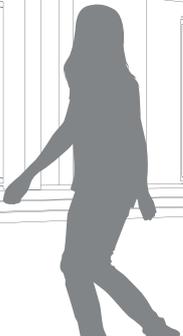
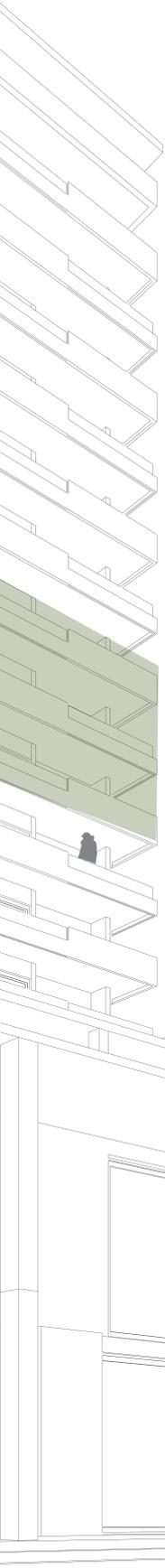


# **BUILDING SAFETY BILL**

Addendum to the essential guide



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## Introduction

Following the publication of our Essential Guide to the Building Safety Bill (the Bill) in September 2021, the Government has published six pieces of draft secondary legislation that provide further detail about the new regulatory regime. The draft regulations are expected to be debated alongside the main Bill, which is currently in the Report Stage ahead of its third reading in the House of Commons.

Together with the two other draft regulations published alongside the Bill in July 2021 (which we covered in our Essential Guide), these new draft regulations provide further clarity about how various aspects of the regime will work in practice. Currently, we expect the bulk of the new obligations to come into force between July 2023 and January 2024.

Trowers & Hamlins is committed to helping our clients navigate the new building safety regime and prepare effectively for implementation. This addendum is intended to sit alongside our Essential Guide to provide an overview of the key elements of the new draft regulations.



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# The six new draft regulations

## The Building (Higher-Risk Buildings) (England) Regulations [2022]

These draft Regulations provide more detail about the building control approval stages for the design, construction and major refurbishment of Higher-Risk Buildings<sup>1</sup>, formerly referred to as “Gateway 2” and “Gateway 3”.

Gateway 1, which requires consideration of building and fire safety for Higher-Risk Buildings as part of local authority planning applications, came into force on 1 August 2021.

The draft Regulations apply to anyone undertaking “HRB work”, which is defined as:

- the construction of a Higher-Risk Building; or
- work to an existing building that causes it to become a Higher-Risk Building; or
- such work, if any, which is necessary to ensure a building that undergoes a material change of use to become a Higher-Risk Building complies with the applicable requirements listed in Regulation 6 of the Building Regulations 2010.

### Gateways 2 and 3

Gateway 2 is now referred to as “building control approval”, which must be applied for and approved before any HRB work commences.

Following Gateway 2 approval, strict change control procedures apply. In some instances (where there is a “notifiable change”), the Building Safety Regulator (the Regulator) will need to be notified in advance of the change being made. In others (where there is a “major change”), an application to the Regulator will need to be made first. The Government has not yet defined which changes will be “notifiable changes” and “major changes.”

Gateway 3 is now referred to as “completion certificate approval”, which must be applied for after completion of the works and must be approved before the building can be legally occupied. Completion certificates will be issued if a Gateway 3 application is approved. Applicants may also apply for partial completion certificates for a building. Only once the completion certificate has been issued (either for partial or full completion) can the new building be registered with the Regulator for occupation.

The draft Regulations provide detailed guidance about documents and information to be provided to the Regulator as part of each application, and for any change control application during the works period, including careful consideration of building safety.

It is anticipated that the Regulator must approve or reject applications within 12 weeks of building control approval and completion certificate applications, or such longer period as agreed between the Regulator and the applicant. Change control applications must be determined within 4 weeks or a longer agreed period. There are also requirements on the Regulator to consult with certain persons (such as “enforcing authorities” as defined in article 25 of the Regulatory Reform (Fire Safety) Order 2005) before approving applications.

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<sup>1</sup>As defined in Part 3 of the Bill, together with the draft Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations

The Regulator must give reasons for any rejection of an application and may make any approval conditional on remedial actions or amendments to any of the key documents. Where an application is rejected, the applicant may apply for the decision to be reviewed and may then appeal to the First-tier Tribunal if the Regulator's decision is upheld on review.

### **Golden thread**

The draft Regulations define for the first time the “golden thread” (an electronic portal containing all information submitted as part of building control, change control and completion certificate applications as well as any mandatory occurrence reports). Golden thread information must be kept electronically, but the Government has yet to provide further details on an appropriate standard or format.

The draft Regulations also require that “key building information” about Higher-Risk Buildings is submitted by the Client to the Regulator via an online portal. The purpose of the key building information is to allow the Regulator to keep a register of Higher-Risk Buildings. Up-to-date key building information must be kept electronically but, as with the golden thread information, the standard or format is still to be confirmed.

Both golden thread and key building information must be provided to the “relevant person” (which will usually be the Principal Accountable Person) before the completion certificate application is made.

### **Mandatory occurrence reporting**

The draft Regulations also set out details of the mandatory occurrence reporting system for HRB work. During design and construction, the main duty to put in place a mandatory occurrence reporting system will be placed on the principal designer and the principal contractor. Where there is a safety occurrence during the construction phase, a principal Dutyholder must follow a prescribed reporting procedure to inform the Regulator on becoming aware of the occurrence.

## **The Construction Products Regulations 2022**

These draft Regulations establish a new regime for the regulation of construction products in the UK.

### **Safe products and the general safety requirement**

The provisions define a “safe product” and place a general safety requirement on “economic operators” (manufacturers, importers and distributors) not to make a construction product on the market unless it is a safe product. They also require all economic operators to be established in the UK so as to be able to ensure conformity with the rules and any enforcement decisions. There is also a positive obligation on that economic operator to notify the Secretary of State where they have reason to believe the product does not comply with the general safety requirement.

There are express obligations on manufacturers, importers and distributors of construction products to undertake risk assessments and provide safety information about construction products, and withdraw or recall products that are not in compliance.

### **Safety critical products**

The Secretary of State may request that the British Standards Institution draw up a “safety-critical standard” for a “safety critical product” (products that may risk death or serious injury to any person), establish an AVCP (assessment and verification of constancy of performance) system for safety critical products, and place enhanced obligations on manufacturers, importers and distributors in relation to safety critical products, including Declarations of Performance.

### **False or misleading claims about construction products**

The draft Regulations introduce a new requirement that economic operators must not make false or misleading claims about construction products they put on the market.

### **Enforcement powers**

Enforcement authorities are granted a wide range of powers to test and inspect products, require information from economic operators, enter premises for the purposes of testing and inspecting, seize or detain goods, and order the withdrawal or prohibition of unsafe products.

The draft Regulations establish a number of offences for breaches of the regulatory regime and the obstruction of any enforcement activity. Where an offence is due to the acts of a third person, that person may also be guilty of the offence. Individuals within bodies corporate may also be prosecuted.

## **The Higher-Risk Buildings (Prescribed Principles for Management of Building Safety Risks) Regulations [2022]**

These draft Regulations set out the principles that Accountable Persons must follow in taking all reasonable steps to prevent a “building safety risk” (as defined in the Bill) materialising and reducing the severity of any incident resulting from such a risk materialising.

Under section 86(3) of the Bill, when carrying out the duty set out above, the Accountable Person must act in accordance with “prescribed principles”. The draft Regulations set out these “prescribed principles”, which are to:

- avoid building safety risks;
- evaluate building safety risks that cannot be avoided, including identifying the proportionate measures required to reduce address and mitigate the building safety risks;
- combat building safety risks at source by introducing proportionate measures to reduce, address and mitigate that risk at the earliest opportunity;
- ensure suitable and proportionate systems are in place for the effective inspection, testing and maintenance of the efficacy of measures taken;
- give collective protective measures priority over individual protective measures;
- adapt to technical progress;
- where reasonable to do so, replace the dangerous with the non-dangerous or less dangerous;
- where reasonable to do so, consider the impacts on residents within the higher-risk building and carry out engagement with those residents, and
- give appropriate instructions and information to employees and persons working on or in the higher-risk building.

## The Building (Restricted Activities and Functions) (England) Regulations [2022]

These draft Regulations require that certain functions of local authorities, the Regulator and registered building control approvers (“restricted activities”) must only be carried out after receiving advice from a registered building inspector whose registration covers the type of building and building work to which the function relates. “Restricted activities” relate to all building control and other approval decisions for Higher-Risk Buildings.

## The Building Safety (Fees) Regulations 2022

These draft Regulations allow the Regulator to charge fees and recover charges for or in connection with the performance of a “chargeable function”, which covers most of the Regulator’s anticipated functions under the Bill. All fees covering the design and construction of a project must be paid by the client Dutyholder, whereas all fees covering in-occupation functions are to be paid by the Principal Accountable Person.

## The Architects (Fees for Services) Regulations [2022]

The Bill amends the Architects Act 1997 to allow the Architects Registration Board (ARB) to amend its registration requirements for architects in line with the new regulatory regime. These draft Regulations allow the ARB to charge fees for the registration of UK and overseas architects.

For further information about the Building Safety Bill and how it may affect you, please contact:



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