

CONSTRUCTION ENGINEERING & INFRASTRUCTURE

Where will the Golden Thread lead – the Draft Building Safety Bill

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Introductions



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Agenda

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- + Criticisms of the existing system
- + Introduction to the Draft Bill.
- + The Regulator and its functions
- + Building Safety Risks and Higher-Risk Building
- + Regulation of building control profession
- + The Golden Thread' duty holders and gateways
- + Enforcement and sanctions
- + What is not covered/what is still to come?
- + Housing Communities and Local Government Committee Report (November 2020) – Key Recommendations
- + Delegated Powers
- + Other key issues

Timeline- How did we get here?

- + May 2018 Independent review of Building Regulations and fire safety (“Hackitt Report”)
- + December 2018 Building (Amendment) Regulations 2018
- + June 2019 – Government consultation for proposed Building Regulation



Timeline- How did we get here? (Cont.)

- + 30 August 2019 – New version of Approved Document B. Correction on 19 September 2019 (note European Classifications A1 or A2) - May 2020 further amendments
- + 5 September 2019 to 28 November 2019 – Government Consultation on Sprinklers / Fire Safety Measures
- + October 2019 – June 2020 – Grenfell Tower Public Inquiry Phases 1 and 2

Criticisms of the existing system

1. Guidance unclear, misunderstood and often misinterpreted.
2. No clear line of responsibility and regulatory enforcement inadequate.
3. Variable competency.
4. Answer: Establishment of the golden thread!

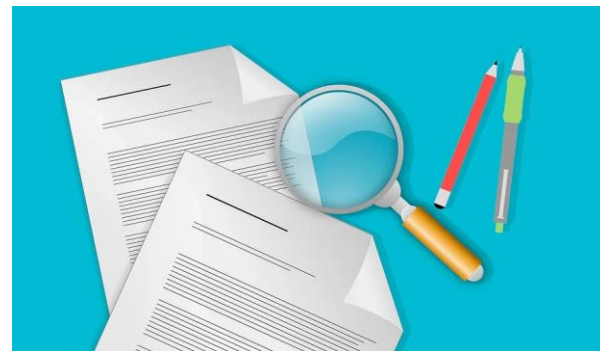


Introduction to the Draft Bill

+ The Draft Bill itself comprises 5 main parts:

- Part 1 – Introduction (Clause 1)
- Part 2 – The Regulator and its functions (Clause 2 - 35)
- Part 3 - The Building Act 1984 (Clauses 36 - 59)
- Part 4 – Higher Risk Buildings (Clauses 60 - 105)
- Part 5 – Supplemental and General (Clause 106 – 119 together with schedules)

+ Explanatory Notes



The Regulator and its functions

- + Clause 2 - “the regulator” means the Health and Safety Executive.
- + Clause 3 - the Building Safety Regulator has three broad functions:
 - Implementing the new, more stringent regulatory regime for higher-risk buildings.
 - Overseeing the safety and performance of all buildings.
 - Assisting and encouraging competence among the built environment industry, and registered building inspectors.
- + Proactive duties; e.g. Clause 4 (Facilitating building safety), Clause 5 (Keep safety and standard of buildings under review)
- + The Building Safety Regulator is concerned with “building safety risks” in “higher-risk buildings”.

Building Safety Risk and Higher-Risk Building

“Building Safety Risks” are defined at Clause 16 as:

“Meaning of “building safety risk” (1) In this Part and Part 4 “building safety risk” means a risk to the safety of persons in or about a building arising from the occurrence as regards the building of any of the following—

- a) fire;
- b) structural failure;
- c) any other prescribed matter.”

“Higher-risk buildings” are defined at Clause 19.

“Meaning of “higher-risk building” In this Part and Part 4 “higher-risk building” means a building of a prescribed description.”

‘prescribed description’ may be by reference to a building’s size, design, use, purpose or other characteristics.



Building Safety Risks and Higher-Risk Building (Cont.)

Currently proposed that:

“A building which satisfies the height condition and contains:

- a) Two or more dwellings (i.e. house, flat or serviced apartment);
- b) Two or more rooms for residential purposes (e.g. supported accommodation), or
- c) Student accommodation.

Where:

1) The height condition is that:

- a) The floor surface of the building’s top storey is 18 metres or more above ground level (ignoring any storey which is a roof-top plant and machinery area or any storey consisting exclusively of plant and machinery rooms); or
- b) the building contains more than 6 storeys (ignoring any storey which is below ground level).

And

2) “Room for residential purposes” means a room (other than in a dwelling) which is used by one or more persons to live and sleep but excluding a room in:

- a) A residential care home;
- b) Secure residential institution (e.g. prison, detention centre);
- c) Temporary accommodation (e.g. a hotel, hostel, guest house, hospital, hospice).”

Regulation of building control profession

- + Clause 44 provides for the Building Safety Regulator to become the unified regulator of both building inspectors and approved inspectors.
- + What will this mean?
 - Those involved in building control will need to be registered with the Building Safety Regulator
 - There will be minimum requirements to be met
 - Requirements in respect of competence
 - Powers of sanction



‘The Golden Thread’ duty holders and gateways

- + Clause 37 - new provisions for Schedule 1 of the Building Act 1984, including:
 - Procedures relating to applications for building control approval, and for requirements to be imposed on approvals (new paragraph 1B);
 - Approval of schemes whose members can issue certificates, and provision about those certificates and schemes (new paragraph 1C);
 - Requirements on giving, obtaining or keeping of information or documents, in relation to any work or other matter to which building regulations are applicable (new paragraph 1D);
 - Requirements for the establishing of a system relating to mandatory occurrence reporting (new paragraph 1E);
 - The form and content of documents and information to be provided with building control applications (new paragraph 1F);
- + “the Golden Thread” – to ensure that the high quality information in respect of a higher-risk building and its safety is produced and retained so that it is available at all stages of a building’s lifecycle.

'The Golden Thread' duty holders and gateways (Cont.)

- + Clause 38 – five main dutyholder roles:
 - Client - Any person or organisation for whom a construction project is carried out;
 - Principal Designer- plan, manage, monitor and coordinate the pre-construction phase. The Principal Designer is in control of the pre-construction phase;
 - Principal Contractor - plan, manage, monitor and co-ordinate the construction phase. The Principal Contractor is in control of the construction phase;
 - Designer - prepare or modify a design or instruct any person under their control to prepare or modify a design;
 - Contractor - Anyone who manages work or directly employs or engages construction workers is a contractor.
- + A general duty to govern the way building work is carried out - not just seen as a box ticking exercise.
- + The Golden Thread



The 'Golden Thread' duty holders and gateways (Cont.)

Gateways

- Gateway One: The planning permission stage.
- Gateway Two: Before construction work commences, the Building Safety Regulator must be satisfied that the design meets the requirements of building regulations.
- Gateway Three: Pre-occupation of the building.



Enforcement and sanctions

Toughened existing powers

- Extends time limits of
 - Sections 35 of the Building Act 1984 (time limit for prosecution for contravention of building regulations)
 - Section 36 of the Building Act 1984 (notice for removal or alteration of offending work) to apply formal enforcement powers in relation to non-compliance with building regulations.

New powers

- The Building Safety Regulator will have powers to prosecute all offences in the Bill and the Building Act 1984.
- Directors or managers liable to be prosecuted as well as the corporate bodies.
- The Building Safety Regulator will be able to issue compliance notices / stop notices.
 - Failure to comply is a criminal offence = up to two years in prison and an unlimited fine.

What is not covered/what is still to come?

1. Pre-legislative scrutiny – what is not covered/areas for concern arising from the Report of the HCGLC
 2. Delegated Powers – what might be coming
 3. Other issues:- Overlapping legislation, Training/competency of your organisation, HSE, Insurance, Costs.
- + Introduction
 - + Why so many gaps?



Housing Communities and Local Government Committee Report (November 2020)

13 “Key” Recommendations:

1. *Publication of More Detail* – “We urge the Government to include as much detail in the Bill itself or to publish the secondary legislation alongside it. It is especially important that this be done for core provisions such as the Gateways process and the regulation of construction products”
2. *Timetable* – “We recommend that the Government publish with the Bill a clear timetable for commencement so it is clear by when the industry has to demonstrate compliance and the Building Safety Regulator establish the regime.”
3. *Leaseholders* – “The Government must recommit to the principle that leaseholders should not pay anything towards the cost of remediating historical building safety defects, and, in order to provide leaseholders with the peace of mind they deserve, amend the Bill to explicitly exclude historical costs from the building safety charge.”

Key Recommendations from HCLGC Report (Cont.)

4. *Funding of Historical defects – “The Government must announce, before it publishes the Bill, its proposals for funding all historical building safety remediation works. These proposals should impose no costs on leaseholders and explicitly acknowledge that in the short term the Government must foot the bill, until such time as mechanisms for cost recovery have been developed.”*
5. *Scope – “We strongly recommend that the initial scope of the regime be enshrined in the Bill itself, and not be left to delegated legislation, in order to give stakeholders the certainty they need to prepare for the new regime.”*
6. *Expansion of Scope – “We recommend that the Government specify in the Bill itself by way of a requirement to “have regard” the factors that must be considered in the future when the scope of the regime is expanded and that the ability of residents to evacuate the building be the principal factor. We also recommend that any requirement to have regard to the ability of residents to evacuate a building explicitly include both the vulnerability of residents and the number of means of egress. Finally, we recommend that the Government indicate its intention to review the scope and set a timetable for doing so.”*

Key Recommendations from HCLGC Report (Cont.)

7. *Third party Accreditation – “We strongly recommend that the Government include provisions in the Bill itself for establishing a national system of third-party accreditation and registration for all professionals working on the design and construction of higher-risk buildings.”*
8. *Building Control Bodies – “We recommend that dutyholder choice be removed entirely from the building control system and replaced by a system of independent appointment, and that this be made explicit either in the Bill or in secondary legislation to be published alongside it.”*
9. *Accountable Persons – “We recommend that the Bill provide for a general duty to co-operate on accountable persons in respect of buildings for which there are multiple accountable persons and that the Government publish statutory guidance alongside the Bill setting out the sorts of behaviours that would be expected under such a duty.”*



Key Recommendations from HCLGC Report (Cont.)

10. *Statutory Guidance for accountable persons – “We recommend that the Government publish statutory guidance alongside the Bill outlining how it expects accountable persons and responsible persons to co-operate in practice. In the longer term, we recommend that the Government review the operation of the two regimes with a view to rationalising and simplifying the legislation.”*
11. *Competency for role of Building Safety Managers – “The Government must announce before the Bill is published whether it intends to adopt the competency framework for the role of building safety manager proposed in the report from Working Group 8. If it does not, it must publish with the Bill the full details of the framework it does intend to adopt.”*
12. *Accreditation for Building Safety Managers – “We recommend that the Government provide, either in legislation or in statutory guidance, for a national system of accreditation to agreed common standards and for a central register of building safety managers.”*
13. *Product Certification – “We recommend that the Government provide for the publication of test failures and re-run tests and for the establishment of an independent and unified system of third-party certification in order to introduce greater transparency and rigour into the regulation of construction products.”*

Delegated Powers

An insight into the future?

- Building Safety risk - Clause 16 (1)
- Higher Risk Building Clause 19 (1) & Clause 20 (1) Modification of Part 4
- Fees and Charges – Clause 33 (1)
- Interpretation of Part 2 (Clause 35 (1) and (3))



Other key issues

- + Interactions with other regulations: CDM, Fire safety Order
- + Training/establishing competency for the new roles
- + HSE
- + Insurance
- + General costs



Conclusion

- + Signifying a cultural shift towards monitoring and compliance
- + But ...concerns remain over lack of detail/clarity and secondary legislation
- + Process:
 - a) Laid before Parliament early 2021
 - b) New regime 2023
- + However, implement and oversee new practices asap!

Next webinar – “Construction Winter Webinar Series”

Contractual Considerations in 2021 – a New Landscape - 20 January 2021

For construction professionals, the contractual landscape has unfortunately been ‘hardening’ in recent years. In addition, the professional indemnity insurance market has also “hardened”, with cover being limited in areas such as in respect of fire safety, ACMs and combustible materials, amongst others. And then we have the COVID-19 pandemic and the UK’s transition period after Brexit coming to an end on 31 December 2020.

Will Buckby and Robert Read will discuss those important contractual considerations that construction professionals should be considering in the current market.

Please contact the below email if you wish to join:

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Thank you



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