

# 3/2021 Building Safety Bill

8/7/2021

## Key Points

- The Building Safety Bill was introduced to the House of Commons on 5 July.
- Along with the Bill and explanatory notes to the Bill, the Government has published its response to pre-legislative scrutiny of the Bill in draft by the HCLG Select Committee, draft regulations and a transition plan.
- Part 2 of the Bill provides for the establishment of a new Building Safety Regulator within the Health and Safety Executive responsible for regulation of the design, construction, management and refurbishment of higher-risk residential buildings.
- As previously proposed, higher-risk buildings are defined as at least 18 metres in height or having at least 7 storeys.
- Part 3 of the Bill amends the Building Act 1984 to introduce the dutyholder, Gateway and Golden Thread proposals made by Dame Judith Hackitt's Review into the building control process; it also makes the Building Safety Regulator the building control authority for higher-risk buildings.
- Part 4 of the Bill gives new responsibilities to the owners of higher-risk residential buildings, introducing a new role of Accountable Person for such a building and gives them new responsibilities.
- These include
  - a duty to register the building with the Building Safety Regulator by supplying details of each higher-risk building and the Accountable Person responsible for it;
  - a duty, when called by the Regulator, to apply for a Building Assessment Certificate for each building, such application to include:
    - details of the Building Safety Manager responsible for the building
    - a Safety Case Report
    - details of any occurrences relating to fire or structural failure which it is mandatory to report
    - confirmation that required information about the building has been provided to residents and others
    - a resident engagement strategy.
- New duties are placed on residents and flat owners not to act so as to increase safety risks or interfere with safety equipment, and to provide relevant information to the Accountable Person.
- Both an Accountable Person and the Building Safety Regulator are required to operate a complaints process that allows residents to complain to the landlord or building owner and escalate the complaint to the Regulator if not satisfied with the landlord's response.
- The Bill contains a number of other provisions relating to:
  - service charges for building safety-related works
  - redress for work carried out on existing buildings;
  - changes to the Fire Safety Order;
  - the establishment of a New Homes Ombudsman;
  - regulation of construction products;
  - disciplinary orders made against architects;
  - removal of the 'democratic filter' which requires social housing residents wishing to escalate a complaint to the Housing Ombudsman to do this via a 'designated person' or wait eight weeks.

## Background

The Building Safety Bill was introduced to the House of Commons on 5 July. It takes forward the Government's commitment to reform the building safety system following the Grenfell House fire,

giving effect to the policies set out in the *Building a Safer Future* consultation paper issued in June 2019, which in turn reflected the principles and recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety published in May 2018. A draft Bill was published in July 2020 for pre-legislative scrutiny, and the HCLG Select Committee recommended a number of amendments. The Government's formal response to the Select Committee has been published alongside the Bill, together with draft regulations and a transition plan.

Links to all these documents can be found at the end of this briefing.

## **Main provisions**

### **1: A new Building Safety Regulator**

Part 2 of the Bill provides for the establishment of a new Building Safety Regulator within the Health and Safety Executive responsible for regulation of the design, construction, management and refurbishment of higher-risk residential buildings. As previously proposed, higher-risk buildings are defined as at least 18 metres in height or having at least 7 storeys.

### **2: Reform of building control to strengthen regulation of design and construction of higher-risk residential buildings**

At the core of Dame Judith Hackitt's recommendations was the proposal that during each stage in the life cycle of a higher-risk residential building it should be the responsibility of a specified dutyholder to assess and manage risk. A series of 'gateway points' would be established at the transitions between stages through which a building could not progress unless the relevant dutyholder had demonstrated to a new Building Safety Regulator that risks are being adequately managed. The proposed Gateways are as follows:

#### **Gateway 1: grant of planning permission**

Reforms to the planning system are proposed, which are not part of the present Bill, to ensure that fire safety issues are adequately considered before planning permission is granted.

On grant of planning permission the building enters the 'pre-construction phase' during which the Principal Designer is the dutyholder in control. Before the building can pass through Gateway 2 and begin, the Principal Designer would need to show how the building has been designed to be safe and follows building regulations by providing full plans and supporting documents.

#### **Gateway 2: Building control approval prior to commencement of construction**

The Principal Contractor is the dutyholder in control of the construction phase, with the role of planning, managing, monitoring and co-ordinating the construction phase as a whole. Before the building is handed over and occupied, the Principal Contractor would need to hand over building safety information about the completed building. They would need to apply for and receive a provisional registration of the building and assure the regulator that building risks have been assessed and arrangements are in place to make sure the building is managed safely while people are living there.

#### **Gateway 3: Completion and handover prior to occupation of the building**

Once handed over, responsibility for the building passes to an Authorised Person responsible for meeting the requirements on an occupied building.

Among the responsibilities of the dutyholders for each phase is to create and maintain a golden thread of information to ensure that the right information about the building is available to the right people at the right time to ensure buildings are safe and safety risks are managed throughout the building's life cycle.

Part 3 of the Bill amends the Building Act 1984 to introduce these reforms into the building control process. It also makes the Building Safety Regulator the building control authority for higher-risk buildings.

### 3: Regulation of occupied higher-risk residential buildings

Part 4 of the Bill gives new responsibilities to the owners of higher-risk residential buildings. It introduces a new role of Accountable Person (or Principal Accountable Person) for such a building and gives them new responsibilities, including:

- A duty to register the building with the Building Safety Regulator by supplying details of each higher-risk building and the Accountable Person responsible for it;
- A duty, when called by the Regulator, to apply for a Building Assessment Certificate for each building, such application to include:
  - Details of the Building Safety Manager responsible for the building
  - A Safety Case Report
  - Details of any occurrences relating to fire or structural failure which it is mandatory to report
  - Confirmation that required information about the building has been provided to residents and others
  - A resident engagement strategy.

Failure to comply with these duties is an offence punishable by fine or imprisonment.

The Bill states that it will be an offence for a building to be occupied without reasonable excuse unless it has been registered. It is not clear how this provision will be applied to buildings occupied before the Bill is enacted, unless that fact is judged sufficient as a 'reasonable excuse'.

As the Bill is drafted, an Accountable Person may be an individual or a corporate person. In response to the 2019 consultation paper *Building a Safer Future*, ARCH raised concerns about how the Accountable Person provisions would apply to a local authority. These remain unresolved.

New duties are placed on residents and flat owners not to act so as to increase safety risks or interfere with safety equipment, and to provide relevant information to the Accountable Person.

This Part also requires both the Accountable Person and the Building Safety Regulator to operate a complaints process that allows residents to complain to the landlord or building owner and escalate the complaint to the Regulator if not satisfied with the landlord's response.

### Other provisions

The Bill contains a number of other provisions relating to:

- service charges for building safety-related works
- redress for work carried out on existing buildings
- changes to the Fire Safety Order
- the establishment of a New Homes Ombudsman
- regulation of construction products

- disciplinary orders made against architects
- removal of the 'democratic filter' which requires social housing residents wishing to escalate a complaint to the Housing Ombudsman to do this via a 'designated person' or wait eight weeks.



The proposals in relation to service charges require landlords to minimise leaseholders' contributions to the cost of remedying building safety defects by exhausting other funding options before billing leaseholders but fall short of the HCLG Select Committee's recommendation, which has widespread public support, that leaseholders should not be required to contribute to the cost of remedying historic defects.

## Detailed Briefing

This briefing focuses on the Bill's implications for ARCH member authorities as owners and managers of council housing, which were also the focus of ARCH's 2019 response to the consultation paper Building a Safer Future. It therefore focuses on the proposals relating to buildings in occupation (mainly in Part 4 of the Bill) and does not consider in detail the Bill's proposals for reform of the design, construction or building control processes, except insofar as they have implications for the subsequent management of the homes thus provided.

### Part 1: Overview of the Bill

The Bill contains six parts and nine schedules, as follows:

Part 1 provides an overview of the Bill.

Part 2 establishes a new Building Safety Regulator within the Health and Safety Executive.

Part 3 amends the Building Act 1984 as it applies to England and Wales and defines the scope and provisions for the regime during the design and construction phase for higher-risk buildings. It also provides for the registration of building inspectors and building control approvers to better regulate and improve competence levels in the building control sector.

Part 4 is concerned with higher-risk residential buildings in England where they are occupied and defines the scope and provisions for the regime for higher-risk buildings in occupation. It defines and places duties on the Accountable Person (the dutyholder during the occupation phase) in relation to building safety risks in their building.

Part 5 details other provisions, including provisions relating to service charges and redress, and changes to the Fire Safety Order. It includes provisions to require a New Homes Ombudsman scheme to be established, and powers to make provision for regulation of construction products for the UK. It allows disciplinary orders made against architects by the Professional Conduct Committee of the Architects Registration Board to be listed alongside an architect's entry in the Register of Architects. It also removes the 'democratic filter' which requires social housing residents wishing to escalate a complaint to the Housing Ombudsman to do this via a 'designated person' or wait eight weeks.

Part 6 contains the technical clauses relating to the Bill, including Crown application and provision for liability of officers.

### Part 2: The Regulator and its Functions

This Part establishes the new Building Safety Regulator and defines its functions.

**Clause 2** and **Schedule 1** establish a Building Safety Regulator within the Health and Safety Executive.

**Clause 3** sets out the new Regulator's objectives and regulatory principles.

**Clause 4** gives the Regulator a duty to facilitate the safety of people in or about higher-risk buildings (higher-risk buildings are defined by Clause 62).

**Clause 5** requires the Regulator to keep the safety and standard of buildings under review.

**Clause 6** requires the Regulator to facilitate improvement in the competence of "persons in the built environment industry" and building inspectors. The meaning of these terms is defined by Clause 29.

**Clause 7** gives the Regulator the power to recommend new regulations to the Secretary of State, which may be enacted following consultation.

**Clause 8** requires the Regulator to establish a system for the voluntary reporting of information (including occurrences of fire or structural failure) to an independent body charged with operating the system.

**Clauses 9 to 11** require the Regulator to establish three Committees to advise it:

- A Building Advisory Committee to provide advice and information to the Regulator in relation to its functions, other than issues of competence of persons within the building industry or of registered building inspectors;
- A Committee on industry competence;
- A Residents Panel.

The Residents Panel must be chosen from residents of higher-risk buildings but may also include non-resident leasehold owners and representatives of groups representing tenants or leaseholders.

**Clause 12** gives the Secretary of State the power to amend the arrangements for Committees by regulations subject to the affirmative procedure.

**Clauses 13 to 15** enable the Regulator, under specified conditions, to call on assistance from local authorities and Fire and Rescue authorities and ensures that these bodies have power to provide such assistance. Clause 16 enables the Regulator to prepare guidance for local authorities, etc in relation to the provision of such assistance.

**Clauses 17 to 19** require the Regulator to produce a Strategic Plan and Annual Report.

**Clause 20** requires the production of a statement at least annually about engagement with residents of higher-risk buildings.

**Clause 21** allows the appointment of authorised officers with specified powers which are detailed in Schedule 2 of the Bill.

**Clauses 22 and 23** create new offences of obstructing or impersonating authorised officers of the Building Safety Regulator and of the provision of false or misleading information to the Regulator.

**Clauses 24 and 25** provides rights to someone impacted by one of the Regulator's decisions to request a review by the Regulator of that decisions and to appeal if not satisfied following that review to a first-tier Tribunal.

**Clause 26 and Schedule 3** creates various powers and duties relating to cooperation and information-sharing between the Regulator and others. Schedule 3 paragraph 2 creates new duties to co-operate between the Regulator and local authorities and fire and rescue authorities.

**Clause 27** enables the Secretary of State to make regulations enabling the Building Safety Regulator to charge fees and recover charges.

**Clause 28** makes provision for the service of documents by the Regulator, whether physical or electronic.

**Clause 29** provides definitions of key terms used in Part 2.

### **Part 3: Amendment of Building Act 1984: building control authorities and building regulations**

Part 3 amends the Building Act 1984, which is the current legislation governing building control.

**Clause 30** introduces a definition of 'higher-risk buildings' for the planning, design, construction and refurbishment phases of a building's lifecycle, to supplement the definition in Clause 62, which applies to occupied buildings. It includes a power for the Secretary of State to give a more detailed definition by regulations, and draft *Higher-Risk Buildings (Description and Supplementary Provisions) Regulations* have been published alongside the Bill.

**Clause 31** makes the Building Safety Regulator the building control authority for work on higher-risk buildings in place of the local authority.

**Clause 32** provides powers for building regulations to set new requirements for higher-risk buildings. It will allow for introduction of the system of Gateways and the Golden Thread recommended by the Hackitt Review. Further details relevant to this clause and to the provisions of clauses 33 and 34 are provided in the draft *The Building (Appointment of Persons, Industry Competence and Dutyholders)(England) Regulations* published alongside the Bill.

**Clause 33** provides for the designation of dutyholders with particular responsibilities in each stage of the design and construction process to allow the Gateway system to operate.

**Clause 34** allows for building regulations to prescribe competence requirements of the Principal Designer and Principal Contractor, who are the dutyholders in each of the first two stages of the Gateway process.

**Clause 35** provides for building control approvals to lapse automatically after three years if building work has not commenced.

**Clause 36** allows an applicant to appeal to the Secretary of State if a building control authority has failed to make a relevant decision on a prescribed application for a higher-risk building within a prescribed timescale.

**Clause 37** allows for the issue of compliance or stop notices.

**Clause 38** amends the procedures and penalties relating to breach of building regulations to increase the maximum fine and allow for imprisonment for up to 12 months.

**Clause 39** provides that where a corporate body commits a criminal offence in contravention of building regulations, an officer of that body is also deemed to have committed that offence under certain circumstances.

**Clause 40** allows for revocation of provisions in the building regulation formerly introduced by EU legislation.

**Clause 41** provides for the registration of building inspectors and building control approvers.

**Clauses 42 and 43** restrict the exercise of certain functions to registered building inspectors and building control approvers.

**Clause 44** clarifies the default powers of the appropriate national authority.

**Clause 45** ensures that, as Clause 31 provides, building control approval of higher risk buildings is provided by the Building Safety Regulator.

**Clause 46** allows the Secretary of State to make regulations modifying the higher-risk buildings regime for public bodies.

**Clause 47** allows the Secretary of State to designate bodies to approve insurance schemes adequate to support the work carried out by registered building control approvers.

**Clauses 48 to 50** amend the provisions relating to the issue of plans certificates and notices.

**Clauses 51 and 52** relate to the gathering and holding of building control information by local authorities.

**Clauses 53 to 55**, and **Schedule 5** include minor and consequential amendments and provision for changes to the appeals process under the Building Act 1984.

**Clauses 56 and 56** allow the Secretary of State by regulations to allow local authorities to charge fees for building control functions, including a new levy on applications for building control approval in respect of higher-risk buildings.

## **Part 4: Higher-Risk Buildings**

Part 4 relates to higher-risk residential buildings in occupation. It contains the main provisions with direct implications for ARCH member authorities.

**Clause 58** provides an overview of Part 4.

### **Building safety risks**

**Clause 59** defines “building safety risk” as risks to the safety of persons in or about buildings with regards to risks arising from the building resulting from the occurrence of: fire spread, structural failure or any other risk that may be prescribed in regulations in future.

**Clauses 60 and 61** allow the Building Safety Regulator, after consultation, to recommend to the Secretary of State that a new class of risk and a new class of higher risk buildings should be specified by regulations.

**Clause 62** defines a “higher-risk building” as at least 18 metres in height or having at least 7 storeys and containing at least two residential units. The clause gives the Secretary of State power to supplement this definition or amend it in certain ways by regulations subject to the affirmative procedure.

**Clauses 63 and 64** require consultation and the production of a cost-benefit analysis before any proposal is made for regulations under clause 62.

**Clause 65** gives the Secretary of State further flexibility to modify by regulations the application of this Part to certain kinds of higher-risk building.

**Clause 66** requires the Building Safety Regulator to recommend that a particular class of building should be classed as higher-risk, or as subject to greater or different risks than other classes of higher-risk buildings, if it believes that building safety risks in the building are greater than normal, leading to risks of serious injury or death to a significant number of people, and appropriate for regulation.

**Clause 67** requires the Regulator to consider whether it needs to make a recommendation under clause 66 if asked to do so by the Secretary of State.

**Clause 68** specifies the application of most of Part 4, which relates to higher-risk building in occupation, by defining such a building as “occupied” if there are residents of more than one residential unit. Clause 123 gives the meaning of ‘residential unit’. Clause 68 also includes a power for the Secretary of State to amend by regulations the definitions of ‘occupied’ and ‘resident’.

### **Accountable Persons**

**Clause 69** defines an Accountable Person - the dutyholder responsible for meeting the statutory obligations for occupied higher-risk buildings. An Accountable Person is defined as the person who either has the legal estate in possession of, or is under a relevant repairing obligation, for any part of the common parts of the building. Such a person may be an individual or a corporate person. This definition may be amended by regulations by the Secretary of State.

**Clause 70** defines a ‘principal accountable person’ as either the Accountable Person, if there is only one, or, if there is more than one, the Accountable Person that is the owner of the structure and exterior of the building. An exception is made for premises occupied for the purposes of a business.

**Clause 71** allows an ‘interested party’ to apply to a tribunal for a determination as to who is the Accountable Person or Persons for a building.

### **Registration of higher-risk buildings**

**Clause 72** requires the principal Accountable Person to ensure that a higher-risk building is registered before it becomes occupied and commits an offence if they fail to do so without reasonable excuse. If tried by magistrates, an offence under this section carries a maximum penalty of an unlimited fine and/or 12 months imprisonment.

**Clause 73** sets out the arrangements for registration of occupied higher-risk buildings and the submission of applications for registration. The principal Accountable person for any higher-risk building is expected to provide their personal details and those of the relevant building for inclusion in a register; the detailed information to be included in the register and the procedure for the submission of applications is to be specified by regulations.

### **Building Assessment Certificates**

**Clause 74** allows the Building Safety Regulator to require a principal Accountable Person to apply for a Building Assessment Certificate within 28 days of being asked to do so and sets out the penalties for failure to comply.

**Clause 75** sets out the information and documentation required in an application for a Building Assessment Certificate. This includes confirmation that a Building Safety Manager has been appointed for the building, and their details, a copy of the most recent Safety Case Report,

prescribed information about the Mandatory Occurrence Reporting System, prescribed information that demonstrates that the Accountable Persons are meeting their duties with regards to the provision of information and a copy of the resident engagement strategy required by Clause 91. Detailed requirements under this section will be specified in regulations.

**Clause 76** requires the Building Safety Regulator, once an application has been received, to assess whether the relevant duties have been complied with and enables it to inspect the building in connection with this assessment. If the Regulator's view is that the application meets the statutory requirements, it must issue a Building Assessment Certificate; if not, it must not, except that if the Regulator considers a contravention can be remedied promptly it may issue a Certificate subject to a Notice to that effect. Subsection (5) of the clause details the obligations on the principal Accountable Person, which are spelt out in subsequent clauses.

**Clause 77** requires the Principal Accountable Person to display the most recent Building Assessment Certificate, or any relevant compliance notice in a conspicuous place within a higher-risk building.

### **Building Safety Managers**

**Clause 78** defines the role of Building Safety Manager and requires the Principal Accountable Person to appoint a Building Safety Manager for a higher-risk building prior to its occupation. A Building Safety Manager may be an individual or an organisation. A Principal Accountable Person may appoint a Building Safety Manager only if they are satisfied that, if a person, the Manager has the skills, knowledge, experience and behaviours necessary to carry out the role, or if an organisation, it has the organisational capacity to carry out the role's functions and there will be a competent individual from the organisation always in place to oversee and manage this.

**Clause 79** sets out the arrangements for appointment of a Building Safety Manager when there is more than one Accountable Person for a building.

**Clause 80** specifies the terms of appointment of a Building Safety Manager.

**Clause 81** allows an Accountable Person to take on the role of Building Safety Manager if they are satisfied they have the skills, etc. necessary for the role.

**Clause 82** covers the application of clause 81 where there is more than one Accountable Person.

### **Safety Case Reports**

**Clause 83** provides that every Accountable Person is under an ongoing obligation to carry out an assessment of the building safety risks relating to the part of a higher-risk building for which they are responsible. This duty applies as soon as a building is occupied and the first assessment must be made as soon as practicable thereafter. Further assessments must be carried out at regular intervals, when directed to do so by the Building Safety Regulator, when the Accountable Person suspects the assessment is no longer valid or they become aware of a significant change to the building.

**Clause 84** places an obligation on Accountable Persons to take all reasonable steps and actions necessary to manage building safety risks, preventing them materialising in their building and to mitigate the severity of such an incident if it does occur. The steps and actions required must conform to 'prescribed principles' which will be set out in regulations.

**Clause 85** requires a Principal Accountable Person to produce a Safety Case Report that demonstrates that building safety risks have been both assessed and all reasonable steps taken to prevent building safety risks materialising in the building and to mitigate the severity of such an incident if it does occur. A revised Safety Case Report is required under each of the circumstances

requiring a further assessment of risks listed in Clause 83 or if there is a change of Accountable Person.



**Clause 86** requires a Principal Accountable Person to notify the Building Safety Regulator as soon as practicable after a Safety Case Report has been produced or revised. The Secretary of State may prescribe in regulations or guidance the form and process notifications should follow.

### Occurrence reporting

**Clause 87** requires a Principal Accountable Person to establish and operate an effective mandatory occurrence reporting system and to supply reportable information to the Building Safety Regulator. Regulations will prescribe the detailed arrangements; the intention is to require Accountable Persons to report certain structural and fire safety occurrences to the Regulator, similar to those duties that exist in other industries such as aviation.

### Prescribed information

**Clause 88** requires the Principal Accountable Person to keep and maintain prescribed information, as specified in regulations, about a higher-risk building and to ensure it is up to date.

**Clause 89** allows the Secretary of State to make regulations requiring information about a building to be shared in prescribed circumstances, including with new residents and with the Building Safety Regulator.

**Clause 90** applies where there is a change in Accountable Person and requires the outgoing Accountable Person to supply prescribed information (the “Golden Thread”) to their successor.

### Resident engagement

**Clause 91** requires a Principal Accountable Person to produce a residents’ engagement strategy to promote the participation of residents and flat owners in decision-making about the building safety risks in their building. The high-level requirements for inclusion are set out in the Clause and include: the information that will be provided to residents about decisions relating to the management of the building, the scope of what residents will be consulted about, the methods to be used to seek residents’ views and how the effectiveness of the strategy will be evaluated. The Secretary of State will have a power to specify more detailed requirements in regulations. The Principal Accountable Person will also be responsible for providing a copy of the strategy to residents and owners of residential units for which they are responsible.

**Clause 92** requires provision of additional information to a resident or flat owner on request. A list of the additional information that must be provided will be specified in regulations.

**Clause 93** requires a Principal Accountable Person to operate a complaints process enabling residents and flat owners to raise safety concerns or concerns about the performance of a duty by the Accountable Person. More details of required process will be set out in secondary legislation.

**Clause 94** requires the Building Safety Regulator to operate a complaints procedure to allow for escalation of complaints not satisfactorily dealt with by an Accountable Person. Before establishing or amending such a procedure the Regulator must consult the Residents Panel required by Clause 11. The Secretary of State may make regulations prescribing details of this procedure.

### Residents’ duties

**Clause 95** sets out the duties on residents and flat owners. They must:

- not act in a way that creates a significant risk of a building safety risk materialising;

- not interfere with a relevant safety item;
- comply with a request made by the appropriate Accountable Person for information reasonably required to perform their duties to carry out an assessment of building safety risks and to manage those risks.



A 'relevant safety item' is defined as anything in or part of the common parts of a building that is 'intended to improve the safety of people in or about the building in relation to a building safety risk, or anything else prescribed by regulations.

**Clause 96** allows an Accountable Person to serve a notice on a resident or flat owner if they have not complied with a requirement of clause 95. The notice must specify the breach, the action required to end the breach and to avoid further breaches and what may happen next if the resident fails to comply. Further action may include asking the resident pay for the repair or replacement of a damaged item. If a resident fails to comply with a notice the Accountable Person may apply to the County Court for an order requiring compliance or payment of a sum demanded.

**Clause 97** sets out the procedure for gaining access to relevant premises (not confined to residential units) to carry out a building safety risk assessment or to determine whether a resident has complied with their duties under section 95. The Accountable person must request access in writing giving at least 48 hours' notice. If access is not granted, an application may be made for a County Court order to gain access.

### Other provisions

**Clause 98** places a duty on the Regulator to enforce Part 4.

**Clauses 99 and 100** allow the Regulator to issue a compliance notice to an accountable person appearing to be in breach of a relevant statutory obligation and make provision for regulations specifying in further detail how compliance notices with work in practice.

**Clause 101** creates an offence of a contravention of a relevant requirement of this Part of the Bill which places those in or about the building at significant risk of death or serious injury arising from a building safety risk.

**Clauses 102 to 111** set out the arrangements whereby the Building Safety Regulator may place a building in special measures after contravention by an Accountable Person of two or more duties under Part 4. A building in special measures becomes the responsibility of a Special Measures Manager appointed by the Regulator.

**Clauses 112 to 115** provide rights of appeal against compliance notices and other decisions of the Regulator made under this Part and related secondary legislation.

**Clause 116** ensures that Tribunal decisions relating to various provisions in this Part are enforceable.

**Clause 117** sets out the areas of the building safety regime where the Building Safety Regulator may issue guidance with statutory force.

**Clause 118** requires cooperation between Accountable Persons and Responsible Persons under a Fire Safety Order to support a co-ordinated approach to the management of fire safety risks in mixed-use buildings.

**Clauses 119 to 121** amend the Landlord and Tenant Act 1987 to ensure consistency with the provisions in this Bill. Clause 122 amends the Commonhold and Leasehold Reform Act 2002 to the same purpose.

**Clause 123** provides definitions of key terms used in Part 4.

## Part 5: Other Provision about Safety Standards, etc.

Part 5 includes provisions relating to:

- service charges for building safety-related works
- redress for work carried out on existing buildings;
- changes to the Fire Safety Order;
- the establishment of a New Homes Ombudsman;
- regulation of construction products;
- disciplinary orders made against architects;
- removal of the 'democratic filter' which requires social housing residents wishing to escalate a complaint to the Housing Ombudsman to do this via a 'designated person' or wait eight weeks.

**Clause 124** amends the existing section 20 consultation process in the Landlord and Tenant Act 1985 to require landlords to take additional steps before embarking on defined remediation works. The landlord must take reasonable steps to seek other cost recovery avenues before passing the costs of such works on to leaseholders and inform the leaseholders of what these steps were. Other 'cost recovery avenues' include grants payable, the possibility of recovering costs from third parties, for example via insurance or indemnity or from the developer, or any other kind of funding available. 'Reasonable steps' may be prescribed in further detail by regulations.

Clause 125 sets out that a person carrying out work on a relevant building owes a duty to the person for whom the work is done and any person subsequently taking on a legal or equitable interest in the building concerned to ensure that, as regards the work, the dwellings in the building are fit for habitation when the work is completed. The Defective Premises Act 1972 created a right to claim compensation in the civil courts for defective work connected with the provision of a dwellings. The effect of this provision is to extend that right to cover subsequent work on an already-existing building. **Clause 126** extends the time limit for claims under these provisions from 6 to 15 years.

**Clauses 127 to 132** and **Schedule 8** provide for the establishment of a New Homes Ombudsman scheme.

**Clause 133** gives the Secretary of State powers to regulate construction products.

**Clause 134** amends the Fire Safety Order 2005 to reflect the conclusions of consultation on its operation carried out in 2019.

**Clauses 135 and 136** makes amendments to the arrangements for disciplinary action against architects.

**Clause 137** amends the Housing Act 1996 to remove the 'democratic filter' that requires a complainant, having exhausted their landlord's internal complaints procedure, to make their complaint to a 'designated person' or wait 8 weeks before escalating the complaint to the Housing Ombudsman.

## Part 6: General

Part 6 contains general provisions relating to the extent and application of the Bill and arrangements for review of its provisions. It also establishes that an officer of a corporate body may under prescribed circumstances be held responsible for a criminal offence committed by that body.

**Clause 146** sets out the arrangements for commencement of the provisions of the Act when passed. All provisions with significant implications for action by ARCH member authorities will come into force on a date specified in regulations by the Secretary of State.

An outline Transition Plan was published alongside the Bill giving more information about the proposed timetable for implementation. It states the Government's intention that, following Royal Assent, a number of changes will come into force within the first 12 months. These will include:

- Establishing the Residents' Panel within the Building Safety Regulator (Clause 11).
- Extending the limitation period of the Defective Premises Act 1972 retrospectively - and applying this Act to refurbishments prospectively (Clause 125).
- Additional powers for the regulation of construction products, including paving the way for a national regulator for construction products, which is being established within the Office of Product Safety and Standards (OPSS) (Clause 133).
- Changes to the Regulatory Reform (Fire Safety) Order 2005 (Clause 134).
- Strengthening the powers of the Architects Registration Board to monitor the competence of architects (Clauses 135 & 136).
- Removal of the Democratic Filter for social housing residents (Clause 137).

Within 12 to 18 months of the Bill receiving Royal Assent, the Government intends that the bulk of the new provisions brought forward in the Bill will come into force. These will include:

- Establishing the Building Advisory Committee within the Building Safety Regulator to help it perform its functions to oversee the safety and performance of all buildings. Additionally, the Building Safety Regulator will begin managing the performance of building control bodies.
- Setting up the Industry Competence Committee within the Building Safety Regulator to help it perform its functions to assist and encourage the improvement of competence in the built environment industry.
- New Gateways to ensure rigorous assessment of regulatory requirements to ensure building safety and regulatory compliance is considered at each stage of a building's design and construction.
- A targeted developer levy, which will apply only when developers seek building control approval to develop certain high-rise residential and other in scope buildings in England.
- Mandatory reporting to the new Building Safety Regulator of prescribed fire and structural safety occurrences.
- The requirement to create, hold and maintain the golden thread of information.
- Mandatory registration of building inspectors and building control approvers.
- Mandatory registration of occupied high-rise residential buildings with the Building Safety Regulator.
- New requirements on dutyholders to have clear accountability and statutory responsibilities as buildings are designed, constructed and refurbished.
- New duties on the Accountable Person to manage building safety risks in occupied high-rise buildings, including duties to engage with residents.
- New duties on residents to ensure each other's safety by making sure their actions do not adversely affect the safety of their building.
- New measures to protect leaseholders, by placing additional duties on the Accountable Person to explore alternative cost recovery routes before passing costs to leaseholders and a Building Safety Charge to cover the ongoing costs of implementing the new

regime, giving leaseholders assurance, transparency, and protection in relation to ongoing costs.

- New requirements for construction products included on the safety-critical list and the requirement for construction products to be safe, with strengthened oversight and enforcement powers to be used by the national regulator for construction products to operate effectively.



## Links to relevant documents

Building Safety Bill <https://bills.parliament.uk/bills/3021?=5>

Explanatory Notes <https://bills.parliament.uk/bills/3021/publications>

Draft Regulations <https://www.gov.uk/government/publications/building-safety-bill-draft-regulations>

Transition Plan <https://www.gov.uk/government/publications/building-safety-bill-transition-plan>

Government Response to pre-legislative scrutiny by the HCLG Select Committee:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/999032/SC\\_response\\_Building\\_Safety\\_Bill\\_WEB\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999032/SC_response_Building_Safety_Bill_WEB_July_2021.pdf)

HCLG Select Committee: Fifth Report: Pre-legislative scrutiny of the Building Safety Bill

<https://committees.parliament.uk/committee/17/housing-communities-and-local-government-committee/publications/>

MHCLG Consultation Paper *Building a Safer Future*

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/806892/BSP\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806892/BSP_consultation.pdf)

ARCH Response to *Building a Safer Future* [http://www.arch-](http://www.arch-housing.org.uk/media/131012/building_a_safer_future_-_arch_response.pdf)

[housing.org.uk/media/131012/building\\_a\\_safer\\_future\\_-\\_arch\\_response.pdf](http://www.arch-housing.org.uk/media/131012/building_a_safer_future_-_arch_response.pdf)

Report of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/707785/Building\\_a\\_Safer\\_Future\\_-\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf)