

Bullet point Building Safety Act 2022: what you need to know

This is a bullet point summary of what the main parts of the new Building Safety Act 2022 cover.

Part 2: The Building Safety Regulator

- Regulator's objective is to secure the safety of people in and around buildings and improve the standard of building, and with primary duty to facilitate building safety in higher-risk buildings.
- Any prescribed decision of the regulator is to be capable of review and then appeal to the FtT though the details will need Regulations to be made by the Secretary of State.

Part 3: new Building Control Regime under the Building Act 1984

- New building control regime for higher-risk buildings, those at least 18m in height or having at least 7 storeys.
- The Building Safety Regulator will be the building control authority for works to higher-risk buildings.
- New provisions are proposed to ensure that building safety is considered at each stage of design and construction, with a 'golden thread' of information about design and construction to ensure building safety risks are managed through a building's life.
- Regulation by the building safety regulator, and registration, of (local authority) building inspectors and new (private sector) building control approvers (replacing approved inspectors) with provisions for codes/rules of conduct to be published.

Part 4(I): Management of Safety in Higher Risk Buildings

- Higher risk buildings are to be registered with the building safety regulator able, amongst other things, to direct that a building safety certificate be displayed.
- Duties, enforceable including by the regulator, on 'accountable persons' and the 'principal accountable person', which will include landlords (with the legal estate in possession of common parts and the structure and exterior) of occupied higher risk buildings, to assess and manage building safety risks, with provision of information to the regulator and residents, and production of a residents' engagement strategy for participation in building safety decisions.

- New FtT jurisdiction to determine who the accountable persons are and who should be the principal accountable person and for which part/s of the building they are responsible.
- Duties on residents and owners in occupied higher risk buildings with the county court having powers to enforce contravention notices given by the accountable person.

Part 4(II): amendments to the Landlord and Tenant Acts 1985 and 1987

- Terms relating to building safety are to be implied into any lease of any dwelling in a higher risk building requiring the landlord to comply with building safety duties, and requiring tenants to comply with their duties and allow access.
- Implied term into any such lease allowing the costs of taking building safety measures (complying with the duties) to be payable as a service charge.
- Certain costs to be excluded from the service charge: costs incurred as a result of enforcement by the building safety regulator, legal costs in connection with special measures proceedings, costs incurred by reason of negligence, breach of contract or unlawful act.
- Further costs relating to building safety measures for exclusion to be the subject of regulations.
- Obligation to give building safety information in demands for rent for premises in a higher risk building.

Part 5: cladding and other costs

- The Part which deals with liabilities for costs of relevant defects (arising out of anything done or used in connection with relevant works (in the last 30 years or after that period to remedy a relevant defect) which causes a risk to safety from fire or building collapse), with liability intended to be cast upon developers first, then manufacturers, then freeholders, then leaseholders last.
- Applies to relevant buildings: containing at least two dwellings and at least 11m or 5 storeys high, but with an exclusion for leaseholder owned buildings.
- Applies to any qualifying lease of a dwelling: one for more than 21 years granted before 14 February 2022 where as at 14 February the dwelling was the tenant's only or principal home and the tenant did not own more than 2 other dwellings.

- No tenant of a qualifying lease will be liable to pay a service charge in respect of cladding remediation or relevant legal or professional services. Otherwise, service charges are excluded for costs of relevant measures relating to relevant defects for which the landlord or its developer associate is responsible, or where the landlord has a high group net worth or where the lease is of lower value, or otherwise charges limited by a £15,000 or £10,000 cap (London versus elsewhere) (with higher caps for high value property).
- New s20D of the Landlord and Tenant Act 1985 imposing on landlords an obligation to take reasonable steps to ascertain whether monies for remediation works can be obtained by grant or from a third party, or else remediation costs can be disallowed from service charges.

Part 5: other provisions

- The FtT is given jurisdiction to make remediation orders to compel landlords to remedy certain kinds of defects; and remediation contribution orders to require the landlord or a developer to contribute to the costs of remedy.
- Building Industry Schemes are proposed linking future development to conduct in relation to defects.
- The High Court is given a jurisdiction to make building liability orders against developers who have failed to meet a relevant liability under the Defective Premises Act 1972, or s38 of the Building Act 1984 as a result of a risk from fire spread or of structural collapse.
- New s2A in the Defective Premises Act 1972 extending the s1 duty to any person who in the course of a business takes on work in relation to any part of a relevant building, i.e. one consisting of or containing one or more dwellings.
- New s4B in the Limitation Act 1980 for claims under s1 and s2A of the Defective Premises Act 1972 and s38 of the Building Act 1984 of 15 years from the date on which the right of action accrued, with retrospective effect in relation to s1 for claims arising over the past 30 years, save that such a claim can be dismissed if it is necessary to do so to avoid breach of the defendant's rights under the Human Rights Act 1996.
- Proposed new homes ombudsman scheme.
- New build home warranties to provide cover for 15 years.

- Provisions for new regulations relating to the safety of construction products with new claims available for damages for defective or mis-sold construction products.

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