

Learning Objectives

Understand the full scope, extent and implications of the building safety reform programme, including the Building Safety Act 2022 (BSA), Building Act 1984 as amended by the BSA, Fire Safety Act 2021 and supporting measures; Understand the full range of amendments to the existing Building Regulations 2010 and scope of the new regulations that come into force on 1st October 2023;

Be aware of further Regulations that will be introduced in the coming months to implement the 2022 Act;

Recognise the significant changes in the requirements for competence in the built environment sector, including the building control sector and those who operate higher risk buildings;

Understand that the building safety reform programme affects the design and construction of **all buildings**; Understand the new building safety regime for all buildings and the additional requirements for higher risk buildings.

Appreciate the full range of wider policy development that will also have a direct impact on the construction sector over the coming three years.



Summary

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This is a time of unprecedented change in our sector:

the Building Safety Act 1922 and supporting measures are driving the most far reaching review of building and fire safety legislation in half a century for all building work;

greater digitalisation, modularisation and off-site fabrication and assembly are government priorities;

the Climate Change Act's net zero carbon target by 2050 is driving changes to building energy legislation: Parts L, F, O & S came into force in June 2022; the Future Homes and Buildings Standards are due in 2025 with consultations likely soon; natural gas heating currently due to be phased out in the coming years.



Where are we now?



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Policy Background

Building Safety Act 2022

Fire Safety Act 2021 and Fire Safety (England) Regulations 2022

Supporting secondary legislation, regulations – to implement the powers contained in the Act Building Act 1984 as amended by the Building Safety Act

Building Regulations 2010 (as amended a number of times, most recently last month)

Net zero carbon related policy

Future Homes Standard, Future Buildings Standard – under development Development of the industry led Net Zero Carbon Buildings Standard

Other policy drivers

Construction Playbook, Constructing the Gold Standard, Transforming Infrastructure Modern Methods of Construction (MMC), Digitalisation & Cybersecurity

Timber in Construction roadmap – are all current government priorities



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UK Net Zero Carbon Buildings Standard

Who is behind it and who is developing it?

The Institution of StructuralEngineers RIBA ## CORES CIBSE

TRUST

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Background

How did we get here?





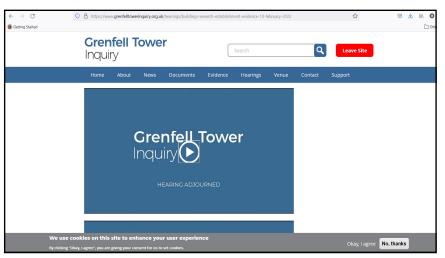
Key issues underpinning system failure – Dame Judith: Ignorance and misunderstanding of regulations and guidance

Indifference —to quality and safety and focus on speed and cost Lack of clarity on roles and responsibilities and of accountability

Inadequate regulatory oversight, enforcement tools, enforcement action and deterrence – a view that compliance did not pay







Competence is key

The proposed overarching system of competence is made up of four key elements:

• a new competence committee sitting within the Building Safety Regulator
• a national suite of competence standards
• arrangements for independent assessment and reassessment against the competence standards
• and a mechanism to ensure that those assessing and certifying against the standards have appropriate levels of oversight.

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Process is essential

New building control processes for all work covering applications and notifications; Additional duties and requirements for HRB work – change control and mandatory occurrence reporting;

Demonstrating competence will matter – how will you show your client that you are competent to do the work you are being considered to undertake?

There will be a proportionate approach to enforcement but ultimately the same principle as for the Health and Safety at Work etc. Act applies – something does not have to go wrong for an offence occur and enforcement action to be appropriate; Enforcement will be stepped up!



The government has accepted ALL of Dame Judith's findings

Passed the Building Safety Act 2022 - on 29th April 2022:

- Establishing the new Building Safety Regulator for ALL building work, NOT just on higher risk buildings (HRBs);
- Defines "higher risk buildings" and creates a new regime for the operation of higher risk buildings in use;
- · Establishing Building Control as a regulated profession;
- A new regime for Construction Product safety and approval;
- Sets out a new competence framework for ALL the industry;
- Stringent procedures to notify and control work on HRBs;
- Robust control of product substitution and design changes.



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Fire Safety Act 2021

The Act received Royal Assent in 2021

Brought into force on 16^{th} May 2022 and 23^{rd} January 2023 through the Fire Safety (England) Regulations 2022

Requires additional tasks during risk assessments and regular checking of fire safety equipment in relation to blocks over 11m in height, with further safety requirements and notification of the FRS in all multi-residential buildings;

External Walls and Fire Doors to individual flats or apartments ARE common parts and so the freeholder or person responsible for the building as a whole has a legal duty to include them in their fire risk assessments on the building;

PAS 9980 Fire risk appraisal of external wall construction and cladding of existing blocks of flats - Code of practice has been published by BSI.



Building Safety Reform Legislation

Where are we going now?



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The Scope of Reform

What sort of activity is covered by the Building Safety Act, Building Regulations and associated legislation?

Is this all about high rise apartment buildings?

What else is covered?



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Building Regulations and Higher Risk Buildings

The Building Regulations cover all notifiable building work

They are not limited to high rise apartments

Regulation 3 sets out what constitutes Building Work

Higher Risk buildings are a new class of buildings which are subject to further regulation over and above the requirements of the Building Regulations. The new regime delivers

"a risk-based approach to the level of regulatory oversight based on a clear risk matrix will be most effective in delivering safe building outcomes. Complex systems that are designed for residential multi-occupancy must be subject to a higher level of regulatory oversight that is proportionate to the number of people who are potentially put at risk."



Meaning of building work

- **3.**—(1) In these Regulations "building work" means—
- (a) the erection or extension of a building;
- (b) the provision or extension of a controlled service or fitting in or in connection with a building;
- (c) the material alteration of a building, or a controlled service or fitting, as mentioned in paragraph (2);
- (d) work required by regulation 6 (requirements relating to material change of use);
- (e) the insertion of insulating material into the cavity wall of a building;
- (f) work involving the underpinning of a building;
- (g) work required by regulation 22 (requirements relating to a change of energy status);
- (h) work required by regulation 23 (requirements relating to thermal elements);
- (i) work required by regulation 28 (consequential improvements to energy performance).



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What is a 'higher risk building'?

Part 3 of the BSA adds a new section to the Building Act 1984 - Section 120D(2)(b):

"Higher-risk building" means a building in England that—

- (a) is at least 18 metres in height or has at least 7 storeys, and
- (b) is of a description specified in regulations made by the Secretary of State.

The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 then define three descriptions of building which are higher risk buildings:

The following descriptions of building are specified for the purposes of section 120D(2)(b) of the 1984 Act—

- (a) a building which contains at least two residential units;
- (b) a care home;
- (c) a hospital.

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What is a 'higher risk building'? (2)

A building with two or more residential units that meet the height threshold They are a higher risk building throughout their whole life

The definition also applies to hospitals and buildings containing a care home that meet the height threshold until completion (they then come under workplace regulations and the Health and Social Care Regulations, in particular Regulation 15 on fitness for use)

The new Act creates duties for the Accountable Person (the duty holder in occupation) in relation to identifying, mitigating and managing building safety risks in their building

Part 4 defines the scope of the new regime for higher-risk buildings in England in occupation.



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Building Safety Act 2022 CHAFTER 30 Explanatory Notes have been produced to assist in the sudicetaching of this Act and are available separately Follow @CIBSE

It is vital that the construction sector understands that the new regime is applicable to all work undertaken across the sector. However, it is also important to be aware that the focus of the new Regulator and the

Proportionality & Priorities

new regime will be prioritised on where the greatest areas of risk lie.

Hence stress on structural & fire safety, catastrophic failure and higher risk buildings. However, once the eye of the Regulator falls on a project it has the full range of the new regime at its disposal and will be looking for evidence of compliance.

They may not go looking as hard for compliance in lower risk and lower consequence areas, but if they do have cause to look then the full range of measures, powers and above all sanctions – including criminal sanctions – will be available

https://press.hse.gov.uk/2023/03/22/property-owner-sentenced-after-builder-suffered-life-changing-injuries/







Aims of the Building Safety Act

The Act aims to remedy the systemic issues identified by Dame Judith Hackitt by strengthening the whole regulatory system for building safety.

To create greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings, by:

- creating a Building Safety Regulator in England to drive improved building safety and performance standards in all buildings and oversee a new, more stringent regime for higher-risk buildings;
- defining "higher risk buildings" with powers to regulate their design, construction and operation
- improved competence and oversight of the industry and regulators in the built environment
- · providing a stronger, clearer oversight framework for construction products
- .giving residents a stronger voice in the system;
- extending scope of the Defective Premises Act 1972 to improve routes to redress for past actions;
- · establishing additional protections for leaseholders in relation to remediation costs;
- · driving industry culture change and incentivising compliance;



Building Safety Act 2022

An Act in six Parts

- · Introduction and Scope
- · Establishing the new Regulator, Committees and Powers
- Major revision and reform of the Building Act 1984 (England & Wales) including the definition of higher risk buildings (see earlier slide)
- The new Higher Risk Buildings Regime in operation (residential)
- · Constructions Products, Architects Registration (UK wide)
- Technical clauses relating to liability, Crown Application, transitional arrangements and other legal provisions

The Act also contains enabling provisions relating to the costs of building remediation



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Building Safety Act

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Part 1: Introduction and Scope

The Act takes forward the Government's commitment to fundamental reform of the building safety system.

The Act is also a vehicle for wider improvements including changes to the Architects Act, the Housing Act 1996, and provisions to establish a National Regulator for Construction Products and a New Homes Ombudsman.

Much of the Act applies only to England. However, procedural provisions, particularly in Part 3, also apply to Wales.

Provisions in Part 5 relating to Constructions Products and Architects Registration provisions apply to the whole of the UK.



Building Safety Act

Part 2: Establishing a new Regulator, Committees and Powers

This part has legally established the Building Safety Regulator (BSR) for England, within the HSE, with overall responsibility for the building safety regime for ALL buildings;

The BSR will operate within the HSE and is answerable to DLUHC (or its successor Departments);

The BSR is now up and running. It has established the

Buildings Advisory Committee

The Interim Industry Competence Committee will be made permanent

The Residents Committee has been advertised and is being formed

BRAC will be abolished

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The Building Safety Regulator

The Act gives the new Regulator various duties:

- Transfers oversight of the building control system to the BSR

This includes ALL building work that requires building control approval – whether through a building notice or full deposit of plans - NOT just for higher risk buildings – its for everything!

The BSR will set standards and operate a statutory register for all building control professionals – currently consulting on the framework for inspector competence. The BSR will have oversight of enforcement of building regulations, with potential criminal sanctions in the worst cases.

- For all HRBs the BSR will be the Building Control Body
- Sets duties to oversee competence requirements for work on ALL buildings
- Establishes new duty holder roles and regulatory gateways



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Building Safety Act

Part 4 defines the new regime for Higher Risk Buildings in occupation This includes:

meaning of building safety risk meaning of higher risk building meaning of accountable person & principal accountable person meaning of occupation in relation to higher risk buildings requirements for registration of higher risk buildings, building assessment certificates and safety case reports keeping information about the building (the Golden Thread) engagement with residents and residents' requests for information enforcement duties, compliance and appeals



Building Safety Act

Part 3: Major revision and reform of the Building Act 1984 and definition of Higher Risk Buildings (HRBs). MAJOR amendments to the Building Regulations as a result Part 3 makes wide ranging and extensive changes to the Building Act 1984 to enable the new regime.

These apply to the Building Act 1984, and so apply to ALL building work* regulated under that Act. 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. The Building Act applies to England and Wales – Building Regulations devolved in Wales. The changes include the creation of the Gateways for design and construction of an HRB Section 35 creates powers to regulate competence of any appointed person

* Building work is defined in Regulation 3 of the Building Regulations



Building Safety Act

Part 5: Architects Registration

Amends the regulation of architects across the UK

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.

Includes provisions to require a New Homes Ombudsman scheme to be established

Makes provisions relating to service charges and redress





Construction Products

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Part 5 also includes specific provisions relating to construction products:

It intends that all construction products made available on the UK market should be regulated. The Building Safety Act takes powers to:

- require construction products to be safe; and
- create a statutory list of 'safety critical' construction products.
- introduces new liabilities on materials producers for defective products

This is in addition to the existing product safety regulatory regime.

Creates "building liability orders" and amends the Defective Premises Act 1972.



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Building Regulations (Amendments etc) (England) Regulations 2023



Construction Products

Part 5 gives the Secretary of State the power to regulate construction products for the whole of the United Kingdom, to enforce the regulations and to amend the current regime to ensure that it remains fit for purpose.

Creates a new National Regulator for Construction Products within the Office of Products Safety and Standards. Whilst the OPSS sits within BEIS, DLUHC will retain responsibility for construction products policy and DLUHC Ministers will remain accountable to Parliament.



Building Regulations (Amendments etc) (England) Regulations 2023

Major overhaul of the Building Regulations 2010

New Part dealing with Dutyholders and Competence

New regulations covering the building control process

Changes to the system for giving notices and obtaining approvals prior to starting work

beware – false starts can be a criminal offence!

Applicable to ALL work covered by the Building Regulations

Beefed up Regulation 38 on provision of fire safety information



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Dutyholder and competence requirements – Part 2A

17 new regulations, 11A to 11Q, covering duties, competence and behaviour of clients, designers and contractors Apply to ALL controlled building work – Regulation 3

Creates the new roles and duties of the principal designer and contractor for every project

Clients have a statutory duty to make "suitable arrangements for planning, managing and monitoring a project (including allocation of sufficient time and other resources) so as to ensure compliance with all relevant requirements."

These arrangements must ensure that if the design is built it will be compliant with all relevant requirements and ensure that the work is actually carried out in accordance with those requirements.

The arrangements must also enable designers and contractors to co-operate with each other and to check regularly whether any of the work is classed as higher risk building work, (as defined in section 91ZA of the Building Act 1984).

There is also a duty on clients to "provide building information as soon as is practicable to every designer and contractor on the project." Clients have a legal duty to co-operate with any other person working on the project with duties under these regulations to enable them to fulfil those duties.

There is a major emphasis on planning, monitoring and managing work - a CDM phrase.



CIDSL

Building (Higher-Risk Buildings Procedures) (England) Regulations 2023



More dutyholder and competence requirements - Part 2A

New regulation 11E details considerations that must be addressed before appointing a designer or contractor. They apply to ALL building projects and all those appointed, requiring them to be competent.

Chapter 3 of Part 2A, Regulations 11F-I, cover competence:

a general regulation,

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one each for principal designer and contractor,

one giving requirements should either of the principals cease to meet the competence requirements.

Chapter 4 sets out general duties of all dutyholders and additional duties of principal designers and contractors. These include sharing information and communicating effectively with other parties on the project.

Chapter 5 includes a regulation that defines as a "necessary behaviour" of anyone claiming to be competent a willingness to refuse to carry out work which is not compliant with any relevant requirement, or to undertake design work that effectively cannot be built in compliance with regulations.

Co-operation a necessary behaviour and saying 'no' to doing things beyond your skills, knowledge or experience.



Building (Higher-Risk Buildings Procedures) (England) Regulations 2023

Set out the new building control system for HRBs in detail, implementing Part 3 of the Building Safety Act Parts 1 and 2 of these regulations set out the process for building control of a new HRB and for approval of works to an existing HRB respectively

Part 1 implements Gateway 2 for new HRBs and it also specifies the requirements to notify the regulator prior to starting construction on site

Regulation 4 sets out in great detail what an application to the new Regulator will require. This includes all the information that will be required later under the Key Building Information regulations when the HRB is registered. It also requires information about drainage and about the timing of the work

Come into force for all new applications made on or after 1 October 2023, with a transitional period of six months for work already underway

Detailed transitionals linked to the status of the building control inspector: need careful reading on a project by project basis!





Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 – a closer look!

Various plans and statements must be provided with the application. These include

plans of the building sufficient to demonstrate that the building work "would comply with all applicable requirements of the building regulations".

- a competence declaration,
- a construction control plan.
- a change control plan
- a mandatory occurrence reporting plan.

Together flees will describe how the work is to be undertaken and tie in with the new duties in Part 2A of the amended Building Regulations.

All applications for an HRB need to be accompanied by a Building Regulations compliance statement, setting out how the proposed design will comply with all aspects of the regulations, as well as a fire and emergency file and a planning statement.

They set out what the applicants plan to do, a plan against which they can be held to account by the regulator. There are always changes on a project, and the requirement here is for them to be properly agreed by all parties (the duty to co-operate applies here), justified, tested for compliance with the regulations and recorded. If they are significant then they may need to be notified to or fully approved by the Regulator.

Schedule 1 of the regulations defines these documents in more detail.

An application made on behalf of the client requires a statement signed by the client confirming their agreement to the application being made and to the information it contains.



A new, rigorous legal framework for design and construction of ALL buildings

This will include:

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Defined dutyholder roles, based on the CDM model i.e. client, principal designer, principal contractor, designers and contractors.

These apply to **all** building work – not just work on higher-risk buildings. Explicit competence requirements to ensure that those carrying out design or building work are competent (or in training and appropriately supervised): Part 2A. a new unified professional and regulatory structure for building control, registration of building control inspectors and building approvers (formerly approved inspectors), oversight of competence and performance of building control by the BSR the BSR will be the building control body for all HRBs

new Building Regulations and HRB Regulations all come into force from 1 ${\bf October}$ 2023



So What?

How will building professionals need to respond?



Enforcement during design and construction

Changes to the Building Act 1984 strengthen existing powers and introduce new powers for the Building Safety Regulator and for local authorities. Directors/managers can be found liable for any of the **criminal offences**

Section 35 of BA84 (breach of building regulations):

Triable either way – removes altogether the time limit for prosecutions under s35 Increased penalty – max. penalty of an unlimited fine and up to two years in prison

Section 36 of BA84 (notice for remedial action):

Extending the time limit for enforcement from one year to ten years

Compliance notices

For any breach of building regulations, requiring corrective action by a set date: failure to comply a **criminal offence**

Stop notices:

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Can be served against a breach of specified building regulations (i.e. at Gateways), a breach of a compliance notice and any breach of building regulations which is likely to cause 'serious harm'. Requires all specified work is stopped until the contravention is rectified. Failure to comply will be a **criminal offence**.



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Building Control for HRBs

Specific requirements for building control of HRBs

Requirements to record, manage, notify and obtain approval of changes

Requirements for the Golden Thread of information

Occurrence reporting requirements

Completion certificates

Notification of and transfer of information on change of client or principal designer or contractor



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Managing HRBs – implications for building owners

Regulating building safety in operation for the first time

Requiring accountable persons to have, maintain and use the golden thread of information to enable them to manage their building safely

Managing safety risks effectively with clearly identified and competent dutyholders during occupation and any refurbishment of high-rise buildings.

During occupation, Accountable Persons must demonstrate to the Building Safety Regulator and to their residents, that they have effective, proportionate measures in place to manage safety.

Those who don't meet their obligations may face criminal charges.



So What?

- Changes in legislation ARE coming for ALL buildings in 17 days time
- · This is not be going away!
- New, key, roles of Principal Designer and Principal Contractor and Client
- The BSR will oversee the Building Control profession and enforcement
- Responsibility being placed on accountable person for the owners of HRBs
- · Integration of the Golden Thread into building safety management
- The need for a safety case process and regular safety case reports
- · HRBs need to be registered, certified & re-approved for occupation regularly
- · Both new and existing HRBs are all covered



Further reading & resources

For the latest on the Act and its implications for CIBSE members see https://www.cibse.org/policy-insight/key-policy-areas/building-safety-act



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Further reading & resources

The following links are almost essential reading to provide fuller context for the material presented above:

A general update landing page leading to information relating to the Building Safety Act:

https://www.gov.uk/government/collections/building-safety-bill

The Act itself

https://www.legislation.gov.uk/en/ukpga/2022/30/contents/enacted

Building Regulations

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

