

The Building Safety Act

An update for members

April 2024



Executive summary

The Building Safety Act represents a significant shift in the regulatory framework governing the UK's construction industry. Its core objective is to reshape the industry's culture and practices to make sure building safety is a paramount concern on all projects.

Now the secondary legislation is released there is a huge amount of work and debate taking place across the industry, primarily in England, as these regulations impact this country the most, with a significant amount relating to Wales and very little applying to Scotland or Northern Ireland.

There is a great deal to consider here. The transitional period began in October 2023 leaving the industry less than a year to get everything in place ready for full implementation of the Building Safety Act in April 2024.

Additionally, the recommendations laid out in the Morrell review describe changes that will have a significant effect on businesses manufacturing construction products.

The Independent Review of the Construction Product Testing Regime looks across the whole system of construction product regulation to provide an understanding of what needs to change before products are placed on the market and crucially - before they are placed in buildings. It asks how product users can make informed choices about fitness for purpose and how, through the right processes, diligent oversight and the principles of transparency and accountability, there can be confidence that products are selected, handled, installed, operated and maintained against clear and verifiable Declarations of Performance.

Under the Building Safety Act 2022, manufacturers and sellers of construction products can now be held accountable where the use of a construction product in works, causes or contributes to a dwelling or a building containing a dwelling(s), being unfit for habitation.

Under this Act, Section 38 of the Building Act 1984 becomes enforceable meaning that any breach of building regulations can now lead to a claim for damages in a period up to 15 years from the date of completed building work, but only in respect of buildings completed after 28 June 2022, when the Act came into force. In addition, the Act extends the limitation period with respect to work already completed for claims under the Defective Premises Act 1972 from six years to 30 years, with retrospective effect.

This emphasises the need for manufacturers to now keep construction product information for an extended minimum period of 15 years (compare this to the Construction Products Regulation which states a period of 10 years).

Further information

The Government Independent Review of Building Regulations and Fire Safety report [HERE](#)

STA COMMENT

Whilst the Act per se applies only to high-risk buildings, it is quite possible that some organisations commissioning other types of buildings may feel comforted by applying the Act to smaller lower-risk projects. STA provide this information in anticipation of this condition and by doing so prepares STA members for such eventuality.

The Building Safety Act

Coming in the wake of the Hackitt review, receiving Royal Assent on 28 April 2022, the Building Safety Act covers a raft of changes introducing new duties for the management of fire and building safety in high-risk residential buildings¹. These include a new system of accountability for safety in projects and a refreshed regulatory framework. It is claimed to be the biggest change in building safety for over 40 years.

The Building Safety Regulator (BSR) became fully operational on 01 April 2023 and the principal accountable person (the person who is legally responsible for the structure and exterior of the building) has been required to register high-risk residential buildings from that date. The new National Regulator for Construction Products will work with the Building Safety Regulator.

The other important change is the 'golden thread' of information. Dame Judith Hackitt recommended the introduction of a golden thread to support duty holders in designing, constructing and managing their buildings as holistic systems, taking into account building safety at all stages in the lifecycle. The purpose is to ensure all relevant parties have accurate information to understand a building and the steps needed to keep both the building and people safe, now and in the future.

Further information

The Building Safety Act Government website [HERE](#)

Website to register a high-risk building [HERE](#)

Storing information and creating a Golden Thread [HERE](#)

¹ Higher-risk buildings are defined as buildings with at least two residential units, care homes, and hospitals which are at least 18 metres in height or have at least 7 storeys. This definition does not amend definitions of higher-risk buildings in other legislations.

Secondary legislation

On 01 October 2023, the secondary legislation, needed to support the practical implementation of the Building Safety Act came into force. It was also the deadline for registering occupied and new residential high-risk buildings with the Building Safety Regulator.

It has been unclear how the Government and Building Safety Regulator will put the legal requirements within the Building Safety Act into effect. However, this new legislation is intended to help ensure responsible parties operate within the law. The Building Safety Regulator will now monitor the industry and will be able to impose fines, order alterations or the removal of non-compliant work. The extensive enforcement powers granted by the Building Safety Act means the Buildings Safety Regulator has the power to prosecute individuals of corporate bodies.

Further information

Government Building Safety Act: secondary legislation [HERE](#)

Relevant regulations

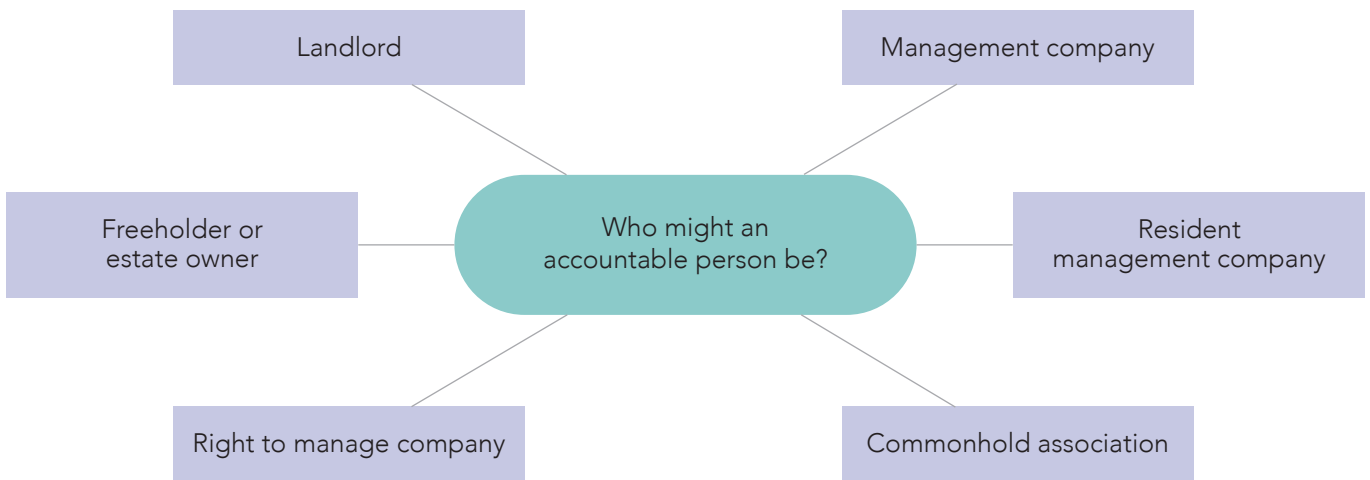
The five sets of regulations that have come into force are:

1. The Building Regulations etc. (Amendment) (England) Regulations 2023
2. The Building Regulations (Higher-Risk Building Procedures) (England) 2023
3. The Building (Approved Inspectors etc. And Review of Decisions) (England) Regulations 2023
4. The Higher-Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023
5. The Building Safety Act 2022 (Consequential Amendments etc.) Regulations 2023

Far-reaching implications

The regulations deliver the recommendations laid out in the Hackitt review and cover the technical detail underpinning the new, more stringent regime for the design and construction of higher-risk buildings, wider changes to the building regulations for all buildings and the details of the new in-occupation safety regime for higher-risk buildings.

Through these changes, the Government has made it clear that those who commission, design and construct buildings maintain the liability for ensuring compliance with the building regulations. This is reinforced by the obligation of clients to declare a project as compliant on completion.



Duty holder responsibilities are now in force with new duties being to plan, manage and monitor activities in relation to building regulations.

Higher-risk construction projects are subject to a new building control measures overseen by the Building Safety Regulator with increased accountability among stakeholders.

A golden thread of information is now required for each higher-risk building.

The Golden Thread

Under the new “gateway” approach to ensure that building safety is considered at each stage of a building’s design and construction, a “Golden Thread” of information needs to be compiled.

The “Golden Thread” provides an audit trail throughout the life of a building. It does this by providing:

- Information about a completed building which allows someone to understand the building and how to keep it safe, now and in the future
- The management of this information ensures that the information is accurate, up-to-date, is easily understandable and can be assessed digitally by those who need it. [At the time of writing, the Government proposes not to define digital law so as to avoid any unnecessary burden on industry.]

While the Government has stated that it intends to work with the Regulator to produce guidance for the sector on golden thread requirements, the guidance below is provided on the information currently available.

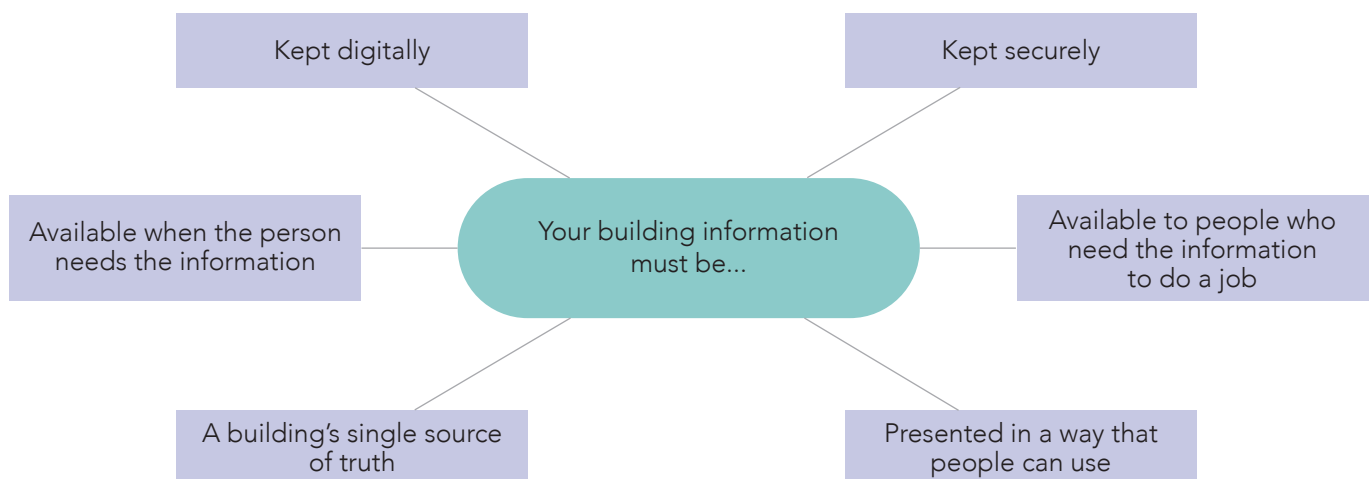
Under Part 4 of the Building (Higher-Risk Building Procedures) (England) Regulation 2023, there is a requirement for the “client” i.e. the building owner, or someone on their behalf, to:

- Make arrangements for an electronic facility to be created and maintained for the purpose of holding the “golden thread” information, and
- Provide procedures for persons involved with designing or carrying out the building work and for those who require access to this facility for the purpose of maintaining the golden thread information in the facility if changes are made in the future.

To enable the above to happen, manufacturers of construction products need to ensure that their product information is:

- Capable of being kept in an electronic format
- Capable of being transferred electronically by other persons (interoperability) without the data, information or document in the golden thread being lost or corrupted
- Accurate and up to date
- Only changed in accordance with procedures which record the person who made the change and the date of this occurrence
- Accessibility - is available in a readable format which is intelligible to the intended readers of the data and any key needed to understand the data is provided with that data
- Made available as soon as is reasonably practicable following a request from a Principal Designer or Principal Contractor to enable them to comply with their requirements under the building regulations
- Secure from unauthorised access
- As far as is reasonably practicable, uses language, terminology and definitions which are consistent.

Thus, the golden thread becomes a “single point of truth.”



It is important to note that golden thread information includes previous versions of any document which has been updated.

When the golden thread information is handed over to the eventual client, the information provided must be sufficient to enable the client to understand, operate and maintain the building (and the fire safety systems in it) after the building work is complete. To assist the responsible person to operate and maintain the building with reasonable safety, the fire safety information to be provided means information relating to:

- The design and construction of the building and the services, fittings and equipment provided in or in connection with the building
- If appropriate, the design of the material change of use and building work to implement this change
- The composition of materials used.

Manufacturers should also bear in mind that if a future claim is made regarding the building, the claimant must show that the work carried out was not undertaken in a workmanlike or professional manner or that 'proper materials' were not used. This emphasises the importance of manufacturers and sellers of construction products to provide accurate, clear, up-to-date, accessible and unambiguous information about their products. CPA advises manufacturers to examine the benefits of engaging with the Code for Construction Product Information.

The overhaul of regulations will require building owners to demonstrate safety at each of three new 'gateways':

- Planning and design
- Construction
- Occupation.

Compliance will be monitored by the Building Safety Regulator with significant powers to demand documents and to stop works, and a new National Regulator for Construction Products with the power to remove dangerous products from the market. These regulations affect predominantly England, with a significant amount relating to Wales and very little applying to Scotland or Northern Ireland.

Paul Morrell review of regulatory regime

The fire at Grenfell Tower also exposed serious weaknesses in the regulation of construction activity and construction products. Ordered following disturbing evidence heard from material manufacturers at the Grenfell Tower inquiry, the Government has recently published Paul Morrell's long-awaited Independent Review of the Construction Product Testing Regime.

The review splits the alleged failures into four categories:

1. Failures on the part of manufacturers to disclose all information relevant to the product and its assessment.
2. Failures on the part of manufacturers to ensure that claims made in a Declaration of Performance for their products are limited to those that are supported by the testing and assessment process.
3. Failures on the part of Conformity Assessment Bodies to follow proper procedure in conducting the assessment process, including testing.
4. Failures on the part of Conformity Assessment Bodies to ensure that a certificate or classification report is fully and assuredly supported by the preceding conformity assessment process.

The review recommends a series of sweeping reforms to ensure products used on buildings are safe - with a major shake-up in the regulatory system likely to follow. The Grenfell Tower tragedy and the failings it has laid bare have made clear the imperative for change.

As the Government's first Chief Construction Advisor, Paul Morrell co-chaired the 174-page review with construction legal expert Anneliese Day KC. It provides advice on how the new National Regulator for Construction Products (CPR), based in the Office for Product Safety within the Department for Business and Trade, will work with the new Building Safety Regulator, based in the Health and Safety Executive.

Further information

Independent Review of the Construction Product Testing Regime [HERE](#)

Morell recommendations

- ✓ Ensure active and effective enforcement under the new regulatory regime for products, backed by adequate and trained resources and communicated with such clarity as to persuade manufacturers and others in the product supply chain that breaches of duty will have real consequences.
- ✓ Assure manufacturers that competition, including from imports, will be conducted on a level playing field.
- ✓ Develop a sector-specific, publicly accessible database that lists products known not to comply with the conditions for being placed on the market, or for which claims are made that cannot be verified.
- ✓ Industry and its trade associations should provide leadership for manufacturers to aid and support compliance with regulatory requirements, and to work closely with the regulator with the same objective and in taking corrective action where required.

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