Building Safety Act 2022
A Summary 17 May 2022

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The Act has now been published and we provide a summary of its key features below. Please note only certain provisions will come into force on 28 June 2022.

What is coming into force so far on 28 June 2022?

As outlined in our previous summary, some sections will come into force automatically on 28 June. We provide the section numbers in the new Act for these below, and a brief reminder of their effect:

- s116 to 125 + Sched 8 BSA: leaseholder protections for certain remedial works costs on certain buildings 11m+; remediation orders and remediation contribution orders etc to facilitate such works
- s134 BSA: New s2A DPA: the relevant duty to ensure a dwelling is fit for habitation will apply to refurbishment or other works in future on existing dwellings
- s135: BSA: limitation extensions (a) s1 DPA: 30 years retrospectively, 15 years prospectively; (b) 15 year prospective limitation period for (i) s2A DPA claims; and (ii) s38 Building Act 1984 claims (s38 is not yet itself in force, but it is it will cover claims for damage or physical injury due to breach of a duty under the building regulations).
- s146 – 155 + Sched 11 BSA: new causes of action etc relating to use of construction products
- s157 – 159 BSA: amendments to the Architects Act relating to professional issues, CPD and an appeals committee etc

New regime for building works

The Act will bring in a whole new regime for certain types of building works for "higher risk" buildings, but some changes will also affect all types of building work under the Building Regulations. Separate summaries will be published on these issues, but a few key topics are highlighted below:

Dutyholder Roles and competency requirements: clients, contractors and designers will be required to meet certain "dutyholder" obligations and demonstrate various competencies.

Golden Thread of information: for higher-risk buildings, a package of detailed information relating to the property's construction, fire and building safety etc will have to be developed and retained both during the life of the construction project and afterwards once the building is complete.

New regulator, and "gateways" for "higher risk" buildings: the Building Safety Regulator is going to be established, and for higher risk buildings, new "gateways" 2 and 3 during the construction process will require detailed steps to be followed before – at Gateway 2 – building control approval will be granted by the BSR (with no construction work able to begin beforehand); and – at Gateway 3 – the final certificate will be provided. (Gateway 1 - relating to planning permission – has been in force since August 2021).

Criminal offences: new or extended criminal offences will be created (including in relation to officers / directors in some circumstances) regarding certain elements of the construction process, including (i) breaches of Building Regulations; (ii) breaches of compliance or stop notices.

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Other Redress avenues (the date they come into force is unknown)

The Act allows for the following sections to be enacted on a date to be aet by the Government:

s130 – 132: Building Liability Orders: The Court will have the power, if it considers just and equitable to do so, to order that a "relevant liability" of entity X relating to a specified building, is also the liability of entities which are "associated with" entity X. A "relevant liability" is a liability "incurred" by entity X: (a) under the Defective Premises Act 1972 or s38 Building Act 1984 or (b) "as a result of a building safety risk" ; and an entity is "associated with" entity X if it is, or was at any time between when the building was being built until the date of the BLO, (a) in control of X; (b) controlled by X, or (c) a third entity controlled both X and the other entity. (there are further definitions in Act about what "control" means in any given case: – see s131). Under s132, claimants will also be able to seek information about associated entities to assist them with seeking a BLO.

s126 – 127: Building Industry Scheme: The Government can introduce regulations to establish a Building Industry Scheme, which can include "securing that "persons in the building industry remedy defects in buildings or contribute [to the costs of doing so]". "Persons in the building industry" are defined to mean "persons carrying on, for business purposes, activities connected with the design, construction, management or maintenance of buildings, including persons carrying out activities in relation to construction products in England…"

s128 – 129: Prohibitions on development and obtaining building control approval: The Government can make regulations to prohibit certain persons from carrying out development of land in England or from being able to obtain building control approval for any proposed buildings. In both cases, persons may be prohibited if they have refused to join any Building industry Scheme.

s136 – 142: New Homes Ombudsman scheme: The Government can set up a scheme to allow complainants to bring claims against members to be determined by an independent Ombudsman. The Government can regulate to require developers or other persons to be members, or face a civil sanction.

S144: New build warranties: A person who carries out a development in England that includes on or more dwellings (i.e. a new build home) can be required to provide the purchaser with a new build home warranty; and there will again be a financial penalty for the failure to do so.

Useful links:
Published Act: Building Safety Act (legislation.gov.uk) ;
Redress Fact Sheet Redress: factsheet - GOV.UK (www.gov.uk