

Building Safety in Brief

The new building safety regime for all buildings

Background

- The Building Safety Act (BSA) became law on 28 April 2022, allowing for secondary legislation to follow with more detail.
- A key consultation on **implementing the new building control regime** ran July to October 2022 (Consultation) and the **Consultation Response** was published in August 2023.
- Following the Consultation and Consultation Response, secondary legislation in the form of The Building Regulations etc. (Amendment) (England) Regulations 2023 (**BR Amendment Regulations**) came into force on 1 October 2023.
- These change the building safety regime for higher-risk buildings (HRBs) and non-HRBs (where building regulations apply subject to some limited exceptions). You can find out more about what an HRB is in our factsheet [here](#).
- This factsheet applies to England only.

This factsheet gives a high-level overview of key ways in which the new building safety regime impacts both HRBs and non-HRBs during the design and construction phase.

There are also other building safety changes which relate to HRBs only (eg Gateways and change control) - for more, see our factsheet on the new building safety regime for HRBs [here](#).

Automatic lapse of building control approval & “commencement”

Under the BSA, if building works have not commenced within 3 years from the date the building control application was made (assuming it was approved), then that building control approval automatically lapses. Building control approval must be applied for again, with building regulations effective at that date applying.

For multi-building developments, if works on one building have not commenced in the 3 year time limit, building control approval for that building will automatically lapse - even if works on the rest of the site have commenced.

The BR Amendment Regulations set out what “commencement of work” means in this context.

New “dutyholders”

The BSA provides for the introduction of “dutyholders”. The BR Amendment Regulations provide more legislative detail.

- Dutyholders will be the Client, Principal Designer, designers, Principal Contractor and contractors (on the face of it similar to the CDM Regulations, but with a focus on building regulations compliance).
- General duties for all dutyholders include:
 - ensuring the work carried out by them (and others under their control) is planned, managed and monitored so as to be in compliance with all relevant requirements (there is a similar obligation for design)
 - cooperating with other dutyholders to ensure that the work is in compliance with all relevant requirements (there is a similar obligation for design).
- Each type of dutyholder (eg Client or designer) will have their own further additional duties.
- There are further duties for dutyholders where the building is an HRB.

There are also detailed requirements around competence - including that any person carrying out building or design work must have the necessary skills, knowledge, experience and behaviours, if they are an individual; and where they are an organisation they must have appropriate management policies, procedures, systems and resources to ensure individuals under their control comply with their obligations.

Meaning of “commencement of work”

For the purposes of lapse of building control approval, “commencement of work” broadly means:

- for “complex buildings” - when the foundations supporting that building and the structure of the lowest floor level of that building (but not the other buildings or structures to be supported by those foundations) are completed
- for construction of a building (which is not a “complex building”) or for the horizontal extension of a building - when the sub-surface structure of the building or the extension including all foundations, any basement level, and the structure of ground floor level is completed
- for any other building work - when 15% of the proposed work is completed.

New procedures for building control applications for non-HRBs

The BR Amendment Regulations replace the current system of depositing full plans. Instead applicants intending to carry out building work (on a building which is a non-HRB) now submit a building control approval application with full plans to the local authority before commencing building work. The application will include a statement on whether the Regulatory Reform (Fire Safety) Order 2005 applies to the building (or will apply post-works), a description of the proposed works, and copies of the full plans.

The local authority determines the application within 5 weeks (or longer if agreed). The application is not to be considered as either approved or rejected until the local authority has issued its decision – so if there is no decision, this does not mean approval is automatically granted. If works commence without approval, they will be deemed “at risk”. There are different, more stringent laws around building control applications for HRBs, which include a more detailed application plus “hard stop” Gateway stages - for more, [see here](#).

Compliance and stop notices

The BSA empowers the Building Safety Regulator and local authorities to issue compliance and stop notices against non-compliant work. The BR Amendment Regulations set out the information to be contained in any compliance notice or stop notice, including the consequences of failing to comply with the notice. It also sets out how these notices should be given, how others should be notified, that notices may be withdrawn, and how an appeal can be made to the First-tier Tribunal.

Contact us

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Simon Lewis
Partner

+44 (0)191 279 9552
simon.lewis@wbd-uk.com



Michelle Essen
Legal Director
(Practice Development Lawyer)
+44 (0) 175 267 7633
michelle.essen@wbd-uk.com