



LEGISLATION

Update



You can't keep
people safe by
simply ticking a box



BUILDING SAFETY ACT 2022

The long-awaited Building Safety Act has arrived with the Building Safety Bill having just received Royal Assent after some last-minute amendments, including removing the Building Safety Manager role.

The journey isn't over, however, as a myriad of Secondary Legislation is still required to set some timelines, provide clarification and guidance and ultimately bring all aspects of the Act into force.

So, what should we be aware of in the immediacy of the Act coming into place?

- Construction products will be subject to a new regulator who can force their withdrawal from sale if found to be deficient
- The Building Safety Regulator will be introduced to oversee the design, build and ongoing management of in scope buildings
- A new Ombudsman will be set up for disputes with developers required to sign up to the scheme
- Leaseholder's rights are enhanced with amendments to Defective Premises legislation, including increasing the right to claim to up to 30 years post-completion
- Leaseholders can be shielded from cladding remediation costs
- Housebuilders not paying for fire safety remediation can now face Government intervention

BUILDING SAFETY — ACT 2022

CONTINUED

- Individuals have to be nominated and remain responsible for in scope buildings from the design, through construction and during the continued occupancy of the building
- There will be increased regulatory oversight of the construction & occupation of in scope buildings through a three stage "Gateway" system
- Residents will have access to mandatory engagement schemes giving them opportunities to participate in making decisions on the management of their building and to raise concerns. Conversely, they will also now be legally bound to cooperate with the accountable person in the provision of information and not to create risks through their actions (e.g. replacing a front door with a non fire door).

The devil is in the detail, though, and the exact nature of each key aspect of the Act and its practical implementation will be set out in Secondary Legislation and guidance. This means the different clauses of the Act will be subject to a lead in time expected to be through a 12 – 18 month window, the best estimates being...



BUILDING SAFETY — ACT 2022

NEXT 12 MONTHS

- The Building Safety Regulator will set up the Residents' Panel
- The limitation period of the Defective Premises Act 1972 will be retrospectively extended to 30 years for existing builds and extended to 15 years for future builds and will now also cover building refurbishment as well
- The Office of Product Safety and Standards (OPSS) will host a new construction product regulator with additional powers in addition to current ones
- The Regulatory Reform (Fire Safety) Order 2005 will be amended so that there is more clarity to the identification of "responsible persons" and that fire risk assessments are recorded in more detail in all cases

- The professional body governing architects, the Architects Registration Board, will gain additional powers to oversee the architect's competence
- A system for protecting leaseholders from fire safety costs is likely to be introduced following recent Government pledges.

12-18 MONTHS

- The various new committees under the Act will be set up, including the Building advisory committee and committees covering competence throughout the building industry
- The Building Safety Regulator will establish its own Industry Competence Committee within the as part of its function to assist and encourage better competence in the built environment sector



BUILDING SAFETY — ACT 2022

12-18 MONTHS CONTINUED

- The three 'Gateways' (Planning; prior to onsite work; prior to occupancy) will fully apply to ensure regulatory requirements for building safety are comprehensively checked to ensure compliance at each stage of building design and build with the later steps being stop/go halting any progression with build or occupancy until satisfied compliance is achieved
- Mandatory occurrence reporting of specified fire and structural safety incidents to the Building Safety Regulator
- Introduction of the Golden Thread of building safety information is the requirement to create, hold and maintain the specified information enacted
- Building inspectors and building control approval organisations will require mandatory registration
- In scope occupied high-rise residential buildings must register with the Building Safety Regulator
- Duty holders will be required to have clear accountability, and statutory responsibilities as buildings are designed, constructed and refurbished



BUILDING SAFETY — ACT 2022

12-18 MONTHS CONTINUED

- Duties commence on the accountable person to actively manage building safety risks and engage with residents in occupied in scope buildings
- Residents will become legally responsible for ensuring their own actions do not negatively impact on the safety of the building they live in
- The new regulator for construction products will become live with enhanced oversight and enforcement powers coupled with increased safety requirements on products, including a safety critical list for certain key items.

WHAT NEXT?

All parties likely to be affected by these changes should already be taking broad steps towards compliance and keeping watch as secondary legislation trickles in and duties are fully clarified.

Existing buildings should already be formulating resident engagement strategies and collating data for Golden Threads (most of which in theory should already exist due to Regulation 38 of the Building Regulations requiring handover of fire safety information from the build) and ensuring they have a clear management structure to ensure they can meet the ongoing risk management duties.

They should also ensure that any external organisations used in assisting with risk management, risk assessment, and particularly ongoing maintenance are truly competent in all aspects of their service offerings, looking for accreditation in all the fields they will be assisting with.

Finally, whilst most focus has understandably been on fire safety, the Act covers general building safety too, and structural hazards must not be overlooked. Over recent years, for example there have been a variety of near miss and injury incidents related to glazed elements of a building structure that would have come under the scope of the new legislation and its liabilities (both civil & criminal) had it been in force then.

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