



# The Building Safety Bill

This briefing updates members on the progress, content and policy implications of the Building Safety Bill, an important part of the legislative response to the Grenfell fire.

## Introduction

The Grenfell Tower Fire on 14 June 2017 represented the greatest loss of life in a residential fire since the Second World War. Following the fire, the government commissioned the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt. Dame Judith's final report, published in May 2018, found that the current system for ensuring fire and structural safety in high-rise residential buildings was not fit for purpose and concluded that a new system of regulation is required for the design, construction and occupation of high-rise residential buildings.

The Building Safety Bill (the bill) contains a series of reforms to building safety and is the most substantial legislative response to the Grenfell Tower fire. This bill would make changes to building regulation, management, and law, taking forward the government's plans to implement Dame Judith Hackitt's recommendations.<sup>1</sup> The bill was first published in draft in July 2020 and was subject to pre-legislative scrutiny by the Housing, Communities and Local government Committee (HCLG).

The bill was laid before Parliament in July 2021 and the Public Bill Committee took evidence for its scrutiny from Sep-Oct. London Councils submitted evidence, both in writing and in the witness sessions to the committee and at all previous stages of stakeholder consultation for the bill. The key objectives of the bill include:

- Ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime.
- Establishing a new Building Safety Regulator (the regulator) to oversee the new, more stringent regime for higher-risk buildings (HRBs) and drive improvements in building safety and performance standards in all buildings.
- Ensuring residents have a stronger voice in the system.
- Driving industry culture change - incentivising continuous improvement and addressing non-compliance.
- Providing a wider and stronger framework for national oversight of construction products.

1. Independent Review of Building Regulations and Fire Safety: final report

# What does the bill do?

## The Building Safety Regulator

The bill establishes the regulator within the Health and Safety Executive (HSE). Its key functions are:

- To implement a new regulatory regime for HRBs, and to be the building control authority for these buildings.
- To oversee the safety and performance of all buildings, including the performance of other building control bodies and understanding and advising on building standards and safety risks.
- To support the competence of those working in the built environment industry (anything that is built), and to manage the system of registered building inspectors.

## Reforming building regulations

The bill proposes the following changes to building safety regulations:

- Amendments to the Building Act 1984, that forms the current basis for building regulations and the building control process.
- The introduction of a three stage 'gateway' process for the construction of higher risk buildings.
- Changes to the time limits on building control approval and enforcement procedures.
- Allowing building regulations to set levels of competence for the building process.
- Creating a reformed regulatory structure for building control.

## High-rise residential blocks during occupation

The bill proposes a new regime for the management of HRBs in occupation (those over 18m or seven storeys, or more with two or more residential units) and creates roles for the management of those buildings (the Accountable Person and the Building Safety Manager).

The Accountable Person will have an ongoing duty to manage the safety of the building and maintain a safety case. It is this safety case report that the regulator will review before issuing a building with a Building Assessment Certificate.

The bill also requires the Accountable Person to produce a Resident Engagement Strategy and for residents to be able to request specific information. The Accountable Person must put a complaints process in place, including the potential for escalation to the regulator.

## Leaseholders and the Building Safety Charge

During the HCLG scrutiny of the draft bill, London Councils raised concerns over the proposed Building Safety Charge, including that it could be used to make leaseholders pay for historical remediation works. The latest version of the bill states that the charge will only apply to the ongoing costs of the new regime - a requirement to pay the new charge will be implied into "relevant leases" of HRBs.

The government's clarification on this point is welcome, but there are ongoing concerns over the potential cost of the new regime. The estimate of the average cost to leaseholders of £16 per month in the bill's Impact Assessment is dubious at best.

## How does the bill deal with fire safety costs?

The bill does not exempt leaseholders of a potential liability to pay for fire safety works if their lease agreements provide for their recovery. The bill does, however, attempt to mitigate these costs:

- Landlords will be required to take "reasonable steps to recover costs" through other avenues before passing costs on to leaseholders. For example, through insurance claims, guarantees, and government funding schemes.
- The period for a claim to be made under the Defective Premises Act (1972) will be extended

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from six to 15 years and apply retrospectively.

- The bill as currently drafted does not make provision for the long term low-interest loan scheme announced on 10 February 2021 for blocks between 11m and 18m in height with combustible cladding. The government is said to be re-examining this proposal. We are concerned that it will not be replaced with a more equitable funding scheme.

### The New Homes Ombudsman

The bill creates a New Homes Ombudsman (NHO) to “champion homebuyers, protect their interests and hold developers to account.” Owners of new build homes will, within the first two years of buying from a developer, be able to escalate complaints against members of the NHO scheme and have them investigated and determined by an independent individual.

## How will the bill affect local authorities?

Local government is in a unique and challenging position: as a landlord with social tenants and leaseholders residing in its buildings, a regulator of building construction and the ongoing safety of buildings in occupation, and more broadly as a champion of the rights of its constituents.

**Local authorities as developers and building owners** - building owners will have clear lines of responsibility for building safety during design, construction, completion, and occupation of high-rise buildings. Government will also require a golden thread of information, with safety considered at every stage of a building’s lifetime.

Part of this will mean greater responsibilities for Accountable Persons in occupied buildings who will need to demonstrate that they have effective, proportionate measures in place to manage safety risks through presenting a “safety case” to the regulator to receive a Building Assessment Certificate (without which a building may not be occupied once the regime is transitioned in). These dutyholders will be personally culpable under criminal law, risking fines or imprisonment. However, in the current form of the bill, it is not yet clear at what level this Accountable Person will reside in councils, or indeed if it can be the council entity itself.

Establishing a “golden thread of information” for existing buildings will present a crucial and challenging aspect to the regime for London boroughs. Much of London’s older stock has little to no construction information, meaning that expensive investigations into the structure of buildings and their safety features will be required.

Making London’s buildings safe in councils’ capacity as stockowners will be expensive and we need to anticipate how to meet these costs alongside housebuilding, net zero carbon, and decent homes programmes.

**Local authorities as regulators** - approximately 12,500 existing buildings will need to be transitioned into the new regime; this will likely be the greatest challenge for local authorities. The relevant authority must ensure that any of its staff involved in aiding the regulator have the appropriate skills, knowledge, experience and behaviours. Building Control operational performance will be set and monitored by the Regulator and there will be a code of conduct, financial penalties, suspension and ‘special measures’ type sanctions for any entity not complying with the standards. Building Control will be a vital part of the new regime and needs investment so that we can prepare to support the Regulator upon implementation.

The Housing Act has, to date, formed a central plank in the strategy to deal with and enforce against unsafe buildings in occupation. Environmental Health will therefore likely continue to play a key role of the new regulatory regime.

### Our key lobbying positions:

- **Funding/resources** - Any additional costs that the bill imposes on councils as both landlords and as regulators must be fully funded.
- **Scope of buildings covered in the new regulatory regime** - Height is too narrow a risk factor to be the sole identifier for buildings of high risk. A better approach would be:

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- For new buildings: The Gateways should apply to all major works, including for buildings under 18m.
  - For existing buildings – adapt the Building Prioritisation Tool that has been developed for the Fire Safety Act to identify HRBs based on the whole risk profile of the building.
  - All buildings where vulnerable people sleep i.e. care homes and hospitals - should be covered under the regime.
- **Transition period** - Building owners need sufficient time and financial resources to deliver the required safety improvements, and the sector more broadly needs sufficient time to upskill and develop capacity.
  - **Leaseholder service charges/ building safety charge:**
    - Government should pay up-front for remediation costs until such a time as a cost recovery mechanism is in place - either from those directly responsible or from the private developer industry.
    - Any protection for leaseholders against remediation costs should also cover social housing providers – otherwise council tenants will end up paying for developer’s incompetence and protecting the profits of developers.
    - Government must specify what “demonstration of alternative funding avenues” means in practice.
  - **Choosing your own regulator**- Duty holder choice should be removed entirely from the building control system and replaced by a system of independent appointment.
  - **The leaseholder access problem** - More robust powers of entry are required to maintain the golden thread of information and conduct safety works. The time and resources needed to pursue county court orders is significant, and will only grow as landlord duties increase. We do not believe that this has been adequately addressed to date.
  - **New 15-year limitation period for certain Defective Premises claims:**
    - Loopholes such as the use and accountability of SPVs (special purpose vehicles) needs to be addressed if this expansion of the Defective Premises Act is to be used effectively.
    - Leaseholders’ capacity to bring complex claims against developers as well as freeholders’ incentive to do so limit the effectiveness of this act.
  - **Gateway two levy exemption** - a new proposed Building Safety Levy, which will help to fund the remediation of buildings that have dangerous cladding systems will apply to developments seeking building control approval from the Building Safety Regulator at Gateway two (unless a relevant exclusion applies). Social developments must be exempt from the proposed levy.
  - **Introduction of Principal Accountable Person’s role** - the bill needs to be clear on the requirements placed on accountable persons and how those duties will work in practice in buildings with complex ownership structures.

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## Links:

[Building Safety Bill \(UK Parliament website\)](#)

## This member briefing has been circulated to:

**Portfolio holders and those members who requested policy briefings in the following categories: Housing and Planning**