



March 2024

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Sustainable development: adapting to a new building safety regime

As the latest pieces of the Building Safety Regime jigsaw puzzle fall into place, in this Bulletin we consider what the new regime means for those operating in the built environment sector in England, the key measures to be considered and learnings for the built environment sector more broadly.

Background

It is several years since the Grenfell tragedy in London and the subsequent Hackitt review of the events leading to this terrible fire and loss of 72 lives.

Many of the Hackitt report's recommendations, and the results of industry-wide consultation addressing building safety, have found their way into new legislation.

April 2024 is the next key milestone date which sees more of the supporting regulatory framework coming into force.

As a package, the new Building Safety Regime aims to put residents at the heart of protection measures and bring transformational improvements to safety in the design, building and maintenance of their homes.

Many businesses operating across the built environment sector are impacted – whether developers, building owners, property consultants, inspectors, product manufacturers, designers, contractors, occupiers or property managers. Indeed, some of these roles are regulated and competency to fulfil them must be demonstrated. Those involved in the financial aspects of residential development also have a key role to play in influencing building safety - whether as financiers, insurers or other key stakeholder.

Importantly from April 2024* and, as regards building control, unless a building inspector is registered with the BSR they can no longer undertake certain activities.

Building Safety: regime overview

The Building Safety Act 2022 achieved Royal Assent in April 2022 and is supported by various pieces of secondary legislation which are gradually coming into force.

The regime is overseen by a new Building Safety Regulator (BSR), appointed under the arm of the Health and Safety Executive (HSE). The BSR will be the only building control body in England for Higher Risk Buildings (HRBs).

In direct response to the potential causes of the Grenfell tragedy, a key focus of the regime is on the manufacturing process and product standards, including of cladding systems to HRBs.

To regulate this, the Office for Product Safety and Standards (OPSS) becomes the new national regulator of construction products. To help industry comply with enhanced safety standards, manufacturers and suppliers are being encouraged to sign up to the 'Code for Construction on Product Information' (CCPI).

The Act currently only applies to England. Other UK devolved nations are considering related changes to regulations, at a different pace, some more advanced than others.

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People need to go beyond the 'how do I get past this rule?' mindset and instead have the one of 'what's the solution that meets the requirement?'

Dame Judith Hackitt, RIBA Journal, October 2023

What constitutes a higher risk building (HRB)?

There is much detail to the UK Government's **guidance** which should be carefully understood. In summary, factors include whether the building (existing or intended):

- is 18 metres high or taller
- has at least 7 storeys (ground floor & above)
- contains at least two homes
- is a care home
- is a hospital.

"The Building Safety Act overhauls existing regulations, creating lasting change and makes clear how residential buildings should be constructed, maintained and made safe"

The Building Safety Act, gov.uk, July 2022

Underpinning the regime are key regulations, including:

The Building (Higher Risk Buildings Procedures) (England) Regs 2023

This includes compliance procedures.

The Building Regulations etc (Amendment) (England) Regs 2023

This replaces most of the existing building regulations so far as HRBs are concerned and introduces duty holders roles.

The Building (Approved Inspectors etc and Review of Decisions) (England) Regs 2023

This creates a new building control profession - registered building control approvers who replace traditional inspectors.

The Higher Risk Buildings (Management of Safety Risks etc) (England) Regs 2023

These are the detailed requirements and responsibilities of Principal Accountable Persons (PAP); Accountable Persons (AP) roles; building assessment certs (BACs); the PAP's ongoing management responsibility; defines "prescribed principles".

Sources of information

A full summary and guidance on the regulations is provided by the BSR:
www.hse.gov.uk/building-safety

Key dates for building control inspectors & new transitional arrangements

Open Letter to Industry from Director of Building Safety, HSE (published 14 March 2024)

Building a Safer Future Report, May 2018, Dame Judith Hackitt

CIC report on achieving a competence-led built environment

About the **CCPI Code**

About the **OPSS**

Key highlights



What are some of the important aspects of this new building safety regime?



EXISTING BUILDINGS

All existing buildings meeting the HRB criteria should have been notified to the new BSR by 1 October 2023. Whilst several thousand have been notified reports suggest not all accountable persons appear aware of, or are on top of, this requirement.



NEW BUILDINGS

From 1 October 2023, all new buildings are required to be registered before they can be occupied and BSR approval must be achieved for any plans for a new HRB development.



KEY ROLES

Duty holders (akin to the roles under the Construction Design Management (CDM) regulations but creating distinct duties) now exist with specific duties targeted at building safety.



These roles will need to be fulfilled by demonstrably competent people. Failure to comply with these requirements creates significant risk and penalties for those responsible, known under the regime as accountable persons.

In addition, the regime includes new controls, gateways, budget requirements and project monitoring parameters including:

CONTROLS

TRADITIONAL

Public realm

TRADITIONAL

Private sector

DESIGN & CONSTRUCTION COMPLIANCE WINDOW

8 weeks to assess an existing HRB and 12 weeks to assess a new HRB.

GATEWAYS

PLANNING

Presentation of advanced designs, start of the coordination process and early sight of fire strategies.

PRESITE

Submission of technical design and construction application process including proposals for building management.

COMPLETION/PARTIAL COMPLETION

Sign-off required by BSR before occupation/partial occupation can take place.

MONITORING

PROGRESS

A new requirement of a 'golden thread' has been introduced whereby key building information is captured and maintained in a digital, accessible format improving handover, development of a maintenance plan and ongoing resilience and safety of a building.

BUDGETS

ASSESSMENT

An hourly rate will apply to projects for the Regulator to review, assess or approve materials at each Gateway stage.

The costs, and who covers them, need to be factored into project planning and budgeting.

Learning points for safety

In response to the new regime and in the wider built environment sector

Whether designing HRBs, indeed any building, safety measures at all project phases are critical. They feature prominently in many organisation's core approach. Indeed, many of those operating in the built environment have committed to safety objectives which go beyond national requirements, including international objectives such as the UN's sustainable development goals (SDGs).

By making decisions and taking action through the lens of building safety - aiming to get the right information to the right people at the right time - whatever your role or stage of the project this is all achievable and within reach of those serious about building safety. Consider the following key measures:

1. BE SAFETY FOCUSED

- Establish a clear policy
- Forge a strong culture and robust approach
- Start with the tone from the top and bring your whole organisation on board with your ethos
- Allow sufficient budget and resource.

2. BE PEOPLE SAVVY

- Communicate clearly across the project team and into key stakeholders
- Advocate - and encourage - a strong safety culture internally
- Plan for continuing development and establish competency of your people, recognising your operations may involve regulated activities
- Seek opportunities to collaborate
- Support information sharing.

3. BE PROCEDURE CONFIDENT

- Implement a systematic approach to building safety
- Understand requirements throughout the project life cycle, establishing 'the golden thread'
- Plan projects carefully, preparing diligently at the front end
- Build-in any statutory time limits and approvals processes into the project plan
- Utilise digital solutions capturing key project information in support of your approach
- Document key reviews and decision points
- Pay careful attention to evolving regulations on building safety.



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