

**The Government's
draft Building
Safety Bill:
Essential Updates**



The key elements of the draft Building Safety Bill which relate to the construction of buildings are:

1. Reform of Building Control and the Building Regulations

- The Bill introduces building control approvers (previously known as approved inspectors) who may be individuals or organisations, and also registered building inspectors who will be individuals able to provide advice to local authorities or registered building control approvers overseeing construction work;
- Building control overseeing work to higher-risk buildings will now be done in all such cases by the Building Safety Regulator. There are provisions in the Bill to cover situations where designs are altered such that the high-risk buildings regime begins to apply after a project has commenced; and
- More changes to the Building Regulations can be made by statutory instruments, without amending - Building Act 1985. This includes the processes and mechanisms of the approval process, e.g. relating to the issuing of notices and certificates.

2. Building Safety Regulator & enforcement powers

The HSE (in practice a division of it) will be the Building Safety Regulator (BSR). The role of the BSR will be to:

- Implement the new, stricter regulatory regime for higher-risk buildings, including acting as the building control authority for construction work relating to such buildings;
- Oversee the safety and performance of all buildings (not just those categorised as higher-risk) – this will involve overseeing the work of all other building control bodies and building control approvers and advising on new emerging risks and possible changes to the Building Regulations;
- Lead the construction industry via the Industry Competence committee and establish a unified building control profession, in order to assist and encourage competence in the built environment industry and registered building inspectors; and;
- Maintain a register of building control approvers and registered building inspectors, and introduce a code of conduct relating to those roles.

Establish three committees:

- **The Building Advisory Committee** (replacing the Building Regulations Advisory Committee for England (BRAC)), to advise the BSR on matters connected with its building functions;
- **Industry Competence committee**, to assist the BSR in unifying the building control industry; and
- **Residents' panel**, made up of residents of higher-risk buildings and relevant individuals, who must be consulted before the BSR issues or revises guidance relating to residents of higher-risk buildings.

Under the draft Bill the BSR will have powers to enforce obligations by:

- Exercising existing powers under the Building Act 1984 in relation to non-compliance with
- Building Regulations, with extended time limits for prosecution (from two years under section 35, or one year under section 36, to ten years in either case);
- Exercising new powers to prosecute all the offences under both the Building Act 1984 and the draft Bill (this includes the power to also prosecute the relevant individual where a corporate body commits an offence with the consent or connivance of, or attributable to the neglect of, a director, manager, or other similar individual);
- Issuing compliance notices (requiring issues to be remedied) and stop notices (requiring design and construction work to stop until non-compliance is remedied);
- Exercising powers of entry to gather evidence for compliance action; and
- Where there are serious failures endangering the life safety of residents in a building, replacing an Accountable Person or Building Safety Manager with a Special Measures Manager.

3. Duty holder and gateway regimes for higher-risk building during design and construction

The intention is that the dutyholders will be the same as dutyholders under the Construction (Design and Management) Regulations 2015 i.e. client, principal contractor, principal designer, contractor, and designer. The draft Bill allows the government to introduce, via the Building Regulations, competence requirements for the dutyholders.

There is also a regime for 'mandatory occurrence reporting', requiring dutyholders to inform the BSR of structural and fire safety occurrences that could cause a significant risk to life, throughout both construction and occupation of higher-risk buildings.

The gateway regime, which alongside the dutyholder regime has been explained and explored in the government's previous consultation and policy documents, is designed to ensure that building safety issues are considered at three 'gateways' during the design and construction process.

- **Gateway One** is when applying for planning permission, before duty holders are in place;
- the BSR will be a new statutory consultee for higher-risk buildings;
- **Gateway Two** is before construction work begins, at the current 'deposit of full plans' for building control. There is a 'hard stop', preventing any construction work beginning, until the BSR is satisfied the design meets the requirements of the building Regulations and does not contain any unrealistic safety management expectations; and
- **Gateway Three** is at the completion/ final certificate stage. All prescribed documents must be given to the Accountable Person, and also to the BSR, which will then (once satisfied) issue a completion certificate.

4. Construction products

The current legislative framework (the EU Construction Products Regulation 2011 (305/2011/ EU) implemented in the UK by the Construction Products Regulations 2013) applies to only around 400 product families for which there has been an EU harmonised standard adopted or a European Technical Assessment applies.

The draft Bill allows for all construction products on the UK market to be regulated. 'Designated products' will be the ones covered by the current Regulations, and 'safety critical products' will be others that the government can put on a statutory list and regulate separately.

If a construction product isn't on either list, the draft Bill includes powers to make regulations requiring manufacturers to ensure that the products they supply are safe. There is also provision for the government to create new civil penalties and criminal offences for anyone breaching the new product regulations.

5. Architect's competence

The government has identified that architects are not currently subject to requirements to undertake continuing professional development or undergo competence checks. The draft Bill gives powers to the Architects Registration Board (ARB) to monitor architects' competence, and to set and monitor criteria, including removing an architect from the register if they fail to meet those criteria.

The key elements of the draft Building Safety Bill which relate to the owners/ occupiers are.

6. Accountable Person

An Accountable Person assumes the role that the 'dutyholder' had during the design and construction phase to ensure the on-going fire and structural safety of the building once it is occupied.

The role to the Accountable Person includes registering the building to obtain a Building Assurance Certificate and assessing the building safety risks to mitigate a major incident. This is an on-going obligation which is evidenced by a 'Safety Case Report' which needs to be reviewed and updated as necessary to demonstrate the building is safe for occupation.

The Accountable Person also has a duty to engage with residents and provide/ allow access to relevant safety information. The Bill also makes it a requirement for the Accountable Person to comply with its statutory obligations. Failure to do so could result in enforcement action which if not rectified could be subject to criminal liability.

7. Building Safety Manager

The Accountable Person must also appoint a Building Safety Manager who will be responsible for building safety on a day to day basis. The Accountable Person must inform the Building Safety Regulator of the identity of the Building Safety Manger. The HSE will have the power to veto the appointment of unsuitable building safety managers.

8. Resident's Duties

The draft bill amends the Landlord and Tenant Act 1985 to imply terms into long leases of high-risk buildings. Landlords are required to carry out appropriate building safety measures as Accountable Person and the leaseholder is to pay a new 'building safety charge' being their share of the reasonable costs of the safety measures.

The Bill does contain powers which are deliberately included to limit the costs that can be re-charged to leaseholders. In addition, the Government expert Michael Wade has been appointed to test and recommend funding solutions to protect leaseholders from unaffordable costs of fixing historic defects, ensuring that the burden does not fall on tax payers. He will also develop proposals to address insurance issues around building safety.

9. Housing Ombudsman

For the first time, new build homeowners will have the right to complain to a 'New Homes Ombudsman' to seek redress against developers and builders. The draft bill sets out minimum standards for how the scheme must operate when the government introduces it. Developers will have to be a member of the scheme, with the ombudsman having the power to hold them to account and pay compensation.

10. Removing the " democratic filter" for social housing residents

A social housing resident that has exhausted its landlord's complaints procedure must escalate their complaint to the Housing Ombudsman by way of a 'designated person' (an MP, councillor or recognised tenant panel) or wait eight weeks after the end of their landlord's complaints process.

The draft Bill enables social housing complainants to escalate their complaint direct to the Housing Ombudsman Service.

How we can help

The draft Bill will have far reaching consequences for those that build, own, occupy and manage high risk buildings. For further information about this or any other [Construction](#) and [Real Estate](#) matter please contact us via email at contact@clarkslegal.com by telephone [0118 958 5321](tel:01189585321) (Reading office).