

## The Building Safety Bill, introduced in the House of Commons, 5 July 2021: summary notes

### Executive summary

#### Key changes from the draft version of Bill (published July 2020):

- Building Safety Manager (BSM) = statutory role
  - **but no statutory duties** - contract will outline the BSM duties
  - role is to assist the Accountable Person (AP) meet their obligations under Part 4 of the Bill, comprising the management of safety and overseeing the systems and processes in place for the building's safety
- Principal Accountable Person (PAP)
  - = appointer of the BSM
  - new term, recognition of multiple accountable persons (APs) in a building
  - potentially exempted from BSM duty when an individual (if PAP is an individual) nominated individual (if organisation) within the PAP meets competence requirements
- Scope
  - building height: 7 storeys or at least 18 metres, and at least two residential units
  - building safety risk:
    - spread of fire
    - structural failure
- HSE influence – 'as far as is reasonably practicable'
- Assessment of BSM remains the same as in the Draft Building Safety Bill (Draft BSB), guidance will be provided by the Building Safety Regulator (the 'Regulator') on this in the future. IWFM, through its membership of the Building Safety Alliance, will be engaging on this with the HSE. PAS 8673, which will outline the competence standard for the BSM, is expected to be referenced in the guidance as the benchmark for competence. **This PAS is under public consultation until 15 September**
  - individual BSM is assessed by the AP
  - individual nominated by both organisation BSM and AP (implied, as the AP duty is to reassure themselves of the competence of organisational capability and competences)
  - statutory guidance expected to make reference to PAS 8673

- government expects BSM to be certified by third party accredited organisations (Industry Competence document and government response to Housing Select Committee)

### **Key documents (with links):**

1. [Building Safety Bill](#)
2. [Building Safety Bill Explanatory Notes \(ENs\)](#)
3. [Draft Regulations](#)
4. [Factsheets](#)
5. [Draft PAS 8673 Framework for competence of individual Building Safety Managers and nominated individual Building Safety Managers – Specification](#) (consultation closes 15 September)

### **Wider Context**

#### **Objective of the Bill:**

1. To learn the lessons from the Grenfell Tower fire
2. To remedy the systemic issues identified by Dame Judith Hackitt by strengthening the whole regulatory system for building safety

**Regulator objective and regulatory principles** (Clauses 3, 4 and 5) - remain unchanged from the Draft BSB).

Regulator objectives:

1. Secure the safety of people in and around buildings
2. Improve building standards

Regulator core functions:

1. Oversee the safety and performance of all buildings
2. Facilitate improvement in competence of industry and building inspectors
3. Implement a more stringent regime for higher risk buildings

#### **Committee engagement by Regulator**

The Regulator will establish and maintain several committees, as already outlined in the Draft BSB: the Building Advisory Committee, the Residents' Panel and the Committee on Industry Competence.

The Interim Committee on Industry Competence has been set up and a working plan is being developed.

#### **Higher-risk buildings – which buildings are in scope?**

The Bill introduces a new regulatory regime for 'higher-risk buildings', defined in the Bill as buildings in England that are:

- at least 18 metres in height or have at least seven storeys; and
- contain at least two residential units. A residential unit can be a dwelling, a flat, a bedroom in a hall of residence, or any other unit of living accommodation.

[The Higher-Risk Buildings \(Descriptions and Supplementary Provisions\) Regulations](#), published in draft with the Bill, provides that care homes and hospitals will be higher-risk buildings, but secure residential institutions, temporary leisure establishments (e.g. hotels) and military premises will be excluded.

For the purpose of Part 4 of the 2021 Act, buildings are **not** higher-risk buildings if they comprise entirely of:

- (a) a care home;
- (b) a hospital;
- (c) a secure residential institution (e.g. prison, youth detention centre, etc);
- (d) a temporary leisure establishment (e.g. hotel); or
- (e) military premises.

### [Draft Regulations](#)

#### Factsheet:

The NHS has unique risks when compared to other higher-risk buildings and a key issue is therefore that the buildings are optimally designed and constructed, especially as such buildings can have an operational life of 30 years. The 'in-occupation' parts of the regime will not cover these NHS buildings, as they are regulated through the Fire Safety Order and by the Care Quality Commission.

The list of buildings in scope can be amended by regulations in future.

### **Which building safety risks fall within scope?**

The risks covered in Part 4 of the Bill are risks to the safety of people in or about a building arising from any of the following occurring as regards the building:

- the spread of fire (previously it was 'just' fire)
- structural failure
- any other prescribed matter. So while the scope of risks could be expanded in future, it is not anticipated that this will happen over the next few years.

The risk would only be considered for inclusion in the prescribed list if it would have the potential to cause **a major incident**, which in itself means resulting in:

- a significant number of deaths, or
- serious injury to a significant number of people

## **Key Roles**

**Accountable Person** - the dutyholder in occupation

### **AP - who are they:**

- the entity responsible for meeting the statutory obligations for occupied higher-risk buildings
- a person who holds a legal estate in possession in any part of the common parts (subject to Subsection 2), or
- a person who is under a relevant repairing obligation in relation to any part of the common parts (a management company can be defined as an AP)
- can be an individual, partnership or corporate body
- where there are multiple APs, a Principal Accountable Person (PAP) will be identified as the lead AP
- a PAP can be the only AP, or where more than one AP when they are the entity that owns the structure and exterior of the building

### **Obligations in occupation:**

- PAP duty to register the building within 28 days of a direction from the Regulator (existing occupied buildings will need to be registered within a fixed transition period following the regime coming into force). This step allows for dutyholders to identify themselves to the Regulator, who in turn can then decide if any investigation needs to take place
- PAP duty to apply to the Regulator for a Building Assessment Certificate, which must be obtained before a building can be occupied - this will be issued once the Regulator is satisfied that the AP complies with their obligations, including the BSM appointment obligation
  1. Building Assessment Certificate must be displayed by the PAP in a prominent position in the building
- PAP duty to appoint a BSM, prior to occupation of the building. If there are multiple APs and where the PAP will take on the BSM role, the PAP must:
  1. consult the other APs; and
  2. give them a document setting out the proposed terms of an agreement, to be made between all the APs, for sharing relevant expenditure

- PAP duty to establish and oversee a single mandatory occurrence reporting process (MOR) for the whole building. While the PAP will oversee the single MOR system, each AP will be responsible for ensuring compliance in their area and will need to coordinate with the PAP
- Ongoing duty for APs to assess and manage risks
- Ongoing duties for APs to maintain and update the safety case of the building (and its safety case report – the latter should be prepared by the PAP and submitted to the Regulator)
- Duties relating to information and documents:
  1. APs must, in prescribed circumstances, give prescribed information to the regulator
  2. PASs must establish and operate an effective mandatory occurrence reporting system, which will make sure information is given to APs so that they can comply with their duty to keep the regulator informed of prescribed information. The purpose of this approach is to create a blame-free culture, where people should not be punished for stepping forward and sharing certain information
- Duty to promote a strong partnership with residents:
  1. produce and keep up to date a Residents' Engagement Strategy
  2. put in place an internal complaints procedure for safety complaints
  3. duties covering information provision
  4. the role of residents in helping to keep the building safe
- Cannot delegate their accountability, but can delegate the tasks
- Duty to cooperate and coordinate with every other AP and RP in the building (Clause 118)

Failure to comply with these duties is a criminal offence, punishable by imprisonment for up to two years and/or a fine.

## **Building Safety Manager**

Duty to appoint BSM (Clause 78)

### In summary:

- Statutory role
- **But** clause 78 (1) limits BSM duties to: carry out such duties relating to the planning, managing and monitoring of Part 4 functions **as may be specified in the appointment (BSM duties)**

### Further detail around appointment requirements:

- Principal Accountable Person (PAP) to appoint BSM prior to occupation
- The appointment is dependent on the PAP satisfying themselves that the BSM is **competent**:

1. if they are an **individual**, they must have the skills, knowledge, experience and behaviours (SKEB) necessary to carry out the role
  2. if they are an **organisation**, they must have the **organisational capability** to carry out the role's functions and there will be a **competent individual** (the '**nominated individual**') from the organisation always in place to oversee and manage the carrying out of the BSM duties (with the necessary SKEB)
- Appointment of BSM where there are **multiple APs (Clause 79)**:
    1. PAP appoints prior to occupation
    2. PAP consults other APs, recovers proportion of BSM payment
    3. Anticipated result: agreement between the PAP and other APs as to the terms and scope of duties of the appointed BSM and how the costs are to be met
  - Exemption to this appointment duty is only possible if the PAP is competent themselves - they would therefore be an:
    1. individual with SKEB to carry out the BSM duties
    2. organisation with organisational capability and a nominated individual with SKEB to oversee and manage the carrying out of the BSM duties (Clause 81)

#### A single BSM for a building? YES

The indication is that there should only be a single BSM for a building, as clarified by MHCLG in conversation. The purpose of this is clear - the single person will ensure a holistic whole building approach. Clause 78 only refers to 'a' person appointed. The BSM duties cannot be split out across different contractual relationships

EN 670 also states that there cannot be multiple BSMs engaged separately by each of the APs in a single building - this is the rationale why a single AP cannot have several contractual relationships either.

#### The BSM role or function

Unlike the Draft Bill, the actual Building Safety Bill, while acknowledging the statutory role, does not outline specific BSM duties. The reason for this is because the Government wanted to make clear that all accountability lies with the AP. The Bill therefore only makes reference to the BSM duties, insofar as they are outlined in the contract with the PAP (Clauses 78 and 80).

It is anticipated, however, that many of the AP duties (see above) will be delegated to the BSM, while the accountability for meeting the duty will remain with the PAP.

EN 660 sets out the role:

- to assist the AP meet their obligations under Part 4 of the Bill, comprising the management of safety and overseeing the systems and processes in place for the building's safety. The PAP will set out the functions of the BSM in contract.

EN 661 refers to holistic and coordinated oversight of delivering safe outcomes

EN 662 example:

- in practice, given the breadth of the obligations set out in Part 4 of the Bill, it is expected that a team of competent individuals within the same organisation will be required to provide the assistance needed by APs. Within appointed managing agent organisations, for example, there may be a group of individuals who, collectively, meet the functions expected of a BSM. A '**nominated individual**', with appropriate competence, will need to be identified in such instances to oversee the management of relevant individuals to ensure a holistic and coordinated approach.

EN 670:

- For many higher-risk buildings, ownership structures are complex and numerous bodies may hold rights and obligations for different parts of a building. Notwithstanding this, the Building Safety Review set out that a **whole building approach be delivered for the management of building safety risks**. Therefore, there cannot be multiple BSMs engaged separately by each of the APs in a single building.

EN 672 example:

- There must be a single BSM, appointed by the PAP, for the building, regardless of the number of APs for the building. Any BSM should play a key role in ensuring a **whole building approach** to managing risks.

#### How many buildings can a BSM have within their portfolio?

This is not set out in legislation. The Regulator will assess the capability and competence of the BSM in relation to the buildings they would manage. This will therefore be an ad hoc decision by the Regulator, when they assess the AP's application for a Building Assessment Certificate, as this application will include the name of the BSM and the AP will need to provide their due diligence.

The Regulator will be empowered to order the removal or replacement of a BSM.

#### Competence requirements for the BSM

Clause 117 talks about statutory guidance the Regulator will issue about competence assessment of the BSM, both the individual and the nominated individual, by the AP, and, in case of a nominated individual, by the BSM organisation as well.

The expectation is that the BSM is certified by third party accredited bodies, that may also decide to hold a register. The Building Safety Alliance, of which IWFM is a founding member, has been set up to drive the implementation of certification for BSMs and a BSM register, to create a single standard and level playing field for competence. The Alliance is currently developing the scheme against PAS 8673.

Industry competence requirements have been outlined in:

- [Government response to the Housing Select Committee report](#)

- [Industry Competence factsheet](#)
- [Draft regulations](#)

## **Access**

Where access has been refused, the AP may apply to the county courts for an order to enter the premises.

The court may grant such an order for entry, provided that it is satisfied that the order is necessary for the purpose as set out in the request (to assess building safety risk, or to make sure no duties on residents or owners have been contravened).

Before the court makes an order, it must ensure that:

- the AP has made a written request, setting out the purpose and an explanation for why access is needed, providing at least 48 hours' notice of their intention to access the premises and seeking permission to access the premises at a reasonable time;
- the request is either made in connection with the AP's duty to assess or manage building safety risks or in connection with duties on residents and owners of residential units; and
- entry to the premises has not been permitted.

If an order for access is granted, it must specify a date or a time period during which the relevant person must allow the AP, or a person authorised by them (such as the BSM), access to the premises.

## **Building Safety Charge**

This is the charge payable by tenants to the landlord for the ongoing cost of this new building safety regime and is in addition to the service charge.

The Landlord and Tenant Act 1985 will be amended as the provisions of the BSB will be inserted.

The BSB outlines what is understood under the costs, including:

- legal fees
- other professional fees
- fees payable to the regulator
- management costs

The landlord must comply with some obligations when demanding the building safety charge.

Costs will only be recoverable to the extent they are:

- reasonably incurred
- in connection with relevant building safety measures
- have been subject to a timely demand
- have been subject to prior consultation where required
- right to ask for information

- not excluded costs

## **Enforcement and sanctions**

The Regulator will have the power to ensure compliance with the measures outlined in the Bill through a combination of toughened existing powers and new powers.

The Regulator will have powers to prosecute all offences in Parts 2 and 4 of the Bill (including Schedule 2), and the Building Act 1984. In addition, for all offences in Part 4, where an offence is committed by a corporate body with the consent or connivance of a director, manager etc of that corporate body, or is attributable to their neglect, that person will be liable to be prosecuted as well as the corporate body.

The Regulator will be able to issue **compliance notices** (requiring issues of non-compliance to be rectified by a set date) and, in design and construction, stop notices.

Failure to comply with compliance and stop notices will be a **criminal offence**, with a maximum penalty of up to two years in prison and an unlimited fine.

The Bill includes **powers of entry to gather evidence for compliance action**. A warrant from a magistrates' court will be required for premises used wholly or mainly as a private dwelling, or where force needs to be used to enter any premises.

## **Strengthened Fire Safety Order**

The Bill includes provisions to strengthen the FSO to support greater compliance and enforcement, and to support a whole-system approach to building management.

The amendments will require that:

- the Responsible Person (RP) must record their fire risk assessment;
- the RP must not appoint a person to assist them with making or reviewing a fire risk assessment unless that person is competent;
- the RP must record their fire safety arrangements;
- for buildings consisting of two or more sets of domestic premises, the RP(s) must provide specific fire safety information to residents about relevant fire safety matters, and must keep records of the relevant fire safety matters;
- the RP must take reasonable steps to identify themselves to all other RPs in the same premises, inform them of their name and UK address and the part of the premises they consider themselves to be RP for, and keep a record of that information;
- departing RPs must provide specific relevant fire safety information they hold to incoming RPs for premises or parts of premises for which they are responsible, keeping records of the fire safety information;

- for higher-risk buildings in England, the RP must identify and co-operate with APs in the same premises to enable them to carry out their duties under the Building Safety Bill;
- increased financial penalties of unlimited fines apply for the criminal offences of impersonating an inspector, failing to comply with any requirements imposed by an inspector, and failing to comply with requirements relating to the installation of luminous tube signs; and
- Article 50 of the FSO (recently amended by the Fire Safety Act 2021) which relates to the provision of guidance for RPs, be amended to expressly provide that the court may take compliance or non-compliance with such guidance into account when considering offences of breach of the Order.

### **Timeline for implementation**

The Bill is expected to become an Act in about 12 months (around July 2022).

The Government has indicated that the first round of provisions will come into force within 6 to 12 months of the Bill receiving Royal Assent (late 2022, first half 2023).

While some provisions will come into force earlier, such as the Gateway 1 process for construction and major refurbishment of higher-risk buildings (on 1 August 2021), the majority of the provisions will come into force within 12 to 18 months of Royal Assent.

If you have any queries on the content of these summary notes, or would like further information on the Building Safety Bill, please email: [policy@iwfm.org.uk](mailto:policy@iwfm.org.uk)