

UNISON BRIEFING: BUILDING SAFETY ACT

JUNE 2022

1. INTRODUCTION

The Building Safety Bill takes forward the Government's commitment to fundamentally reform and strengthen the regulatory system for building safety. The Bill gives effect to policies set out in the Building a Safer Future consultation response, published in April 2020. This detailed how the Government intends to deliver the principles and recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, [published](#) in May 2018, which made over fifty recommendations in response to the Grenfell Tower fire tragedy.

2. ABOUT THE ACT

The Building Safety Bill started its passage through Parliament in July 2021 and became an Act of Parliament on 28 April 2022. Most of the Act applies to England only.

The Act sets out significant changes to the regulatory regime for building safety, including new rules to improve building standards during design, construction and management of buildings and to ensure the safety of residents and buildings as well as to protect leaseholders from the cost of fire safety building remediation works.

As such the Act aims to ensure greater accountability and responsibility for fire and structural safety issues across the entire lifecycle of buildings.

Stephen Greenhalgh, Government Minister for building safety, stated that the new Act represents the "biggest changes in building safety legislation in our history".

3. KEY MEASURES

The majority of the measures in the Act will take between 12-18 months before they are introduced. They include:

- Establishing a new Building Safety Regulator in England to oversee a new, "more stringent regulatory regime for higher-risk buildings of 18 meters and over" and drive improvements in building safety and performance standards in all buildings
- Ensuring residents have a stronger voice in the system, and establishing additional protections for leaseholders in relation to financing remediation works
- Increasing access to redress through the Defective Premises Act 1972 for leaseholders to utilise to recover remediation costs from those responsible
- Driving industry culture change and incentivising compliance
- Strengthening the Fire Safety Order (2005) by placing additional requirements on Responsible Persons for individual buildings
- Providing a stronger and clearer framework for national oversight of construction products, by establishing a new national regulator for construction products, which will hold

construction product manufacturers to account and have the power to remove unsafe products from the UK market

- The creation of a New Homes Ombudsman (NHO) which will provide owners of new builds, in the first two years of ownership, to escalate complaints against members of the NHO (housing developers), which will be independently investigated and determined

Defective Premises Act (England and Wales)

The Building Safety Act amends the [Defective Premises Act \(DPA\)](#) (1972), by extending the time period building owners can launch a claim for compensation against developers involved in the construction of a building which is defective or deemed “not fit for human habitation”, from 6 years to 30 years retrospectively and for future work extended prospectively for 15 years. The DPA’s coverage will also be extended to include refurbishment and other works to existing buildings as well as new buildings to ensure that buildings are safe for human habitation. This will make it possible to take legal action against developers and construction product manufacturers who have built defective buildings.

Landlord And Tenant Act

The Building Safety Act amends Section 24 of the Landlord and Tenant Act to make building safety discrete from the other management functions. Safety failings are dealt with via the Building Safety Regulator (see below).

Other relevant changes are:

- The landlord remains obligated to keep in repair the structure and exterior of the building, ensuring it is fit for human habitation. The tenant must grant access for these repairs to take place
- There are new implied covenants for building safety. This will apply to all higher-risk buildings in England
- Landlords will be given access to the building for safety purposes and to comply with the terms of any order appointing a Special Measures Manager
- Landlords will be able to pass on the running/management costs of the new regime to the tenant as a ‘building safety charge’, aside from a service charge. The Bill’s [Impact Assessment](#) estimated that leaseholders would pay an average of £16 per month for this charge

4. IMPACT ON CONSTRUCTION INDUSTRY

The new Act establishes a new safety regime for construction of residential high rise buildings.

It establishes the Building Safety Regulator (BSR) within the [Health and Safety Executive](#) (HSE), which will have two main objectives:

- Secure the safety of people in and around buildings
- Improve building safety standards

To deliver these objectives, the BSR will have three core functions:

- Implement the new, more stringent regulatory regime for higher-risk buildings of 18 meters tall or higher
- Oversee the performance and safety standards of buildings (Building control and monitoring emerging building standards and advising on changes to regulations, risk and standards of buildings)

- Assist on and encourage competence amongst the built environment industry. This includes leading on a building competence committee, publishing non-statutory guidance and establishing a unified building control profession

As the regulator leading delivery of the more stringent regulatory regime, the Building Safety Regulator will be responsible for all regulatory decisions under the new regime during the design, construction, occupation and refurbishment of higher-risk buildings.

The regulator will take advice from, and liaise with, other regulators regarding decisions throughout the lifecycle of the building, holding powers to bring together teams including Local Authority Building Control Teams and Fire and Rescue to assist in major regulatory decision-making.

The new regulatory regime will hold to account those responsible for the design and construction of new buildings. A Principal Designer (Planning application stage), Principal Contractor (Construction Phase) and Accountable Person (Occupation) must be skilled, knowledgeable and experienced. The Accountable Person can be a team of people.

The Accountable Person will also be expected to apply for a building assessment certificate, which confirms that they are meeting their duties, by submitting their case report to the new regulator.

5. IMPACT ON LOCAL AUTHORITIES

There is an impact on local authorities, namely how they scrutinise, amend and monitor planning applications.

The Act amends the Building Act 1984, allowing the creation of a new 'Gateway' regime, which will ensure that building safety risks are considered at each stage of new higher-risk building's design and construction:

Planning Gateway One

- Amending the Town and Country Planning Order 2015, incorporating fire safety at planning stage
- HSE will be a statutory consultee before permission is granted
- There must be a fire statement to ensure applicants have considered fire safety
- Help inform effective decision-making by local planning authorities
- The Principal Designer is the duty holder at this stage

Planning Gateway Two

- Occurs prior to construction work. Full design intention must be submitted to BSR
- Construction cannot begin until the BSR is satisfied the dutyholder's design is viable and safe
- Dutyholders required to submit information to prove proposals comply with building regulations
- The Principal Contractor is the duty holder at this stage

Planning Gateway Three

- BSR signs off higher-risk building once construction complete to ensure compliance with building regulations

- Further documentation must be provided to BSR including a building control application, a 'golden thread' of building information that will be stored digitally and updated throughout a building's lifecycle
- Further inspections before building can open
- The Accountable Person (which can be a team) is the duty holder at this stage

There is a more stringent occurrence reporting regime so any incidents are reported to the BSR. The Accountable person will be responsible for setting up this process. The increased regulation at each of these stages is likely to result in increased costs from those parties and it is not clear how these changes will impact professional indemnity insurance arrangements for duty holders.

6. FIRE SAFETY REMEDIATION COSTS

Earlier drafts of the Building Safety Bill contained clauses which placed responsibility for paying remediation costs mostly on leaseholders. This would have had a huge impact on leaseholders most of whom already face huge costs – in some cases over £100,000 - for remediation works they did not cause, are not responsible for and cannot afford, placing financial burdens on them and affecting their livelihoods. Following criticisms of this by Labour and housing campaigners, the Bill was amended to contain clauses or changes which shifts responsibility for the bulk of remediation costs from leaseholders to the construction industry, including developers/construction manufacturers and freeholders/owners of buildings (including councils and housing associations), to pay for remediation works.

The new Act includes a [“waterfall of protections for leaseholders”](#):

- Leaseholders (who own up to three UK properties) will not have to pay for cladding remediation costs in buildings over 11 metres or five storeys high
- Leaseholders will be able to take legal action against developers who have built unsafe buildings going back 30 years
- Freeholders or building owners will be responsible for the remediation costs of both cladding and non-cladding works; freeholders will only be liable for such costs if developers cannot be traced
- Where developers or building owners are not able to pay the full costs of remediation works in defective buildings, these costs can be passed on to leaseholders. The Government has included protections to limit the amount billed to leaseholders at £10,000 nationally and £15,000 in London. These caps will take into account costs already paid out in the past 5 years
- **These provisions will come into effect two months after the Bill gained Royal Assent**

The Government advocated that leaseholders should not have to pay the costs of making their homes safe. However, the Act does not offer full protections for leaseholders, as they can still face charges: Leaseholders in buildings over 11 metres will still be liable for non-cladding remediation works. They will also face charges (for both cladding and non-cladding remediation works) if they own more than three properties. It is unfair that leaseholders through no fault of their own should continue to pay for costs that they are not responsible for – and in some cases will be faced with the burden of having to pursue the costs from developers through legal action. Many of them have been crippled by huge bills, face bankruptcy, and are trapped in homes that they cannot sell because they have no value and people cannot get mortgages on them.

Leaseholders need more protections and financial certainty. [UNISON is a supporter of the “End Our Cladding Scandal campaign”](#), led by Inside Housing, which is calling on

the Government to provide upfront funding for remediation works for buildings with fire safety defects to ensure that people are housed in safe homes and are not forced to pay for huge fire safety remediation costs.

7. BUILDING SAFETY LEVY

The Act empowers the Secretary of State to impose a new Building Safety Levy to help fund the costs for remediating historical building safety defects of buildings 11 metres or taller built over the past 30 years.

Earlier this year the Government negotiated a deal with housebuilders/developers and construction product manufacturers requiring them to sign up to the Building Safety Pledge, and committing them to help fund the costs of building and fire safety remediation works through a £4bn levy. Developers are required to contribute to the levy at Planning Gateway 2 stage. So far over 35 of the biggest housebuilders have signed up to the pledge. Defective buildings will include those built as part of Section 106 Agreements (for affordable housing delivery). Developers are required to undertake the works quickly to address “life-critical fire safety defects”.

8. UNISON COMMENTARY

The Grenfell Tower fire tragedy exposed the failings of successive Governments and the construction industry to effectively reform and manage buildings throughout their entire lifecycle to ensure they are safe for occupation. Almost five years after the tragedy, the Government’s new Building Safety Act aims to provide a more stringent building safety regulatory framework to address these failings. Most of the measures contained in the new law are welcome and will help make residents and buildings safe. However, there are funding and resource implications for leaseholders and building owners which the Government needs to address:

- Leaseholders are not fully protected from fire safety remediation costs as some of the costs can still be passed on to them from developers and building owners.
- The Government’s decision to set arbitrary height limits to buildings to exclude those under 11 meters from accessing funding support to help pay for fire safety remediation costs is unfair, given that defective buildings under 11 metres face the same risks and dangers as those in blocks over 11 metres. **The safety rules should apply to all residential blocks regardless of height.**
- The new Act does not make a distinction between developers and social housing providers which have historical defects in their buildings. This means building owners or commissioning organisations, such as local authorities and housing associations, could be made liable for building safety works, if they are the developer and/or have links with the developer. UNISON notes that the [National Housing Federation](#) has sought clarification from the Government which states that the new Act “should not prevent a commissioning organisation from pursuing a responsible contract over costs”.
- While the Government has provided the £400m Social Sector Cladding Remediation Fund for the removal of and replacement of unsafe cladding systems, this is limited to Aluminium Composite Material (ACM) cladding in buildings over 18 meters tall. This funding remains inadequate. **It is important that the Government commits to further funding to help fund both cladding and non-cladding works, to reduce further pressures on Local Government Budgets which are already overstretched due to austerity and cuts to housing budgets. Failure to do so will impact on housing services and the building of much needed new social rented housing, for which there is high demand due to**

the high costs of private housing, but which remains in limited supply due to lack of Government investment in these homes.

- The new regulatory framework, including the Building Safety Regulator, the Accountable Person role and Planning Gateways, will have resource implications for parties involved, including fire and rescue services and local authority planning and building control services in carrying out new and additional duties to ensure residents and buildings are safe. Local authorities will therefore need to be adequately funded by the Government to ensure that staff have the skills and resources to do their work effectively.
- The new Building Safety Levy imposed on developers, including social housing providers, could also lead to further pressures on housing budgets. In effect this means that local authorities and their tenants could end up helping to pay for remediation works of both social housing and private housing – which could in turn lead to a scaling back of essential housing services and projects to deliver new social rented homes. Accountable, not-for-profit local authorities should not be held responsible for the failures of the construction industry, and UNISON is calling for an exemption to the levy to protect essential public services.
- The creation of the ‘Accountable Person’ role will have implications for anyone taking on that role in terms of salary, responsibilities and insurance.
- The requirement for a ‘golden thread’ of building information that will be stored digitally and updated throughout a building’s lifecycle will require secure and effective data sharing between private and public sector organisations.

UNISON Members can:

- Share this briefing with UNISON members
- Access further resources on the Building Safety Act from [here](#)

For more information contact:

Email: policy@unison.co.uk

UNISON Housing resources:

UNISON Housing Website: <https://www.unison.org.uk/at-work/community/key-issues/housing/>

UNISON Housing manifesto: <https://www.unison.org.uk/content/uploads/2020/01/UNISON-Housing-Manifesto-JANUARY-2020-FINAL.pdf>