



## The Draft Building Safety Bill – A Summary Commentary (July 2021)

At Tetra Tech, we have been actively monitoring the progression of the Building Safety Bill since it was first published as a consultation document on 20 July 2020 last year. Implementation of the Bill will require a true commitment by all parties with a direct or indirect involvement in the building lifecycle process, to ensure they can demonstrate the required level of compliance with this new legislation.

The guidance to the Bill also references the need for cultural change and has engagement, collaboration and competence embedded in the Bill. The Bill is in the early stages of the parliamentary review process however, the Government confirmed in this year's Queen speech that it would be introduced in late 2021.

To help duty holders understand what the Bill means for them we have developed a summary commentary focusing on its main provisions. We know that duty holders with building safety responsibility (in the design, construction, occupation, redevelopment and repurposing) will need to carefully consider, plan and potentially recruit to achieve compliance with the new requirements including new duty holder roles and responsibilities. Whilst we know no one involved in a buildings' lifecycle would contest the primary need for inherently safe buildings (and especially the higher risk and high-rise residential buildings), it needs to be undertaken carefully with an appropriate level of informed diligence which is where we can help.

**This summary of the Building Safety Bill as it has been placed before Parliament is authored by Howard Hall, Head of Safety Management at Tetra Tech in the UK with inputs from the wider Asset Management**

## Building Safety Bill Overview

The draft Building Safety bill was reviewed by MP's on the Housing, Communities and Local Government Select Committee (report published 24 November 2020), with subsequent revisions, before its first reading in parliament on 5 July 2021. The Explanatory Notes that accompany the Bill have also been produced and provide greater commentary and examples to illustrate the purpose and level of demonstrable compliance that the Bill will require from duty holders. This can be accessed via government web sites (<https://bills.parliament.uk/bills/3021/news>).

The Building Safety Bill will introduce a new building safety regime, overseen by the new Building Safety Regulator (the Health and Safety Executive), to reinforce the Government's commitment to a fundamental reform of the current building safety system. The Bill gives effect to policies set out in the 'Building a Safer Future' consultation response, published in April 2020. This document detailed how the Government intended to deliver the principles and recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, published in May 2018.

The Independent Review and Governments consultation document followed the Grenfell Tower disaster that occurred on 14 June 2017; where a fire broke out in the 24-storey Grenfell Tower block of flats in North Kensington, West London, resulting in 72 deaths, including those of two victims who later died in hospital. More than 70 others were injured whilst 223 people escaped. It was the deadliest structural fire in the United Kingdom since the 1988 Piper Alpha disaster and the worst UK residential fire since the Second World War.

With reference to the Explanatory Notes accompanying the Bill published 5th July 2021.

1. The Building Safety Bill takes forward the Government's commitment to fundamental reform of the building safety system. The Bill gives effect to policies set out in the Building a Safer Future consultation response, published in April 2020. This detailed how the Government intends to deliver the principles and recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, published in May 2018.
2. The Bill acts as the vehicle for wider improvements including changes to the Architects Act, the Housing Act 1996, and provisions to establish a National Regulator for Construction Products and a New Homes Ombudsman. It takes forward further changes to the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order or FSO), building on the Fire Safety Act 2021.
3. The objectives of the Bill are to learn the lessons from the Grenfell Tower fire and to remedy the systemic issues identified by Dame Judith Hackitt by strengthening the whole regulatory system for building safety.
4. The objectives will be achieved by ensuring there is greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety. This involves:
  - Establishing a new Building Safety Regulator in England to oversee a new, more stringent regime for higher-risk buildings and drive improvements in building safety and performance standards in all buildings
  - Ensuring residents have a stronger voice in the system, and establishing additional protections for leaseholders in relation to financing remediation works
  - Increasing access to redress through the Defective Premises Act 1972
  - Driving industry culture change and incentivising compliance
  - Strengthening the Fire Safety Order
  - Providing a stronger and clearer framework for national oversight of construction products.
5. **Part 1** provides an overview of the Bill. The Bill contains six parts and nine schedules addressing a range of issues relating to building safety and standards. The Bill makes a number of changes to existing legislation, most notably the Building Act 1984.
6. **Part 2** establishes a new Building Safety Regulator within the Health and Safety Executive.
7. **Part 3** deals with amendments to the Building Act 1984 as it applies to England and Wales and defines the scope and provisions for the regime during the design and construction phase for higher-risk buildings. It also provides for the registration of building inspectors and building control approvers to better regulate and improve competence levels in the building control sector.
8. **Part 4** is concerned with higher-risk residential buildings (HRRB's) in England when they are occupied and defines the scope of the regime for higher-risk buildings in occupation. It defines and places duties on the Accountable Person (the duty holder in occupation) in relation to building safety risks in their building.
9. **Part 5** details other provisions, including provisions relating to service charges and redress, and changes to the Fire Safety Order.
  - It includes provisions to require a New Homes Ombudsman scheme to be established, and powers to make provision for regulation of construction products for the UK.
  - It allows disciplinary orders made against architects by the Professional Conduct Committee of the Architects Registration Board to be listed alongside an architect's entry in the Register of Architects.
  - It removes the 'democratic filter' which requires social housing residents wishing to escalate a complaint to the Housing Ombudsman to do this via a 'designated person' or wait eight weeks.
10. **Part 6** contains the technical clauses related to the Bill, including Crown application and provision for liability of officers

## The New Building Safety Regulator

The new regime will regulate building safety risks in 'higher-risk buildings' in England (currently this is stated to be buildings at least 18 metres in height or having at least 7 storeys and containing at least two residential units).

The Building Safety Regulator's objectives and regulatory principles are detailed as:

- Securing the safety of people in or about buildings in relation to risks arising from building
- Improving the standard of buildings.

and

The Regulator must provide such 'assistance and encouragement' to relevant persons as it considers appropriate to securing the safety of people in or about higher-risk buildings (for identified building safety risks).

For this purpose, "relevant persons" means:

- Residents of higher-risk buildings
- Persons who are Accountable Persons or Building Safety Managers, and
- Persons upon whom duties are imposed by virtue of the Building Act 1984 (duty holders)

It will operate a new, more stringent safety regime for high-risk buildings (including high rise residential buildings).

The draft Bill's new rules will apply when buildings are designed, constructed and then later occupied. At each of these 3 stages, clear responsibility for managing the potential risks are outlined and a 'golden thread' of vital information about the building must be gathered over its lifetime.

When residents move into a building that falls under the new set of rules:

the Building Safety Regulator

- A Building Assurance Certificate will need to be applied for
- The Accountable Person will need to conduct and maintain a building 'safety case risk assessment'
- A Building Safety Manager will need to be appointed to oversee the building day to day

Building inspectors will be responsible for signing buildings off as safe for people to live in i.e. confirming that the building complies with current Building Regulations

## Duty Holder Roles & Industry competence

The Bill allows for a new duty holder regime to be incorporated across the lifecycle of higher-risk buildings. This is based on the principle that the person or entity that creates a building safety risk should, as far as possible, be responsible for managing that risk.

When buildings are designed, constructed or refurbished, those involved in the commissioning, design, construction or refurbishment process will have formal responsibilities for compliance with building regulations. These provisions will apply to all work to which Building Regulations apply, and these duty holders will include those appointed under the Construction (Design and Management) Regulations 2015 (CDM 2015).

The main duty holder roles under CDM 2015 are:

- **Client** - Any person or organisation for whom a construction project is carried out.
- **Principal Designer** - Appointed by the Client under CDM 2015. Role is to plan, manage, monitor and coordinate the pre-construction phase, when most design work is carried out. The Principal Designer is in control of the pre-construction phase.
- **Principal Contractor** - Appointed by the Client under CDM 2015. Role is to plan, manage, monitor and co-ordinate the construction phase. The Principal Contractor is in control of the construction phase.
- **Designer** - Carries on a trade, business or other undertaking in connection with which they prepare or modify a design or instruct any person under their control to prepare or modify a design.
- **Contractor** - Manages or controls construction work (e.g. building, altering, maintaining or demolishing a building or structure). Anyone who manages this work, directly employs or engages construction workers.

The Bill provides powers to impose competence requirements on the Principal Designer and Principal Contractor, and other persons. It also has powers to impose duties on persons making appointments in relation to building regulations to ensure that those they appoint meet the competence requirements. This is to ensure everyone doing design or building work is competent to carry out that work in line with building regulations.

For higher-risk buildings, the Bill provides powers to prescribe documents to be supplied with building control applications, which the Government proposes to use to require a signed declaration from the Client that they have assessed and are content with the competence of the Principal Designer and Principal Contractor.

# New Gateways

The amendments to the Building Act 1984 in this Bill, will allow for the creation of a new Gateway regime. This will ensure that building safety risks are considered at each stage of a new higher-risk building's design and construction.

The new Building Safety Regulator will oversee the building work and ensure appropriate measures are being implemented to manage compliance. Building work carried out in existing higher-risk buildings will also be overseen by the new Building Safety Regulator. It will either involve building control applications with plans and prescribed documents proportionate to the proposed refurbishment being submitted to the Building Safety Regulator, or by work being carried out under the Competent Person Scheme and being notified to the Building Safety Regulator. This is however separate to the Gateways process.

## Gateway One - Planning

This will introduce new requirements that will ensure fire safety matters relating to land use planning are incorporated at the planning stage for schemes involving a high-rise residential building. It will

- Involve the Health and Safety Executive (HSE) becoming a statutory consultee before permission is granted for development (including those involving a high-rise residential building)
- Require relevant applications for planning permission to include a fire statement ensuring that applicants have considered fire safety issues relating to land use planning matters (for instance layout and access)
- Help inform effective decision-making by local planning authorities that properly reflect and respond to the needs of the local community.

## Gateway Two

Gateway two occurs prior to construction work beginning on a higher-risk building. The Regulator will need to be provided with the full design intention (replacing the current building control 'deposit of plans' stage).

Gateway two provides a 'hard stop' where construction cannot begin until the Regulator is satisfied that the duty holder's design meets the functional requirements of the building regulations and does not contain any unrealistic safety management expectations.

Duty holders will be required to submit key information to the Regulator as part of the building control application, to demonstrate how their proposals will comply with the requirements of building regulations. Design decisions in relation to fire and structural safety must be well considered and justified, to ensure they will work effectively for the building in use.

## Gateway Three

Gateway three is equivalent to the current completion/final certificate phase, where building work on a higher-risk building has finished and the Regulator assesses whether the work has been carried out in accordance with the building regulations.

At this point all "golden thread" documents and information must be handed over to the new building owner. Duty holders will be required to submit a building control application to the Regulator with prescribed documents and information on the final, as-built building.

Again, Gateway three is a 'hard stop' where the Regulator will assess the application against applicable requirements of the building regulations, undertake final inspections of the completed building work, and issue a completion certificate on approval. Only once Gateway three has been passed can the new building be registered with the Regulator. The registration process is distinct to the Gateway three process, and both processes must be completed before occupation of the building is allowed to commence.

# Golden Thread

The Bill requires the creation and maintenance of a golden thread of information. The intention is to ensure that the right people have the right information at the right time to ensure buildings are safe, and building safety risks are managed throughout the building's lifecycle.

This information will ensure that the original design intent and any subsequent changes to the building are captured, preserved and used to support safety improvements.

For new builds, the duty holders must start to collect this information during the design and construction process. Once construction is complete, the information must be handed over to the new building owner. This information will be managed by the Accountable Person during occupation.

## Occurrence reporting

Mandatory occurrence reporting (MOR) will be required for higher-risk buildings. All structural and fire safety occurrences which could cause a significant risk to life will need to be reported to the Regulator.

Duty holders in design and construction will be required to establish a framework and process for reporting mandatory occurrences. This must include enabling workers on-site to report mandatory occurrences. Duty holders will also be required to report mandatory occurrences to the Building Safety Regulator.

The Accountable Person is the duty holder during occupation. They may be an individual, partnership or corporate body and there may be more than one Accountable Person for a building. Where there are multiple Accountable Persons in a building, one of them will be identified as the lead Accountable Person, known as the Principal Accountable Person.

## Higher-risk buildings in occupation

The Accountable Person will have a duty to register any building that is in scope of the new regime with the Regulator before it becomes occupied. Existing occupied buildings will have to be registered within a fixed transition period following the new regime coming into force. Once the Building Assessment Certificate has been issued it must be displayed in a prominent position in the building.

## Building Safety Manager

The Accountable Person will be required to appoint a Building Safety Manager, unless they have the organisational capability to deliver the role in-house or individual competence that has been confirmed to the Regulator.

The Accountable Person will need to ensure that the Building Safety Manager has the necessary skills, knowledge, experience and behaviours if they are an individual, and organisational capability where they are not, to carry out the functions assigned. The appointment of a Building Safety Manager is part of the Regulators Building Assessment Certificate review.

The Building Safety Manager can be an individual or organisation whose principal role is to support the Accountable Person in complying with the Bill's obligations. Where an organisation is appointed, a nominated individual with the competence to oversee the overall delivery of the role must be named.

## Building Safety Case Reports

The Bill creates an ongoing duty on the Accountable Person to assess the building safety risks relating to their building, to take all reasonable steps to prevent a building safety risk materialising, and to limit the severity of any incident resulting from such a risk. Building Safety risks are defined in the Bill as risks to the safety of persons in or about buildings resulting from the occurrence of fire spread, structural failure and any other risk that may be prescribed by regulations in the future.

The Accountable Person will need to demonstrate how they are meeting this ongoing duty via their safety case and Safety Case Report, which they will be required to keep up to date. The safety case comprises the full body of evidence relating to the assessments and ongoing management of building safety risks.

***Note:** Guidance issued with the draft Building Safety Bill made reference to Safety Cases utilising suitable electronic platform (stating BIM Level 2 or CAD equivalent) that does not appear to have been retained within this revised Bill. For the larger / complex building and/or the higher risk buildings it may be prudent to consider incorporating BIM level 2 / 3D modelling or equivalent to allow easy demonstrable risk annotation during the design phase and relevant risk mitigation strategies for any retained or emerging risks that are identified post Construction handover (i.e. Gateway 3) in the Operational phase of the building.*

The Accountable Person will be required to submit the building's Safety Case Report to the Building Safety Regulator as part of the process for issuing a Building Assessment Certificate.

The report should summarise all the key components of the wider safety case, providing a justification for the safety measures in place. It will include references to supporting documentation and safety information, including all the evidence that supports how these building safety risks are being assessed and managed, contained within the golden thread of information. A key part of the report will be the overview of the Accountable Person's safety management system (SMS), which explains the policies, procedures and processes they have in place across the organisation to deliver continuous management of building safety risks. The Safety Case Report should set out the building safety risks in the building and how these are being managed on an on-going basis, to ensure resident safety.

If the Regulator is of the opinion that the Safety Case Report does not demonstrate that the ongoing duty is met, they will be able to issue a compliance notice, setting out specific areas of concern and, where appropriate, actions the Accountable Person must take in order to ensure the duty is met. Continued failure to comply with the notice means there is continued breach of the statutory obligation and criminal and/or Special Measures proceedings may ensue.

# Strengthened Fire Safety Order

To support the whole-system approach to the management of building and fire safety in higher-risk buildings in occupation, the Bill includes provisions to strengthen the Fire Safety Order in order to support greater compliance and effective enforcement, which will better protect relevant persons' safety in regulated premises.

The amendments will require that:

- The Responsible Person must record their fire risk assessment
- The Responsible Person must not appoint a person to assist them with making or reviewing a fire risk assessment unless that person is competent
- The Responsible Person must record their fire safety arrangements
- For buildings consisting of two or more sets of domestic premises, the Responsible Person(s) must provide specific fire safety information to residents about relevant fire safety matters, and must keep records of the relevant fire safety matters
- The Responsible Person must take reasonable steps to identify themselves to all other Responsible Persons in the same premises, inform and record their names and United Kingdom address and the part of the premises they consider themselves to be Responsible Person for
- Departing Responsible Persons must provide specific relevant fire safety information they hold to incoming Responsible Persons for premises or parts of premises for which they are responsible, keeping records of the fire safety information
- For higher-risk buildings in England, the Responsible Person must identify and co-operate with Accountable Persons in the same premises to enable them to carry out their duties this Bill
- Increased financial penalties of unlimited fines apply for the criminal offences of impersonating an inspector, failing to comply with any requirements imposed by an inspector, and failing to comply with requirements relating to the installation of luminous tube signs.
- Article 50 of the FSO (recently amended by the Fire Safety Act 2021) which relates to the provision of guidance for Responsible Persons, be amended to expressly provide that the Court may take compliance or non-compliance with such guidance into account when considering offences of breach of the Order.

# About Tetra Tech

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