

Building Safety Act 2022

10 key changes

Following the Grenfell Tower tragedy, an independent review into fire safety in buildings was completed, which culminated in a report that identified the need for significant reform. The findings of the report were accepted in full by the UK government, leading in turn to the Building Safety Act 2022.

What is the Buildings Safety Act 2022?

The Act is being brought into force gradually, with a plan and timeline produced by the Government. It applies in England and Wales, although there are expected to be some differences in its implementation. A key first step has been the establishment of a Building Safety Regulatory, providing statutory powers and time to recruit and develop appropriate capacity to implement the new regime.

It's been described as both ground-breaking and transformational, creating a more rigorous regime for planning, design, construction and operation/occupation of higher risk buildings and strengthening the entire building control system.

It will provide enhanced rights for property owners, leaseholders and occupiers, introduce new planning and building control gateways, and implement new and enhanced roles and responsibilities. The Act also introduces leaseholder protections to reduce their liability for the costs of remediation and contains significant provisions relating to construction products and defective products/premises.

What is a higher risk building?

The Act defines a higher risk building as a building that is either at least 18 metres in height or 7 storeys, and contains a minimum of two residential units. It includes multi-occupied residential buildings, mixed use buildings with a residential element, student accommodation and educational accommodation (the definition may differ in Wales, this being an area where consultation is still on-going).

The design and construction duties will also apply to new hospitals and care homes, but not in the occupation phase, as these will continue to be regulated under existing legislation.



10 key changes introduced by the Act

1

New Building Safety Regulator

A new Building Safety Regulator (BSR) has been created, who will sit within the Health and Safety Executive and become the building control authority for higher risk buildings. The Regulator will have three main functions:

- overseeing the safety and standards of all buildings
- helping and encouraging the built environment industry and building control professionals to improve their competence
- leading implementation of the new regulatory framework for high-rise buildings.



2

The golden thread of building information

Duty holders will now be required to create and uphold a 'golden thread' of information for a higher risk building throughout its lifecycle. This will include capturing up-to-date information on the building design, build and management and storing it digitally.

A Safety Case Report will be presented with and form part of the golden thread of information. This will summarise the information used to manage the risk of fire spread and structural safety of the building and demonstrate the ongoing safety of a building. It will also identify any major fire or structural hazards and outline how they manage these risks.

They will have the powers to enforce compliance under the Building Safety Act 2022, and will be able to take action against those who do not comply with regulation. It is thought that enforcement will be targeted at the worst offenders, and will aim to be consistent and proportionate.

The BSR will establish and maintain three main committees - the Industry Competence Committee, Building Advisory Committee and a Residents' Panel.

The role and remit of the BSR will be broad, with their overarching remit to improve building and fire safety standards. Associated functions will include developing and improving competency across the build environment.

3

New roles and responsibilities

Changes in the building safety regime seek to provide clarity around roles, responsibilities and accountability when buildings are being designed, built, refurbished and occupied.

The Building Safety Act 2022 identifies new duty holders known as 'accountable persons' for higher risk buildings. The accountable person is a person who holds a legal estate in possession of any part of the common parts, or a person who is under a relevant repairing obligation in relation to any part of the common parts.

The accountable person's duties include:

- completing an assessment of fire and structural safety risks for the parts of the building they are responsible for and regularly review
- taking reasonable steps to avoid any building safety risks occurring in the part of the building they're responsible for, and to reduce the severity of any incidents which do arise out of these risks
- keeping and updating information about the building and providing information to the regulator when necessary.

If a building has more than one accountable person, the accountable person responsible for the structure and exterior of the building will be the principal accountable person (PAP). When buildings have a single accountable person, that entity or person is the PAP.

The principal accountable person's duties include:

- registering higher risk buildings, applying for a building assessment certificate and ensuring it is displayed at the building
- preparing the safety case report, which establishes how Building Safety Risks are being identified, mitigated and managed
- complying with mandatory reporting requirements
- preparing a Resident's Engagement Strategy and reviewing regularly
- establishing a system for the investigation of complaints.

Whilst the proposal for a Building Safety Manager role has since been withdrawn, competence standards produced by the British Standards Institution (BSI) in the form of a Publicly Available Specification (PAS) include those specific to the management of safety in residential buildings.

With regard to the design (pre-construction) and construction phase, existing duty holders (Client, Designers, Principal Designer, Principal Contractor and Contractors) under the Construction (Design and Management) Regulations have new duties to plan, manage and monitor their activities in relation to the building regulations.



4

Creation of a gateway system

The Gateway System has been developed to ensure that building safety is considered through the development cycle of higher risk buildings:

- Gateway 1 – Introduced through amendments to planning legislation from August 2021 and requires fire safety matters to be incorporated into the planning stage for higher risk buildings. Information has to be submitted with the planning application to illustrate that fire safety requirements have been considered and incorporated into proposals for the scheme.
- Gateway 2 – A hard stop, with construction work unable to commence until the BSR is satisfied that the design meets the requirements of the regulations, with appropriate and realistic expectations around building safety management. The client must submit an application with required information and documents, with the BSR having 12 weeks to determine the application. Separate arrangements (potentially introduced through supplementary regulation) are expected to deal with change control.



It's important to note that duty holders during the design and construction phase will be identified as they are in the Construction (Design and Management) Regulations (CDM), i.e. Client, Principal Designer, Designer, Principal Contractor and Contractor.

- Gateway 3 – A hard stop, with assessment undertaken once building work has been completed. The BSR assesses compliance and if satisfied a Completion Certificate will be issued. The BSR will again have 12 weeks to consider. Issue of the Completion Certificate allows occupation of the building.



5

Changes to limitation periods

The Building Safety Act 2022 has extended the limitation periods in which a potential claimant can bring forward a claim, from a current position of 6 years after completion of a project, to either 30 years for existing projects that were completed before 28 June 2022, or 15 years for projects due to be complete after 28 June 2022.

This is in respect of claims for dwellings unfit for habitation under the Defective Premises Act 1972 (DPA), or in breach of the Buildings Regulations under the Building Act 1984.

6

Refurbishment works

Another important change is the introduction of section 2A within the Defective Premises Act which will now extend potential liability to refurbishment or extension works, whereas previously this had only applied to new buildings. This new section extends the right to claim under the DPA for any work carried out to an existing dwelling (i.e. refurbishment), provided that the works are done in the course of a business (i.e. not by an individual on their own or anyone else's home). Claims under section 2A can only be made for claims that accrue after 28 June 2022 and will have a 15-year prospective limitation period.



7

Introduction of a construction product cause of action

The Act also introduces a cause of action that can be brought against construction product manufacturers and suppliers if a product has been mis-sold, is inherently defective or breaches existing product regulations. If this contributes to the dwelling becoming unfit for habitation, a claim can be made. The will be subject to a 30 year limitation period and applies only to cladding products.

8

Section 38 of the Building Act 1984

This amendment under the Act allows a claim to be brought forward in respect of physical damage caused by a breach of building regulations (as at the time of construction). This will be brought into force alongside the Defective Premises Act 1972 and allow claims for compensation to be brought for physical damage, or injury, caused by a breach of building regulations.

9

Building Liability Orders

This unusual and potentially significant provision creates potential joint and several liability for associated companies, such as parent companies, successor companies, or related group companies. It relates to claims under the DPA, section 38 of the Building Act, or claims which relate to a building safety risk. It is likely to come into play where the original developer has become insolvent, or was a special purpose vehicle without assets.



10

New Leaseholder Protections

Qualifying leaseholders of higher risk buildings will be protected from all costs related to remediation of unsafe cladding systems under the Building Safety Act 2022. The Government has committed to protecting leaseholders from remediation; by making, those who built defective buildings take responsibility for remedying them. The Act will mean that building owners who are, or are associated with, the developer must pay for remediation of historical safety defects. Courts will also now be able to extend liability to associated companies who are associated with a developer.

The Act also means that any contribution required from qualifying leaseholders for non-cladding defects will be capped and spread over a number of years.



Register any higher risk building by 30 September 2023

Next steps

Whilst terms such as gradual and transitional are referenced, and there is potentially more regulation to come, as the plan and timeline produced by the Government suggests, things are now moving forward at a pace, with parts of the Act already implemented and significant changes to come through the remainder of 2023.

This is illustrated by the opening of the register occupied 'higher-risk buildings' in England, with principal accountable persons (or those appointed to act on their behalf) required to register any higher risk building by 30 September 2023. After this date, it'll be an offence to occupy a building that isn't registered.

It's key to understand the implications of the changes, the roles and responsibilities of duty holders (design, construction and occupation phases) and how they apply to organisations, timelines for implementation, relevant competence requirements and the impact of associated regulations and guidance.

Key takeaways for property owners

- identify any higher risk buildings you are responsible for
- ensure an appropriate Accountable Person or Principal Accountable Person is appointed and that they are aware of their responsibilities
- present a Safety Case report and comply with mandatory reporting requirements
- prepare the Golden Thread of Information and register any higher risk buildings by 30th September 2023
- following the introduction of the Gateway System (anticipated October 2023), ensure that applications for planning and construction are submitted to the BSR in sufficient time for them to review the application
- consider the implications of New Leaseholder Protections for any necessary remedial works undertaken after the introduction of the Act.

Sources of further information:

[Building safety](#) – HSE
[The Building Safety Act](#) - GOV.UK (www.gov.uk)
[Fire safety and high-rise residential buildings \(from 1 August 2021\)](#) - GOV.UK (www.gov.uk)
[Built Environment Competence Standards](#) | BSI (bsigroup.com)
[Applying to register a high-rise residential building](#) - GOV.UK (www.gov.uk).
[Protection and Building Safety](#) (nationalfirechiefs.org.uk)
[Independent Review of the Construction Product Testing Regime](#) - GOV.UK (www.gov.uk)
[Building Scotland \(Amendment\) Regulations 2022 - fire safety and cladding: presentation](#) - gov.scot (www.gov.scot)
[Building safety for higher-risk buildings](#) | GOV.WALES
[Building Control NI](#) (buildingcontrol-ni.com)