

Draft Building Safety Bill

Proposals for buildings in scope of the higher-risk regime

NHF briefing for members, 12 August 2020

Summary

The government published the draft Building Safety Bill on 20 July, setting out proposed legislative change to deliver reforms to the building safety regulatory system. As well as setting out the government's final proposals for a more stringent regulatory regime for higher-risk buildings, the Bill also sets out proposed regulatory changes that will impact all building work.

This briefing provides a summary of proposals that will apply to all building work and to higher-risk buildings that will be part of the more stringent regulatory regime. We have published [another briefing](#) that just summarises proposals for all building and refurbishment work, which organisations without higher-risk buildings may prefer to read initially. However, we recommend that all of our members are informed on the changes that will apply to higher-risk buildings, as we believe the new measures could be considered best practice in other buildings in the future.

In the draft Bill, a higher-risk building is defined as a building that is:

- 18m and over, or more than six storeys – whichever is reached first.
- Contains two or more rooms for residential purposes, or two or more dwellings, or student accommodation.
- The definition of 'room' does not include residential care homes, temporary accommodation such as hotels, nor secure residential institutions such as prisons. We are clarifying with MHCLG what this means for existing buildings that meet the height criteria and provide this sort of accommodation.

In this briefing we outline:

- The structure and scope of the draft Bill and how it fits with other proposed legislative change for all new and existing buildings.
- Specific applicable sections of the Bill contents, including where we expect more detail in future, and our plans for government and member engagement.

- Where we still want to influence the final proposals – and the input we’ll need from our members to do this. You can share your views with us by emailing housingsafety@housing.org.uk by Tuesday 8 September to inform our engagement with the pre-legislative scrutiny process in Parliament. We also welcome any views you would like to share after this date.
- How we’ll support our members to ensure residents’ safety by adopting the new regulations and continuing remediation projects.

Introduction

The government published the [draft Building Safety Bill](#) on 20 July 2020, setting out proposed legislative change to deliver a reformed building safety regulatory system.

The draft Bill will deliver the main points from the government’s final proposals for a new regulatory system, set out in [Building a Safer Future](#), following a consultation process last summer. The proposals intend to shape reform, and execute the principles and recommendations of Dame Judith Hackitt’s [Independent Review of Building Regulations and Fire Safety](#).

The Building Safety Bill is the second of two pieces of legislation on building safety expected this year, and follows the [Fire Safety Bill](#) published in March. In addition, the government has announced its [Fire Safety Consultation](#), seeking views on the implementation of the Grenfell Tower Public Inquiry phase one recommendations, and other details on the responsibility for fire safety measures, which we are also collecting member feedback on.

Overview of the Bill

- The draft Building Safety Bill brings forward a more stringent regulatory regime focused on fire and structural safety, with defined roles and responsibilities and a new dedicated Building Safety Regulator (BSR).
- It sets out additional requirements for the management of fire and structural safety risks in new and existing buildings deemed to be ‘higher-risk’ or in scope of the more stringent regime.
- **Importantly, parts of the reformed regime cover the performance of all buildings and those who work to design, build and maintain them.**
- This includes upcoming changes to cross-cutting legislation such as building regulations and guidance that will impact the work of all housing associations, not just those who develop and own buildings falling within the defined scope of the more stringent regulatory regime.

- The draft Bill also sets out plans for enhanced sanctions and redress. In addition to the new Building Safety Regulator, there will be a New Homes Ombudsman scheme, which all those who develop or commission new homes will be required to join.
- In addition, social housing residents will not need to contact their local MP to access the existing Housing Ombudsman.

The NHF's and our members' top priority is resident and building safety. As a sector, we remain committed to engaging with and adopting new responsibilities for safety without waiting for legislation to be finalised. We support the proposals as the complete overhaul of the regulatory system for building safety that is needed, and we will continue to engage with the government and other stakeholders so that the regulatory system helps us to ensure resident safety as effectively as possible.

How this briefing is structured

1. Summary of the main proposals in the draft Bill ([skip to](#)).
2. Proposals that will impact all buildings ([skip to](#)).
3. Proposals that will only apply to buildings considered higher-risk in the first instance ([skip to](#)).
4. Our headline views, asks, and plans to engage with the government and our members ([skip to](#)).
5. Next steps, and how you can help us influence government while the proposals are in draft form ([skip to](#)).

We strongly recommend that all housing associations review all sections of this briefing to understand the breadth and scale of proposed industry change. Good practice approaches to building quality and safety across the built environment, including working in partnership with residents, are likely to be enhanced by responses to the more stringent building safety regulatory regime.

1. Summary of the main proposals

The draft Bill seeks to address a range of issues relating to building safety and standards, by making a number of changes to existing legislation. Alongside the [draft Bill](#), the government has also published extensive supporting information:

- [Explanatory notes](#) which explain what each part of the draft Bill will mean in practice.

- [Impact assessment](#) which sets out anticipated costs and benefits based on assumptions in relation to the impact of the draft Bill and its policy proposals.

Many of the draft Bill proposals will be familiar to those of our members who are already engaged in the government's building safety and regulatory reform work. However, there are several areas where proposals and assumptions have been clarified or updated in the draft Bill and its supporting documentation that we would encourage members to consider in the context of their organisational responsibilities and operations:

The government will establish a new national Building Safety Regulator (BSR) within the HSE. The new regulator will be responsible for overseeing and enforcing the implementation of the new more stringent regulatory regime for new and existing buildings in scope over their lifespan. It will also be responsible for driving improvements in building safety and performance standards in all buildings.

- The BSR will also oversee the dutyholder regime, which places responsibility on those designing and constructing buildings to explain how they are managing safety risks and demonstrating that a building is safe for occupation. Key responsibilities include the management of three gateway points in the construction process at which buildings or plans will need to be approved to continue, and protection of a golden thread of information.

The dutyholder regime will continue into the occupation stage for buildings in scope, by imposing specific obligations on an Accountable Person (AP). The AP will be responsible for understanding fire and structural risks in their buildings and taking appropriate steps to mitigate and manage these on an ongoing basis, so that the building can be safely occupied.

- A Building Safety Manager (BSM) function or role will also be required. The BSM will be appointed by the AP and approved by the BSR, to deliver the day-to-day functions on behalf of the AP.
- For existing buildings, the AP will be required to register the building and then apply to obtain a Building Assurance Certificate (BAC) which is necessary to allow a building to be occupied, as with new builds. However, there will be a staged transition period during which the BSR will take into account the information available to the AP at the time of the application.

- Residents of buildings in scope of the new regime are given duties to cooperate with the BSM, and developing a resident engagement strategy (RES) will be a required part of a building's safety case. Residents will also be entitled to core information about building safety, with the right to request more detail as appropriate.
- The new regulatory regime will place additional responsibilities on developers, designers, contractors and other dutyholders including building owners involved in the design, construction and management of buildings in scope. Dutyholders will be required to coordinate and manage all phases of construction to ensure that the building project complies with building regulations and meet additional duties and responsibilities.

2. Regulatory changes that will impact all building work

The draft Bill contains provisions that will have implications for all building work that requires building regulation approval and will therefore impact the operations of all housing associations. These changes cover the development of new buildings and works to existing ones, whether or not they are considered higher-risk and will therefore also be in scope of the new more stringent regime for those buildings.

The wider role and functions of the Building Safety Regulator

As well as its role to implement and enforce the new more stringent regulatory regime for buildings in scope, the BSR is tasked with stronger oversight of the safety and performance of all buildings, and assisting and encouraging competence among the built environment industry and registered building inspectors (more detail about building control reform is contained later in this briefing).

Dutyholder regime for building work requiring building regulatory approval

When any building is designed, constructed or refurbished, those involved in commissioning, design, construction or refurbishment will have formal responsibilities for compliance with building regulations and be held to account. The draft Bill will enable additional duties to be imposed on all people participating in building work to which building regulations already apply.

Dutyholders who will be ultimately responsible include those commissioning work, as well as those controlling or managing it, as currently set out in the Construction (Design and Management) Regulations 2015 (CDM 2015). Housing associations who commission any work subject to building regulations will have responsibility for the Client role in the dutyholder regime, with more information on the Client role given later in this briefing.

Dutyholder roles can be fulfilled by either an individual or an organisation or legal entity and can hold more than one role in a building project. The Bill also introduces a general duty to govern the way building work is carried out, to promote an engaged approach to safety and performance by dutyholders as opposed to tick-box approach to compliance.

Building regulations and industry competence

Building regulations do not currently make provision relating to competence of those carrying out building work. The CDM regulations 2015 include general duties in relation to the competence of designers and contractors and to ensure the competence of those they appoint to work on construction sites. However, these duties focus on health, safety and welfare rather than the safety and quality of buildings and have no requirements for higher-risk buildings.

The Bill creates powers to prescribe competence requirements in building regulations for the Principal Designer, Principal Contractor and any prescribed person. It also creates the right to impose duties on the persons appointing them to ensure they meet the designated competence requirements.

The new provisions will impose general duties in relation to competence of persons carrying out any work on all buildings to ensure compliance with building regulations. Competence requirements can apply to both organisations and individuals. For individuals, requirements will relate to their skills, knowledge, experience and behaviours. For organisations, requirements will relate to organisational capability – the ability to carry out its functions properly under the building regulations. This may include having appropriate management systems, processes and policies in place and being able to ensure that staff have met competence requirements to carry out specific roles on behalf of the organisation through imposed requirements.

These changes will apply to any design or building work on all buildings and will have implications for a number of roles in member organisations that involve appointment of designers and contractors and the management of building work.

Guidance is expected to assist those in client and management roles to be able to effectively assess the competence of dutyholders to meet requirements.

The government intends to provide statutory guidance in the form of an Approved Document to support changes to building regulations in regard to competence. Guidance is to be issued for higher-risk buildings in the first instance, with wider competence guidance to follow later. It will provide examples of the skills, knowledge, experience and behaviours and organisational capacity required and may make references to the competence standards being developed by British Standards Institution (BSI) for different applicable roles.

Building Control reform

The draft Bill includes provision to improve competence and accountability levels in the building control sector by changing existing arrangements to a unified professional and regulatory structure.

- Individuals and organisations currently known as ‘Approved Inspectors’ (private sector firms providing building control services) will need to register as ‘building control approvers’. Local authorities will not have to register and will continue to perform their building control functions.
- A new role of a registered building inspector is introduced – an individual who will be able to provide advice to local authorities or registered building control approvers overseeing building work (many local authority inspectors and AIs are expected to transition to this role).

The new BSR is to establish and maintain a register of individual building inspectors and building control approvers (either organisations or individuals). Additional details amend various powers and obligations including the ability to issue cancellation notices when work becomes higher-risk, transfer of powers and information between building control professionals and approvers.

In future, building control authorities (the BSR for higher-risk buildings and local authorities for other buildings, as currently), or registered building control approvers overseeing building work, will be required to obtain and consider advice from a registered building inspector in line with the type of registration they hold before exercising their building control functions. Further information on reforms can be found from [page 69 of the draft Bill explanatory notes](#).

Increased liability, sanctions and enforcement

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The BSR will ensure compliance with the measures outlined in the draft Bill through a combination of toughened existing powers and new powers. The time limit for formal enforcement powers in relation to non-compliance with building regulations will extend from two to ten years and from one year to ten years for correction of non-compliant work.

The BSR will have powers to prosecute all offences in the Bill and the Building Act 1984, including non-compliance with building regulations. All building control authorities will be able to issue compliance notices (requiring issues of non-compliance to be rectified by a set date) and, in design and construction, stop notices (requiring work to be halted until serious non-compliance is addressed). Failure to comply with notices will be a criminal offence, with a maximum penalty of up to two years in prison and an unlimited fine.

The draft Bill includes powers of entry for building control authorities (the BSR for higher-risk buildings and local authorities for all other building control work) to gather evidence for compliance action. A warrant from a magistrates' court will be required for domestic premises, or where force needs to be used to enter business premises.

Where a corporate body commits a criminal offence under the new regulatory system, any officer of that body is also deemed to have committed that offence in certain circumstances – where an individual has consented or been involved in an offence attributable to neglect on their part. Further information and examples are provided on [pages 67/8 of the explanatory notes](#).

Construction products

The draft Bill provides powers so that all construction products marketed in the UK fall under a regulatory regime, allowing market withdrawal if they present a risk, and making a link to the same products regulated by the EU framework. Manufacturers must ensure that the products they supply are safe.

The Bill also establishes the concept of a 'safety critical product', whereby the Secretary of State has the power to place such products on a statutory list. New civil penalties and criminal offences for breaching regulations are created. National oversight is to be provided by the Secretary of State, enabling the sharing of construction product information between regulators, such as the BSR and local authority building control.

These changes should improve assurance for housing associations, enabling them to trust the products specified in their homes, supporting resident and building safety.

Improving the competence of architects

The Bill introduces powers for the Architects Registration Board (ARB) to monitor competency of the architects on their register, which architects will have to join if they want to use the title 'architect'. If requirements are not met or professional misconduct is found, the ARB will have the power to remove individuals from the register and disciplinary orders will be listed against any name on the register, to increase transparency.

Removal of the democratic filter in raising a complaint with the Housing Ombudsman

To increase the speed of redress, social housing residents will be able to escalate a complaint to the Housing Ombudsman directly, once they have completed their landlord's complaints process. This removes the current requirement for a social housing resident to raise their complaint via a 'designated person' (an MP, councillor or tenant panel) or wait eight weeks to raise the complaint directly with the Ombudsman themselves, with the intention speeding up redress.

New Homes Ombudsman scheme

The draft Bill introduces a power to require developers to become and remain members of a New Homes Ombudsman scheme and be subject to sanctions should they breach scheme requirements. Membership of the scheme is to be open to all developers, enabling relevant owners of new build homes to raise complaints to the New Homes Ombudsman. The draft Bill will enable a scheme to investigate and independently determine complaints against scheme members.

Complaints can be made for new build homes developed or converted after the scheme comes into effect and up to two years post acquisition. The scheme may also include provision for individuals other than the owners to have complaints investigated and determined under the scheme. We will be seeking clarity on whether this could be extended to housing associations so they can also raise complaints against members of the scheme.

3. Regulatory changes to create a new more stringent regime for higher-risk buildings

This section highlights powers and definitions in the draft Bill that are specific to those buildings deemed higher-risk and in scope of the new more stringent regulatory safety regime throughout their lifecycle. This is by no means a comprehensive list but identifies the main headlines of the more stringent regime that housing associations need to be aware of, and where the government has made changes to previous proposals.

In addition to some commentary in the sections below on the considerations for the sector, there is a later section in this briefing setting out more strategic issues that we will be raising with the government.

Definition of ‘resident’ and ‘occupied’

The Bill proposes definitions of ‘resident’ and ‘occupied’ for buildings that are categorised as higher-risk and within the scope of the more stringent regulatory regime.

The meaning of ‘occupied’ requires that the building is in multi-occupation by two or more resident households. A ‘resident’ includes any person who lawfully resides in a dwelling within the building under a contract or licence, including minors and others who have obtained lawful permission to live in the building. We recognise that there will be cases in which a resident may not lawfully reside in a building and we’re seeking clarity from MHCLG on what this could mean for residents and housing associations in practice.

Definition of a ‘higher-risk building’

The new regulatory regime will regulate building safety risks in higher-risk buildings. The government proposes to define a ‘higher-risk building’ as:

- 18m and over, or more than six storeys – whichever is reached first.
- Contains two or more rooms for residential purposes, or two or more dwellings, or student accommodation.
- However, the definition of ‘room’ does not include residential care homes, temporary accommodation such as hotels, nor secure residential institutions such as prisons. We are clarifying with MHCLG what this means for existing buildings that meet the height criteria and provide this type of accommodation.

We know that this clarification will be important given the specific risks to building safety presented by some of these types of housing. For the future, there is flexibility within the Bill for additional types of buildings to come into scope, but not without Parliamentary scrutiny.

Procedures and requirements as higher-risk buildings are built or refurbished

The new regulatory regime will introduce procedures and requirements for new higher-risk buildings as they are designed and built, and for building work carried out on them. Proposals for new higher-risk buildings will go through a process of three gateways. Gateway points will provide rigorous inspection of regulatory requirements to help ensure building safety risks are considered during planning, design and construction. There is more information on the three gateway points in the explanatory notes from page 11.

Proposals for building work on existing higher-risk buildings will go through the refurbishment process, each of which will be laid out in building regulations. For each process, there will be specific duties for a Client, Principal Designer and Principal Contractor, with specific competence requirements for the latter two.

Dutyholder in occupation and new roles

The Bill will implement a new dutyholder regime to be incorporated across the lifecycle of higher-risk buildings in scope of the more stringent regulatory regime. Key dutyholder and new roles identified for housing associations are the:

- Client (during design and construction)
- Accountable Person (or dutyholder in occupation)
- Building Safety Manager.

However, it is worth noting that some housing associations will have additional duties where they are classed as a Principle Contractor or contractor during works carried out by their staff.

Client role

For higher-risk buildings, the Bill provides powers to prescribe the form, content and other consistent standards of documents to be supplied with building control applications, including the submission process. This includes submission of a signed declaration from the Client to the BSR that they have assessed and are content with the competence (i.e. the skills, knowledge, experience and

behaviours) of the Principle Designer and Principle Contractor involved in the work. This additional responsibility will need to be considered by organisations who develop homes, in terms of insurance and governance arrangements.

We will be raising this with MHCLG for consideration in their work to improve access to professional indemnity insurance for those working on remediation projects, to prevent any issues accessing appropriate insurance once the new system comes into force.

For refurbishment projects, applicants must submit prescribed documents, but further information can be required by the building control authority.

The BSR is the building control authority for buildings in scope of the higher-risk regime. This removes the client's or contractor's current ability to choose their own building control body.

During construction, regulations will require a Client to enable workers on-site to report potential safety occurrences through a mandatory reporting system. Principal Designers and Principal Contractors should use this information to report structural and fire safety occurrences that could cause a significant risk to life safety in higher-risk buildings. These occurrences will form part of a prescribed list of documents for submission to the BSR referenced above.

Accountable Person (AP)

The Bill creates an AP, which is a dutyholder during occupation, with statutory obligations to maintain the fire and structural safety of the building. There will be an ongoing duty on the AP to assess the building safety risks relating to their building, and to mitigate a major incident resulting from those building safety risks in or around the building. The AP will need to demonstrate how they are meeting this ongoing duty through a Safety Case Report.

The AP must apply to register a higher-risk building before it becomes occupied and then apply to the BSR for a Building Assurance Certificate (BAC). The BSR issues a BAC if it is satisfied that the AP has not contravened specific statutory obligations including:

- Appointment of a BSM.
- Assess building safety.
- Take steps to prevent a major incident.

- Produce a Safety Case Report.
- Collate and maintain prescribed information (golden thread).
- Give certain information to residents.
- Produce a residents' engagement strategy.

Further information on these obligations is available later in this briefing.

In most cases the AP will be the freeholder of the property, but in cases where the interest of the building has been demised to other lessees, and they retain the obligation to repair and maintain a common part as defined, the definition will also make those persons APs. This will include individuals, investment companies, local authorities and housing associations.

We are seeking clarity on how the AP is decided upon in buildings where complex ownership structures mean the responsibilities could fall to several people, or if the role is intended to be shared.

Assessment of building safety risks

The ongoing risk assessment that the AP carries out must be suitable and sufficient so that the AP is able to comply with their safety duties.

This duty applies from occupation with the first assessment to be carried out 'as soon as is reasonably practicable'. Further assessments must be made at regular intervals, when directed by the BSR or notified by the BSM of a change in circumstances. A number of examples are provided [in the explanatory notes from page 99](#) and include considerations for both new and existing buildings. The government has previously recommended that organisations that will be taking up the AP role in the future begin this work as soon as possible, ahead of the new system coming into force.

There is also an ongoing duty of the AP to take all reasonable steps and actions necessary to ensure the prevention of major accidents and/or fires arising from the building safety risks and the reduction in severity of any such accident or fire. Following identification of the hazards within their building the AP will have to assess who might be harmed by them and evaluate the likelihood and consequence of those hazards becoming a major incident. The AP then has to decide on and take all those steps that are reasonably needed to mitigate against this.

The AP must refer to a set of principles set out in regulations to form a systematic, best practice approach to risk management from most to least efficient in avoiding risk. The BSR will have the power to direct the AP to take steps where measures prove insufficient. Again, a number of examples are provided [in the explanatory notes from page 101](#).

Safety Case and Safety Case Report

There is a duty on the AP to collate a safety case, followed by a Safety Case Report demonstrating they have assessed the building safety risks and taken all reasonable steps to mitigate them. The duty to prepare the Safety Case Report starts as soon as the building is occupied.

The Bill gives the Secretary of State the power to set out requirements regarding the form and content of these reports. We therefore expect that this will be covered by secondary legislation. We'll be calling for interim guidance or confirmation of the direction of travel, in recognition of the certainty our members need to start or continue working on safety cases prior to the outset of the new regime.

The main way that the BSR will hold the AP to account is through the Safety Case Report and this is how the AP can demonstrate compliance with their ongoing duties. At any point, the report should demonstrate that the arrangements the AP has in place are reasonable for managing their specific building, including management systems and emergency plans.

Where a change in AP occurs, the new AP is required to prepare a report as soon as reasonably practicable. The Safety Case Report can be reviewed and revised by the AP at any time but the BSR is provided with the power to direct such a review.

In this section, there are two key terms:

- **Safety case** – the full body of evidence, comprising a comprehensive and structured set of documents. It will often include evidence from test results, detailed safety analysis reports etc. For the purposes of the regulation of higher-risk buildings this may also be referred to as the information that makes up the 'golden thread' (the concept of golden thread goes further, to include specific digital standards).
- **Safety Case Report** – a summary of the key components derived from the full body of evidence, with appropriate references to supporting evidential documents, which makes the claim of and argument for safety.

It is the Safety Case Report in this regime that is the key document and is submitted to the BSR by the AP as either part of the process for issuing a BAC or on request from the BSR.

On assessment, if the BSR considers the Safety Case Report does not demonstrate that the ongoing duty is met, they will have a dialogue with the AP regarding any additional further measures and evidence required in the report.

Where agreement cannot be reached, the BSR will be able to issue a compliance notice, setting out specific actions the AP must take to meet their duty. Continued failure to comply with the notice means there is continued breach of the statutory obligation and criminal proceedings may follow.

As soon as the report is compiled or revised due to changes in approach or dutyholders, the AP must notify the BSR as soon as reasonably practicable. The Bill lays the groundwork for secondary legislation to set out the process that will support this. Examples of when the BSR might review a Safety Case Report – such as on submission, as part of the application for a BAC, the issue of compliance notices, where an incident in another building highlights a scenario not previously considered, or following recommendations by a public inquiry – are provided [from page 106 of the explanatory notes](#).

The Bill also lays the groundwork for secondary legislation that requires APs to ensure adequate insurance cover is in place for losses associated with building safety risks, and prescribe the kinds of losses arising that should be covered. A contract for such insurance must be in place to evidence compliance. Failure to provide such a contract may result in a compliance notice from the BSR, with further non-compliance leading to fines or court action.

We are aware that some building owners have experienced significant changes to the cost of buildings insurance in recent years, impacting the affordability of homes in higher-risk properties. The provisions in the new system could support the insurance industry in accurately ascertaining any risk, but we will highlight to the government the need to ensure that this is the case so that insurance costs remain affordable.

Building Safety Manager (BSM)

A further statutory obligation for the AP is to appoint a BSM who must have the organisational capability and relevant skills, knowledge, experience and behaviours. The AP must notify the BSR, who has the power to reject their appointment.

The BSM can be an individual or organisation whose principal role is to support the AP in the day-to-day management of fire and structural safety in the building. Where an organisation is appointed to fulfil the BSM function as opposed to an individual, they must appoint a nominated competent person to carry out the functions of the BSM as soon as reasonably practicable.

BSM responsibilities include:

- Managing the building in accordance with the Safety Case Report.
- Ensuring compliance with the Building Assurance Certificate requirements.
- Keeping informed and cooperating with the managing agents (if any) of the building about safety measures and works.
- Complying with directions and statutory notices issued by the BSR.
- Cooperating with other occupiers or owners of the building, including any other person acting as the Responsible Person under the Fire Safety Order.

The AP has a duty to appoint the BSM prior to the occupation of any higher-risk building as soon as reasonably practicable, with failure being an offence incurring daily fines and potential imprisonment. The AP is able to appoint the BSM if the BSR approves the appointment, based on whether the individual or organisation has the competence to carry out the role or its functions.

We are aware that some of our members have already appointed staff that they have described as BSMs, so we will be pressing for a direction of travel that helps you assess competence levels until a British Standard for the required competence of the BSM is finalised.

From commencement of this part of the Act, empty buildings that will become occupied and existing occupied higher-risk buildings will need to have a BSM in place. The obligation to meet the overarching statutory requirements of the regime sit with the AP and cannot be delegated to the BSM.

The BSR has the power to direct the AP to dismiss the BSM when they consider they are not carrying out their role to aid the AP in meeting their statutory objectives. This can include changing a nominated individual.

Duties relating to information – golden thread and data standards

Mandatory reporting requirements

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There is a duty on the BSM to report certain building safety information of an occupied building to the BSR and on the AP to establish and operate a system to enable this reporting. Current proposals for reporting are three working days from the time an occurrence is noticed.

Golden thread

The AP is required to obtain, keep and maintain certain information about a higher-risk building.

The specific documents, data and information that will make up the prescribed information will be set out in regulations but will generally be information about the building and relevant to the management and reduction of building safety risks. The information must be stored and kept in accordance with prescribed standards that will also be set out in regulations. [The government's impact assessment](#) sets out limited assumptions about data standards and examples are provided [in the explanatory note on page 111](#). The BSR will be able to issue statutory guidance and best practice examples to support AP compliance.

Providing information to others

The AP is required to share prescribed information and documentation about their building in certain prescribed circumstances, such as with the BSR or residents and owners of flats. If the AP sells the building, this information must be passed to the buyer or sanctions can be imposed. Clause 81 provides further detail regarding information provision to a new AP.

Building registration and certification in occupation

The AP must register a higher-risk building before it becomes occupied. Detail regarding the timing of registrations for both new and existing buildings and any additional circumstances and detail required are to be set out in regulations.

The information from building registration will enable the BSR to consider whether to take any regulatory investigation before APs have to apply for Building Assurance Certificates (BACs).

The BSR may add a building to the register of higher-risk buildings if the required information has been provided, and must publish a copy of the register. Buildings may be removed where they are no longer occupied or no longer fall under the regime scope. The BSR will only issue a BAC if the AP is meeting their statutory obligations. The BAC must be displayed in a conspicuous position in the building.

Secondary legislation will set out procedural matters including the duration of the certificate, form, content (such as the details of the AP and the BSM) and procedures for revocation, such as where an AP has contravened a specified duty.

When applying for a BAC, the AP must include a copy of the Safety Case Report accompanied by prescribed information about the AP's Mandatory Occurrence Reporting System, meeting their resident engagement duties and the BSM. Prescribed information is to be set out in subsequent regulations.

Evidencing competence

The Bill creates powers to prescribe competence requirements for dutyholders in building regulations and the right to impose duties on the persons appointing them, to ensure they meet designated competence requirements. This will have implications for housing associations as clients during design and construction and as APs and for BSMs in occupation.

For higher-risk buildings, the competence of the Principal Designer, Principal Contractor, and others carrying out design or building work must be appropriate to the particular higher-risk building undergoing work, including work done during occupation. These duties will also apply to any design or building work on all buildings under building regulations. Breach of these duties will be a criminal offence and government intends to provide an Approved Document as statutory guidance, prioritising higher-risk buildings.

Clause 37 of the Bill provides powers for building regulations to prescribe documents to be supplied with building control applications. This includes, as part of the gateway two application, a signed declaration from the Client that they are content with the competence (skills, knowledge, experience and behaviours) of the Principal Designer and Principal Contractor plus the evidence of their assessment process.

The guidance will provide examples of the skills, knowledge, experience and behaviours and organisational capability required to work on higher-risk buildings, particularly for the Principal Designer and Principal Contractor. It may also reference the competence standards being developed by British Standards Institution (BSI) for these roles and the overarching competence framework standard.

The government expects that over time the built environment industry will develop sector-specific competence frameworks, which could be recommended and adopted

in statutory guidance, advised by the BSR's Industry Competence Committee. Guidance may make reference to the competence standards being developed by the BSI. A cross industry working group, of which the NHF was part, has put forward a suggested framework for competence for the BSM role for the BSI to consider in developing new standards.

A number of examples are provided [from page 63 of the explanatory notes](#) including advice on how to comply with the legal requirements for industry competence and reviewing sector specific competence frameworks against the overarching BSI standard.

Resident engagement

All APs will be required to produce a Resident Engagement Strategy (RES) to promote participation of residents and flat owners in the decision-making about safety risks in their building.

High-level requirements for meeting this obligation are also set out and include the information the AP will provide to residents, the scope of what they will consult residents about, and the methods they will use to seek views and measure strategy effectiveness. Good practice guidance is anticipated, including worked examples and templates following consultation by the BSR's Resident Panel.

Residents can ask the AP for more detailed safety information on request, with a list of the information and documentation that can be obtained to be set out in regulations made by the Secretary of State. A list of the further information current envisaged is set out [on page 114 of the explanatory notes](#), including risk assessments, asset plans and outcomes of inspection checks.

There is also a requirement for APs and the BSR to establish complaints procedures. The APs is to enable residents and flat owners to raise safety concerns and for the BSM to handle complaints in line with that process. More detail will be set in secondary legislation, covering processes, timing and referral to the BSR.

Similarly, the BSR is tasked with establishing and operating a complaints procedure and system to handle resident safety concerns escalated to them either directly by residents or via the AP/BSM. The BSR's Residents Panel is to be consulted regarding any changes to agreed systems or processes with further information to be set out in secondary legislation. This will include the process for escalating a

complaint to the regulator, timing considerations and actions available to the BSR where the AP has not resolved resident safety concerns.

Resident duties

The draft Bill sets out duties for residents occupying higher-risk buildings within scope of the new regime.

Residents must:

- Keep any relevant resident's item in repair and proper working order.
- Take reasonable care not to damage any relevant safety item.
- Comply with a request from an AP to provide information reasonably required for the AP to perform their duties.
- Comply with such other duties as may be prescribed.

'Relevant resident's item' means any electrical or gas installation or appliance in a dwelling, other than those which somebody else has responsibility for (i.e. a leaseholder's gas boiler)

'Relevant safety item' means anything in the common parts of a building that is intended to improve the safety of anyone in the building or its vicinity, for example, signage, sprinklers, smoke alarms.

The AP is permitted to serve a notice on a resident where it appears they have not complied with one or more of the duties. Following serving of such a notice, the AP may request a county court order for action to be taken by the resident, providing it is satisfied due process has been followed. Further detail and examples are provided [on page 116 of the explanatory notes](#).

Access to dwellings/flats

The county court may also make an order to access any dwelling following an application by the AP for an occupied higher-risk building providing it is satisfied that a number of steps have been followed.

Any order requires the resident to allow the AP or a person authorised by them access. It is recognised that the AP may need to access more than one dwelling in the building to carry out their duties and check resident duty compliance. The example of ensuring maintenance of gas installations are highlighted as an example of use of this provision.

Charging and fees

The draft Bill contains extensive clauses in relation to the recovery of safety related costs payable under long leases of dwellings in higher-risk in scope buildings. These proposals have not previously been shared.

The Bill will imply terms into all relevant long leases (i.e. granted for a term of over 21 years) to ensure that they contain appropriate and consistent arrangements in relation to carrying out, and recovering the costs of, building safety measures. Proposals would add new sections to the Landlord and Tenant Act 1985. Provisions allow the landlord to re-charge to the leaseholders the cost of building safety measures, while also including an obligation to apply for any financial support that may become available to mitigate building safety costs. [Explanatory notes start on page 118.](#)

Costs will be denoted by a new 'building safety charge', separate from service charges, for relevant leases and buildings, intended to facilitate transparent cost recovery. Landlords are obliged to provide budgets and estimates accordingly and deduct the value of any funding received. Provision exists for some costs to be excluded from recovery if they are:

- Subject to restrictions.
- Consulted on where required.
- Reasonably incurred.
- Subject to timely demand

The building safety charge may include:

- The commission and production of the safety case, RES and mandatory reporting scheme.
- The appointment of the BSM.
- Building safety works.
- Monitoring and management of day to day safety in the building, resident engagement and using the mandatory reporting system.
- The costs of compliance with statutory notices, obligations and requirements (but not the cost of enforcement action).
- Fees and other charges payable to the regulator.

Certain costs cannot be recovered through the building safety charge, including those incurred resulting from enforcement action, breach of

contract, unlawful acts or negligence. Costs are to be limited by excluding any cost incurred more than 18 months before the demand for payment is made. This does not apply if within 18 months of incurring the building safety costs the leaseholder is notified that the costs have been incurred and they will subsequently be required to make a contribution.

Further landlord obligations include annual budget preparation and cost apportionment between all building dwellings, the holding of the charge received on trust in a separate account and provision of a reconciliation account within 28 days of the end of the accounting period (with specific provision identified). Failure to comply with requirements to hold charge contributions on trust is identified as an offence, with local authorities being able to bring forward prosecutions.

A building safety charge demand cannot be served at intervals of less than three months and the leaseholder can withhold a payment until any overdue estimate, budget or reconciliation account has been provided. Proposed new lease clauses set out that leaseholders will be required to pay charges within 28 days. We recognise that this is likely to be different from the way service charges are recouped, and so we will be discussing this disparity with MHCLG.

Where a lease sets out a method for apportionment of costs this must be used and if the lease is silent on such terms, then a method agreed in writing between the landlord and leaseholder can be applied. Disputes over this and other aspects of building safety charges will need to be considered by the First Tier Tribunal.

Works or services are expected to be of a reasonable standard and reasonably incurred or payment can be limited to what is deemed to be a reasonable amount. Particular scenarios are noted where circumstances may differ, as are consultation requirements prior to entering in to works contracts when a leaseholder's contribution will exceed an appropriate amount. Secondary legislation will specify the appropriate amounts, so we will proactively discuss costs with MHCLG beforehand, so that they remain affordable and transparent to leaseholders, while also ensuring that building owners can fairly recoup appropriate costs.

Further detail regarding the what 'qualifying building safety works', the 'qualifying building safety agreement' and 'the consultation requirements' will be set out in regulations made by the Secretary of State. However, the Bill makes clear that an agreement appointing a BSM will not be a qualifying agreement.

Leaseholders or a recognised tenants' association are allowed, with notice, to inspect documentation and obtain copies evidencing that the requirements are being complied with. Leaseholders are also allowed to withhold payment of the building safety charge if that person has reasonable grounds for believing that the landlord has not complied with duties or processes.

Enforcement and special measures

The Bill also includes powers for the BSR to issue a 'compliance notice' to a relevant person, such as the AP or BSM, where they are contravening or likely to contravene requirements of the bill or subsequent regulations for higher-risk buildings.

Such notices introduce a power for the BSR to address non-compliance with the new regime for the safety of higher-risk buildings without having to resort immediately to criminal prosecution. Measures have been modelled on notices under section 21 of the Health and Safety at Work Act 1974 and are intended to be used in similar circumstances. Notices will require steps and timing to be specified or require the relevant person to remedy the identified issue in that time. If the BSR believes that people in and around the building are in imminent danger, the notice is termed an 'urgent action notice'.

The [explanatory notes from page 67](#) set out more detail and the implications of non-compliance, offences committed as a result, and appeals. Similar provisions apply in respect of corporate bodies and liability of corporate officers as set out previously.

The BSR has to notify other relevant bodies when it serves a notice, including the local authority, relevant Fire and Rescue Authority, the Regulator of Social Housing (in appropriate cases) and any other body prescribed in regulations. We are clarifying with MHCLG what this might mean in practice.

In addition, Clause 94 creates an offence of breaching a 'relevant requirement' under the new regime set out in part 4 of the Bill (higher-risk buildings) without reasonable excuse, where that failure places those in or about the building at a significant risk of death or serious injury arising from a building safety risk. A 'relevant requirement' is defined as a requirement that is not excluded from enforcement action by secondary legislation and 'building safety risks' are defined in clause 16. Imprisonment and on-going penalties can result on indictment.

It is expected that compliance notices and urgent action notices would be employed in the first instance before reaching this stage. However, for the most serious

breaches the BSR will be able to move directly to prosecution if that is considered the most effective and appropriate course of action.

In addition the BSR can appoint a Special Measures Manager to replace the AP or BSM where there are serious failures endangering the life safety of residents in the building. [Chapter 10 of the explanatory notes](#) covers this provision and related clauses and starts on page 127.

Transition

Little additional information is provided regarding transition to the new regime for higher-risk buildings. However, [the impact assessment \(page 38\)](#) does provide some working assumptions to support its cost analysis. These are heavily caveated as a high-level estimate and tools for risk profiling, and the design of phasing are still under development.

It is assumed that it will take the BSR seven years to review and inspect the safety cases for all existing buildings for the first time. This review will be carried out phase by phase, with the current assumption that all buildings will be prioritised based on pre-existing information on their likely complexity and level of hazards.

Buildings in scope of the regime will be required to reapply for registration periodically and it is assumed that this will happen every five years. The following table (12) is provided which considers assumed transition for existing buildings.

	% of all cases	Number of buildings in scope (year 1)	Inspection schedule for existing buildings
Simple/low risk	30%	3,900	2028/29–2029/30
Standard/mid risk	60%	7,800	2024/25– 2027/28
Complex/high risk	10%	1,200	2023/24–2024/25

Estimated risk profiling of stock has been based on work undertaken by PRP Architects to identify residential buildings of 18m and over to prioritise for remediation on behalf of large Registered Provider clients. PRP Architects undertook an initial desk-based review and visual two-hour survey of over 200 buildings. From this, they identified the number of buildings falling into low, medium and high-risk categories. This risk categorisation is based on a scoring system, which considers facades, balconies, fire safety measures (e.g. appliance access, firefighting equipment, etc.), external fire risks, etc.

Further detail to come in secondary legislation

We set out throughout this briefing where secondary legislation and guidance is expected to provide further detail on proposals in the Bill. A summary is provided below:

Definition of higher-risk buildings

This will be set out in regulations and the BSR will issue detailed guidance to help developers understand the scope of the regime, assess whether their building falls into the definition, and allocate the correct building control body.

Industry competence

The government intends to provide statutory guidance in the form of an Approved Document to support changes to building regulations in regard to competence. Guidance is to be issued for higher-risk buildings in the first instance, with wider competence guidance to follow later. The guidance will provide examples of the skills, knowledge, experience and behaviours, and organisational capacity required to work on higher-risk buildings, in particular for the Principal Designer and Principal Contractor.

The BSR may also issue guidance regarding how to assess the competence of a prospective BSM ([page 132 of the explanatory notes](#)). The guidance may make references to the competence standards being developed by the BSI for these roles.

The government expects that over time, the built environment industry will develop sector-specific competence frameworks, which could be recommended and adopted in statutory guidance. It is expected that the BSR's competence committee will advise the government and BSR (refer to [page 30 of the explanatory notes](#) for relevant examples). We will be calling for interim measures or confirmation of the direction of travel to support organisations who have already appointed BSMs or want to start doing so prior to legislative changes being confirmed.

Building Assurance Certificate

Requirements are set out indicating the type of information to be submitted by the AP when applying for their BAC (Clauses 65 and 66 in the Bill). This includes a copy of the Safety Case Report, prescribed information about the AP's Mandatory Reporting System, prescribed information demonstrating they are meeting their resident engagement duties and prescribed information about the Building Safety Manager.

Regulations are to set out what this prescribed information must include, with the further powers for government to make additional provision regarding the form, content and how the application process is made, including the form and content of the Safety Case Report.

Golden thread to support the Safety Case

Changes to building regulations will set out the information and documents that must be obtained and kept, and the standards to which these documents and information must be stored and maintained, to develop a golden thread of information throughout a lifecycle of a higher-risk building.

Statutory guidance will be issued to support this change, with building regulations defining the circumstances where information must be shared and the prescribed persons it must be shared with.

The AP must keep and maintain the prescribed information about the building and ensure it is up to date as far as possible. Where this does not exist, they are required to obtain this information unless this is not practicable. The BSR will be able to issue statutory guidance about how to comply with these duties, providing best practice examples and details to support the AP in fulfilling their duties.

Planning Gateway One

This uses the existing process by which planning permission is granted in England, this requirement is to be taken forward through secondary legislation and statutory guidance under the Town and Country Planning Act 1990.

Mandatory occurrence reporting to the BSR

Secondary legislation will include a list of categories of occurrences that must be reported, on the basis that if they were to occur in a higher-risk building they would meet the threshold of a significant risk to life safety. Guidance is promised to assist the BSM to determine whether an occurrence falls within these categories.

Resident Engagement Strategy

The Bill will enable secondary legislation to change or provide more detail on the requirements for a Resident Engagement Strategy. The government envisages making good practice guidance available to APs to support in developing their strategies, including worked examples and templates. The BSR Residents' Panel will be a statutory consultee.

AP complaints process

APs are required to establish a process and system for residents and flat owners to raise safety concerns and for the BSM to handle complaints in that process ([page 115 of the explanatory notes](#)). More detail on the requirements will be set out in secondary legislation, including the process for making a complaint, the need for a timely response and the points at which a complaint should be referred to the BSR for consideration.

BSR complaints procedure

The BSR is to establish and operate a complaints procedure and system to handle residents' safety concerns escalated to them by the resident, the AP or BSM ([page 115 of the explanatory notes](#)). The BSR must consult with their Residents Panel Advisory Committee if making any changes.

More detail that will be set out in secondary legislation will include the process for escalating a complaint, the need for a timely response and the set of actions available to the BSR on receipt of a complaint.

Accountable Person (AP)

Where complex ownership structures exist, there could be more than one AP for a whole building. The government is eager to ensure this arrangement can still deliver a holistic approach to safety. The government will produce comprehensive guidance to help identify and support the AP in such cases.

The AP may also be the responsible person under the Fire Safety Order, but it will be on the relevant dutyholder to demonstrate their actions have met both sets of requirements.

Where a building is mixed-use, the government intends to consult in the current fire safety consultation on duties of co-operation between the responsible person(s) under the FSO and the AP(s) under the new regime to ensure effective management of the building as a whole.

Variation or revocation of orders to impose a Special Measures Manager in an occupied building in place of an AP

Secondary regulations can specify the conditions or grounds a First Tier Tribunal may vary or revoke an order to impose a replacement AP ([page 131 of the explanatory notes](#)).

Further detail regarding the Architects Registration Board to charge fees for additional administrative services are also expected.

A number of the examples contained [in the draft Bill explanatory notes](#) cite the potential for the BSR to work with its committees and stakeholders to develop industry best practice guidance sharing insight and delivery support. Examples include running workshops and groups to understand and overcome obstacles to compliance, through providing better quality guidance and information.

4. NHF view of the proposals

We support the proposals for a new regulatory system for building safety, and welcome the additional information and clarity provided by the draft Bill.

The Bill does not contain the level of detail we know housing associations will want to see to continue confidently implementing the proposals. We will be making the case to the government for a transition period that is deliverable, particularly given the potential for changes to be simultaneously brought into existing regulatory regimes through the Fire Safety Bill.

We are proactively engaging with the government on the Bill's contents, providing sector feedback on key sections to clarify detail, highlight any further considerations, consequences and delivery implications for housing associations.

Further support we need from the government

Housing associations have been making significant changes to their businesses and practices for the last three years, to further ensure residents' safety. To support our members to continue this work and adopt the new regulations confidently and efficiently, we are calling for the government to:

- Provide interim guidance to support housing associations to build on the work they have already done to implement aspects of the new system. This will enable members to confidently adopt new regulations prior to secondary legislation and ensure that the work already done on this remains fit for purpose.
- Provide direction on risk prioritisation and work with us and other industries to help manage the transition to the new regulatory system, alongside

remediation and other regulatory requirements coming into effect simultaneously.

- Ensure the new system provides for a more stringent approach that would enable building owners to gain access to properties so they can fulfil their responsibilities for the whole building, in the minority of cases where this is refused by a resident.
- Ensure the costs of implementing requirements in the new regulatory system remain affordable, both to residents who will pay the new 'building safety charge', but also to housing associations who have social missions to build more much-needed affordable housing.
- Provide as much information about the intended timing and approach to transitioning to the new system to help housing associations to do so efficiently.

Next steps and member engagement

Next steps for the draft Bill in Parliament

The draft Building Safety Bill will be scrutinised by the Housing, Communities and Local Government Select Committee, which is seeking feedback from affected stakeholders to inform the recommendations they will make before the Bill is finalised ahead of its passage through the Houses of Parliament.

We will be feeding into this process, as well as engaging with MHCLG directly on areas within the draft that need refinement, which we will be participating in.

It is not yet clear when the legislation will become law, particularly due to the need for regulations to be laid in secondary legislation.

How you can help us shape the proposals

We will continue to engage and support housing associations to understand, plan and prepare for the implementation of the new building safety regulatory regime. This will include working with our members to highlight our sector's priorities and putting forward suggestions for improvements with government.

We recognise that while these proposals will create the significant change we want to see in the building safety regulatory system, there could be cost challenges in doing so. Our engagement with the government will also raise the need for the new

regulatory system to consider affordability, for residents and for charitable housing associations.

To allow us to do this, we are asking our members for feedback on the proposals. Member feedback is essential to enable us to compile evidence and intelligence to represent the housing association sector during and beyond the scrutiny period for the draft Bill. We would like to hear feedback from all members who will have new responsibilities under the new regulatory system to inform our engagement with MHCLG and in our submission to the Housing, Communities and Local Government Select Committee as part of their scrutiny process.

You can share your views with us by emailing housingsafety@housing.org.uk as soon as possible to inform our conversations with MHCLG. **We would be grateful to hear from you no later than Tuesday 8 September**, so that we have your evidence prior to submitting our feedback to the Select Committee. We will also be welcoming views you would like to share after this date.

Supporting our members to implement the proposals

We will also set up a range of opportunities for our members to help us develop our work to support you in implementing the regulations. To stay in touch with us on these, please ask to be added to our building safety mailing list by contacting communications@housing.org.uk.