

## Construction Law Update

### Government ditches the role of Building Safety Manager in latest shake-up of the Building Safety Bill

In a further change to the Building Safety Bill put forward following the Grenfell Tower tragedy in 2017, the Government has now scrapped the requirement to appoint a Building Safety Manager during the occupation phase of a construction project.

#### Background

The Building Safety Bill (the “**Bill**”), which is still making its way through Parliament and is yet to be passed into law, aims to improve the safety and regulation of higher-risk buildings post-Grenfell. The proposed introduction of a new role of Building Safety Manager (the “**BSM**”) was one example of how the Government intended to achieve this. Other proposals covered in our previous bulletins have included: -

- The appointment of a new Building Safety Regulator (the “**Regulator**”).
- The provision for financial contributions through the ACM cladding remediation programme and the Building Safety Fund to remediate unsafe non-ACM cladding for buildings over 18m in height.
- Prioritisation of the Government’s £5.1 billion funding on the highest risk buildings.
- Providing £27 million to fund fire alarms in all high-risk buildings to end controversial “waking watches”.
- Amending the Bill to retrospectively extend the legal right to claim under the Defective Premises Act 1972 to 30 years (instead of the previously proposed 15 years).

On 23 March 2022, the Government proposed further amendments to the Bill which included abolishing the role of the BSM and the requirement for a separate building safety charge.

The Government’s rationale behind these amendments, which received acceptance during the report stage of the Bill on 29 March 2022, is to “help

avoid unnecessary costs” being passed onto leaseholders in an effort to “restore common sense on building safety”.

#### The Role of the Building Safety Manager

As above, the Government had originally proposed to create the new role of BSM. This would have meant that landlords managing higher-risk buildings (i.e. high-rise buildings such as Grenfell) would have been obliged to recruit a BSM to manage the day-to-day running of their building to ensure that operation and occupancy complied with fire safety rules.

Under the Government’s old proposals, the Accountable Person, (the individual, partnership or corporate body with the legal estate in possession and / or a repairing obligation for a part of the common parts of a higher-risk building) would be responsible for appointing and notifying the Regulator of their chosen BSM (this could be done in-house or by an external individual or company).

Whilst the Bill did not initially set out the specific duties of the BSM, it was envisaged that these would include:

- Involvement in the planning, management and monitoring of activity in a building to ensure duties of the Accountable Person were complied with;
- Designing and implementing a suitable inspection regime in a given building;
- Notifying the Accountable Person where the safety and risk assessment of a building is inadequate and recommending steps to rectify the same; and
- Regular liaison with the Regulator.

Following the Government’s proposed amendments, it is likely that certain obligations including a requirement for the Accountable Person to inform the Regulator of their chosen BSM, will no longer be required. Other responsibilities including those which

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it had initially been envisaged would fall within the remit of the BSM, are likely to remain with the Accountable Person to fulfil. As such, an Accountable Person will now be expected to continually re-assess their own management arrangements to ensure compliance with evolving fire safety rules.

### Further Protection for Leaseholders

The Government has also proposed that existing protections in place aimed at preventing leaseholders from being charged for defective cladding work will be extended to those who own up to three UK properties.

Leaseholders in lower value properties will also not be charged for relevant remediation work.

### New Powers for the Secretary of State

Proposals have also extended to giving the Secretary of State wider powers to “impose requirements about new build home warranties”. This includes investigating and having a say on: -

- what defects the developer must agree to remedy;
- the circumstances in which a developer must agree to remedy given defect(s);
- the policy of insurance that must be held for a building including the risks that must be covered, the minimum amount of cover provided for under the policy, the duration of cover and the maximum amount of any excess chargeable; and
- the ability of a person with the benefit of the new build home warranty to transfer their benefit to another person.

### Analysis

These changes reflect the further evolution of the Government’s approach to the cladding crisis.

Whether these proposals constitute meaningful change and go far enough remains to be seen pending formal approval of the Bill.

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