

# Building Safety Act 2022 – building regulations consultation – a summary



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We have previously reported in detail on the Government's consultation on further key new building regulations to support the Building Safety Act 2022 (BSA) [here](#). The below is a summary of some of the Government's key proposals (although it is important to note no consultation feedback or regulations have yet been issued and the position may change in future).

## “New Building control processes - “Higher risk” building work proposals

- higher risk” for this purpose is a building or proposed building in England at least 18m / seven storeys in height with a description to be specified in a separate regulation (also yet to be published, but proposed to be two or more dwellings, hospitals and care homes)
- New regulations for building control procedures will apply in various ways to various works, including (i) the construction of a new higher risk building; (ii) building work to an existing higher-risk building (iii) building work to a non-higher risk building such that it becomes a higher-risk building (e.g. change of use or adding floors) or vice versa.

For new builds as an example:

- “hard stop” gateways before building control approval is obtained and before completion. Building control approval must be obtained before work can be commenced. 12 week time frame between submission of a building control application and a decision by the BSR (if no BSR decision within 12 weeks the application will be deemed refused)
- Detailed new process for building control approval including a significant suite of prescribed documentation.
- Detailed information gathering and reporting steps required during the works phase and prior to completion, including golden thread of information system, change control, mandatory occurrence reporting.
- Completion certificate application - proposed time frame for BSR decision is proposed to be 12 weeks, again deemed refused if no BSR decision.
- **Regularisation of unauthorised work:** “regularisation” in relation to certain work in higher risk buildings which has been undertaken but was not notified when it should have been.

## Enforcement and sanctions for building work

- New regulations will (a) provide for the procedural and administrative requirements around the use of the new “compliance” and “stop” notices provided for in the BSA; and (b) set out options in relation to building regulations which will be exempt from enforcement action.
- The BSA provides for expanded criminal sanctions for breach of the building regulations (or steps to implement these) under s.35 Building Act 1984; and for the civil liability provision for breach of the regulations under s.38 Building Act 1984 to be brought into force. This means that new building regulations which are brought in as a result of the consultation, such as the dutyholder and competency requirements, and building control processes, will be caught by both the criminal and civil sections, unless the Government chooses to exempt some of the regulations or provide for defences.

## “Dutyholder” and competency requirements applying to all building works

- Apply to **all** building work in England to which the Building Regulations apply
- Proposed dutyholders to be the client, the designer(s) and the contractor(s), with a principal designer and principal contractor to be appointed.
- Proposed dutyholder roles relatively broad, may create statutory obligations with an absolute liability element in some instances.
- Proposed competency requirements also described relatively broadly. BSI has produced guidance to assist with competency demonstration.
- Additional dutyholder requirements where the building is a higher-risk building.. New “serious infraction” test, and need to provide declarations re. previous conduct as part of competency declaration when applying for building control approval.

## Golden thread of information

- Obligations on dutyholders to ensure suitable arrangements in place to create, manage and maintain the “golden thread” of information for a project; Principal Designer expected to manage it during the design phase; Principal Contractor during the construction phase; and client to have overall responsibility for ensuring arrangements are in place to create and manage the information.
- only “relevant” information should be in the golden thread – defined as that “supporting compliance with all applicable building regulations”
- building control approval application materials will form part of the golden thread
- BSR will publish best practice guidance of how to implement the golden thread in practice – golden thread to be digital but no prescribed system.

## Wider changes to the building regulations

- Changes to the building control approvals process for non-higher risk building work in England, including specifying that notices/approvals lapse automatically after three years if work has not started.
- New definitions of commencement of work for new builds and work to existing buildings.
- Replacement of the current deposit of plans requirement with a new requirement to submit a building control approval application before commencing work.

### Overview of the Act

1. The Building Safety Act takes forward the Government's commitment to fundamental reform of the building safety system. The Act 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.
2. The Act also acts as the vehicle for wider improvements including changes to the Architects Act 1997, the Housing Act 1996, and provisions to establish a National Regulator for Construction Products and a New Homes Ombudsman. And it takes forward further changes to the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order or FSO), building on the Fire Safety Act 2021.
3. The objectives of the Act are to learn the lessons from the Grenfell Tower fire and to remedy the systemic issues identified by Dame Judith Hackitt by strengthening the whole regulatory system for building safety.
4. This will be achieved by 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 for building safety. This involves:
  1. establishing a new Building Safety Regulator in England to oversee a new, more stringent regime for higher-risk buildings and drive improvements in building safety and performance standards in all buildings;
  2. ensuring residents have a stronger voice in the system, and establishing additional protections for leaseholders in relation to financing remediation works;
  3. increasing access to redress through the Defective Premises Act 1972;
  4. driving industry culture change and incentivising compliance;
  5. strengthening the Fire Safety Order; and
  6. providing a stronger and clearer framework for national oversight of construction products.
5. Part 1 provides an overview of the Act. The Act contains six parts and eleven Schedules addressing a range of issues relating to building safety and standards. The Act makes a number of changes to existing legislation, most notably the Building Act 1984.
6. Part 2 establishes a new Building Safety Regulator within the Health and Safety Executive.
7. Part 3 deals with amendments to the Building Act 1984 as it applies to England and Wales, and defines the scope and provisions for the regime during the design and construction phase for higher-risk buildings. It also provides for the registration of building inspectors and building control approvers to better regulate and improve competence levels in the building control sector.
8. Part 4 is concerned with higher-risk residential buildings in England when they are occupied, and defines the scope of the regime for higher-risk buildings in occupation. It defines and places duties on the Accountable Person (the dutyholder in occupation) in relation to building safety risks in their building.
9. Part 5 details other provisions, including provisions relating to service charges, remediation and redress, and changes to the Fire Safety Order. It includes provisions to require a New Homes Ombudsman scheme to be established, and powers to make provision for regulation of construction products for the UK. It allows disciplinary orders made against architects by the Professional Conduct Committee of the Architects Registration Board to be listed alongside an architect's entry in the Register of Architects. It also removes the "democratic filter" which requires social housing residents wishing to escalate a complaint to the Housing Ombudsman to do this via a "designated person" or wait eight weeks.
10. Part 6 contains the technical sections related to the Act, including Crown application and provision for liability of officers.