Royal Assent

Made four sets of regulations before Parliament:

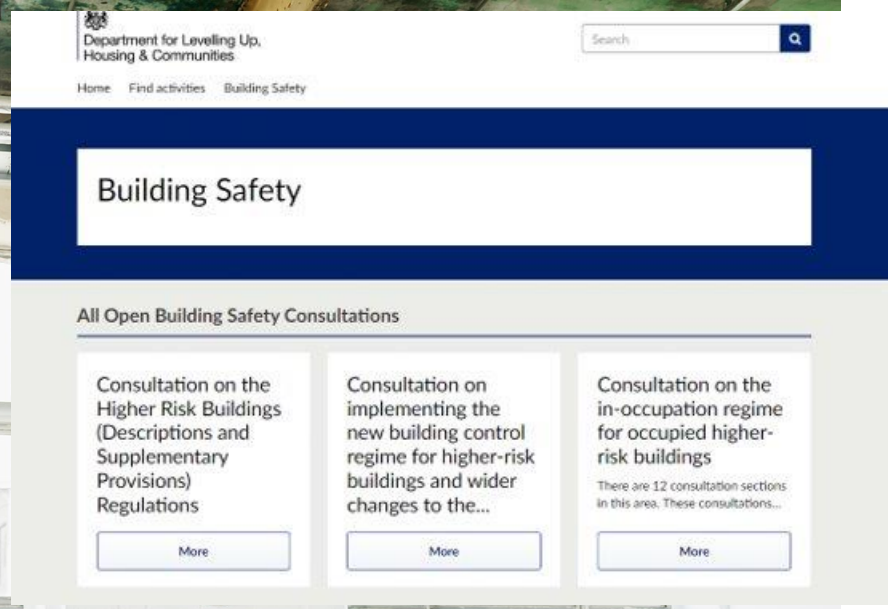
- Two bring to life **'leaseholder protections'** included in the Act;
  - ✓ *The Leasehold Protections (affirmative) regulations*
  - ✓ *The Leasehold Protections (negative) regulations*
- One gives the new **National Regulator of Construction Products** access to improved enforcement powers
  - ✓ *The Construction Product (Amendment) regulations*
- One means **Approved Inspectors** will no longer have to have Government-approved insurance
  - ✓ *The Building and Approved Inspectors etc. (Amendment) (England) regulations*

Have consulted on:

- **Higher Risk Buildings Descriptions** and Supplementary Provisions – defines in scope buildings
- **Building Safety (Registration of HRBs) Regulations** - requirements for registration of buildings (from April '23)
- Part 4 **HRB In-Occupation Regulations** (affirmative and negative) – supporting the new regime for occupation of HRBs
- **Building (HRB Procedures) Regulations** – amends the building regulations as necessary to deliver new regime for design and construction of HRBs
- **Building (Amendment) (England) Regulations** - amends the building regulations as necessary to deliver new regime for design and construction of non-HRBs and requirements applying to all building work including HRBs
- **Building Safety (Fees & Charges) Regulations** (HSE lead on consultation) – allows BSR to charge for its functions

Consultations

Our Citizen Space Building Safety Landing page is now available and all (open and closed) consultations can also be viewed on DLUHC's Citizen Space homepage



Questions?