

The background of the entire page is a photograph of two construction workers in silhouette, standing on a steel framework of a building under construction. The scene is set against a sunset sky with warm orange and yellow light. The workers are wearing hard hats and safety gear. The steel beams create a complex geometric pattern across the image.

The Building Safety Bill

Factsheet

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The Building Safety Bill (the Bill) was introduced to the House of Commons on 5 July 2021, just over four years since the Grenfell Tower disaster.

The Bill represents the UK Government's efforts to introduce a strengthened regulatory regime for high-rise residential buildings (also termed as "higher-risk buildings"). The government is hoping that the Bill will, in time, improve accountability, risk-management and assurance within the high-rise building industry.

It is beyond doubt that the Bill represents a seismic shift in the regulation of every stage of a high-rise building, from design and construction to occupation. As such, property developers, contractors, building-owners, landlords and managing agents will need to take proactive steps to align their fire and structural safety systems and procedures with the more stringent requirements imposed by the Bill.

Introduction of the Building Safety Regulator

The Health and Safety Executive (HSE) will be the new Building Safety Regulator and have responsibility for oversight of the regulatory regime in respect of all "higher-risk buildings". A "higher-risk building" is defined at clause 62 of the Bill as a building that is at least 18 metres in height or has at least seven storeys and has at least two residential units. It also applies to care homes and hospitals that meet the same height threshold during design and construction. There is draft secondary legislation that sets out technical definitions for the purposes of "higher-risk building".

The Building Safety Regulator will have three core functions:

- 1 Implementing the new regime for higher-risk buildings by becoming the building control authority in England, and overseeing and enforcing the new regime in occupation for higher-risk buildings. It is envisaged that it will work closely with other regulators and relevant experts (such as experts within local authorities and fire and rescue services).
- 2 Overseeing the safety and performance of all buildings, which will include the performance of the building control sector, as well as advising on existing and emerging buildings standards and safety risks, including legislative change and changes to the scopes of various regimes.
- 3 Assisting and encouraging competence within the industry and among registered building inspectors.

Design and construction of higher-risk buildings

Dutyholders

The Bill provides the framework for the introduction of dutyholders in respect of the commissioning, design and construction of higher-risk buildings. The dutyholders will mirror those within the Construction (Design and Management) Regulations 2015 (CDM 2015) and will therefore be:

- Client
- Principal Designer
- Principal Contractor
- Designer
- Contractor

Dutyholder roles can be filled by either an individual or an organisation. In certain circumstances, one individual or organisation can hold more than one role in a building project.

Competence requirements

The Bill also provides powers for competency requirements to be imposed on the Principal Designer and Principal Contractor (and, in fact, other persons) under section 38. It will also impose a duty on those that are appointing further dutyholders to ensure competency of those individuals or organisations.

For individuals, the Explanatory Notes to the Bill (the Explanatory Notes) explain that competence requirements will relate to “skills, knowledge, experience and behaviours”. For organisations, the competence requirements will relate to “organisational capability” which require evidencing appropriate management systems, processes and policies are in place to allow it to discharge its duties, ensuring staff are fully trained, etc. It will of course be the case that the competence requirements must be appropriate to the particular higher-risk building in question.

The government intends to provide statutory guidance in the form of “An Approved Document” to support these requirements.

Gateway regime

Amendments made to the Building Act 1984 within the Bill, coupled with existing legislative powers, enable the government to introduce a new “Gateway regime”. The practical detail of this regime will be set out in future secondary legislation. It will require prescribed documents and checks to be completed at certain stages before the construction process can progress.

Gateway one has been introduced by amendments to secondary planning legislation and has been in force since 1 August 2021. In short, it:

- Introduces the HSE as a statutory consultee before permission is granted for development, which may involve a high-rise residential building.
- Requires relevant applications to include a fire statement (in a set format) to ensure applicants have considered fire safety issues. The initial detail to be included in that statement can be found in the draft Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021.

Gateway two will mirror the current “deposit of plans” stage under the Building Regulations. It will require the dutyholders to satisfy the Building Safety Regulator that the design meets the functional requirement of the building regulations and that, effectively, the fire safety arrangements envisaged under those plans are justified, realistic and sufficient.

Gateway two will constitute a “hard-stop”, meaning construction cannot commence until the Building Safety Regulator is satisfied Gateway two has been passed.

Gateway three is equivalent to the completion/final certificate phase and will involve the Building Safety Regulator assessing whether the work has been carried out in accordance with regulations. At this point, the “golden thread” set of documentation must be submitted to the Building Safety Regulator. This will include the building control applications and permissions with prescribed documents as well as information on the final, as-built building.

Only once the Building Safety Regulator has issued a completion certificate and therefore Gateway three has been passed, can the new building be registered. It is only after that registration the building can then be occupied.

The purpose of these additional steps is to make sure:

- 1 The building is safe to occupy; and
- 2 The building's owners or managers have the information necessary to manage the building safely.

“Golden thread”

This will be a new concept centred around the creation and maintenance of a key dataset relating to fire and structural safety. It will be held in a digitally standardised format and will capture all information relating to origin design intent and subsequent changes.

The golden thread of information will be passed from Principal Contractor to Client and then from Client to Accountable Person (defined below).

It appears to be the intention that owners and managers of existing higher-risk buildings should build the golden thread for those properties so far as is possible. Depending on the information available and, therefore, the data that is unavailable, it may be the case that intrusive surveys will need to be undertaken to ensure all safety critical information is identified and made available.

Dutyholders during occupation

Part 4 of the Bill discusses higher-risk buildings in occupation and imposes duties on persons, partnerships or corporate bodies taking on the roles of “Accountable Person” and “Building Safety Manager” to pro-actively manage fire and structural safety risks presented by such buildings.

Accountable Person

The creation of this dutyholder role is based on the premise that there should be a clearly identifiable entity that must comply with statutory obligations in respect of the fire and structural safety of any higher-risk building. In short, the Accountable Person has an ongoing duty to take all reasonable steps and actions necessary to manage building safety risks (as defined at section 59).

This is defined at clause 69 and is, as currently drafted, 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 higher-risk building. The Bill does acknowledge that there may be situations where a management company is in fact the accountable person as a result of it being subject to a relevant repairing obligation, even where it does not hold any legal estate in any part of the building.

This is supported by the introduction of the concept of a “Principal Accountable Person” where there are more than two such dutyholders, ensuring that there is at all times a single entity that takes primary responsibility for the fire and structural safety of the building.

Building Safety Manager

Section 80 of the Bill imposes an obligation on the Principal Accountable Person to appoint a Building Safety Manager that will support the Accountable Person in complying with its obligations under Part 4 of the Bill. The Accountable Person must ensure that the Building Safety Manager has the necessary skills, knowledge, experience and behaviours if an individual and organisational capability if not, to carry out the assigned functions.



Safety case report

The Principal Accountable Person for an occupied higher-risk building must prepare a “safety case report” containing an assessment of the building safety risks posed by that building and a description of how they are being managed on an on-going basis to ensure resident safety. The report will be scrutinised by the Building Safety Regulator and where the Regulator is not satisfied that the Accountable Person is complying with its duties within Part 4, then it will request the implementation of improved risk management measures. The Regulator will have enforcement powers to compel Accountable Persons to achieve compliance.

This is the main way in which the Regulator will hold the dutyholders to account for identifying and thereafter controlling risks. It will serve as a blueprint for analysing whether the control measures introduced were sufficient in theory and whether, in fact, they are actually being applied in practice.

Mandatory occurrence reporting

The Bill creates a mandatory occurrence reporting system for higher-risk buildings during both construction and occupation, under which there will be an obligation on dutyholders to report to the Building Safety Regulator any structural and fire safety occurrences which could cause a significant risk to the safety of individuals within the building. During occupation, it will be the responsibility of the Principal Accountable Person to set up a framework that facilitates the identification and reporting of mandatory occurrences.

It is anticipated that this will operate in a similar way to RIDDOR reporting, and will therefore identify instances during which the structural and fire safety risks presented by a higher-risk building have not been appropriately and properly managed.

Residents’ engagement strategy

The Principal Accountable Person is also required to devise and implement a “residents’ engagement strategy” that should aim to promote the participation of residents in the making of building safety decisions. This obligation is at section 93 of the Bill. The strategy must include information about the arrangements in place to take accounts of the views of residents and the information that will be provided to residents in relation to the management of the building.

Claims for defective works

The Defective Premises Act 1972

Section 1 of The Defective Premises Act 1972 (the DPA) provides a right for residents to claim compensation under civil law for defective work connected with the “provision” of a dwelling when the work renders the dwelling “not fit for habitation”. In this context, provision means work done in the construction or conversion of a dwelling. Clause 125 of the Bill amends the DPA to introduce section 2A which expands the right to claim compensation in respect of any work undertaken on a dwelling at any time (such as refurbishment), provided that the work is done in the course of a business. The limitation period for new section 2A will be 15 years.

Clause 126 of the Bill extends the limitation period for offences under section 1 of the DPA to 15 years both prospectively and retrospectively. As such, there will be a considerably longer period of time within which those that have carried out works on relevant dwellings will be liable for latent defects.

The Building Act 1984

Section 38 of the Building Act 1984 (albeit not yet in force) provides statutory recourse for any persons suffering damages as a result of a breach of Building Regulations. Clause 126 of the Bill extends the limitation period in respect of this statutory provision to 15 years. It would seem, therefore, that the government does intend to bring this section into force at some point in the future.

Amendment of Regulatory Reform (Fire Safety) Order 2005

The Regulatory Reform (Fire Safety) Order 2005 (the RRO) applies to non-domestic premises in England and Wales and the Bill makes the following amendments:

- All Responsible Persons (as defined in the RRO) must record their fire risk assessment in full, as opposed to just the significant findings, as well as their fire safety arrangements.
- Responsible Persons must appoint fire safety professionals that meet the competence requirements as set out in the Bill.
- Responsible Persons under the RRO will be required to inform and support one another in discharging their duties, and a guidance note will be provided to dictate best practice.
- Specific provisions regarding cooperation and coordination between Responsible Persons and Accountable Persons will be made to cover situations in which a higher-risk building has both residential and commercial units.

Summary

The Building Safety Bill was introduced to the House of Commons on 5 July 2021, some four years after the Grenfell Tower disaster. Since then, the Bill has been amended several times, and may indeed be subject to further change before it receives Royal Assent, which is expected in or around the Spring of 2022.

The amendments to the Bill highlight a shift in focus to accountability and responsibility for building safety. As such, there will be wide-ranging implications for property owners, occupiers and all those involved in the design and construction of buildings and their insurers.

Against this background, the recently re-named department for levelling up, Housing and Communities and the HSE, continue to work on certain details of the legislation that are not included or set out in the Bill, such as the golden thread.

Nonetheless, it is important for all those potentially impacted by the Bill to keep up-to-date with further developments and to continue to prepare for the new legislation by familiarising themselves with the provisions, many of which will remain substantively the same but with additional detail being provided in the near future.

Timeline

- July 2021 - Bill introduced to parliament
- April 2022 to July 2022 - Royal Assent to be given to Bill
- Within six to 12 months of Royal Assent
 - Limitation period of DPA extended
 - Regulatory Reform (Fire Safety) Order 2005 changes come into force
 - Powers of Architect's Registration Board strengthened
- Within 12 to 18 months of Royal Assent
 - Duties upon Accountable Person to manage building safety risks come into force
 - Industry Competence Committee and Building Advisory Committee established
 - Mandatory registration of high-rise residential buildings with the Building Safety Regulator
 - Gateways two and three come into force
 - Mandatory Occurrence Reporting comes into force
 - Provisions regarding Golden Thread of Information come into force

Related items

- [Transforming building safety regulation: A look at the new Building Safety Bill](#)
- [Building Safety Bill provides unexpected limitation wildcard for defective works](#)
- [Bill to remove ambiguity from fire safety legislation for multi-occupancy residential buildings](#)
- [Key proposals for reform of the building and fire safety regulatory framework](#)
- [The building and fire safety regulatory framework: new national construction products regulator](#)
- [Grenfell: four years on and the future of construction safety](#)

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