

BUILDING SAFETY BILL

The Building Safety Bill (the Bill) was introduced to the Commons on 5 July 2021, some four years after the Grenfell Tower disaster. Although amendments are expected before it receives Royal Assent in or around April 2022, we have unpicked some of the key proposals it currently contains.

Building Safety Regulator

This new body will sit within the Health and Safety Executive (HSE) and lies at the heart of the new regulatory regime.

IT WILL HAVE THREE MAIN FUNCTIONS:

Overseeing the safety and performance system for all buildings, including the provision of advice to the government about building regulation changes and the identification of risks in the built environment;

Encouraging the improvement of competence in the built environment sector; and

Leading the implementation of the new regulatory regime for higher-risk buildings (defined as being buildings in England that are at least 18 metres high, or at least seven storeys, or contain at least two residential units)

The HSE has a proven track record of enforcing related legislation stringently and so it is certainly to be welcomed that it has been named as the new regulator, provided it is given sufficient resources to incorporate this new role into its remit.

The Gateways

Three overarching Gateways will form part of the new regime governing how higher risk buildings are designed and constructed and how any major renovations are undertaken.

1

Planning (from 1 August 2021)
– Anyone submitting planning applications to construct a higher risk building will need to show that they have considered fire safety issues and Dutyholders will need to provide fire safety information.

2

Prior to construction (12 - 18 months from Royal Assent) – Approval must be sought from the new Regulator before breaking ground, Dutyholders must demonstrate to the Regulator how the design and construction will comply with Building Regulations. Where works begin before this gateway has been passed, the Regulator will have a range of enforcement options, including prosecuting the developer.

3

Completion (12 - 18 months from Royal Assent)
– Dutyholders must submit documentation to the Regulator, including detailed as-built drawings and must also demonstrate compliance with Building Regulations and fire safety requirements. The Regulator will undertake an assessment and, if satisfied that the building is fire safe, will issue a completion certificate.

The introduction of stop-go gateways, where evidence of compliance must be produced before a project can move into the next phase, should improve scrutiny of the proposed scheme.

Implied terms in leases

Several terms will be automatically inserted into the existing and new leases of flats in higher-risk buildings including:

An obligation on the lessee to allow access to the landlord/ managing agents on reasonable notice in order to carry out building safety works;

A requirement in leases of more than seven years for the lessee to pay a proportion of any 'building safety charges' incurred by the landlord. These are the reasonable costs (or estimated costs) incurred by the Accountable Person in connection with building safety measures (and will include fees). As a condition of being able to re-charge the lessees, landlords will have to take 'reasonable steps' to ascertain whether there are any other viable avenues of funding for the relevant works

Parties will be unable to contract out from the implied terms.

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Dutyholders and The Accountable Person

It is hoped that the implementation of 'Dutyholder' roles, similar to those under the Construction (Design and Management) Regulations 2015 will mean that it is clear who has responsibility for fire and building safety throughout the life cycle of a higher risk building.

The Accountable Person will need to be appointed once a building is occupied. It will be the person or entity who owns the common parts or who is under a relevant repairing obligation. In practice this is likely to be the freeholder, head leaseholder or management company or, where more than one of those exist, it appears that the freeholder will be the principal Accountable Person.

As part of its role, the Accountable Person will have a duty to ensure that the building is registered with the Regulator, to appoint a competent building safety manager and to obtain a Building Assurance Certificate which will confirm compliance with their various safety duties.

In addition to their duties at the relevant stages of construction, upon completion the Dutyholders will have to provide the Accountable Person with the 'golden thread' of building safety information for the particular building, setting out how the task has been managed from design to occupation.

Extension to Limitation Period of the Defective Premises Act 1972 (DPA)

A surprise addition to the Bill, provision has been included to more than double the limitation period for breaches of the duties contained in the DPA. This extends the time that proceedings could be brought against those responsible for any defective building, including designers, contractors and developers, from 6 years to 15 years and the change will apply retrospectively.

There are already murmurs of Human Rights Act challenges backed by industry bodies to this proposal if it becomes law which will relate to the sudden and hugely increased exposure to claims, but other sources consider that the likelihood of occupiers having the appetite, or the pockets, for this type of litigation will be minimal.

Development Levy

A new tax on large residential property developers is already at consultation stage, but an additional levy has been incorporated into the Bill and will attach to applications for Building Control approval for higher-risk buildings.