



Draft Building Safety Bill

WHAT CLIENTS NEED TO KNOW

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*“The draft Building Safety Bill represents the most **radical change to the UK building industry** since the advent of the Health & Safety at Work Act in 1974”* Scott Dorling, partner, Trowers & Hamlins

*“the draft Bill will introduce a new era of **accountability**, making it clear where the **responsibility** for managing safety risks lies throughout the design, construction and occupation of buildings in scope. There will be **tougher sanctions for those that fail to meet their obligations.**”* Robert Jenrick
Housing secretary

DRAFT BUILDING SAFETY BILL

Legislation Context

In her final report, Dame Judith Hackitt said;

‘existing building regulations have created a “race to the bottom”’.

“The primary motivation is to do things as quickly and cheaply as possible, rather than to deliver quality homes which are safe for people to live in,”

“Where enforcement is necessary, it is often not pursued. Where it is pursued, the penalties are so small as to be an ineffective deterrent,”

Dame Judith Hackitt also criticised a **lack of clarity about roles and responsibilities**, exacerbated by fragmentation within the industry, and **inadequate regulatory oversight**.



Overview of Building Safety Bill

Intention of legislation is to ensure direct accountability **throughout the life cycle** of a building, including **design, construction and occupation**.

The bill applies to all buildings but many of the detailed provisions apply only to “**higher-risk buildings**” (HRBs). At present, HRB is defined in the bill as all multi-occupied residential buildings with a height of 18m or more, or more than six storeys (whichever is reached first). What constitutes an **HRB** will be further defined and can be amended if necessary (as and when required).

The MHCLG issued a formal statement, explaining the need for clarity and accountability in relation to “**higher-risk buildings**” (HRBs). *“At each of these three stages [design, construction and occupation], it will be clear who is responsible for managing the potential risks and what is required to move to the next stage, enabling a ‘golden thread’ of vital information about the building to be gathered over its lifetime.”*

Draft Building Safety Bill – 5 Parts to Bill

Part 1 – Overview of the draft Bill.

Part 2 – Establishes the **Building Safety Regulator**; definitions and scope of the regime.

Part 3 – Amendments to the Building Act, **design and construction phase** (**duty holder regime**) and building control and inspectors (**registration and competency requirements**).

Part 4 – Sets out **in-occupation obligations** and the roles of **Accountable Person** and **Building Safety Manager**, and sets out details of offences and sanctions (see below).

Part 5 – Supplementary provisions,

- Powers to make provision about Construction Products
- Registration and monitoring of competence of architects in line with new competency requirements.

Part 2 - HSE: Building Safety Regulator

Introduction of a new national regulator for building safety: the **Building Safety Regulator**.

The Health & Safety Executive (HSE) is the **Building Safety Regulator (BSR)**. The BSR will have two key objectives:

- 1.To secure the safety of people in or about buildings; and**
- 2.To improve the standard of buildings.**

The BSR will have wide-ranging powers (real teeth), both to **enforce compliance with the new legislation** and existing powers under the Building Act 1984.

Building Safety Regulator's functions and duties?

- To implement the new regulatory regime for High Risk Building (HRB's)
- To oversee and monitor the safety and performance of all buildings, with ongoing review.
- To establish a system for giving of building safety information. In the Hackitt Report, it was recommended that the existing Confidential Reporting on Structural Safety schemes be extended, effectively a confidential “whistleblowing” scheme for building and engineering professionals.
- Set up a Building Advisory Committee to provide advice and information to the BSR.
- Set up a committee on industry competence.
- A Residents' Panel – to give residents a voice.
- To assist and encourage improvement in competence among the “built environment industry” and building inspectors.

Part 3 - Amendments to the Building Act

Part 3 of the draft Bill empowers the Secretary of State to impose **competency requirements on Dutyholders** working on higher-risk buildings (HRB's)

Those appointing **Dutyholders** will also be required to ensure all appointees and prescribed persons meet competency requirements, and provide documents demonstrating competency.

Full details of Dutyholder responsibilities and the Gateway system for approving the design, construction and occupation of in-scope buildings, will be covered in secondary legislation.

Part 3 - Duty Holders

Five new duty holders during design and construction of higher-risk buildings

This aligns with the Construction (Design & Management) Regulations 2015 (CDM 15) and provide for specific duty holders who will be **responsible for safety and Building Regulations compliance during design and construction.**

The duty holder roles will be **Client**, **Principal Contractor**, **Principal Designer**, **Contractor** and **Designer**.



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Part 3 – Client Duty Holder

Table 2: Role-Specific Duties

Client	<ul style="list-style-type: none">• Make suitable arrangements for managing building work to deliver compliance with building regulations, including allocating sufficient time and resource;• Appoint a Principal Designer and Principal Contractor in accordance with CDM requirements, if there is more than one contractor working on the building project;• Take reasonable steps to ensure that those they appoint comply with their responsibilities in relation to building safety;• Ensure appropriate handover of information takes place between key dutyholders;• Ensure that the regulatory requirements of the building regulations are met, including the requirements specific to buildings in scope;• Develop and maintain a golden thread of information that will enable building safety information to be available to other dutyholders, during design and construction, to the Building Safety Regulator and later to the Accountable Person;*• Establish reporting processes to support a mandatory occurrence reporting regime.**
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Part 3 - New Gateway Regime

There will be a new “Gateway” regime:

Gateway One will occur before duty holders are required to be in place and those applying for planning permission.

Gateway Two - occurs prior to construction work beginning and is described as a “hard stop” – works cannot begin until the BSR is satisfied that the duty holder's design is compliant with the new requirements.

Gateway Three - is at completion requiring the duty holders:

- To hand over the prescribed documents and information (the golden thread) to the Accountable Person.
- To submit to the BSR the prescribed documents and information on the final As-Built Building.

The intention of the bill is “to ensure that the right people have the right information at the right time to ensure buildings are safe and building safety risks are managed throughout the building’s lifecycle” (the golden thread). This information is to be held digitally (no mention is made of a hard copy being required)

Part 4 - Higher-risk buildings in occupation

Accountable Person

An AP will have wide-ranging statutory obligations which will include:

- Registering the building with the BSR and apply for a Building Assurance Certificate (BAC).
- Ensuring the most recent issue of the BAC is displayed prominently in the building.
- Appointing the **Building Safety Manager (BSM)** who must have the “organisational capability and relevant skills, knowledge, experience and behaviours” – and informing the BSR of this appointment.
- An ongoing duty to assess the building’s safety risks and to take reasonable steps to prevent, control the impact of a major incident.
- Produce and maintain a Residents’ Engagement Strategy, which will include information about where residents can access safety information and a complaints process.
- Maintaining a Safety Case Report (see below) to demonstrate compliance with this ongoing duty.

Part 4 – Building Safety Manger

1. The BSM can be a person or an organisation who will support the AP in the day-to-day management of fire and structural safety in the HRB. The BSM's duties will include:
2. Managing the HRB in compliance with the Safety Case Report and the BAC.
3. Liaising with the managing agents (if any) about safety measures and works.
4. Co-operating with other owners/occupiers of the HRB to ensure an integrated approach to managing risks.

Summary

Client Opportunities

- **Reduced Risk to life (safer buildings)**
- **Reduced risk to buildings**
- **Better quality built buildings**

Client Challenges

- **Project Programme Increases (pre-construction/construction)**
- **Increased Costs, construction/professional services**
- **Potential impacts to contracts types (e.g. D&B etc)**