



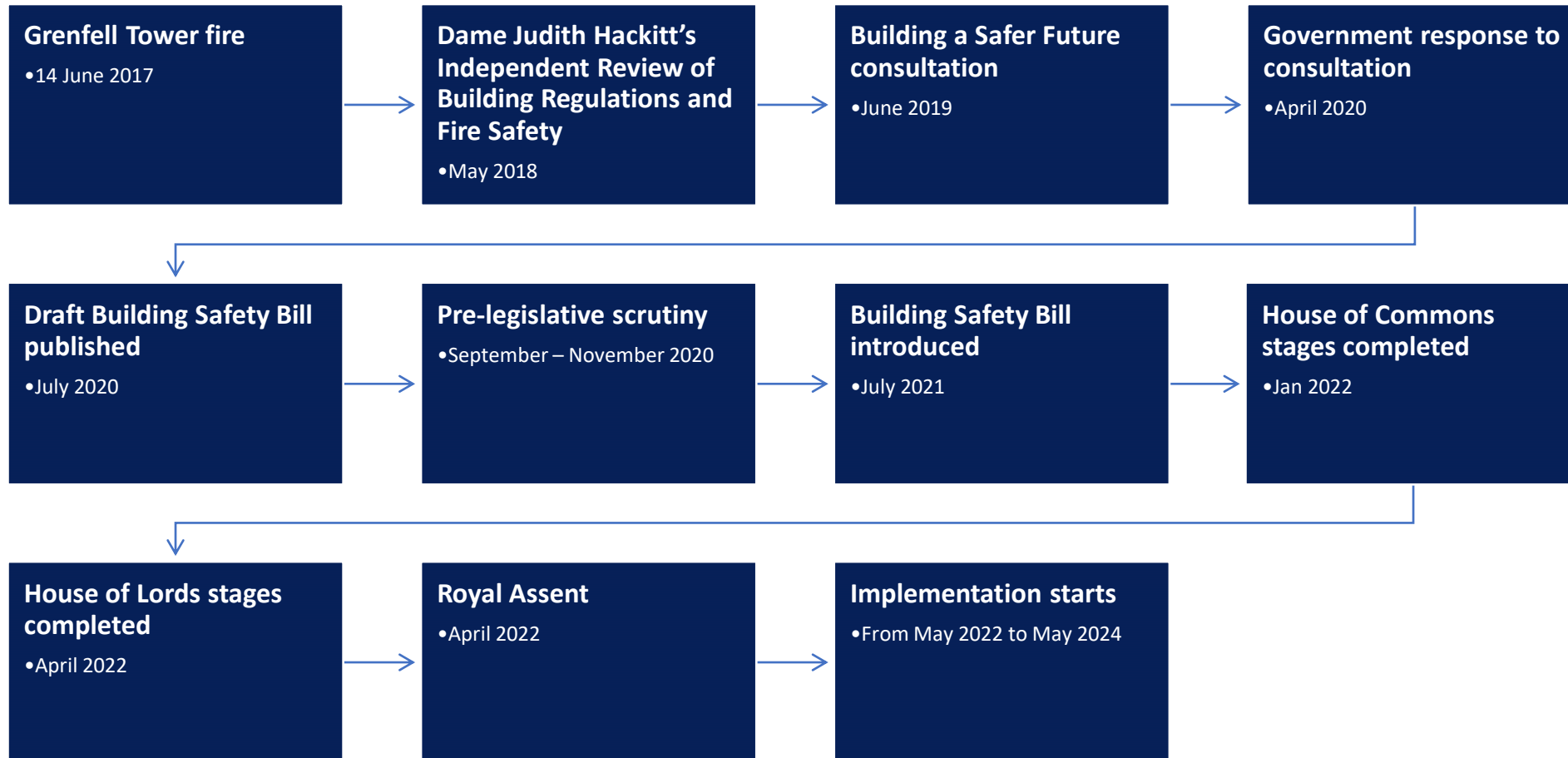
Building Safety Act

An overview

May 2022



How did we get here?





Key Facts

- It's Big!

171 sections

11 schedules

6 parts

- And getting it right has taken time...

**3 Queen's
speeches**

**298 days in
Parliament**

**Around 300
Government
amendments**



- The Act implements the **recommendations of Dame Judith Hackitt's report** on building regulations and fire safety.
- The Act:
 - Establishes a new Building Safety Regulator and paves the way for a new National Regulator for Construction Products and New Homes Ombudsman.
 - Seeks to improve the competence and oversight of both industry and regulators in the built environment sector;
 - Sets out a rigorous new legislative framework for the design, construction and management of high-rise buildings; and
 - Improves routes to redress for past wrongdoing of industry actors and introduces new protections for leaseholders from unaffordable costs for historical remediation.
- There will be a major programme of secondary legislation through to 2024 to implement many aspects of this regime.



Shape of the Act

- | | |
|---|---|
| Part 1 – Introduction | An overview of the structure, contents and objectives of the Act. |
| Part 2 – Regulator & its functions | Establishes a <u>new Building Safety Regulator</u> , and the powers to allow the regulator to undertake its functions. |
| Part 3 – Building Act 1984 | Amendments to the Building Act 1984, setting out the provisions for <u>the new regulatory regime during the design and construction</u> of buildings in scope, and regulation of <u>building inspectors and building control approvers</u> (formerly Approved Inspectors) to improve competence levels. |
| Part 4 – Higher-risk buildings | The new regime for <u>occupied buildings in scope</u> , including the duties on the Accountable Person, and resident engagement. |
| Part 5 – Other provisions about safety, standards | Various measures including arrangements for a <u>New Homes Ombudsman</u> ; provision about construction products; provisions about <u>Architects’ competence</u> ; <u>removing the ‘democratic filter’</u> for complaints from social housing residents. Part 5 also covers <u>limitation periods for the Defective Premises Act</u> , the periodic review of the system, and introduces provisions related to payment for remediation and the service charge (<u>leaseholder protections</u>). |
| Part 6 – General | General provisions around commencement etc, as well as application to the crown estate. |



What this means for residents and homeowners

- Residents in high-rise buildings will have more say in the management of their building, and more confidence that those working on buildings are competent. They will be able to raise building safety concerns directly with the owners and managers of buildings, who will have a duty to listen to them.
- If they feel safety concerns are being ignored, they will be able to raise them with the Building Safety Regulator.

AND IMPORTANTLY – Leaseholders will be protected from most historical remediation costs...

- Building owners will have to prove that they have explored all other routes to covering remediation costs before passing them on to leaseholders.
- Homeowners will now have 30 years retrospectively to claim compensation for sub-standard work - effectively covering buildings built from mid-1992 onward. The limitation period will also be extended to 15 years prospectively.
- More on this later...

What this means for new buildings

A rigorous new legislative framework for design and construction of new buildings:

- Defined roles, based on the CDM model i.e. client, principal designer, principal contractor, designers and contractors. These will apply to all building work – not just work on higher-risk buildings.
- And these are supported by competence requirements, ensuring those carrying out design or building work are competent or trained and supervised.
- New Gateways – creating stop/go decision points at key stages – a new building control approval regime for higher-risk buildings. Requiring approval before a dutyholder starts construction and at completion, before the building can be occupied with stringent requirements during construction.
- A new 'golden thread' of building information – started during construction, stored, and updated throughout the building's lifecycle to support the ongoing management of building safety risks
- And a new unified professional and regulatory structure for building control, including registration of building inspectors, and oversight of competence and performance by the Building Safety Regulator.



What this means for building owners

Managing buildings

- Safety will need to be considered at every stage of a building's lifecycle – including during the earliest stage of the planning process – supported by a golden thread of safety information about the building throughout its lifecycle.
- Building owners and other responsible people will be required to manage safety risks, with clearly identified and competent dutyholders during design, construction, completion, occupation and any refurbishment of high-rise buildings.
- During occupation, Accountable Persons must demonstrate to the Building Safety Regulator and to their residents, that they have effective, proportionate measures in place to manage safety.
- Those who don't meet their obligations may face criminal charges.



- The Building Safety Regulator will be located within the Health and Safety Executive.
- It will have the following roles:
 - Overseeing the safety and performance of all buildings.
 - Promoting the competence of professionals, tradespeople and building control professionals working on all buildings. This has two elements:
 - Working with industry to promote competence of professionals working on buildings;
 - Improving the competence of building control inspectors, who assess, inspect and monitor building regulations across the vast majority of buildings. This includes a registration regime.
 - The delivery of the new, more stringent regulatory regime for buildings in scope. This includes acting as the building control authority for all building work on buildings in scope.
- The Building Safety Regulator will work with local authorities and fire and rescue authorities in delivering its role as the regulator and building control authority for in-scope buildings. They will be able to call on the expertise of Building Control Approvers in a support role if necessary.



- The Act provides powers so that all construction products marketed in the UK fall under a regulatory regime, allowing them to be withdrawn from the market if they present a safety risk.
- After an implementation period, the manufacturers of safety critical construction products included on the statutory list will be subject to requirements including the labelling of products, declaring their performance and ensuring that they consistently meet declared performance standards.
- The Act will give enforcement powers for all the existing and new parts of the regulatory regime to the Secretary of State, which will enable us to build up national oversight in central government. Trading Standards' enforcement powers will be extended under the existing regime to the new regulatory requirements.
- The National Regulator for Construction Products is being established within the Office of Products Safety and Standards. DLUHC will remain responsible for construction products policy and our Ministers will remain accountable to Parliament.



Leaseholder Protections

- Qualifying leaseholders - those living in their own home or with up to three UK properties in total, in a building over 11 metres or with at least five storeys - will be protected in law from historical cladding remediation costs.
- Cladding costs cannot be passed on to qualifying leaseholders at all. For other costs...
- Where the landlord is responsible or has links with the developer that is responsible for the defect, or can afford to do so, they will be required to pay in full for the historical building safety issues.
- Where building owners are not linked to the developer and are not able to afford the remediation, some costs can be passed on to qualifying leaseholders.
- Fixed caps will limit how much qualifying leaseholders can be asked to pay for non-cladding costs
- In most cases these will be capped at £10,000, or £15,000 for leases in Greater London, with a repayment period of ten years.
- Leaseholders will pay nothing if their property is valued at less than £175,000 (£325,000 in London)
- Any costs paid out by leaseholders over the past five years will count towards the cap, meaning some leaseholders will pay nothing more.
- Different caps will be applied to very high-value properties – those with a value over £1m but under £2m are capped at £50,000. Where the value is over £2m the cap is £100,000.



Holding Industry to Account

- The Act provides new powers for the Secretary of State to restrict irresponsible developers from building new homes.
- It provides for a Building Safety Levy, expected to raise an estimated £3 billion over 10 years. This will fund the cladding removal on buildings 11-18m where the developer cannot be traced or fails to cover the costs upfront.
- It enhances legal options for building owners, allowing them to pursue developers, contractors and manufacturers for shoddy construction works and defective products where homes have been made unhabitable from the past 30 years.
- There are extra powers for the courts in England and Wales to go after associated companies. This means businesses who have hidden behind shell companies within their corporate structures can now be pursued to pay.
- And new regulations that will force construction product manufacturers to contribute to essential building safety repair costs for buildings where their products have made them too unsafe to live in.



Enforcement - Design and Build

- We are making changes to the Building Act 1984 which will strengthen existing powers and introduce new powers.
- These powers will be available for the Building Safety Regulator for in-scope buildings and for local authorities for out-of-scope buildings.
- Directors/managers can also be found liable for any of the criminal offences mentioned below.
- Section 35 of BA84 (breach of building regulations):
 - Triable either way – removes altogether the time limit for prosecutions under s35
 - Increased penalty – max. penalty of an unlimited fine and up to two years in prison
- Section 36 of BA84 (notice for remedial action):
 - Extending the time limit for enforcement from one year to ten years
- Compliance notices
 - Can be served against any breach of building regulations, requiring corrective action by a set date
 - Failure to comply will be a criminal offence

Stop notices:

- Can be served against a breach of specified building regulations (i.e. at Gateways), a breach of a compliance notice and any breach of building regulations which is likely to cause 'serious harm'
- A stop notice requires that all specified work is stopped until the contravention is rectified
- Failure to comply will be a criminal offence



Enforcement – during occupation

We are introducing new enforcement powers during the occupation phase of a higher-risk building to ensure that dutyholders are discharging their duties to manage building safety risks.

- **New criminal offences**
 - The new criminal offences in Part 4 of the Act will ensure those responsible for the safety of higher-risk residential buildings comply with their responsibilities – including making directors/managers personally liable.
- **Compliance notices**
 - If an Accountable Person fails to meet requirements, the Building Safety Regulator will be able to issue a compliance notice requiring rectification by a set date, with failure to rectify a criminal offence.
- **Special measures**
 - The Building Safety Regulator can trigger a “special measures” provision, giving them extensive powers over the building, including receiving and spending service charges and ground rent.



There is a lot to do over the next two years:

Implementing the Act...

- a major programme of secondary legislation through to 2024 to implement the detailed regime, building on the transition programme published in 2021 (more on the next slide).
- And three regulatory bodies to be established – the Building Safety Regulator, the National Regulator for Construction Products and the New Homes Ombudsman.

And continuing to pursue the industry to pay to fix the issues they have caused...

- working with the industry to ensure that developers who have committed to fix all buildings over 11 metres that they have played a role in developing in the last 30 years deliver on that commitment. Continuing to pursue developers who have not yet committed to do the same
- Potentially using powers taking in the Building Safety Act to pursue companies as part of a new Recovery Unit that will be based in the Department.



So what can you expect in the coming months?

- Lots of engagement from the Department.

In the next 12 months we will be:

- developing and consulting on secondary legislation,
 - drafting guidance to accompany changes in the law, and
 - building digital systems and registers.
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- It is a significant package of work and we will look to you and your members to support and help us in its development.



Thank you for your time today