

Building Safety Act – New build

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Background



- The Building Safety draft Bill, received Royal Assent on 28th April 2022, with an implementation date for some measures as late as 18 months – 2 years after royal assent in 2024 (Management of Building Safety Risks)
- Act is split into 6 parts with a large amount of secondary legislation and guidance still to be issued:
 - Part 1: Introduction
 - Part 2: The Regulator and its functions
 - Part 3: Building Act 1984
 - Part 4: Higher-risk buildings
 - Part 5: Other provisions about safety standards, etc
 - Part 6: General

*During the design and construction phases, a higher-risk building has at least 7 storeys or is at least 18 metres in height and either:

is a hospital or care home, or has at least 2 residential units.



The Gateway process



There are now three gateways at key stages in design and construction, which introduce new requirements during construction, that will apply to higher-risk buildings:

- Planning Gateway one – at the planning application stage (Implemented - from 1st August 2021)
- Gateway two – before building work starts (Implemented 1st October 2023)
- Gateway three – when building work is completed (Implemented 1st October 2023)

The gateway process for council new build schemes will be overseen by the Head of Capital Delivery.

- The Building Safety Regulator will oversee building work as the building control body for higher-risk buildings. It will work closely with local authorities and fire and rescue authorities, bringing in external technical experts as necessary, to make sure the right specialists and regulators are in place when making decisions on applications.



Gateway 1 - Planning



- Planning Gateway 1 has two key elements:
 - The requirement for the developer to submit a fire statement setting out fire safety considerations specific to the development
 - To establish the Health and Safety Executive as a statutory consultee for relevant planning applications

Since August 2021, the local planning authority has been required to consult the Health and Safety Executive on planning applications for High rise buildings.

*Fire statements must be submitted on a form published by the Secretary of State.



Gateway 2 – Building Control



Building work on new high rise building can only start after building control approval from Building Safety Regulator. There is a 12-week determination period, from receipt of an application.

Key documentation required, which is new to the regime, includes:

- a competence declaration
- construction control plan
- change control plan
- mandatory occurrence reporting plan
- building regulations compliance statement
- a fire and emergency file
- a partial completion strategy (where relevant)

Once approved, Building Safety Regulator will carry out inspections during construction, and will agree a bespoke inspection schedule with the applicant. This could involve site inspections, requesting information such change control log(s), or other evidence of building regulations compliance.

The Building Safety Regulator will be able to undertake tests or take samples of building materials by cutting into or laying open building work and will be able to stop work if necessary.



Gateway 3 – Completion



Once building work is complete, a completion certificate application can be submitted.

The application must contain sufficient information to show how the building conforms to the approved design.

This will comprise of:

- ‘as built’ plans and information;
- final versions of all accompanying documents that accompanied the initial application;
- any controlled changes and the change control log;
- information captured through construction;
- information captured through commissioning; and
- information captured through final functional inspections.

(All of this information will be stored as the golden thread)

Occupation is not allowed until Building Safety Regulator is satisfied and issues a completion certificate (This will be determined by the MDT within 8 weeks), and the building is subsequently registered.

The Building Safety Regulator will carry out final inspections of the building work and assess whether the completion certificate application meets the following requirements:



Indicative Costs



*Based on a high-rise property with 120 dwellings
°Based on Building Safety Impact assessment



New build schemes impacted



1. Albert Jacob House – Early in design
2. Ensign Centre – Early in design
3. Caxton Grove – Gateway 1 underway
4. Montefiore Centre – Early in design
5. Edward Mann Close– Gateway 1 approved
6. HAP (Harriot, Apsley & Pattison Houses) – 9 blocks – Currently being redesigned
7. Brunton- 1 block - Currently being redesigned



Enforcement



The new regime brings in changes that strengthen existing powers and introduces new enforcement tools that BSR will have at its disposal.

These powers will be available for building control authorities for all building work.

Offence	Scope of Power	Penalty	Reference
Providing false or misleading information to BSR	Criminal offence Triable as an either way offence	Unlimited fine 1 year imprisonment (magistrates) 2 years imprisonment (crown)	Section 24 BSA22
Contravention of building regulations	Criminal offence Triable as an either way offence No time limit	Unlimited fine Fine for each day the contravention continues (£200)	Section 35 BA84
	Compliance notice Must be served within 12 months	Unlimited fine 1 year imprisonment (upon summary conviction - magistrates)	Section 35B BA84
	Stop notice		Section 35C BA84
Failure to comply with compliance and stop notice	Criminal offence	2 years imprisonment (upon indictment - crown)	Section 35B & C BA84
Removal of offending work	Time limit extended to 10 years	Notice to remove contravening work Chargeable work	Section 36 BA84

Directors and managers can also be found liable for any of the criminal offences mentioned.

Compliance and stop notices can be served without the need to go to a magistrate's court in the first instance.

A breach of building regulations removes altogether the time limit for prosecutions under Section 35 of the Building Act, and will have an increased penalty, with a maximum penalty of an unlimited fine and up to two years in prison.

Compliance notices can be served against any breach of building regulations and require corrective action by a set date. Failure to comply will be a criminal offence.

Stop notices can be served against a breach of specified building regulations, such as a breach of a compliance notice and any breach of building regulations which is likely to cause 'serious harm'. A stop notice requires that all specified work is stopped until the contravention is rectified and failure to comply will be a criminal offence.



Further reading and information



- [PAS 8671-Framework for competence of individual Principal Designers – 2022](#)
- [PAS 8672-Framework for competence of individual Principal Contractors – 2022](#)
- The Three Gateways to Building Safety
- [Building Control: An overview of the new regime \(hse.gov.uk\)](#)
- [Building Safety Regulator charging scheme](#)
- [The Building Safety Bill: Impact Assessment](#)

