

BUILDING SAFETY BILL

Summary guide



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Introduction

On 5 July 2021, the Secretary for Housing Robert Jenrick introduced a revised draft of the Building Safety Bill into the House of Commons. The revised Bill follows a three-year scrutiny and public consultation process, and represents a wholesale reform of the building safety regime, in line with the recommendations of Dame Judith Hackitt's 2018 Independent Review *Building a Safer Future*.

The Bill sets out a new regulatory regime aimed at ensuring the safety of residents in residential buildings. The Bill is intended to cover England, with selected provisions to be adopted in Wales, Scotland and Northern Ireland.

This guide provides a summary of the main features of the Bill and accompanying draft regulations and explains the Government's proposed timeline for implementation of the new regulatory regime.



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Timeline for implementation

The Bill is expected to receive Royal Assent within approximately 9-12 months (e.g. around April 2022).

The Government has indicated that the first round of provisions will come into force within 6-12 months of the Bill receiving Royal Assent (i.e. October 2022 – April 2023). The bulk of the new regulatory regime will come into force within 12-18 months of Royal Assent (i.e. April 2023 - October 2023).

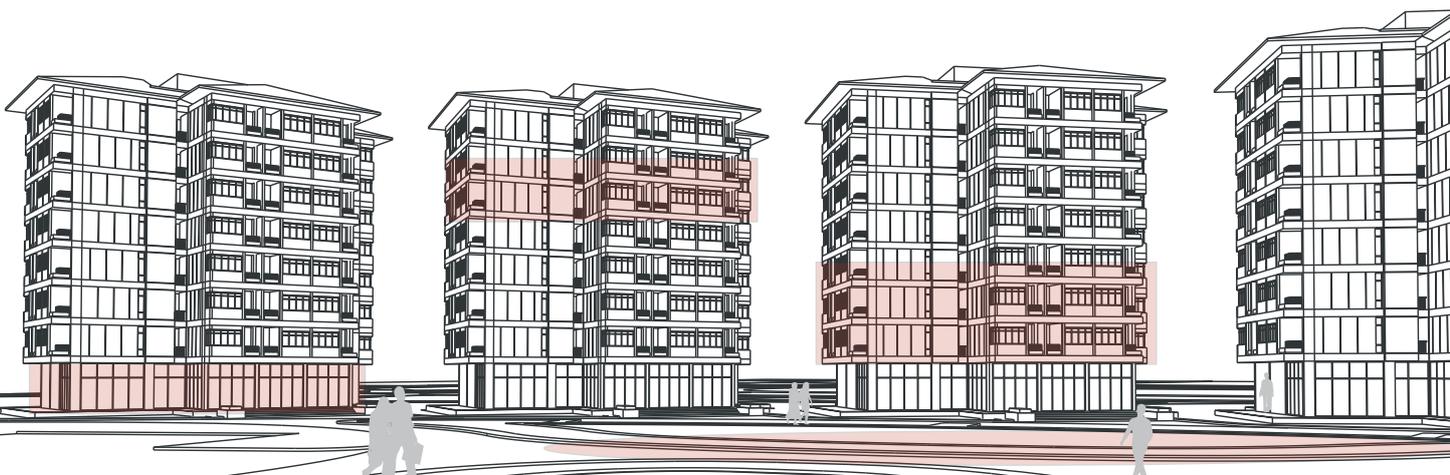
Certain obligations will come into force earlier, such as the Gateway 1 process for construction and major refurbishment of higher-risk buildings (on 1 August 2021).

Building Safety Regulator

The draft Bill establishes a new national Building Safety Regulator, which will sit in the Health and Safety Executive and report to the Secretary of State. The Regulator already exists in shadow form, and will be responsible for developing and implementing the new regulatory regime and establishing and consulting with three advisory committees on building, industry competence and resident representation during the implementation process.

The Regulator will have three main functions:

- Overseeing the safety and performance system for all buildings, including advising Ministers on changes to building regulations, identifying emerging risks in the built environment and managing the performance of building control bodies and inspectors;
- Assisting and encouraging the improvement of competence in the built environment industry and amongst building control professionals, and improving building standards; and
- Leading implementation of the new, more stringent regulatory regime for higher-risk buildings, including powers to order remedial works and stop non-compliant works on higher-risk buildings. The Regulator may also appoint special measures for failing projects and order the replacement of key Dutyholders and fire safety officers.



Definition of higher-risk buildings

The Bill introduces a new regulatory regime for “higher-risk buildings”, defined in the Bill as buildings in England that are at least 18 metres in height or have at least seven storeys and contain at least two residential units.

The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations, published in draft with the Bill, provide that care homes and hospitals will be higher-risk buildings but secure residential institutions, temporary leisure establishments (e.g. hotels) and military premises will be excluded.

Hospitals and care homes will not be required to meet the occupation-stage obligations set out in the Bill. The Regulations also confirm that building height will be measured from ground level to the top floor surface of the top storey of the building, excluding any storey which is a roof-top machinery or plant area or consists exclusively of machinery or plant rooms.

The Secretary of State has general powers to amend the definition of “higher-risk buildings” and prescribe activities for buildings, after undertaking a cost-benefit analysis and/or seeking advice from the Regulator.

Design and construction obligations

Dutyholders

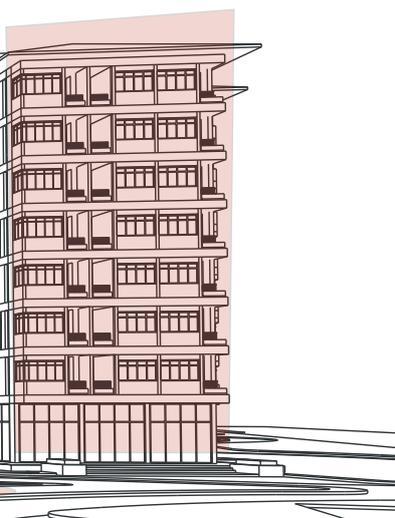
The Bill sets out a proposed regime of Dutyholders for higher-risk buildings, in similar roles to the CDM Regulations for the design and construction phase. Dutyholders will have legal obligations in respect of their duties in respect of higher-risk buildings, and those who fail to meet key building safety obligations will be guilty of a criminal offence.

Where a Dutyholder is a corporate entity, individuals within that organisation may also be prosecuted where the breach was committed with their consent or connivance or as a result of their neglect.

Appointments for building works

The Building (Appointment of Persons, Industry Competence and Dutyholders) (England) Regulations, published in draft with the Bill, impose legal requirements on clients to make suitable arrangements for planning managing and monitoring all building projects in compliance with the Regulations. Clients are required to appoint a Principal Designer and Principal Contractor for any project involving higher-risk building work for which an application must be submitted to the Regulator, and must appoint replacements as required.

Anyone carrying out any design or building work must also take all reasonable steps to ensure that their work is in compliance all relevant requirements. The Regulations also provide that designers and contractors need to undertake their own due diligence and not start work unless they are satisfied that the client is aware of its own duties for the building works. Enhanced obligations also apply to Principal Designers and Principal Contractors.



Competency requirements

The Building (Appointment of Persons, Industry Competence and Dutyholders) (England) Regulations impose a general competency requirement on any person carrying out any building or design work that they have the skills, knowledge, experience and behaviours necessary, or the organisational capability where the appointee is a company. Anyone appointing a Principal Designer or Principal Contractor or other person to carry out building or design work must take all reasonable steps to ensure that the appointee meets these competency requirements. Appointees are under a duty to inform the client in the event that they no longer satisfy a competency requirement.

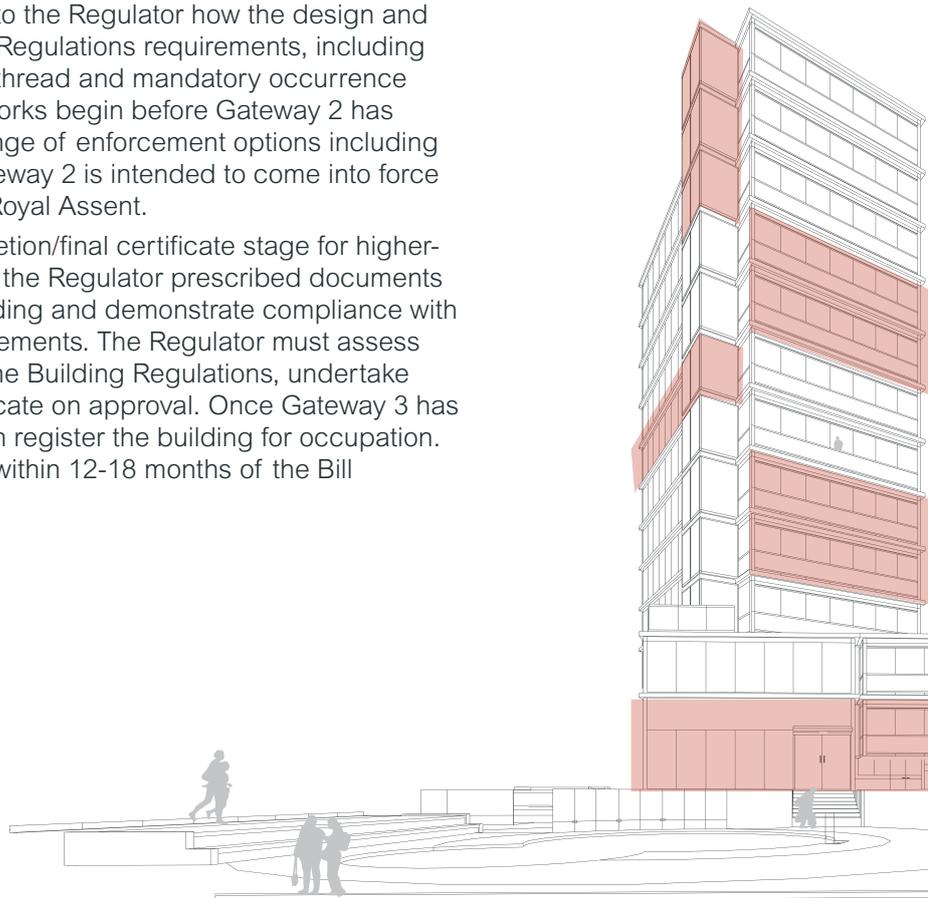
Competency standards

In addition to the competency standards set out in the draft Regulations, the British Standards Institution is expected to publish detailed competency standards in Spring 2022 for the Principal Contractor, Principal Designer and Building Safety Manager roles. Appointees for these roles will be expected to be assessed as meeting the relevant standards by accredited bodies. The Bill also amends the Architects Act 1997 to allow the Architects Registration Board to monitor the competence of architects in line with the new regime.

Gateway scheme

The Bill anticipates a three-stage Gateway regime for the design and construction of and major refurbishments to all higher-risk buildings.

- **Gateway 1** will form part of the current planning application process, and require Dutyholders to provide fire safety information about the proposed building or works. The requirements for Gateway 1 will commence on 1 August 2021.
- **Gateway 2** replaces the building control deposit of plans stage, and must be satisfied before construction or refurbishment works commence on higher-risk buildings. Dutyholders must demonstrate to the Regulator how the design and construction will comply with the Building Regulations requirements, including how the Dutyholder, competence, golden thread and mandatory occurrence reporting obligations will be met. Where works begin before Gateway 2 has been passed, the Regulator will have a range of enforcement options including potentially prosecuting the developer. Gateway 2 is intended to come into force within 12-18 months of the Bill achieving Royal Assent.
- **Gateway 3** will occur at the current completion/final certificate stage for higher-risk buildings. Dutyholders must submit to the Regulator prescribed documents and information reflecting the as-built building and demonstrate compliance with Building Regulations and fire safety requirements. The Regulator must assess whether the building work complies with the Building Regulations, undertake inspections and issue a completion certificate on approval. Once Gateway 3 has been passed, the Accountable Person can register the building for occupation. Gateway 3 is intended to come into force within 12-18 months of the Bill achieving Royal Assent.



Building Inspectors and Building Control

The Regulator will become the building control authority for all higher-risk buildings in England, removing the ability for builders and developers to select their own authority. The Regulator will establish and maintain a register of building inspectors and building control approvers to monitor the quality of buildings and assist with Gateway inspections.

In respect of other buildings, the Regulator will be able to set minimum performance standards for local authority building control bodies and registered building control approvers, and will have powers to investigate non-compliance.

In-occupation obligations

Accountable Person

The Bill establishes the role of the Accountable Person who will be legally responsible for the safety of higher-risk buildings. Accountable Persons may be individuals or corporate entities, and will hold either a legal estate in possession of the common parts of the building or a relevant repairing obligation in respect of the common parts. Landlords are most likely to be Accountable Persons, but this definition will also encompass management companies.

Principal Accountable Person

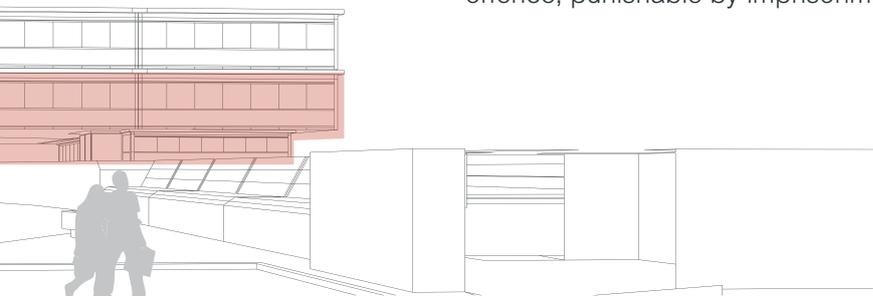
For higher-risk buildings with complex ownership structures which mean that there is more than one Accountable Person, the Bill recognises that a Principal Accountable Person will need to be identified. The Principal Accountable Person will be the person or organisation who holds a legal estate in or possession of the structure and exterior of the building. The Regulator or any person holding a legal estate in a higher-risk building may apply to a tribunal for a determination as to who the Accountable Person(s) and Principal Accountable Person are for that building.

Duties of Accountable Persons

The duties of the Accountable Person (or the Principal Accountable Person, where relevant) include:

- registering a higher-risk building within 28 days of a direction from the Regulator;
- applying for a Building Assessment Certificate, which must be obtained before the building can be occupied;
- appointing a Building Safety Manager prior to the occupation of the building;
- ongoing obligations to assess and prevent fire safety risks and maintain and update the Safety Case for the building; and
- providing residents with key building safety and fire safety information and developing a Resident Engagement Strategy.

Accountable Persons who fail to meet key obligations will also be guilty of a criminal offence, punishable by imprisonment for up to two years and/or a fine.



Building Safety Manager

The Accountable Person is responsible for appointing a competent Building Safety Manager, though the Accountable Person can take on this role itself if it demonstrates sufficient competence and organisational capability. Following public consultation, the Government has clarified that the occupation-stage obligations for higher-risk buildings will sit with the Accountable Person. However, the Building Safety Manager role will have specified duties for the day-to-day management of fire and structural safety in higher-risk buildings. Building Safety Managers who fail to meet their duties under the Bill will commit an offence, though this will be punishable by a fine rather than prison. The Regulator will be empowered to order the removal or replacement of a Building Safety Manager.

Resident empowerment

The Bill places obligations on Accountable Persons to engage pro-actively with residents in higher-risk buildings, including the creation and updating of a Residents' Engagement Strategy, and establishing an internal complaints process. Residents will also be able to escalate concerns about risks to building safety to the Regulator.

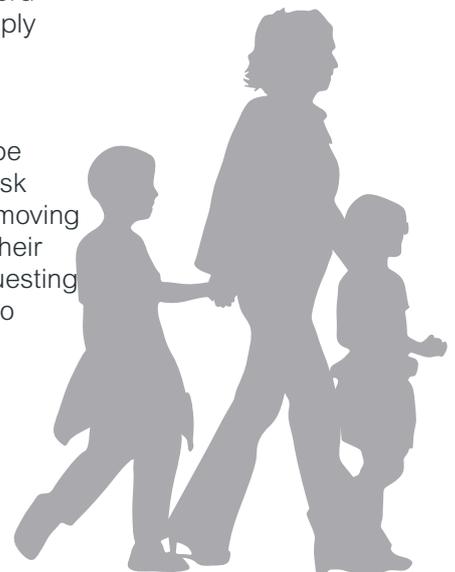
Changes to landlord and tenant law

New service charge regime

The Bill amends the Landlord and Tenant Act 1985, importing a new regime for charging tenants a Building Safety Charge for costs incurred in relation to the ongoing building safety regime set out in the Bill (e.g. day-to-day costs incurred by the appointment of the Building Safety Manager, resident liaison, signage etc). In terms of who pays for historical building safety remediation works, this remains with the service charge payers, provided that landlords have first pursued grant funding, insurance, guarantees and/or claims against third parties. Landlords will not be able to recharge residents for work required by the Regulator or as a result of the Accountable Person's negligence or breach of contract. Provided that landlords have taken reasonable steps to pursue such third party claims, remediation costs are likely fall to leaseholders where the terms of their leases allow recovery and subject to the reasonableness of the costs themselves.

Resident obligations

The Bill imposes implied terms into tenancy agreements covered by the Landlord and Tenant Act, requiring residents and owners in higher-risk buildings to comply with landlords who are Accountable Persons in their building safety duties, to cooperate with relevant persons carrying out building safety duties including providing information to the Accountable Person to assist with building safety compliance and to comply with any special measures order. Tenants will also be required not to act in a way that creates a significant risk of a building safety risk materialising, or to interfere with a relevant safety item (e.g. by damaging it, removing it or interfering with its intended function). Where residents fail to comply with their responsibilities, the Accountable Person may issue a contravention notice requesting that the resident complies within a reasonable time, and may also go to court to enforce a contravention notice.



Landlords' rights of entry

Landlords will be deemed to be granted entry to dwellings to enter the premises for a relevant building safety purposes, provided this is at reasonable times and with 48 hours prior notice. A warrant from the county court will be needed for private dwellings or where force is required to gain entry.

Provision of building safety information:

Where a landlord who is the Accountable Person of a higher-risk building fails to provide building safety information to its residents, tenants will not be required to pay any rent, service charge, administration charge or Building Safety Charge otherwise due for any period before the information is provided.

Retrospective claims for defective works

The Bill will amend the Defective Premises Act 1972 allowing parties to sue under the Act with a prospective and retrospective period of 15 years. Parties will also be able to sue under the Building Act for compensation for physical damage caused by a breach of building regulations for a period of up to 15 years, but only for prospective claims. The Bill also creates a new duty on those who do any work on a building which contains a dwelling to ensure that the work does not render the dwelling unfit for habitation.

Amendments to the building industry

Developer levy

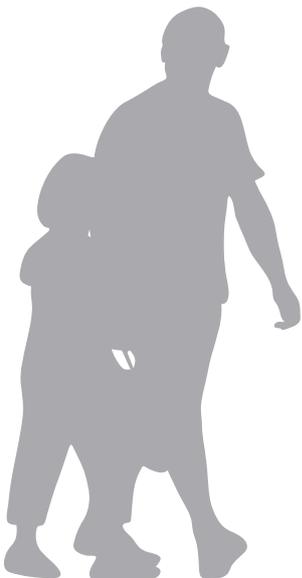
The Bill allows the Secretary of State to apply a levy on developers seeking building control approval to develop certain high-rise residential and other in-scope buildings in England, to ensure the building industry makes a contribution to fixing historical building safety defects. The design of the levy will be consulted on over summer 2021.

New Homes Ombudsman

The Secretary of State will establish a scheme for all developers to allow complaints to be made to a newly established New Homes Ombudsman. The Secretary of State will have the power to approve a new Code of Practice with prescribed standards of build and service quality.

Complaints to Housing Ombudsman

The Bill will allow social housing residents to escalate a complaint directly to the Housing Ombudsman services once they have completed their landlord's complaints process, rather than making a complaint via a designated person or waiting for eight weeks after the end of the landlord complaints process.



New regulator for construction products

The Government will establish a new national regulator for the regulation of construction products within the Office for Product Safety and Product Standards. The new regulator will identify “designated products” and “safety critical products” that may be withdrawn from the market if they present a risk, and will be able to investigate non-compliance and prosecute companies that break the rules.

Amendments to Fire Safety Order

The Bill incorporates amendments to the Regulatory Reform (Fire Safety) Order 2005, requiring Responsible Persons to ensure anyone assisting them is competent within the meaning of the Bill, to provide residents in higher-risk buildings with information about relevant fire safety matters and keep a register of all such matters and to cooperate with Accountable Persons.



What happens next?

The Bill is a complex and technical piece of legislation that will require further amendments to a number of existing laws and regulations, as well as the production of secondary legislation, regulations and guidance, which are likely to be developed over the next year.

As noted above, the Government is continuing to consult with the building industry on a number of key issues. Of chief interest to many will be the roll-out of the Gateway regime, with key decisions around the timing of applications and inspections and the extent and format of building safety information required for applications still to be finalised.

Implementation of the Bill will require considerable resources to establish the building control inspectorate, develop competency in the industry to ensure Dutyholder roles are understood and new roles such as the Building Safety Manager can be undertaken in compliance with the new regime.

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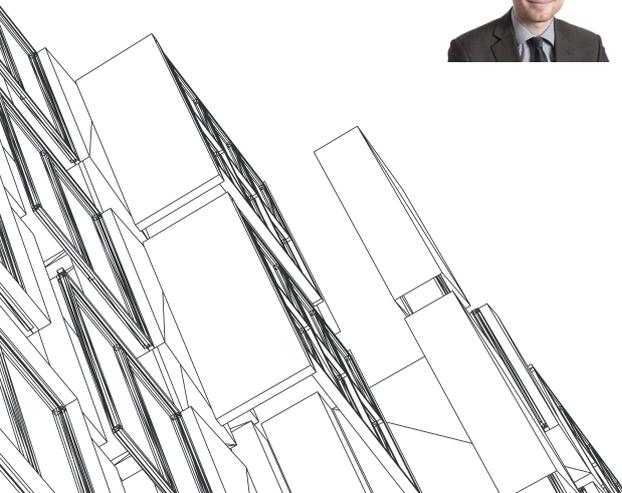
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