

Insight

Insight provides practical information on topical issues affecting the building, engineering and energy sectors.

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The Draft Building Safety Bill:
What will it do?



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The draft Building Safety Bill (the “Bill”) was published by the Government on 20 July 2020. Its purpose is to introduce a “new era of accountability” in building safety so that there is no repeat of litany of failures at every possible level of the design, procurement and construction process for the Grenfell Tower refurbishment project which tragically resulted in the loss of 72 lives in the Grenfell Tragedy on 14 June 2017.

In this Insight we examine the provisions of the draft Bill (particularly Parts 2 and 3) which is described as bringing into effect “the most significant and fundamental changes to building safety legislation in decades”. Even with a fair wind this Bill is unlikely to receive Royal Assent until the end of 2021 and it is currently being scrutinised by Parliamentary Committee. However, it is clear that the industry will need to prepare in advance for the fundamental changes the Bill seeks to introduce. This is particularly for those involved with “higher-risk buildings” which are the focus of the Bill and will be subject to a far more stringent regulatory regime in the future than the one which allowed Grenfell to occur.

For now “higher-risk buildings” are likely to be defined as multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first).² In other words the government is currently focussing on the safety of buildings similar to the Grenfell Tower. However, under the Bill the Secretary of State will have the power to amend the definition of “higher-risk buildings” after appropriate consultation. As such once the regulator and the provisions of the Bill are in force and the building safety regime it establishes is working, there is potential for the reach of the Bill and its provisions to expand.³

Structure of the Bill

The Bill is divided into five parts the first of which merely provides an overview of the Bill. The remainder of the parts focus on the following:

- **Part 2:** This establishes a new Building Safety Regulatory within the Health and Safety Executive.
- **Part 3:** This amends the Building Act 1984 to allow the Building Safety Regulatory to act as the building control authority for higher-risk buildings and requires the regulator to establish and maintain registers of building control approvers and building inspectors.
- **Part 4:** This imposes duties on accountable persons and building safety managers for higher-risk buildings once they are occupied.
- **Part 5:** This sets up a new homes ombudsman scheme, lays the groundwork for changes to the regime governing construction products so that all construction products available on the UK market fall under a regulatory regime and increases the powers of the Architect Registration Board to monitor the competence of Architects.

This article will focus primarily of Parts 2 and 3 of the Bill.

The Building Safety Regulator (Part 2)

The new Building Safety Regulator set up by the Bill, will form part of the Health and Safety Executive and its function will be to underpin the regulatory reforms in the new building safety regime. It will have three broad functions being:

1. **Implementing a new and more stringent regulatory regime for higher-risk buildings;**

2. **Overseeing the safety and performance of all buildings including:**

- a. Overseeing the performance of other building control bodies which includes not just those overseen by local authorities but also registered building control approvers currently known as Approved Inspectors;
- b. Understanding and advising on existing and emerging building standards and safety risks;

3. **Assisting and encouraging competence among the built environment industry and registered building inspectors.**

Building safety risk is defined as encompassing risks to the safety of persons due to fire, structural failure or any other prescribed matter which the Secretary of State can pass regulations on⁴.

So how will all this be achieved?

Well a “shadow” regulator has already been set up by the Health and Safety Executive to ensure a flying start once the Bill becomes law. When it formally comes into existence it will be responsible for all regulatory decision under the new regime during the design, construction, occupation and refurbishment of higher-risk buildings. It will also have powers to bring together teams including fire and rescue expertise and local authority expertise so that it can make key decisions in relation to buildings throughout their lifecycle. To assist in carrying out its functions the Bill also gives the Building Safety Regulatory

the power to set up various committees including a Building Advisory Committee, Committee on industrial competence and residents panel consisting of residents of higher-risk buildings. The idea behind the last of these is presumably to stop to the Grenfell scenarios where residents raised concerns about their safety for years but were steadfastly ignored.

The Building Safety Regulator will also have the power to appoint Authorised officers under Clause 27 to carry out investigations using powers with real teeth.⁵ If they are obstructed or false or misleading information is provided this will be an offence with punishments starting with fines and increasing to two years in prison on conviction by indictment.⁶

Amendments to the Building Act 1984

Part 3 of the Bill introduces a number amendments to the Building Act 1984 so far as it applies in England. In particular:

1. The **Building Safety Regulator will be made the building control authority for higher-risk buildings**, or proposed higher-risk buildings.

Power to inspect higher-risk buildings is accordingly being taken away from the local authorities and approved inspectors and centralised to ensure higher levels of expertise are available.

2. A **new dutyholder regime is to be incorporated into the lifecycle of a higher-risk buildings**.

This will, according to the explanatory notes, mirror those appointed under the Construction (Design and Management) Regulations 2015 with the main duty holders being the Client, Principal Designer, the Principal Contractor (who is in charge or manages the construction phase), the Designer if they modify a pre-existing design and a Contractor who manages or

controls the construction phase. The intention is also ensure that such dutyholders engage with the spirit or the regulations rather than viewing them as a “tickbox” exercise.⁷

Further, competence requirements will be imposed on such people to ensure that they are capable of performing their functions properly and have the “appropriate skills, knowledge, experience and behaviours”.⁸

Finally, there is provision for mandatory occurrence reporting where there is an incident which may cause significant risk to life safety. Such incidents must be reported to the Building Safety Regulator.

3. The **Building Regulations will be allowed to provide for detailed regulatory regimes for higher-risk buildings**.

In particular, a series of Gateways will also be created for the design, construction and refurbishment of buildings which fall within the “higher-risk” definition. For example, Gateway two which occurs prior construction provides for a “hard-stop” where construction can not begin until the Building Safety Regulator is:

“satisfied that the dutyholder’s design meets the functional requirements of the building regulations and does not contain any unrealistic safety management expectations.”⁹

Importantly there is provision for what is called a “golden-thread” of information in relation to the building. The idea behind this is to ensure that safety risks are managed throughout a building’s lifecycle and historical information (including the original design intent) is available to allow the proper assessment of the safety of any subsequent changes to a building’s design or construction. Again this builds on the lessons learned from Grenfell where over the years changes to fire doors

and also cladding weakened the ability of the building to withstand a fire.

4. **Penalties for not complying with the Building Regulations are increased** and the period during which a party can be prosecuted for failing to comply with the Building Regulations has also been increased from two to ten years;¹⁰
5. **A system is laid down in outline for the registration of building inspectors and building control approvers (formerly known as Approved Inspectors)**. The qualifications required are likely to be more rigorous and provision is also made for a code of conduct with misconduct investigations provided for by the Regulator with appropriate punishments for breaches of that code.

All in all it is clear that the standards which are to be imposed by the Building Regulations, as well as the standards governing those who check such standards have been applied, are set to be increased and monitored much more comprehensively. However, since so much of the detail is set to be laid down in secondary legislation exactly how far the system will go remains to be seen.

Parts 4 and 5

Parts 4 and 5 are of less relevance to those involved in the construction process. As noted above Part 4 contains provision governing the management of buildings once in occupation. However, Part 5 does contain some important provisions allowing the Secretary of State to create a list of “safety critical” construction products as well as allowing disciplinary orders to be made against an architect’s entry in the Register of Architects where required. Social housing complainants will also have the power to complain to the Housing Ombudsman service directly rather than having to go via a designated person. The idea being to avoid the situation at Grenfell where complaints by residents over the years were steadfastly ignored.

Overview

Generally the provisions of the Bill have been welcomed as necessary in the light of Grenfell albeit they will undoubtedly make construction of higher-risk buildings more expensive and perhaps take longer once the new regime comes in. It is also clear that the industry needs to take steps now to ensure it understands and can implement the new regulations when they come into force.

However, some concerns have been expressed of a two-tier system (one for higher-risk buildings – currently only those residential buildings with a minimal height requirement) and one for everything else. RIBA for example warns that *“fire does not discriminate”* and other higher-risk buildings should be included within the ambit of the new regime.¹¹ RICS likewise has flagged that: *“we do, however, have concerns that while there is an understandable focus by the government on high risk buildings, the Bill will create a two-tier system of regulation, especially when low rise buildings can create risk depending on the nature of occupancy.”*¹²

Some have noted that offices being converted into flats (a process speeding up in light of COVID-19) are likely to be the *“slums of the future”* and that is essential these are also covered adequately by the Bill (although given the Government’s recent concession on these and permitted development rights in relation to them this may now be slightly less of an issue).

RICS has also welcomed the need for those inspecting our buildings to be properly qualified and experienced enough to do so noting that: *“The very fabric of our society relies on safe buildings, and those involved should be appropriately qualified.”* However, it also raised concerns that: *“training and recruitment need to be something on Governments to do list, as at the current time industry does not have qualified individuals to fill these roles, and a recruitment drive could add to the levelling up agenda.”*¹³ Indeed this concern may be one reason that the Government has singled out high-rise residential buildings for now – it has to start somewhere.

It also remains to be seen how fast the Bill can get through Parliament. There is a lot of detail that will need to be fleshed out in the next year or so and much of that will be found in the secondary legislation sitting underneath the Bill. A lot of work will certainly be required both from the industry and also from parliament and the civil service itself before the Bill finally becomes law.

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Footnotes

1. See the Foreword to the Draft Building Safety Bill by the Rt Hon Robert Jenrick MP the Secretary of State for Housing, Communities and Local Government.
2. See Clause 19 of the Bill [Meaning of “higher-risk building” and the explanatory notes for the Bill which indicate that the definition of “higher-risk building” set by the Secretary of State initially at least will be aimed at residential high rises of over a certain height.
3. See Clause 20 of the Bill.
4. See Clause 16 [Meaning of “building safety risk”].
5. See Clause 27 and Schedule 2 which lists the powers available including entering premises for the purposes of investigating their safety.
6. See clauses 28 and 29 of the Bill.
7. See page 11 of the Explanatory Notes to the Bill.
8. See Clause 5C (3) inserted into the Building Act 1984 by virtue of Clause 39.
9. See page 12 of the Explanatory Notes to the Bill.
10. See Section 42 of the Bill.
11. See RIBA Fire Safety Group Chair, Jane Duncan’s reaction to the Bill dated 20 July 2020.
12. <https://ww3.rics.org/uk/en/journals/built-environment-journal/the-building-safety-bill-for-england.html>.
13. See RICS’ response to the publication of the Building Safety Bill also dated 20 July 2020.