Building Safety Act 2022 – What’s Changed?

Article By

Kevin Greene
Ruth Y. Chang

K&L Gates
Construction Law Blog

Related Practices & Jurisdictions

- Administrative & Regulatory
- Construction Law
- Global
- Consumer Protection
- United Kingdom

Tuesday, May 17, 2022

Background

The Building Safety Bill received Royal Assent on 28 April 2022, and has now completed all the parliamentary stages in both Houses to become an Act of Parliament – i.e. the Building Safety Act 2022 (the “Act”).

According to the Government, many of the measures included within the 262-page Bill are likely to take between a year and 18 months to introduce, as the Act will require the formation of secondary legislation to support actual implementation of the measures.

Who does the Act apply to?
The provisions set out in the Act will apply to building owners and the built environment industry. This includes those who commission building work and who participate in the design and construction process, including clients, designers, consultants, and contractors alike. Given the wide and far-reaching implications of the Act, potentially any parties engaged in the construction process of a building will likely be affected by the Act in one way or the other.

Whilst the Act will cover all buildings (and not just high-rise residential), measures within the Act have a special focus on higher-risk buildings which are defined as buildings that are at least 18m in height or have at least 7 stories and have at least two residential units. Care homes and hospitals meeting the same height threshold during design and construction will also be classified as a “higher-risk building.”

**Introduction of a Building Safety Regulator**

Under the Act, a new Building Safety Regulator will be responsible to carry out the following three main functions:

- Overseeing safety and standards and performance of all buildings;
- Helping and encouraging the built environment industry and building control professionals to improve their competence; and
- Leading the implementation of new regulatory framework for high-rise buildings.

The Building Safety Regulator is to be established by the Health and Safety Executive ("HSE").

**Introduction of concepts of “Gateways”**

Three new concepts of “Gateways” are developed and these must be satisfied before the occupation of a building can take place.

**Gateway one – Planning Gateway**

Planning Gateway one will:

- Involve the HSE in becoming a statutory consultee before permission is granted for development that involves or is likely to involve a high-rise residential building in certain circumstances.
- Require relevant applications for planning permission to include a fire statement to ensure applicants have considered fire safety issues as they relate to land use planning matters (for example, access and layout issues).
- Help inform effective decision-making by local planning.

**Gateway two – Pre-construction stage**

Gateway two requires the Building Safety Regulator to be satisfied that a building’s design meets the functional requirements of the Building Regulations. Construction
duty holders will need to submit essential information to the Building Safety Regulator to demonstrate how the building, once built, will fulfil all the requirements of Building Regulations.

**Gateway three - post completion**

**Gateway three** takes place when construction of the building is completed, and the building control body determines whether the work has been carried out in accordance with the Building Regulations. Documents and information on the final, as-built building must be submitted to the Building Safety Regulator who will then issue a completion certificate, if and when the specified requirements are being fulfilled.

All the gateways are put in place to create ‘golden thread’ of safety information required for a building, ensuring the appropriate information is available to appropriate personnel at all times.

**Introduction of New Home Warranties**

All developers will be required to provide a minimum of 15-year warranty for all new build homes.

**Introduction of New Homes Ombudsman Scheme**

The main proposals in the Act are to introduce a New Homes Ombudsman to serve as a system of redress and develop a code of practice with developers to set standards on sales, marketing, and the standard and quality of workmanship. All developers of new homes will be required to join the scheme.

**Limitation period issues under the Defective Premises Act 1972 (“DPA”)**

One of the most notable focuses of the Act relates to the limitation periods for claims brought under the DPA. The current limitation period for a claim under s1 of the DPA is 6 years from the date of practical completion of the relevant works. The Act extends the limitation period to 15 years prospectively for claims under s1 and s2A (i.e. for claims that accrue after the Act takes effect) and up to 30 years retroactively for claims under s1 only (for claims that accrued before the Act takes effect).

The provisions to give effect to the changes concerning limitation period (as detailed above) are intended to come into force as soon as 2 months after Royal Assent.

**Fire Safety remediation**

The Act made clear that historic remediation obligations now rest primarily with landlords and developers, and not leaseholders.
Under the Act, housebuilders are firmly held liable for paying for any cladding-related remediation works, and that the Government can prevent any house builder from building homes “for any purpose” connected with “securing the safety of people or improving the standard of buildings”. Under a scheme named “Building Safety Pledge”, under which 53 of the largest housebuilders in the UK are invited to sign up to this, the housebuilders are required to rectify any “life-critical fire safety defects” on all buildings over 11m constructed by all these developers in the last 30 years.

Currently, the Act has also in place a waterfall process with regards to fixing non-cladding defects, which will see leaseholders only pay towards costs if the developers cannot be found or freeholders are unable to pay. These are, so far, capped at £15,000 for those in London and £10,000 for those outside of the capital.

**Quality of construction products**

Under the Act a construction products regulator will also have powers to remove any dangerous construction products from the market.

**What next?**

A recent survey by Construction Management found that only 23% of construction professionals think that they and their organizations are ready for the Act.

Given this Act is representing one of the biggest overhauls in building safety regulations in nearly 40 years, construction industry stakeholders will need to come together, and understand one another’s perspectives and viewpoints, before each and every stakeholder will be readily available to cope with any of the challenges that may arise in complying with the Act.

Copyright 2022 K & L Gates

National Law Review, Volume XII, Number 137