

# Draft Building Safety Bill

## Proposals for regulatory changes for buildings outside the scope of the higher-risk regime

NHF briefing for members, 13 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 stricter regulatory regime for higher-risk buildings, the Bill also sets out proposed regulatory changes that will impact all building work. **This briefing sets out the regulatory changes that apply to all building work, whether development or refurbishment.** We have published a separate briefing setting out the regulatory changes that apply only to higher-risk buildings.

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

- Is 18m and over, or has 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' excludes a room in a residential care home, temporary accommodation such as a hotel, or a secure residential institution such as a prison

This briefing covers:

- An explanation of the structure and scope of the draft Bill and how it fits with other proposed legislative change for all new and existing buildings.
- An explanation of the specific applicable sections of the Bill contents including where we expect more detail in future, and our plans for further 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](mailto:housingsafety@housing.org.uk) by **Tuesday 8 September** to inform our work to engage with pre-legislation scrutiny in Parliament. We will still welcome views 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 the document [Building a Safer Future](#), following a consultation process. 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 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.** These reforms will impact the work of all housing associations, not just those who develop and own higher-risk buildings, and are the subject of this briefing.
- The draft Bill also sets out plans for enhanced sanctions and redress for those who do not comply with new requirements when they become law. These measures also apply to all buildings, not just higher risk buildings. In addition to the new Building Safety Regulator, there will be a New Homes Ombudsman, with all those who develop or commission new homes required to be members.

- In addition, social housing residents will not need to contact their local MP to access the existing Housing Ombudsman to raise a complaint about their housing provider.

The draft Bill allows for the scope of the higher-risk regime to be expanded in future, despite the government citing it has no current plans to do so. We therefore recommend that all housing associations review both this briefing and our [other briefing](#) setting out proposals for a stricter regulatory regime for higher-risk buildings. Good practice approaches to building quality and safety are likely to be informed by changes in the more stringent building safety regulatory regime.

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

## 1. Overview of proposals in the draft Bill

The draft Bill seeks to address a range of issues relating to building safety and standards and makes 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.

## **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 all new buildings and works on all existing ones, whether or not they are considered higher-risk. The key changes that apply to all buildings are:

### **The wider role and functions of the Building Safety Regulator (BSR)**

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

### **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 the 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 regarding 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 approved inspectors 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 the 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**

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 on 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. The BSR and local authorities as building control authorities will also 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 relevant owners of new build homes to have complaints against members of the scheme 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.

### **A summary of the more stringent regulatory regime for higher-risk buildings**

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 by virtue of having a building that will be considered higher-risk for the purpose of applying the new more stringent regulatory regime.

We have summarised the latest version of the proposals below, which in some cases vary slightly from proposals the government has previously made on the more stringent regime for buildings in scope, including the definition of higher-risk outlined earlier in the summary of this briefing.

For more information on the stricter regime within the new system, we recommend reading our [briefing specifically on this](#).

- The government will establish a new national Building Safety Regulator (BSR) within the Health and Safety Executive. 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 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 before construction can 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. They will demonstrate how they are doing this in a Safety Case Report, which is the document that goes to the Building Safety Regulator to make the claim of and argument for resident safety.
- 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), as with new homes. 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. Developing a resident engagement strategy (RES) will be a required part of an AP's duties. Residents will also be entitled to receive 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.

## **NHF view of the current 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.

We recognise that housing associations are eager to understand the new regulatory regime in detail, particularly organisations that have higher-risk buildings which are therefore in scope of the more stringent regime.

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 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, and highlighting any further considerations, consequences and delivery implications for housing associations.

As part of this engagement, we will be calling for interim or 'building block' guidance to support our members with regulatory changes they'll need to deliver to higher-risk buildings and to recruit or train staff to sector competence requirements. We will also be seeking clarity on the timing of the transition period, and the timetable for secondary legislation and further reform to building regulations.

## **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 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.

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 our 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](mailto:housingsafety@housing.org.uk) as soon as possible to inform our conversations with MHCLG. **We would be grateful to hear from you by Tuesday 8 September**, so that we have your evidence prior to submitting our feedback to the Select Committee. However, views after this date will also be very welcome.

## Supporting you 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](mailto:communications@housing.org.uk).