



Guidance Note: The Draft Building Safety Bill

What do housing associations need to know?

The Draft Building Safety Bill is designed to enact the recommendations raised within Dame Judith Hackitt's 2018 Building a Safer Future report. The Bill is likely to come into law at some point during 2021, and so the time for the sector to begin preparations for compliance is now.

The implications will be numerous. This guidance note does not by any means cover all of these, but seeks to identify some key points social housing providers should be aware of at this point.

The Building Safety Regulator

The Bill establishes a new Building Safety Regulator (in the form of a new division of the Health and Safety Executive). While the Bill has implications for all buildings, it introduces a more stringent regulatory regime for 'higher risk' buildings. Much of the Bill is dedicated to the roles and responsibilities of the Regulator, which specifically include ensuring the safety of these higher risk buildings, and facilitating the competence of industry professionals and building inspectors.

Areas of the bill that specifically fall under the more stringent regulatory regime for higher risk buildings include:

- The introduction of duty holders who will have accountability and statutory responsibilities for managing risks across the design, construction, and occupation of buildings on an ongoing basis.
 - Gateway points (stop/go decision points) which will provide rigorous inspection of regulatory requirements to help ensure building safety risks are considered during planning, design and construction.
 - A requirement for a 'golden thread' of building information to be created, stored and updated through the Gateway process and throughout the building's lifecycle.
 - A requirement for higher risk buildings to be registered with the Regulator, and for a periodically reviewed certificate to be in place that confirms a building is fit for occupation.
 - A requirement for the Accountable Person to provide a 'Safety Case Report' which demonstrates how building safety risks are being identified, mitigated and managed on an ongoing basis.
 - A requirement for the Accountable Person to appoint a competent Building Safety Manager to support them in managing fire and structural safety risks in the building day-to-day.
 - A requirement to engage and develop a strong partnership with residents to keep the building safe through greater transparency and the effective handling complaints.
- There are therefore numerous changes for social housing providers to be aware of, particularly those that own and develop buildings likely to be denoted as higher risk.
- The new Regulator will have far-reaching investigatory powers which can be used if an organisation is thought to be in contravention of the Act. 'Authorised officers' can be appointed to carry out any investigations, with the power to request information from any 'relevant person'. It will be a criminal offence with a potential prison sentence should that person fail to provide the information requested without a reasonable excuse.
- Included on the following pages is some detail on other specific areas of the Bill social housing providers should be aware of:
- "Industry should prepare for the substantial changes that are coming. Many in industry have already been working to improve standards and have shaped and influenced this Bill. Now they must accelerate this work to improve industry wide culture, competence and compliance."
- The Rt Hon Robert Jenrick MP**



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Higher Risk Buildings

The classification of a higher risk building is ultimately to be defined by the new Regulator and agreed by the Secretary of State, however the Bill is proposing to define a higher risk building as being two or more dwellings where the floor surface of the building's top storey is 18 metres or more above ground level, or the building is more than six storeys high.

It seems likely however that the Regulator could widen that guidance or choose to allocate buildings as higher risk on a cases-by-case basis if it wishes.

Accountable Person

The Bill introduces the role of an 'Accountable Person' for higher risk buildings. This delegation is described as a person who holds a legal estate in possession in any part of the common parts, or a person who is under a relevant repairing obligation in relation to any part of the common parts.

This individual or corporate entity (e.g. a housing association) has a number of duties, including ensuring a building is registered with the Regulator before occupation, applying to the Regulator for a building safety certificate every five years following occupation, appointing a competent Building Safety Manager, and carrying out a regular risk assessment of the building and promptly taking remedial actions where issues are identified. They are also responsible for keeping all prescribed building information in accordance with the prescribed standards, and preparing a resident engagement strategy that promotes the participation of residents in the management of the building.

The Building Safety Manager

The primary role of the Building Safety Manager (which may be a corporate entity or an individual) will be to manage the building in accordance with the safety case report that follows the building's risk assessment. Where that safety report requires work to be done or measures to be put in place, it will be the Building Safety Manager's responsibility to do this. The Building Safety Manager will be required to provide certain information to the Regulator under mandatory reporting obligations and to establish a system for doing so.

The 'Golden Thread'

The Bill includes provisions that will help create a golden thread of information. The intention of the clauses in the Bill are to ensure that the right people have the right information at the right time, so as to ensure buildings are safe and building safety risks are managed throughout the building's lifecycle. This information will be held digitally and will ensure that the original design intent and any subsequent changes to the building are captured, preserved and used to support safety improvements.

For new builds, the duty holders must start to collect this information during the design and construction process. Once construction is complete, the information must be handed over to the Accountable Person.



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The Role of Residents

The Bill introduces duties for residents which include keeping any 'relevant resident's item' (e.g. a gas or electrical installation) in repair and proper working order, taking reasonable care not to damage any 'relevant safety item' (meaning anything in the common parts of a building that is intended to improve the safety of anyone in the building or its vicinity, for example, signage, sprinklers, or smoke alarms etc.), and comply with a request from an Accountable Person to provide information reasonably required for the Accountable Person to perform their duties and assess building safety risks.

The Housing Ombudsman

The Bill introduces the New Homes Ombudsman Scheme, which is intended to provide a central 'hub' for owners of new build homes to make complaints and have those complaints investigated and determined by an independent ombudsman.

Regulation of Construction Products

The Bill creates powers to make provision for regulation of all construction products marketed in the UK. There will be powers to create new civil penalties and criminal offences for breach of the new regulations relating to construction products.

Summary

We have presented here just a few aspects of the Bill. Its full implications are wide-ranging and will need to be understood across the sector once made into law.

The Bill is not fully prescriptive regarding the regulatory regime, so we should expect guidance from the HSE in due course. In the meantime the government and HSE have been revising and publishing guidance on building safety gradually for some time, so there is already plenty that landlords can use to prepare.

We have included below some thoughts on key areas housing providers may wish to start considering.

Key points to prepare for:

- Any landlord owning or developing buildings classified as higher risk will have significantly increased duties under the Act.
- All relevant staff will need to be aware of and understand the Act, and boards should also appreciate the new risks it poses and the implications of non-compliance. Boards and management should consider from where they receive assurance that these risks are being managed when making decisions around building management and development.
- A number of policies around development and maintenance functions will need to be developed to ensure compliance with the Act. A significant point to note will be to make sure that the 'golden thread' of building safety information is being retained and can be provided to the Regulator on request.
- A Building Safety Manager will need to be appointed for all relevant buildings.
- A resident engagement strategy will need to be developed that promotes the role of residents in building management and building safety.
- It would be good practice to make information available to tenants around the key points of the Act and the responsibilities of both themselves and the landlord.
- Procurement processes around development and maintenance will need to consider key aspects such as ensuring safety of materials in use, incorporating the new roles and responsibilities of duty holders, and information gathering and storage etc.
- The changes required by the Act are likely to introduce increased costs throughout the development supply chain. The level of these costs is not yet possible to quantify, and will depend on each individual developer. It would be sensible to begin considering this within financial plans and development strategies however.