



New Health and Safety Legislation Changes and Responsibilities as a Result of Grenfell

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Introduction

- Changing the law – improved standards of fire and structural safety while building is in use
- “The Government is committed to bringing about the biggest change in building safety for a generation”
- New high rise residential buildings initially
- Will apply to existing high rise residential eventually
- Some changes for **all** buildings
- More obligations on developer/owner during construction and operation





Main Topics Covered

- Fire Safety Bill
- Building Safety Bill – main features
- New Homes Ombudsman Scheme
- Implied Terms in Long Leases





Fire Safety Bill

- MHCLG Advice Note 14 (Ministry for Housing, Communities and Local Government)
- Intention to clarify the Fire Safety Order:
 - References to “structural” includes external walls and attachments to them e.g. windows, cladding, balconies
 - Front doors of flats (i.e. fire doors) are also covered by the Fire Safety Order







Implications

- There must be a regular fire safety risk assessment for external walls and front doors of flats, and fire risk reduced as far as is reasonable
- Developers need to take more interest in these parts of the structure
- Fire and Rescue Authorities can enforce these amendments







Regulations to be made under the Fire Safety Act

- New duties on building owners or managers of high rise residential on inspection and sharing of information
- More requirements in relation to design of external walls and the materials used
- Regular inspection of individual flat entrance doors





Hand Arm Vibration Syndrome

- Policies developed in 2007 not implemented
- Failures identified in a 2011 audit not addressed
- 11 more cases identified from occupational health surveillance
- Wrexham County Borough Council fined £150,000 + costs £11,000
- Thanet District Council fined £250,000 and £18,325.84 costs for a similar situation





Building Safety Bill – main features

- New regime for high rise residential – 18 metres or more than six storeys – higher risk buildings
- Change to building control bodies – new Building Safety Regulator
- Amendments to Building Regulations
- New homes ombudsman scheme
- Extra duties/competence required of professionals on higher risk and all other buildings





Building Safety Bill – main features cont.

- New regime applies to the 17-20 per year major refurbishments of high rise
- New regime applies to the 1100-1300 per year major works on high rise
- After transitional period, all **existing** high rise residential buildings subject to the new regime (estimated 11,100 of these)
- Each building must have an Accountable Person to register a building and produce a Building Safety Case Report







Building Safety Regulator

- Enforce more stringent regime for higher risk buildings; responsible for all major regulatory decisions at key points during design, construction, occupation and refurbishment
- Regulator will be the building control body for higher risk buildings
- Oversee safety and performance across **all buildings**
- Enforce residents' right to ask for and receive information
- Advise duty holders on managing safety risk in buildings







Higher risk buildings

- The following slides apply only to higher risk buildings, except where stated otherwise, ie
- Residential/student accommodation
- 18 metres or more than 6 storeys excluding basement and roof level plant rooms
- Not hotel/care home/hospice/prison





Gateway 1: before planning permission

- Submit Fire Statement – access and water supply in particular
- Government will provide national guidance on contents
- Fire Statement to include information on the “near vicinity area” – how far does this extend?







Gateway 2: before construction can start

- Full set of detailed drawings must be provided to the Regulator
- Construction control plan (including change control system)
- Staged applications allowed







During construction

- Critical safety management changes require prior approval of Regulator (estimated 115 additional days per building)
- Assumed eight safety changes per building – requires prior approval from Regulator
- Assumed cost of delay to completion (loss of rent/finance costs) at £10,000 per week of delay (£150 per flat per week) and estimated risk of delay 2 – 26 weeks: mitigated by providing staged information?





Gateway 3: before handover can happen

- Estimated 48 days to prepare information and 16 days for review
- **Client/Principal Designer/Principal Contractor to produce and co-sign the final declaration that to the best of their knowledge the building complies with the building regulations:** the Regulator decides whether to accept this
- New role(?): Independent Construction Assessor, to give assurance of compliance with building regulations





Gateway 3: before handover can happen (continued...)

- Client to demonstrate through Safety Case appropriate actions to mitigate and manage fire and structural risks have been made so that the building can be safely occupied
- Partial occupation permitted if it is part of the original design strategy, and the fire management strategy will be required to allow for this
- Accountable person to apply for and receive Building Registration Certificate from Regulator







Building Registration Certificate

- Regulator can impose conditions – breach of conditions could be a penalty and/or a criminal offence
- Special conditions (for specific risks)
- Voluntary conditions – suggested by the accountable person
- Mandatory conditions – applying to all buildings
- **Obtaining the certificate is a precondition to occupation**





Building Registration Certificate (continued...)

- Non compliance or poor performance – Regulator can review or amend conditions or require replacement of Building Safety Manager
- Requirements for Building Safety Manager (and Accountable Person) – see ‘Safer people, safer homes: Building Safety Management’
- Certificate will be reviewed periodically by the Regulator





Safety Case

- Accountable Person to provide to Regulator
- Building Safety Manager to keep up to date and show residents
- Must state how fire and structural risks are being managed
- Similar to fire risk assessments under the Fire Safety Order
- Regulator can require changes to the risk mitigations





Safety Case (continued...)

- Reviewed periodically and on request e.g. resident concern
- Template being developed based on those used in major hazard industries





Accountable Person

- Probably the owner – the ultimate financial controller who has the right to receive rent – there will be government guidance for complex ownership
- Accountable Person must understand fire and structural risks in the building and take steps to mitigate and manage so it can be safely occupied
- Accountable Person must make adequate resources available for the Building Safety Manager
- Accountable Person must ensure the skills, knowledge, experience and behaviours of the Building Safety Manager







Building Safety Manager

- They will deliver the functions **on behalf of** the Accountable Person
- Approved by the Regulator
- Maintain the Safety Case
- Comply with conditions in the Building Registration Certificate
- Check the competence of those maintaining fire and structural safety
- Engage with residents





Mandatory occurrence reporting

- Duty holders to report if there is a structural safety or fire event giving rise to significant risk to life – similar to RIDDOR
- Client to have “functional internal framework” – Building Safety Manager responsible for reporting during occupation
- Government guidance on format will be issued
- Regulator will set up voluntary reporting scheme – an expansion of the Confidential Reporting on Structural Safety Scheme





Refurbishment and remediation

- Building Safety Manager to engage with residents and update Safety Case and carry on updating throughout the works
- For certain refurbishment Regulator to give prior approval
- Residents must notify Building Safety Manager if refurbishing their own property







Refurbishment and remediation (continued...)

- Building Safety Manager to update Safety Case and give approval to residents' works
- Accountable person is expected to rectify identified risks and pay for it themselves (e.g. risks identified during transition period, for existing buildings)





Sanctions

- Regulator can issue:
 - stop notices
 - compliance notices
 - improvement notices – no response to an improvement notice can lead to a stop notice
- Regulator can revoke the Building Registration Certificate
- Regulator can prosecute duty holders including the Accountable Person – personal criminal liability/unlimited fine





New homes ombudsman scheme

- Developers must join it
- Comply with code of practice







All construction projects

- New regulations apply to **all** building work
- CDM duty holders deemed appointed under building regulations
- Power to impose duties on duty holders “to ensure compliance with building regulations”: “formal responsibilities for compliance with building regulations” – must not accept appointment unless can fulfil these
- Building regulations can “prescribe competence requirements relating to the principal designer”





Residents' rights in higher risk buildings

- Residents must be given certain information
- Accountable Person must have strategy to involve residents in building safety decisions
- Residents' right to be given certain information
- Complaints procedure for building safety risks





Implied terms in long leases (over 21yrs)

- Landlord to carry out building safety measures
- Leaseholder to pay fair share of reasonable costs and allow access
- ‘Building Safety Charge’ to be kept separate from service charge
- Leaseholders should not have to face unaffordable costs





Other issues

- Existing buildings: building assurance certificate
- Accountable person to apply for building assurance certificate
- Secretary of State may require accountable person to hold insurance against specified losses for building safety risk materialising
- Government wants collaborative procurement approaches for higher risk buildings i.e. not design and build
- Increased competence: skills, knowledge, experience and behaviours; for everyone [See 'Setting the Bar']





References

- Building Safety Bill:
www.gov.uk/government/publications/draft-building-safety-bill
- **Explanatory notes to Building Safety Bill:** ditto
- Setting the Bar: www.cic.org.uk/setting-the-bar-annexes.php [Competence requirements for all professionals]
- Safer people, safer homes: Building Safety Management: cic.org.uk/admin/resources/annex-8a-safer-people-safer-homes-building-safety-management.pdf [Role of Building Safety Manager and Accountable person]
- Latest: search for ‘Building Safety Bill aims welcome’





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