



Building Safety Bill

Summary of the draft Bill



AUGUST 2020

Table of Contents	Table of Contents.....	1
	Introduction.....	2
	The Building Safety Regulator.....	3
	New regulatory regime for 'Higher-Risk Buildings' [HRBs].....	5
	Building Control and Building Regulations.....	6
	The Accountable Person [AP].....	9
	Duties of the Accountable Person.....	10
	The Building Safety Manager [BSM].....	12
	Liability of Officers of body corporate, etc.....	16
	Assessment of building safety risks.....	17
	Steps to prevent a major incident.....	18
	Safety case report.....	19
	Safety case (the Golden Thread information).....	20
	Provision of information, etc. to the regulator, residents and other persons.....	21
	Residents' engagement strategy.....	22
	Requests for further information.....	23
	Complaints procedures.....	24
	Duties on residents.....	25
	Contravention Notices.....	26
	Access to dwellings, etc.....	27
	Implied terms.....	28
	Building safety charges.....	30
	Order appointing special measures manager.....	36
	Building insurance.....	37
	Offences.....	38

Introduction

The Government published a draft Building Safety Bill on the 20th July 2020.

At the heart of the proposals, to be legislated for in the Bill, is a more stringent regulatory regime for “higher-risk residential buildings”.

Many aspects of the regime will be taken forward through secondary legislation including requirements that will apply to all construction work that falls within the requirements of the building regulations.

The Bill’s provisions will extend and apply in the main to England only.

The Building Safety Regulator

Part 2 of the Bill establishes the new Building Safety Regulator [BSR] within the Health and Safety Executive [HSE] and sets out its objectives and functions.

Objectives

The objectives of the BSR are to:

- secure the safety of people in or about buildings in relation to risks arising from buildings, and
- improving the standard of buildings.

To achieve their objectives, the BSR:

- will:
 - be responsible for all regulatory decisions under the new regime during the design, construction, occupation and refurbishment of Higher-Risk Buildings;
 - work closely with and take advice from other regulators such as local authority building control teams and fire and rescue services and relevant experts in making key decisions throughout the lifecycle of a building;
 - have powers to bring together teams including the regulators listed above to assist it in making regulatory decisions.
- must:
 - provide assistance and encouragement to **relevant persons** so that they secure the safety of people in or about Higher-Risk Buildings by managing the building safety risks Higher-Risk Buildings;
 - keep safety and standards of buildings under review; and
 - facilitate improvement in competence of industry and building inspectors.

“**Relevant persons**” are defined as:

- residents of Higher-Risk Buildings,
- persons who have duties in relation to Building Regulation compliance, and
- Accountable Persons or Building Safety Managers.

Committees

The BSR will be required to establish and maintain a:

- **Building Advisory Committee**, to give advice and information to them about matters connected with any of their functions.
- **Committee on Industry Competence**, concerned with the competence of persons in the built environment industry,
- **Residents Panel**, comprising residents of Higher-Risk Buildings to give advice to them about matters connected with their functions that relate to Higher-Risk Buildings.

The industry competence committee is required to:

- monitor industry competence;
- advise the BSR about industry competence;
- advise persons in the built environment industry about industry competence;
- facilitate those who design, construct, manage and maintain buildings to improve industry competence;

- provide guidance to the public about ways of assessing the competence of persons in the built environment industry;
- carrying out analysis and research in connection with a function listed above.

Enforcement Officers

The Bill allows the BSR to authorise individuals so that they can exercise specified powers to carry out ‘relevant building functions’ on behalf of the BSR including enforcement-related functions.

Compliance notice

The regulator may give a compliance notice to a relevant person who appears to the regulator to have contravened, be contravening or be likely to contravene a relevant requirement.

A “compliance notice” is:

- a notice requiring the relevant person to take specified steps within a specified period, or
- a notice requiring the relevant person to remedy the contravention or the matters giving rise to it within a specified period.

Urgent action notice

Where it appears to the regulator that the contravention has placed or will place people in or about the building in imminent danger the regulator may specify that the compliance notice is a notice to which this subsection applies (an “urgent action notice”). A person to whom a compliance notice has been given may appeal to the tribunal.

Fees and charges

The BSR will be allowed to charge fees and recover charges from those it regulates in relation to its functions.

New regulatory regime for 'Higher-Risk Buildings' [HRBs]

Part 4 of the Bill introduces a new regime for the construction and management of higher-risk residential buildings.

This section allows for a new dutyholder 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.

Many aspects of the regime will be taken forward through secondary legislation.

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.

Higher-Risk buildings

At the start of the new regulatory regime we propose to define a 'Higher-Risk Building' as a building which satisfies **the height condition** and contains:

- Two or more dwellings (i.e. house, **flat** or serviced apartment);
- Two or more **rooms for residential purposes** (e.g. supported accommodation), or
- Student accommodation.

"The height condition" is that the:

- floor surface of the building's top storey is 18 metres or more above ground level (ignoring any storey which is a roof-top plant and machinery area or any storey consisting exclusively of plant and machinery rooms); or
- building contains more than 6 storeys (ignoring any storey which is below ground level).

"**Room for residential purposes**" means a room (other than in a dwelling) which is used by one or more persons to live and sleep but excluding a room in:

- A residential care home;
- Secure residential institution (e.g. prison, detention centre);
- Temporary accommodation (e.g. a hotel, hostel, guest house, hospital, hospice).

"**Flat**" means premises:

- which form part of a building,
- which are constructed or adapted for use as a separate dwelling, and
- either the whole or a material part of which lie above or below some other part of the building.

Building Safety Risk

Duties are imposed in Part 2 on the Regulator and in Part 4 on duty holders in relation to building safety risk.

The Bill defines "building safety risk" as risk to the safety of persons in or about a building arising from the occurrence as regards the building of any of the following:

- fire;
- structural failure;
- any other prescribed matter.

Building Control and Building Regulations

Higher-Risk Buildings Building Control Authority

The Bill will amend the Building Act 1984 so that the Building Safety Regulator becomes the building control authority for Higher-Risk Buildings.

The BSR will be responsible for all building regulations matters when building work is undertaken on Higher-Risk Buildings (not just fire and structural safety matters).

The new regulatory regime will introduce procedures and requirements for new Higher-Risk Buildings as they are designed and built, and for building work carried out on them.

Proposals for new Higher-Risk Buildings will go through the Gateway process, and proposals for building work on existing Higher-Risk Buildings will go through the refurbishment process, each of which will be laid out in building regulations.

Construction of and Alteration to Higher-Risk Buildings

The regulatory regime for “higher-risk residential buildings” will require duty holders involved in the construction and alteration of Higher-Risk Buildings to:

- ensure that building regulations, the minimum standards a building must meet, are complied with;
- show that they are managing risks at new “**gateway points**” before they can continue with the different stages of the building process.

Higher-Risk Building Gateways

Gateway 1 – before planning permission can be given, the dutyholder will need to submit a ‘fire statement’ and the regulator will consult the Fire and Rescue Authority to make sure fire safety is considered early on.

Gateway 2 – before construction can begin, the dutyholder will need to show how the building has been designed to be safe and follows building regulations by providing full plans and supporting documents.

Gateway 3 – before anyone can move into the building, the dutyholder will need to hand over building safety information about the completed building. They will need to apply for and receive a provisional registration of the building and tell the regulator that building risks have been assessed and arrangements are in place to make sure the building is managed safely while people are living there.

Higher-Risk Buildings Mandatory Reporting during Building Works

Dutyholders will also be required to report information about safety incidents taking place during building work as part of the Mandatory Occurrence Reporting System.

Regulations will require a Client to establish and operate a framework, according to prescribed requirements, that will enable workers on-site to report potential occurrences.

Principal Designers and Principal Contractors should use this information to report structural and fire safety occurrences which could cause a significant risk to life safety in buildings within scope of the wider regime; these occurrences will be on the list mentioned above.

Building Work

The Bill facilitates new regulations that will:

- apply to all building work, and all persons participating in that building work;
- regulate and hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings; and
- facilitate formal appointment of relevant persons involved in such work.

The provisions of the regulations:

- will apply to those appointed under the Construction (Design and Management) Regulations 2015 (CDM) when CDM applies to the building work; and
- ensure that when buildings are designed, constructed or refurbished, all dutyholders, including existing dutyholders identified in CDM 2015, will have formal responsibilities for compliance with building regulations.

Those appointed under CDM 2015 will be deemed appointed under the building regulations.

Compliance and Competence

The Bill creates a power to amend the Building Safety Act 1984 so that:

- duties are imposed on relevant persons throughout the design and construction phase of the project.
- building regulation competence requirements are prescribed in relating to the Principal Designer and Principal Contractor (appointed persons), and any prescribed person.

Relevant persons include those commissioning or undertaking work as well as those appointed, controlling or managing the work.

These requirements will apply to any design or building work on all buildings. Secondary legislation will be laid once the Bill has received Royal Assent, to impose the competence requirements.

For any design or building work on all buildings:

- The Principal Designer and Principal Contractor (appointed persons) must have the appropriate skills, knowledge, experience and behaviours and, if they are an organisation, the organisational capability, to carry out their duties specified in building regulations in a way that is compliant with building regulations. They may not accept an appointment unless they fulfil these conditions.
- Anyone who participates in or manages the work must have the appropriate skills, knowledge, experience and behaviours, and if they are an organisation, the organisational capability to carry out work in a way that is compliant with building regulations.
- Anyone who appoints organisations or individuals to carry out design work or building work must take reasonable steps to ensure that those they appoint meet the competence requirements for their roles.
- For Higher-Risk Buildings, the competence requirements for the Principal Designer, Principal Contractor, and those carrying out design or building work must be appropriate to the particular Higher-Risk Building in question.

Breach of these duties will be a criminal offence.

The Bill also provides powers to require as part of the Gateway two application, to provide a signed declaration from the Client that they are content with the skills, knowledge, experience and behaviours of the Principal Designer and Principal Contractor, and the evidence of the Client's assessment process for the skills, knowledge, experience and behaviours of the Principal Designer and Principal Contractor.

Enforcement of Building Work

The Bill will amend the Building Safety Act 1984 to:

- extend the time limit for:
 - prosecution for contravention of building regulations from 2 years to 10 years;
 - section 36 notices, which require correction of non-compliant work from 1 years to 10 years.
- allow the building control authority to issue a compliance notice to a person who appears to the authority to have contravened, be contravening or be likely to contravene a provision or requirements of building regulations.

“A compliance notice” will require the recipient to:

- take specified steps within a specified period, or
- remedy the contravention or the matters giving rise to it within a specified period.

The building control authority may also give a stop notice if it appears to the authority that:

- the carrying out of the work would contravene a provision of building regulations prescribed for the purposes of this paragraph,
- a compliance notice relating to the work has been contravened, or
- the work contravenes a provision of building regulations or a requirement imposed by virtue of such a provision, and the risk of serious harm condition is met.

A person who, without reasonable excuse, contravenes a compliance or stop notice commits an offence which upon conviction is subject to a term of imprisonment up to 2 years and/or a fine.

A person to whom a notice has been given may appeal to the tribunal.

Liability of Officers of Body Corporate, etc.

The Bill will amend the Building Safety Act 1984 to the effect that where any offence under committed under the Building Safety Act committed by a body corporate:

- is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, or
- is attributable to any neglect on the part of any such person, that person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

The Accountable Person [AP]

The Accountable Person is the dutyholder during occupation. They may be an individual, partnership or corporate body and there may be more than one Accountable Person for a building.

“Accountable Person” for a Higher-Risk Building is:

- a person who holds a legal estate in possession in any part of the **common parts**, or
- a person who is under a relevant repairing obligation in relation to any part of the common parts.

A person is not the Accountable Person for a Higher-Risk Building if:

- the person holds a legal estate in possession in the common parts or any part of them (“the relevant common parts”), and
- each **long lease** of which the person is lessor provides that a particular person (who is not the lessor) is under a **relevant repairing obligation** in relation to all of the relevant common parts.

The second paragraph sets out the test identifying the Accountable Persons where there are two or more persons with legal interests in a building in scope. This is formulated on the legal estate in possession in relation to the common parts and the lease arrangements in relation to the repair and maintenance of those common parts. It therefore makes provision for management bodies to be defined as Accountable Persons in circumstances where the lease sets out repair and maintenance obligation on that management body.

“**Common parts**” in relation to a building, means:

- the structure and exterior of the building, except so far as included in a demise of a single dwelling or of premises to be occupied for the purposes of a business, or
- of more than one dwelling (whether alone or with other persons).

The definition of common parts includes the structure and exterior of the building and any part of the building which is provided for the use of the residents in the building, except for those demised to individual dwellings.

“**Long lease**” means:

- a lease granted for a term certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture, or
- a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease.

“**Relevant repairing obligation**”: a person is under a relevant repairing obligation in relation to anything if the person is required, under a lease or by virtue of an enactment, to repair or maintain that thing.

Duties of the Accountable Person

Building registration

The Accountable Person for a Higher-Risk Building must make an application to register the building:

- before the building becomes occupied, and
- in other prescribed circumstances within the prescribed period.

The Independent Review identified that there should be clear dutyholders during occupation who will have statutory obligations to maintain the fire and structural safety of the building.

The registration system ensures that dutyholders identify themselves to the Building Safety Regulator, who is then able to use this information to operationalise compliance and enforcement activity.

Building assurance certificate

The Accountable Person for an occupied Higher-Risk Building must, in prescribed circumstances and within the prescribed period, make an application for a building assurance certificate in relation to the building.

The application must be accompanied by:

- a copy of the most recent safety case report for the building;
- prescribed information about the mandatory occurrence reporting system operated by the Accountable Person;
- prescribed information demonstrating compliance by the Accountable Person with their duties under section 80 (Provision of information etc. to the regulator, residents and other persons);
- a copy of the Residents' Engagement Strategy.

Once the Accountable Person has applied for a Building Assurance Certificate, the Building Safety Regulator issues a Building Assurance Certificate if it is satisfied that the Accountable Person has not contravened specific statutory obligations including duties to:

- appoint a Building Safety Manager;
- assess building safety risks;
- take steps to prevent a major incident;
- produce a safety case report;
- give certain information to residents; and
- produce a residents' engagement strategy.

Appointment of a Building Safety Manager

The Accountable Person must, before a Higher-Risk Building becomes occupied, appoint a person to be the Building Safety Manager (BSM) for the building.

The Accountable Person must notify the Building Safety Regulator who has the power to veto the appointment of the BSM.

The Accountable Person must ensure that the BSM they wish to appoint:

- where the person is an individual, that they have the skills, knowledge, experience and

- behaviours to carry out the functions of a BSM;
- where the person is not an individual, they are satisfied with person's capability to perform the functions of a BSM.

Mandatory occurrence reporting system

The Accountable Person for an occupied Higher-Risk Building must establish and operate a mandatory occurrence reporting system.

A "mandatory occurrence reporting system" is a system for the giving of information to the BSM.

Residents' engagement strategy

The Accountable Person for an occupied Higher-Risk Building must as soon as reasonably practicable after the relevant time prepare a "Residents' Engagement Strategy" for promoting the participation of relevant persons in the making of building safety decisions.

Interacting with existing regulations

Where a building is mixed-used, the Government will introduce duties of cooperation between the responsible person(s) under the Fire Safety Order and the Accountable Person(s) under the new regime in order to ensure that the building as a whole is effectively managed.

Provision of information etc to a new Accountable Person

An outgoing Accountable Person must give prescribed information (the Golden Thread of information) or a copy of prescribed documents to the new Accountable Person by the prescribed time and in accordance with prescribed standards.

The Building Safety Manager [BSM]

The BSM can be an individual or organisation.

The BSMs principal role is to support the Accountable Person in the day-to-day management of fire and structural safety in the building.

BSM Duties

The BSM for an occupied Higher-Risk Building must:

- manage the building in accordance with the safety case report for the building.
- as soon as reasonably practicable notify the Accountable Person for the building if the manager has reason to suspect:
 - that the assessment of the building safety risks relating to the building is no longer valid, or
 - that further steps should be taken by the Accountable Person to prevent a major incident.
- in prescribed circumstances, give prescribed information (information communicated through the mandatory occurrence reporting system) to the regulator by the prescribed time and in the specified way; and
- must operate the complaints system and in prescribed circumstances refer the complaint to the Building Safety Regulator.

Responsibilities of the BSM

Responsibilities of the BSM include:

- complying with their own statutory duties as set out in the Bill;
- managing the building in accordance with the Safety Case Report for the building and ensuring that the requirements of the Building Assurance Certificate are complied with;
- keeping informed and co-operating with the managing agents (if any) of the building (if different) about safety measures and works;
- complying with all directions given and statutory notices issued by the Building Safety Regulator; and
- co-operating with other occupiers or owners of the building, including any other person acting as the Responsible Person under the Fire Safety Order, to secure an integrated approach to managing building safety risks.

Nominated individual [NI]

The BSM must as soon as reasonably practicable, appoint an individual acting under its control to be the Nominated Individual for the building.

A Nominated Individual must manage the BSM's functions.

The BSM must ensure that the individual they wish to appoint has the appropriate skills, knowledge, experience and behaviours to manage their functions.

In circumstances where it appears to the regulator that the BSM or NI is not suitable to carry out the functions of a building safety manager they can give direction to the AP to remove them.

Core Competencies

WG8 was tasked by the Government with defining the competencies necessary for a newly designated role of a 'Building Safety Manager', the 'BSM'. Their final report published in June 2020 sets out the following core competencies for Individuals working as a BSM and Nominated Individuals:

Building Systems

- Demonstrate the principles of building design and the key components of the building and their implications for maintenance.
- Apply and appraise the basic principles of the protection of life safety in a range of buildings, including fire and human behaviour and impact on effectiveness.
- Identify and appraise the primary causes of failure to life safety systems, including compartmentation and their potential impact on human and resident behaviour, building safety and each other.
- Interpret the principles and benefits of an effective fire risk management strategy and the required mitigation measures to deliver safe buildings and devise an appropriate strategy for the building.
- Define the principles and factors affecting the life safety of residents and explains the impact on the building and performance of life safety systems.
- Relate the principles of a building as a system and its component parts to performance characteristics and to articulate their impact on life safety.

Building Operations

- Explain the relevant legal duties in relation to the management and operation of the building including identifying the key differences between contracts, leases and tenures to relevant stakeholders.
- Explain the nature and extent of the primary compliance drivers within the context of the organisation and how it relates to life safety and implement across organisation.
- Demonstrate the principles of due diligence to deliver safety as they apply to obtaining quotations for work, selecting and appointing contractors, selecting suppliers, executing work and record keeping.
- Recognise the importance of documented information at organisation and premises level, including advising and sharing information with residents and relevant stakeholders.
- Operates building and life safety information, information management system and appraise the extent of information required at building level and organisation level.
- Lead the identification of the key elements of managing the Golden Thread principles, including managing and maintaining the safety case file, so that risks are proactively identified, and mitigation measures put in place and maintained.

Risk Management

- Recognises key differences between hazard identification and risk management. Interpret and implement the principles and practice of risk assessment relating to building and life safety, including key controls, primary compliance drivers, appropriate process and the requirement to complete actions within appropriate timeframes.
- Understand the difference between strategy, policy and procedure.
- Create the building's risk management strategy.
- Understand, develop and implement the basic control measures used to mitigate the risk posed by the threats to life safety, considering a range of different scenarios and views.
- Apply the statutory requirements relating to duty holders and building registration certificate and the risk profile of the building.

- Identify building safety risk and prioritisation.
- Construct and maintain suitable and sufficient processes to manage physical changes in the building and identify the reasoning for recording changes and its impact on the Golden Thread, safety case and resident and building safety.

Leadership and Planning

- Identify the internal and external issues that are relevant to the organisational building and life safety risk profile.
- Recognises the difference between leadership and management.
- Demonstrate appropriate knowledge to identify and assess the status of those with responsibilities and duties in relation to building and life safety risk, including their competence.
- Explain how to develop and maintain effective relationships and be able to engage with residents and a wide range of stakeholders.
- Explain the importance of setting smart objectives.
- Recognise and balance competing needs using a risk-based approach and set smart objectives.
- Identify the needs of residents and stakeholders and other interested parties.
- Aligns prevention and protection objectives relating to building and life safety with the broader objectives of the organisation's values.
- Define roles and responsibilities relating to building and life safety and recognises the differences between accountability and responsibility.
- Identify the boundaries of their jurisdiction and the scope of the building/life/fire safety risk management system under their control.
- Identify and manage the escalation process for critical decision making.
- Monitor and manage budget under their control and in relation to building and life safety using a risk-based approach.
- Assess the resource requirements (time, funding and headcount) for maintaining governance of building and life safety risk.

Operational Practice

- Develop and implement an effective resident engagement strategy including the dissemination of information, internal processes for escalation and arranging access to training.
- Encourage, enable and support residents and occupants of buildings towards good housekeeping and proactive safety practices.
- Interpret and apply procurement principles.
- Manage change and lead on objectives, including evaluating and making procurement decisions, recognising when the limits of competence are reached and when to bring in additional professional procurement expertise for new build or major refurbishment procurement.
- Assess the importance of appointing competent persons and where and when to seek additional competence in this area.
- Enforces the control of work onsite in so far as it affects building or life safety.
- Interpret any statutory or manufacturers requirements for testing and maintaining fire prevention and protection systems to ensure they operate correctly and record any relevant information.
- Manages effective risk assessment and building safety programmes.
- Interpret and review information, prioritise and assess the strengths and weaknesses of data systems.
- Use collected information to produce and maintain a robust safety case, considering key factors such as building complexity and condition, resident behaviours and vulnerability, height, occupancy or use of, and the building registration certificate.

Monitoring and Control

- Identify monitoring and measurement requirements and to interpret results.
- Provide robust assurance to a range of stakeholders e.g. residents, Accountable Person and/or regulator.
- Analyse, and appraise lessons learnt from good/poor practices, issues and incidents and apply shared learning.
- Construct and establish an effective monitoring programme, including conducting regular reviews of Golden Thread information, resident feedback and other key documentation relating to the risk profile of the building.
- Identify the information requirements to be conveyed during management reviews.
- Report and act upon non-compliance or remedial actions relating to building and life safety, and to know when and how to report specific occurrences to the regulator(s) relating to building or life safety.
- Identify the competence required of external auditors relating to building and life safety.
- Conduct internal audits relating to building and life safety, ensuring its scope relates to the overall effectiveness and risk profile.

Liability of Officers of body corporate, etc.

Where an offence is committed by a body corporate:

- is committed with the consent or connivance of any director, manager, secretary or other similar office of the body corporate, or any person who was purporting to act in any such capacity, or
- is attributable to any neglect on the part of such person, that person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

Assessment of building safety risks

The Bill creates an ongoing duty on the Accountable Person to assess the building safety risks relating to their building, and to take all reasonable steps to prevent the occurrence, and control the impact, of a major incident resulting from those building safety risks in or around the building.

As noted before the Bill defines “building safety risk” as a risk to the safety of persons in or about a building arising from the occurrence as regards the building of any of the following:

- a) fire;
- b) structural failure;
- c) any other prescribed matter.

The Accountable Person will need to demonstrate how they are meeting this ongoing duty through a Safety Case Report which they will be required to keep up to date.

The Bill also includes a provision stating that the Accountable Person must review the risk assessments on which the Safety Case Report is based, and revise the report, if they suspect the report is no longer valid or they are requested to do so by the Building Safety Regulator.

The Accountable Person for an occupied Higher-Risk Building must as soon as reasonably practicable after the relevant time assess the building safety risks relating to the building.

Further assessments must be carried out:

- at regular intervals;
- on receipt of a notice from the BSM because they believe the assessment is no longer valid or steps need to be taken to prevent a major incident;
- at any time that the Accountable Person has reason to suspect that the current assessment is no longer valid; and
- at the direction of the regulator within the period specified in the direction.

Steps to prevent a major incident

The Accountable Person for an occupied Higher-Risk Building must:

- take all reasonable steps for the following purposes:
 - preventing a major incident occurring as a result of a building safety risk materialising as regards the building;
 - reducing the severity of the incident;
- make and give effect to arrangements for the purpose of ensuring the effective planning, organisation, control, monitoring and review of steps to be taken to prevent a major incident.

Safety case report

The Bill requires the Accountable Person for an occupied Higher-Risk Building to:

- as soon as reasonably practicable after the relevant time prepare a report (a “safety case report”) containing:
 - the Accountable Person’s assessment of the building safety risks relating to the building, and
 - any steps to be taken to prevent a major incident
- revise a safety case report if they consider it necessary or appropriate to do so:
 - following a further assessment of the building safety risks relating to the building, and
 - following the taking of further steps to prevent a major incident.
- as soon as reasonably practicable after preparing or revising a safety case report notify the regulator.
- give a copy of the safety case report to the regulator as soon as reasonably practicable when requested.

The safety case report:

- is the document that goes to the BSR to make the ‘claim’ of and argument for resident safety;
- summarises all the key components of the safety case with references to supporting documentation;
- is supported by the wider safety case (the Golden Thread of information) which refers to the totality of the building safety information and includes all the evidence that supports how these building safety risks are being managed, contained within the Golden Thread of information.

It is essentially the response to the exam question: *Can you identify the building safety risks in your building, and show me how you manage these on an ongoing basis, as far as you can, so that it is safe?*

Safety case (the Golden Thread information)

The safety case is the full body of evidence, comprising a comprehensive and structured set of documents. It will often include evidence from test results, detailed safety analysis reports, etc. For the purposes of the regulation of Higher-Risk Buildings this may also be referred to as the Golden Thread information (the concept of Golden Thread goes further, to include specific digital standards).

The Bill includes provisions that will help create 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 be held digitally and 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 dutyholders must start to collect this information during the design and construction process. Once construction is complete, the information must be handed over to the Accountable Person who must:

- keep prescribed information in accordance with prescribed standards, and
- as far as possible keep such information up to date.

Where an Accountable Person does not hold prescribed information or a copy of a prescribed document, they must obtain it except where it is not practicable to do so.

Provision of information, etc. to the regulator, residents and other persons

The Bill allows the Secretary of State to draft regulations that will require the Accountable Person to give prescribed information at prescribed times to:

- the regulator,
- residents of the building,
- owners of flats in the building, or
- any other prescribed person.

The regulations will:

- set out the circumstances in which an Accountable Person must provide prescribed information and documentation about the building. This will include a requirement to provide:
 - all new residents with a range of building safety information, and
 - the regulator with information about the building and any duty holders.
- set out what information or documentation must be shared, the form of the prescribed information, the way in which it must be given, the standard to which it must be given, and any exceptions to any duty imposed under the regulations.

Residents' Engagement Strategy

The Bill places statutory obligations on the Accountable Person that will help to promote a strong partnership between residents and the Building Safety Manager. These obligations cover engagement and participation, complaints handling, information provision and the role of residents in helping keep the building safe.

One such obligation is to produce and keep up to date a Residents' Engagement Strategy setting out how the obligations will be delivered in practice, for example, how they will run inclusive opportunities to participate in decision-making and what the process will be for residents to get access to all the safety information they are entitled to or to raise a complaint when things go wrong.

The Accountable Person for an occupied Higher-Risk Building must:

- as soon as reasonably practicable prepare a **Residents' Engagement Strategy** for promoting the participation of relevant persons in the making of **building safety decisions**;
- review the strategy at prescribed intervals, and
- revise the strategy if they consider it necessary or appropriate to do so.
- as soon as reasonably practicable after preparing or revising the strategy give each resident of the building who is aged 16 or over a copy of it.

The duty to give a copy of the strategy to a resident does not apply if the Accountable Person is not aware of the resident and has taken all reasonable steps to make themselves aware of residents of the building.

"Building safety decision" means a decision by the Accountable Person or Building Safety Manager for the building that:

- is about the management of the building, and
- is made in connection with the performance of a duty of the Accountable Person or the building safety manager under this Part or regulations made under it.

"Residents' Engagement Strategies" must include information about:

- the information that will be provided to relevant persons about decisions relating to the management of the building;
- the aspects of those decisions that the Accountable Person will consult relevant persons about;
- the arrangements for obtaining and taking account of the views of relevant persons; and
- how the appropriateness of the Accountable Person's methods for promoting participation will be measured and kept under review.

Requests for further information

In addition to recommending that residents should automatically receive key building safety information, the Independent Review also recommended that further and more detailed information about the safety of their building should be made available to any resident on request.

Therefore where:

- a resident of an occupied Higher-Risk Building aged 16 or over, or
- an owner of a flat in the building,

makes a request to the Accountable Person for the building to give them prescribed information or a copy of a prescribed document, the Accountable Person must as soon as reasonably practicable give the resident or owner the information or document requested.

The further information to be provided will be set out in regulations and is currently envisaged to comprise the following:

- Full, current and historical fire risk assessments; Planned maintenance and repairs schedules; Outcome of Building Safety inspection checks; How assets in the building are managed; Details of preventive measures;
- Fire protection measures in place;
- Information on the maintenance of fire safety systems;
- Fire strategy for the building;
- Structural assessments; and
- Planned and historical changes to the building.

Complaints procedures

Accountable Person

The Accountable Person for an occupied Higher-Risk Building must as soon as reasonably practicable after the relevant time establish a system for the investigation of **relevant complaints**.

The Building Safety Manager for the building must operate the complaints system.

“**Relevant complaint**” means a complaint relating to:

- the building safety risks as regards the building, or
- compliance by the Accountable Person or building safety manager for the building with any of their duties under, or under regulations made under, this Part.

Regulator

The regulator must establish and operate a system for the investigation of relevant complaints to:

- the regulator, or
- the Building Safety Manager for the building and referred by them to the regulator.

Duties on residents

A “**resident**” of a dwelling is a person who lawfully resides there.

A resident of an occupied Higher-Risk Building aged 16 or over:

- must keep in repair and proper working order any **relevant resident’s item**,
- must take reasonable care to avoid damaging any **relevant safety item**, and
- must comply with a request, made by the Accountable Person for the building, for information reasonably required for the purposes of a duty under:
 - Section 72 – Assessment of Building Safety Risks; or
 - Section 73 – Steps to prevent a major incident.

“**Relevant resident’s item**” means any electrical or gas installation or appliance that:

- is in the dwelling in which the resident resides or is in premises occupied or controlled by a resident of the dwelling in connection with the dwelling, and
- is not an installation or appliance for which a person other than a resident of the dwelling is under a duty to keep in repair or proper working order.

“**Relevant safety item**” means anything that:

- is in, or forms part of, the common parts, and
- is intended to improve the safety of persons in or about the building in relation to a building safety risk.

Contravention Notices

Where it appears to the Accountable Person for an occupied Higher-Risk Building that a resident has contravened (or is contravening) their duties under the Act, the Accountable Person may give the relevant person a notice that:

- specifies the duty in question and the alleged contravention;
- specifies any steps that the Accountable Person considers the resident should take in order to remedy the contravention, and a reasonable time for the taking of those steps;
- specifies anything that the Accountable Person considers the resident should refrain from doing, to avoid further contraventions of the duty in question;
- contains an explanation of the steps that the Accountable Person may take under this section if the notice is not complied with.

The County Court may, on an application made by the Accountable Person, make an order under this section if satisfied that:

- a notice under this section has been given,
- the contravention alleged in the notice occurred, and
- it is necessary to make the order.

The order may:

- require a resident of an occupied Higher-Risk Building aged 16 or over to provide specified information or do a specified thing, by a specified time;
- prohibit such a resident from doing a specified thing.

Access to dwellings, etc.

The County Court may, on an application made by the Accountable Person for an occupied Higher-Risk Building, make an order under this section in respect of any premises in the building occupied or controlled by a resident of the building if satisfied that:

- a request in writing for entry to the premises at a reasonable time has been made to the resident,
- the request is made in connection with the performance by the Accountable Person of their duties to assess the buildings risk or prevent a major incident;
- entry to the premises has not been given, and
- it is necessary to make the order for the relevant purpose.

“**Relevant purpose**” means the purpose of:

- facilitating the performance by the Accountable Person of their duty to assess the buildings risk or prevent a major incident;
- determining whether a residents duty has been contravened.

An order under this section:

- requires the resident to allow the Accountable Person, or a person authorised by the Accountable Person, to enter the premises at a reasonable time on a specified date or within a specified period for the relevant purpose;
- may, if it appears to court necessary for the relevant purpose, authorise the taking of measurements, photographs, recordings or samples by the Accountable Person or authorised person.

Implied terms

The Landlord and Tenant Act 1985 will be amended by the Bill to imply terms into long leases of dwellings in Higher-Risk Buildings so that building safety measures, the associated costs and the related charges that may be passed onto leaseholders **will not be reliant on the service and service charge provisions in each lease.**

Under the new statutory implied terms:

- the landlord makes a commitment to the leaseholder to carry out the necessary measures, to apply for any financial support available, and to observe the statutory requirements in relation to raising charges; and
- the leaseholder makes a commitment to the landlord pay a fair share of reasonable charges and co-operate with the building safety regime.

Landlord

In the lease there is implied a covenant by the landlord:

- to comply with the landlord's statutory obligations in relation to building safety charges: in relation to building safety charges payable by the tenant;
- where the landlord is an Accountable Person for the building:
 - to carry out the prescribed building safety measures in relation to the building, and
 - to cooperate with any other Accountable Persons for the building in connection with the carrying out of prescribed building safety measures;
- where the landlord is not an Accountable Person for the building, to cooperate with all Accountable Persons for the building in connection with the carrying out of prescribed building safety measures;
- where a special measures manager has been appointed for the building by an order under Part 4 of the Building Safety Act 2020:
 - to cooperate with the manager in connection with the manager carrying out any functions under the order or under Part 4 of the Building Safety Act 2020, and
 - to pay to the manager any amounts that are required to be paid by the landlord under the order;
- to take all reasonable steps to apply for any relevant financial support available to the landlord for the costs of carrying out prescribed building safety measures in relation to the building.

Tenant

In the lease there is implied a covenant by the tenant:

- to pay to the landlord, within 28 days of a demand, any building safety charges that are required be paid by the tenant in accordance with the tenant's statutory obligations in relation to building safety charges;
- to allow the landlord, or any person authorised by the landlord in writing, to enter the dwelling for the purposes of:
 - carrying out prescribed building safety measures, or
 - inspecting or accessing any part of the building in connection with carrying out prescribed building safety measures;
- where the tenant is a resident of the Higher-Risk Building, to carry out the duties of a resident of a Higher-Risk Building under sections 86 and 87 of the Building Safety Act 2020.

The covenant implied requires entry to the dwelling to be allowed:

- only at reasonable times, and
- only if at least 48 hours' notice in writing has been given to the tenant.

Building safety charges

The Bill will amend the Section 17 of the Landlord and Tenant Act 1985 with regard to building safety charges payable by tenants under long leases of dwellings in Higher-Risk Buildings.

The new sections allow a **relevant landlord** [Landlord], by written demand, to require a **relevant tenant** [Tenant] to pay a building safety charge the landlord.

“**Relevant landlord**” is a landlord under a lease to which section 17A applies.

“**Relevant tenant**” is a tenant under a lease to which section 17A applies.

“**Building safety charge**” is a charge in respect of building safety costs.

“**Building safety costs**” are the costs or estimated costs incurred or to be incurred by or on behalf of an Accountable Person for a Higher-Risk Building in connection with the person carrying out prescribed **building safety measures**.

“**Building safety measures**” are the measures that an Accountable Person for a Higher-Risk Building is required by Part 4 of the Building Safety Act 2020 to carry out in relation to the building. Measures may, for example, include:

- the commission and production of the safety case, resident engagement strategy and mandatory reporting scheme;
- the appointment of the Building Safety Manager;
- building safety works;
- monitoring and management of day to day safety in the building, resident engagement and using the mandatory reporting system;
- the costs of compliance with statutory notices, obligations and requirements (but not the cost of enforcement action); and
- fees and other charges payable to the regulator.

Landlord obligations

A new section 17H sets out certain obligations the landlord must comply with when demanding a building safety charge.

A landlord may not require a tenant to pay a building safety charge in respect of an annual accounting period unless the landlord has given the following information to the tenant:

- details of the accounting period to be used in respect of calculating building safety costs and charges;
- a budget in respect of the accounting period including an estimate of:
 - the building safety costs to be incurred, and
 - the building safety charges to be payable by the tenant;
- where a building safety charge to be payable by the tenant is in respect of additional building safety costs to be incurred that are not included in the budget, a separate budget including an estimate of the:
 - additional building safety costs to be incurred, and
 - additional building safety charges to be payable by the tenant.

Where a landlord requires a tenant to pay a building safety charge in respect of an annual accounting period, the landlord must:

- apportion the building safety costs between all dwellings in the building in accordance with section 171;
- hold any amounts received from the tenant in respect of building safety charges on trust in a designated account;
- provide the tenant, within 28 days of the end of the accounting period, a reconciliation account setting out in respect of the period:
 - the prescribed building safety measures carried out;
 - the building safety costs incurred in respect of those measures;
 - the amount of those building safety costs in respect of which building safety charges were not payable and the reasons why they were not payable;
 - the total amount of building safety charges due from all relevant tenants in the Higher-Risk Building;
 - the total amount of building safety charges received from all relevant tenants in the Higher-Risk Building;
 - the amount of any balance remaining in the designated account at the end of the period;
 - any penal or enforcement action taken by the regulator under the Building Safety Act 2020 and the costs incurred by the landlord in respect of that action;
- use the amount of any balance remaining in the designated account at the end of the period towards reducing the building safety charges payable by relevant tenants in the Higher-Risk Building in the following annual accounting period.

A landlord may not serve a tenant with a demand for building safety charges more than once in any three-month period.

A tenant may withhold payment of a building safety charge in respect of an annual accounting period if, before the demand for the charge is made:

- the tenant has not been given the information required; or
- the tenant has not been provided with any reconciliation account in respect of the previous annual accounting period.

Apportionment of building safety costs

A new section 171 applies where the landlord is required to apportion building safety costs. Where a landlord is required to apportion building safety costs to a dwelling in a Higher-Risk Building and:

- the lease contains a method for apportioning the building safety costs to the dwelling, the landlord must apportion the building safety costs using that method;
- the lease does not contain such a method, the landlord must, unless a tribunal has determined a fair method of apportion the costs, determine building safety costs using:
 - any method contained in the lease for apportioning relevant costs between all dwellings in the building in order to calculate the service charge payable by the tenant under the lease, or
 - any method agreed in writing with the tenant for apportioning the building safety costs to the dwelling.

Where there is no method of determining the costs or the landlord or tenant believe the method of apportionment is not fair either party may apply to a tribunal for a determination.

Reasonableness

A new section 17J provides that building safety costs are only payable as a building safety charge by the leaseholder to the extent that the costs are reasonably incurred.

Building safety costs are payable by a tenant:

- only to the extent that they are reasonably incurred, and
- where the provision of services or the carrying out of works is a reasonable standard.

Consultation requirements

A new section 17K provides that in relation to “**qualifying building safety works**” or a “**qualifying building safety agreement**”, the “**relevant contribution**” recoverable from a leaseholder as a building safety charge is limited to an “**appropriate amount**” except in the circumstances set out below:

- The “**consultation requirements**” have been complied with or those requirements have been dispensed with by the First-tier Tribunal.
- The works are an “**urgent case**”.
- The works are carried out, or the agreement is entered into, whilst the building is in “**special measures**”.

“**Relevant contribution**” is the amount that a leaseholder will be due to contribute in building safety charges towards the cost of qualifying works or a qualifying agreement.

The Bill will give the Secretary of State power to make regulations specifying the **appropriate amounts**.

Where a leaseholder’s relevant contribution will exceed an **appropriate amount**, the landlord will usually be required to carry out a formal consultation of the leaseholders before deciding on what contracts to enter into.

What are “**qualifying building safety works**”, what is a “**qualifying building safety agreement**” and what are “**the consultation requirements**”, will be set out in regulations made by the Secretary of State.

The Bill allows the Tribunal to dispense with the consultation requirements in any particular case if it is satisfied that it is reasonable to do so.

Urgent Case

Qualifying building safety work is an “**urgent case**” where the works are required to be undertaken pursuant to a compliance notice or an urgent action notice issued by the regulator.

Where the work is an urgent case the landlord, or if the landlord is not an Accountable Person for the building, an Accountable Person, must give each relevant tenant an exemption notice in the prescribed form. The notice must be accompanied by a copy of the compliance notice or urgent action notice and certified by an Accountable Person for the Higher-Risk Building as being true.

Costs of urgent case works may only be taken into account in determining the amount of a building safety charge payable if an exemption notice has been given to the tenant.

Special measures

Special measures apply to:

- qualifying building safety works carried out, or
- a qualifying building safety agreement entered into,

by a **Special Measures Manager** at the direction of the regulator.

Excluded costs

The costs are not building safety costs and may not be taken into account in determining the amount of a building safety charge payable by a relevant tenant if:

- costs incurred or to be incurred solely as a result of any penalty imposed or enforcement action taken by the regulator;
- costs incurred or to be incurred by reason of any negligence, breach of contract or unlawful act on the part of an Accountable Person;
- **prescribed costs** incurred or to be incurred in connection with the carrying out of prescribed building safety measures.

“**Prescribed costs**” are prescribed costs in regulations made by the Secretary of State under this section.

Financial support

Where financial support has been obtained to defray the costs of building safety works to the landlord, superior landlord or Accountable Person, such sums must be deducted from the building safety costs and, therefore, cannot also be recovered as part of the building safety charge.

Time limit on making demands

Unless a tenant was notified in writing that costs had been incurred and that the tenant would subsequently be required to contribute to them, building safety costs cannot be taken into account in determining the amount of any building safety charge were incurred more than 18 months before a demand for payment of the building safety charge is served on the relevant tenant.

Costs of proceedings

A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before:

- a court;
- the First-tier Tribunal or the Upper Tribunal; or
- in connection with arbitration proceedings:

are not to be regarded as building safety costs to be taken into account in determining the amount of any building safety charge payable by the tenant or any other person or persons specified in the application.

Notice to accompany demands for building safety charges

A demand for the payment of a building safety charge must be accompanied by a summary of the rights and obligations of relevant tenants of dwellings in relation to building safety charges.

A tenant may withhold payment of a building safety charge if this requirement has not been complied with.

Liability to pay building safety charges: jurisdiction

An application may be made to the appropriate tribunal for a determination whether:

- a building safety charge is payable; and,
- if costs were incurred for prescribed building safety measures, a building safety charge would be payable for the costs;

and if it is payable in either case, as to:

- the person by whom it is payable,
- the person to whom it is payable,
- the amount which is payable,
- the date at or by which it is payable, and
- the manner in which it is payable.

An application cannot however be made in respect of a matter that:

- has been agreed or admitted by the tenant,
- has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- has been the subject of determination by a court, or
- has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

Building safety charge contributions to be held on trust

Where tenants of a Higher-Risk Building may be required to pay building safety charges to a relevant landlord in respect of building safety costs related to the building, any sums paid to the landlord by way of building safety charges in relation to the building, and any investments representing those sums, are (together with any income accruing thereon) to be held by the landlord either:

- as a single trust fund, or
- in two or more separate trust funds.

The landlord must hold any trust fund:

- on trust to defray costs incurred in connection with the matters for which the relevant building safety charges were payable: and
- subject to that, on trust for the contributing tenants for the time being.

Building safety charge contributions to be held in designated account

The landlord must hold any sums standing to the credit of any trust fund in a designated account at a relevant financial institution.

An account is a designated account in relation to sums standing to the credit of a trust fund if:

- the relevant financial institution has been notified in writing that sums standing to the credit of the trust fund are to be (or are) held in it, and
- any other sums held in the account are sums standing to the credit of one or more other trust funds, and the account is an account of a description specified in regulations made by the Secretary of State.

Order appointing special measures manager

Where:

- the regulator applies to the tribunal for an order in relation to an occupied Higher-Risk Building, and
- no building assurance certificate is in force in relation to the building.

The tribunal may by order appoint a person to be a manager (a “special measures manager”) for the building, to carry out such functions mentioned in subsection (3) as the tribunal considers appropriate.

The functions are:

- any function relating to the management of the building safety risks;
- any function as a receiver.

Building insurance

Clause 77 of the Bill gives the Secretary of State the power to make regulations requiring the Accountable Person for a high-risk residential building to ensure there is adequate insurance to cover losses associated with building safety risks occurring. It also gives the power for regulations to prescribe the kinds of losses arising from building safety risks that such insurance should cover.

Offences

Obstructing an authorised officer of the BSR

It will be a criminal offence to obstruct an authorised officer of the BSR or to provide them with false or misleading information.

A person guilty of the offence is liable to a fine.

Providing of false or misleading information to the regulator

It will be a criminal offence to provide of false or misleading information to the BSR.

A person guilty of the offence is liable to a term of imprisonment of up to 2 years and/or a fine.

Failure to comply with a notice issue by a regulator.

A person who, without reasonable excuse, contravenes a compliance or stop notice commits an offence.

A person guilty of the offence is liable to a term of imprisonment of up to 2 years and/or a fine.

Failure to register a Higher-Risk Building and obtain a building assurance certificate

An Accountable Person commits an offence if they fail to make an application to register a Higher-Risk Building and for a building assurance certificate.

A person guilty of the offence is liable to a term of imprisonment of up to 2 years and/or a fine.

Failure to appoint a building safety manager

An Accountable Person commits an offence if they fail to appoint a BSM.

A person guilty of the offence is liable to a term of imprisonment of up to 2 years and/or a fine.

Failure to provide prescribed information to the regulator

A BSM who fails to give prescribed information to the regulator in prescribed circumstances, by the prescribed time and in the specified way commits an offence.

A person guilty of the offence is liable to a fine.

Contravention giving rise to risk of death and serious injury

It is an offence for an Accountable Person for a Higher-Risk Building to contravene, without reasonable excuse, any relevant requirement where that failure places one or more people in or about the building at critical risk.

A person guilty of the offence is liable to a term of imprisonment of up to 2 years and/or a fine.



The Association of Residential Managing Agents Ltd

3rd Floor, 2-4 St George's Road
Wimbledon
London SW19 4DP

Tel: 020 7978 2607

Email: info@arma.org.uk

Web: www.arma.org.uk

 [@armaleasehold](https://twitter.com/armaleasehold)

© The Association of Residential Managing Agents.

Copyright in all or part of this publication rests with ARMA, and save by prior consent of ARMA, no part or parts shall be reproduced by any means, electronic, mechanical, photocopying or otherwise, now known or yet to be devised.

August 2020.