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The Building Safety Act 2022 Implications for Building Control

While the implications for the construction industry are wide ranging, this guidance note focuses on what it means for building control practitioners and designers, contractors and clients seeking building control approval.

These changes have been brought in as a direct result of the Grenfell Tower tragedy, with the aim of improving compliance with building regulations, improving and regulating competence, establishing responsible persons and ensuring their liabilities cannot be deliberately or otherwise avoided, and strengthening penalties for avoidance or breach of responsibilities under the regulations.

This guidance note focuses on four key areas.

- [1 Duty holder declarations](#)
- [2 Registered Building Control Approvers \(known as Approved Inspectors until 6th April 2024\)](#)
- [3 Registered Building Inspectors](#)
- [4 New regime for Higher-Risk Buildings](#)

Compliance Declarations

This is applicable to all building work (as defined in the building regulations) from a kitchen extension right through to a high rise office development and everything in between including structural alterations, fit-out works, change of use etc. The client should appoint the principal designer prior to design commencing and the principal contractor prior to site works commencing. It is also an obligation of designers and contractors to ensure the client is aware of their obligations.

Effective from 1st October 2023 (with a transitional period where projects have an Initial Notice in place prior to October 1st 2023 and commence prior to April 6th 2024).

Where work described in an Initial Notice is complete, the client must give to the Approved Inspector notice to this effect. The notice must include:

- The name, address, telephone number and email address of the client.
- The name, address, telephone number and email address of the principal contractor and the principal designer.
- A statement that the building work is complete.
- A statement signed by the client that, to the best of the client's knowledge, the building work complies with the Building Regulations.

A statement given by the principal contractor for the work and the principal designer for the work signed by the person to which the declaration relates and includes the name, address, telephone number and email address of that person and the dates of their appointment.

Confirmation that they fulfilled their duties under the Building Regulations (see details of duties above).

You should note that the Approved Inspector cannot issue its final certificate without receiving the signed declarations detailed above as the final certificate requires the Approved Inspector to declare that they have received these signed statements. In the absence of these declarations a project cannot legally commence on site and cannot be issued with a final certificate resulting in potential legal proceedings via the Local Authority and / or newly established Building Safety Regulator (BSR).

Registered building control approvers

The amendments to the Building Act 1984 (section 58A -58Z10) introduce the following requirements.

Approved Inspectors are currently independently monitored and regulated by the Construction Industry Council Approved Inspector Register (CICAIR) under the Building Act 1984. Under the new building control system all Approved Inspectors will need to become Registered Building Control Approvers (RBCA) which requires registration with the BSR. The registration process will begin in October 2023 with all Approved Inspectors expecting to have applied for registration before 6 April 2024 when this becomes a requirement.

Businesses that have not registered by 6 April 2024 will not be able to do new building control work after this date. Transitional arrangements allow businesses who do not register to complete work in progress before leaving the profession. All higher risk building projects must be completed by 6 April 2024. All other building projects must be completed by 1 November 2024.

Registered building inspectors

The Building (Restricted Activities and Functions) (England) Regulations 2023 which apply in England only result in it being a criminal offence to impersonate a Building Inspector (with unlimited fines and / or prison sentences for offenders).

Building control is to become a regulated profession, meaning that the job title Building Inspector will be protected in law. There is a requirement for certain qualifications or experience to be held by individuals working within the profession and for them to register with the regulator (BSR) as Registered Building Inspectors (RBIs). This will become a requirement from April 2024 and applies to individuals within Local Authorities and those working for Approved Inspectors. All RBIs will have their competence third party validated against the Building Inspector Competency Framework for the class of registration.

On 14th March 2024 the government announced a three month delay to 6th July 2024 due to lack of capacity for assessing competency scheme submissions by the original planned date of implementation. However, from 6th April in order to carry out any restricted functions an individual must be at least registered at Class 1 (entry level) and have commenced a competency scheme application (termed in-flight) for class 2, 3 or 4.

Higher-Risk Buildings

The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 with relevant definitions in the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 have resulted in a new approvals regime for Higher Risk buildings where the Building Safety Regulator is the only body able to approve and issue certificates for relevant work. This includes the 'hard-stop' requirements of Gateway 2 and Gateway 3 where it is a criminal offence to commence work or occupy relevant buildings without prior BSR approval, again with potential unlimited fines or imprisonment where contraventions of these regulations occur.

From 1st October 2023, Building Control for alterations to existing, or the design and construction of new Higher-Risk Buildings (HRBs), can only be undertaken by the BSR. There are however some circumstances where approved inspectors may continue as the Building Control provider on HRB projects.

The BSR process will involve passing stringent 'gateways' at planning, design, and construction / occupation stages. The BSR has advised that they will administer this process by utilising the expertise of Multi-Disciplinary Teams (MDTs) which may include suitably qualified and experienced RBIs from the public and private sector.

HRBs are defined as buildings with seven or more storeys or have a storey height of 18m or higher and contain either at least two residential units, or, during design and construction, are a hospital or care home. HRBs are defined in detail within the Higher-Risk Buildings (Description and Supplementary Provisions) Regulations 2023. Additional guidance on determining if a building is a HRB has been published by the Government.

There is some flexibility for projects which are currently being worked on by Approved Inspectors – these have been termed 'in-flight' projects. An in-flight project is excluded from the changes to the Building Regulations and Building Control system, i.e. they may continue to use the incumbent approved inspector instead of the BSR in the following circumstances:

- An Initial Notice has been given and accepted by the relevant Local Authority before 1st October 2023.
- Work is 'substantially progressed' – this means the pouring of concrete for foundations, including piling, or where work relates to an existing building, when the work has started.
- The Approved Inspector has registered to become a RBCA and employees a suitably qualified registered Building Inspector(s) before 6 April 2024.