

In light of Grenfell, changes are coming.

February 2022

The Grenfell Tower tragedy raised many doubts about whether existing residential buildings are safe. As a direct consequence of the disaster, a Bill proposing a new Building Safety Act (**Act**) is now making its way through Parliament to secure Royal Assent by March 2023.

The Bill has severe implications and financial consequences across the UK construction and real estate sectors on new-build and existing residential buildings (including hospitals and care homes) over 18 metres or seven storeys high.

Who will be responsible for building safety?

Introducing a new Building Safety Regulator (BSR) will require an "Accountable Person" to present a Safety Case Report before the BSR issues a Building Assessment certificate. The Accountable Person (including but not be limited to Landlords and Developers) will be responsible for assessing building safety risks continually and will have several statutory duties under the Act.

Everyone involved in the early stages, from designing to managing tall buildings, will all have a big part to play in ensuring compliance with these new statutory requirements. To this end, the Bill proposes criminal sanctions for companies and directors who are non-compliant.

The three golden gateways

The Bill proposes three gateways to the design and building process to ensure a "Golden Thread" of information is maintained and establish a thorough accountability trail.

- The first stage is planning.
- The second stage is before construction commences; and
- The third stage is at the practical completion.

Sign off will be required of each stage by BSR, who will also have the legal authority to stop the design or construction process and prevent occupation should building safety requirements not be met.

Who will pay for this?

The Act will introduce an additional category of expenditure for building maintenance which will be recoverable from tenants by way of a Building Safety Charge covering the reasonable costs of the Building Safety Manager and other costs Landlords incur meeting their statutory responsibilities. In exchange, tenants can pursue claims against the developer for up to 15 years following construction on the subsequent discovery of defects. It is also worth noting the proposal contained in the Bill, that the Building Safety Charge along with rent and applicable service charges will become payable SUBJECT TO fulfilment by Landlords of their obligations set out in the Act. It remains to be seen whether this additional charge will be recoverable through the service charge mechanisms in leases and may prove to be a fertile area for litigation in the future.

So, what does this mean?

With this new legislation at its early stages and subject to amendments in Parliament, it is evident significant changes are coming.

There will be wide-ranging changes and implications for property owners, developers, occupiers and all involved in the stages leading up to and including the construction of a building.

There is the possibility that tenants of new builds and pre-existing buildings may sue their Landlords for building defects because those defects make the property unsafe. Furthermore, on discovering any defects, the new Act will allow tenants to pursue claims retrospectively against the developer for up to 15 years following construction.

The Golden Thread will also bring with it implied obligations within leases. For example, in leases where provision isn't made, Landlords will benefit from an implied right of entry within 48 hours to inspect a property on building safety matters. Tenants may also find themselves with an implied obligation to ensure that their flats are safe from fire.

A developer levy is proposed (overseen by a New Homes Ombudsman) and supported by a new Code of Practice to meet some of the remediation costs.

The legislation also proposes that tenants will only meet any remediation costs once the accountable person has exhausted every other avenue for recovery, i.e. claiming those costs back from developers and constructors.

While the Bill will require more Parliamentary time to thrash out the details, it will inevitably make buildings and tenants safer. The downside for tenants is that they will almost certainly have to pay higher service charges. It will also make designing, building and maintaining multi-occupier buildings more expensive, which might filter down to tenants when buying new-build flats.

Together with the impact of the COVID pandemic, supply chain issues, the increased cost of materials and shortage of staff, compliance with the new Act will inevitably make designing, building and even maintaining buildings more challenging and expensive. However, it is also essential to recognise the principal driver of these changes is to provide tenants with additional assurances and protections they lacked before the Grenfell tragedy.

[If you require any information on the Act or guidance on ensuring compliance, speak to litigation partner Stuart Jacobs.](#)

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