



LABC

Local Authorities and Building Safety

**Briefing on the draft Bill
September 2020**



Grenfell

Worcester Park Flats

Lakeland House

Bolton Cube

Barking Flats

Crewe Care Home



MAKE SURE YOUR AUTHORITY IS READY TO BUILD A SAFER FUTURE

Dear Colleague,

I want to explain why changes happening to building safety will matter to many senior managers and elected members of local government. Following the Grenfell tragedy a full review of building safety was ordered. The recommendations represent the greatest changes in building safety for 40 years since the Building Act. They will affect all local authorities in England. And it is **a mistake to think this is only about tall residential blocks like Grenfell Tower**, the impacts are far wider reaching.

In July the draft Building Safety Bill – the main enabling legislation for radical changes in the building control system – was published. The impact of these changes touch on housing management, environmental health, fire and rescue services, asset management as well as building control.

In normal times, introducing such a major change to local authority operations would be challenging. It's especially challenging now given the unrelenting financial impact of COVID-19 (estimated by the LGA to have created a £7.4 billion hole in budgets); but it's a challenge we must meet. **Building safety is non-negotiable. People must know they are safe in their own homes.**

This briefing is intended as a senior management guide to these major changes. There are well over a thousand pages of new and amended legislation surrounding building and fire safety and much more to come in the following secondary legislation. So, this document explains the most important impacts on your local authority. It will help you to understand what must happen, the timings and how the new system and regulations will work.

LABC will soon run a series of webinars designed exclusively for local government. Plus we will issue further detailed information as the legislation and statutory instruments develop. Please register today - details are at the end of this document.

Right now, building control needs to be under your spotlight even though we're aware there are massive issues happening on other fronts. All local authorities must prepare for these changes.

Lorna Stimpson
Chief Executive, LABC

THE DRAFT BUILDING SAFETY BILL

In July 2020 the government published its draft Building Safety Bill (along with other documents). The proposals include substantial changes to the Building Act required to make the building regulation system safer following the Grenfell tragedy.

When enacted these changes will revolutionise the whole building control system and will place significant new duties and risks on all local authorities in England.

The draft Bill sets up a Building Safety Regulator. Three of its main functions will be:

1. to oversee the safety and standards of **all buildings**
2. to **directly regulate the safety of higher-risk buildings** during construction and after occupation
3. to **improve the competence** of all those involved in the construction and management of higher-risk buildings.

The Regulator will be able to request local authorities and fire and rescue authorities support its work by providing staff or information and if necessary it will have the power to direct them to do so. Importantly local authorities will be reimbursed for the costs of this support.

The Bill provides the 'enabling' legislation to set up the new Regulator.



- **400** – the average number of new higher-risk buildings constructed each year
- **12,500** – the estimated number of existing higher-risk buildings to be included on the Regulator's register
- **1,000,000+** people living in higher-risk buildings in the immediate 'scope'

LEGISLATION KEY POINTS

- 1.** The HSE as the new Building Safety Regulator (BSR) will have oversight of the performance and standards of all building control bodies (public and private sector) and professionals, not just for higher-risk buildings.
- 2.** Local authorities will be exposed to greater responsibilities and risks and key individuals will be deemed dutyholders and will be personally culpable under criminal law, risking fines or imprisonment.
- 3.** Local authority building control teams will take on additional work and will have stronger powers and sanctions.
- 4.** Building control will have to demonstrate it has the capacity, competence and resilience to work on all buildings and individual building control surveyors will have to be registered to practise.
- 5.** Initially higher-risk buildings will include new and existing residential buildings over six storeys or 18m, however, we expect the scope to quickly expand to include a wider range of buildings. The draft Bill gives the Secretary of State the power to define 'higher-risk buildings' – those which will be regulated by the new regime and included on a register.
- 6.** Local authority building control teams will need to work within a recognised and independently audited Quality Management System acceptable to the Regulator.
- 7.** The Building Safety Regulator will act as the building control body on higher-risk buildings but will delegate technical compliance work to local authority building control teams. This includes new buildings under construction and existing buildings during refurbishment.
- 8.** The Building Act and Fire Safety Regulations are undergoing significant amendments to increase technical standards in response to Dame Judith Hackitt's review and the Grenfell Inquiry Phase 1 report. These will impact significantly on building control teams and others in local government.
- 9.** The Fire Safety Bill amends the Regulatory Reform (Fire Safety) Order 2005 to place a legal requirement on building owners to inspect cladding, balconies, windows and fire doors in blocks of flats. All existing residential buildings over six storeys or 11 metres will be covered by the new fire safety regime along with any existing residential blocks reaching this height by the addition of extra storeys.



The homes of millions of people will come under new legislation

RISK

For the first time, local authorities and individual named senior managers will be criminally responsible and legally liable for the safety of higher risk buildings. Failures by local authorities could mean progressive fines or imprisonment. Poor performance by a local authority building control team will be referred to the Secretary of State for 'special measures' type interventions.

The MHCLG impact assessment estimates that there are at least 12,500 existing in-scope buildings housing almost 1 million people. All of these buildings will need to be certificated by the Building Safety Regulator; Local Authority Building Control will have a significant role in supporting the BSR in certificating these buildings.

WHO WILL BE LIABLE?

Building owners, those commissioning work and managers of higher risk buildings – including local authorities – will become dutyholders with legal responsibility for keeping residents safe and meeting new defined standards and processes.

It is worth noting that major changes to the Building Act proposed in the draft Bill will mean where an offence is committed by a 'body corporate' **"...any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity... that person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly."**

This means that both directors of companies and senior managers in certain situations will be personally liable for offences under the Act. This will mean that many elected members, local authority managers plus those working for direct or arms-length housing organisations will be expected to understand and have the competence to handle their responsibilities and understand their liabilities.

A root and branch review of all legislation.



SANCTIONS AND PENALTIES

The Building Safety Regulator will be able to issue a compliance notice on dutyholders where they contravene the regulations and will be able to prosecute if not rectified. This also includes other professionals responsible for protecting the fire strategy of a building.

If tried by Magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months' imprisonment. If tried in the Crown Court, the maximum penalty will be an unlimited fine and/or two years' imprisonment.



New criminal sanctions for people commissioning, designing, specifying and managing construction.

RESOURCING, COMPETENCE AND RESILIENCE

Under the new regime, local authority building control teams will have to provide support to the Building Safety Regulator in the regulation of higher risk buildings through construction, refurbishment and occupation. However, all building control teams and professionals in both public and private sector building control, covering work across the whole built environment, will have to demonstrate ongoing competence, performance and standards. Building control teams in the public and private sector will have to regularly report on performance and operating standards and individual surveyors will need to regularly prove their competence via a third party accreditation scheme and will have to be registered with the Regulator in order to practise.

Experience won't be enough – competence has to be current and validated.





Financial formula:
Rectification = £millions
Prevention = £thousands

FINANCIAL CONSEQUENCES

All local authority building control teams will require investment in:

- Additional professional surveyors.
- Recruitment of trainees.
- Formal learning and structured CPD to ensure professional staff pass their competence and registration exams and are able to maintain that registration.
- ISO quality management systems and independent external audits.
- Back-office processes and IT links with the BSR, fire and rescue authorities and LABC to supply mandatory application information and inspection records.

The most experienced higher-risk building control surveyors will become sought after within other professions and their jobs and status will need upward re-evaluation and pay regrading or they will likely be lost to the private sector. Local authorities need to fully understand the responsibilities placed on them by the Regulator and the need to retain such staff.

In future, these financial burdens will be offset by chargeable work which will be at rates that will reflect the professional status and competence of the surveyors and the service they provide to the Regulator. As the membership organisation for public service building control LABC will continue to provide free or subsidised access to learning, qualifications and competence validations, national standards, an ISO quality management system and UKAS accredited audits.

For housing authorities there will be direct cost in bringing their buildings up to standard. MHCLG estimate the average cost of recladding a higher-risk block (18-30 metres) at £1.8 million and £540,000 to replace fire doors.

Job evaluation and grades need to reflect the need for ongoing validation of professional competence and registration with the Building Safety Regulator.





INTERACTION BETWEEN REGULATORS

The Joint Regulators' Group (JRG) brought together in 2018 by the Ministry of Housing, Communities and Local Government, is currently piloting the processes by which planners, building control, environmental health officers, health and safety professionals and fire authorities will work together to fulfil, document and record how they work together on higher risk buildings.

The JRG is coming together alongside senior MHLCG & HSE officials to deliver a series of information events aimed directly at those most impacted by the changes.

The first event will include: Dame Judith Hackitt, the Minister, leading Officials from the HSE, MHLCG and representatives from the National Fire Chiefs Council and the LGA. This is an invitation only event for local authority Chief Executives and senior managers, council leaders and fire and rescue service chiefs.

Separate additional events are being planned for late October and November for local authority building control and planning practitioners, fire service personnel and dutyholders including housing associations, principal designers, principal contractors and building safety managers.

To apply for your place please register on the LABC website (details next page).

TIMING

It is likely that all legislation will be passed in 2021 with the new Building Safety Regulator established during 2022. So, with only a short transition period, the new Building Safety System could be implemented and fully operational early in 2023.



Local authorities only have 18 months to prepare.

CREATE YOUR PLAN NOW

Actions:

1. Click on www.labc.co.uk/building-safety to find all published documents and legislation.
2. [Register for updates](#) including free webinars and further summaries of new statutory instruments.
3. Also register for management guides on changes to: surveying practises; standards and performance; admin and back office; finances; recruitment; resourcing and resilience.

Or email: buildingsafety@labc.co.uk