

# BUILDING SAFETY BULLETIN 2022

## Introduction

In the last year, we have seen the introduction of the Fire Safety Act, the Building Safety Bill receive royal assent, Michael Gove take the reins from Robert Jenrick as the new Housing Minister and the re-brand of the former Ministry of Housing, Communities and Local Government into the equally less snappy Department for Levelling Up, Housing and Communities.

Understandably, the industry is also being held to account under tough new measures to rectify defective work, importantly protecting leaseholders from costs through a developer's pledge. This has been accompanied by the Building Safety Levy, chargeable on all new residential buildings in England in the hope to raise £3 billion over the next ten years from developers to support remediation works.

While this may all seem positive, in the last month Dame Judith Hackitt told UK Construction Week that reform has been met with "mixed success", as too many have their "head in the sand", often "waiting to be told what to do." Hardly an accolade and, while Hackitt's comments are fully understandable, the headwinds of Brexit, Covid and war in Ukraine should not be downplayed regarding the complexity and scale of challenge facing the construction industry.

Steps forward can however be seen, as captured in [DLUHC's April Building Safety Programme monthly data](#), demonstrating 100% remedial action across all ACM clad buildings in the social housing sector and 88% in the private sector.

Any update would also be deficient without reference to EWS1 which continues to attract high levels of interest. Despite former Housing Secretary Robert Jenrick suggesting in 2021 to have secured mortgage lender support for cancelling EWS1 assessments, EWS1 requests to support mortgage valuations are in fact increasing, rising from 8% to 9% in Q1 of 2022. It is anticipated that the RICS updated guidance to valuers and withdrawal of its Consolidated Advice Note alongside the introduction of PAS 9880 will see EWS1 requests reduce across 2022.

## Legislation and key takeaways

2022 has marked the introduction and implementation of new legislation. The [Fire Safety Act](#) received royal assent on 29 April 2021 and came into force on 16 May 2022, amending the Regulatory Reform (Fire Safety) Order 2005. Essentially, the Act seeks to extend the scope of existing fire risk assessments and the obligations of the Responsible Person to include external walls (including balconies and in circumstances building structure) on any building of two or more residential premises. The Act also introduces a requirement to assess fire doors in both communal and individual flat entrances.

The [Building Safety Act](#) received royal assent on 28 April 2022 and it's fair to say the bill was one of the most scrutinised and hotly anticipated pieces of legislation in recent years. The passing of the bill into law certainly marks a watershed moment for the construction industry. The act's ultimate purpose is to put in place enhanced regulatory regimes for building safety and construction which will impact all levels of the industry. As the bill passed through the House of Lords, some key amendments were incorporated from the draft, namely:

- Removal of Building Safety Manager role with the Accountable Person now taking on day-to-day responsibility for managing safety of a higher risk building.
- Introduction of remediation and contribution orders which may be made to compel developers, partnerships, and landlords to pay for remediation.
- Inclusion of a structure to hold to account and compel construction product manufacturers to pay for the rectification of buildings that have been compromised by their products.
- Provision of minimum fifteen-year warranties as standard for new build homes.
- Widened scope under the Defective Premises Act 1972, to include refurbishment or rectification works that can now give rise to a course of action including an increase of the limitation period from six to fifteen years and retrospectively thirty years for claims that accrued before the act took effect.

## Timetable

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The duties and responsibilities of the Accountable Person are well documented. However, general competency remains a key feature of the act for all duty holders to demonstrate the necessary skills, knowledge, experience, and behaviour to carry out their roles. Regarding next steps, the government has published an [operational timetable](#) that indicates an 18-month transition period with a series of secondary legislation anticipated over the next 12 months.

Across 2023, the regime will come into full force including Gateway 2&3, a new industry competency committee with the Building Safety Regulator, new duties on the Accountable Person and mandatory registration of 'in scope' buildings, the latter associated with current preparation of building safety cases in support of the golden thread.

## PAS 9980

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With the withdrawal of the government's Consolidated Advice Note, January 2022 saw the publication of PAS 9980 as a new code of practice for the fire risk appraisal of external wall construction and cladding of existing multi-storey/multi-occupied residential buildings.

Importantly, the standard sets out a five-step risk-based methodology to conduct and record fire risk appraisals of external walls and gives recommendations for the competence of professionals completing such appraisals. It should however be recognised the standard is not intended as an alternative to the EWS1 form, although it will undoubtedly assist in providing greater levels of information in respect to external walls and general risk levels associated with a building. This new standard and a proportionate risk-based approach sits neatly with the government [Fire Risk Assessment Prioritisation Tool](#) to assist in the undertaking of FRAs with an expanded scope under the Fire Safety Act.



*Bellamy and Fenton House: Employer's agent, quantity surveyor and quality control inspector services for cladding renewal works to two 14-storey residential high-rise blocks for Hounslow Council.*

## Industry response and competence

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The shift towards greater levels of quality across the industry has also been endorsed by the introduction of the Building a Safer Future Charter established to promote culture change and improve building safety for all those living and working in the built environment. Whilst originally conceived to focus on high rise residential buildings, the charter has rightly extended its scope to cover buildings of all heights, a move firmly supported by Baily Garner. In addition, the Code for Construction Product Information (CCPI) has been introduced to drive higher standards in the presentation of construction product information and general transparency. This has been established around five 'acid tests' for a product to be introduced to market. Information must be clear, accurate, up to date, accessible and unambiguous with the overarching aim that clients, specifiers and users will insist to only work with CCPI compliant products as standard.

Competency levels remain a significant challenge across the industry, brought into focus in both the Raising and Setting the Bar Reports of 2019 and 2020. At Baily Garner, our commitment to improve competency levels remains both focused and unwavering. In respect to fire safety, we currently have nine individuals who have progressed various stages of their NEBOSH fire safety course with representation across all our main disciplines.

Three of our Chartered Building Surveyors have completed the RICS approved EWS1 training course and our partner, Andrew Little, joined a panel of industry representatives in undertaking a review of building safety across the industry, concluding one year's investigations with the publication of a report, available [here](#).

Despite a professional indemnity (PI) market that remains highly challenging, we are delighted to have secured several complex fire safety projects in recent months. Two flagship schemes include Edward Woods Estate for Hammersmith and Fulham Council and Bellamy and Fenton House for Hounslow Council.

Edward Woods Estate comprises three 24-storey tower blocks providing residential accommodation across 280 flats in a logistically challenging location adjacent to Westway flyover and an overground railway. A Building Safety Fund funded £25m project with services covering employer's agent, quantity surveying, quality control inspector and principal designer. The works include replacement of cladding and windows with enabling works commenced in early 2022. Pleasingly, this project builds on a series

of successfully delivered fire safety projects with Hammersmith and Fulham Council which included the milestone installation of 4,500 flat entrance doors in Spring 2022.



*Edward Woods Estate: Employer's agent, quantity surveying, quality control inspector and principal designer services for a £25m project including replacement of cladding and windows with enabling works*

Since 2017 we have managed Hounslow Council's fire risk assessment programme covering over 1,000 residential and corporate buildings ranging from sheltered accommodation to offices and depot buildings. With an excellent knowledge of the borough's asset portfolio, in early 2022 we were appointed as employer's agent, quantity surveyor and quality control inspector in connection with cladding renewal works to two 14-storey residential high-rise blocks. Works are being delivered in collaboration with a façade specialist contractor whereby early contractor engagement has provided an efficient route to delivery which firmly supports many of the procurement principles set out by DLUHG in their [2022 guidance](#).

## **Conclusion**

Whilst secondary legislation will provide greater depth of detail behind the main body of the Building Safety Act, the new act undoubtedly provides the framework to drive greater levels of quality, resident safety, competency, and accountability. However, it is important to recognise that while the act was introduced in response to the Grenfell tragedy, it clearly has broader implications such as the Building Safety Levy and amendment to the Defective Premises Act, the latter likely to result in an increase in the baseline cost for developers which will no doubt be passed on to consumers.

New liability and limitation periods may also see a rise in claims being brought by property owners against manufacturers and suppliers of products, especially cladding, associated with current disputes.

The introduction of a proportionate risk-based approach and methodology around external walls including expanded FRAs is welcomed. It is important however that building owners do not lose sight of the need for a wider holistic and strategic approach to asset management to ultimately ensure buildings remain safe, warm, and dry.

A key challenge is considering fire safety implications alongside the decarbonisation agenda in relation to building structure, fabric, and components. This will ensure all building aspects perform efficiently and are managed with residents at the forefront of the building decision-making process.

Andrew, Laura, Will and Tom would be pleased to hear from you to identify any support we can provide in responding to the challenge ahead.



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