

# The Building Safety Act 2022: What does it mean for builders?



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# Overview of the Building Safety Act 2022

The Building Safety Act 2022 (“Act”):

- introduces extensive, wide-ranging changes to the regulation of the construction sector; and
- includes an emphasis on “higher-risk buildings”.



# “Higher-risk Buildings”

“Higher-risk buildings” are defined in Part 3 of the Act as those:

- over 18 metres in height; or
- having at least 7 storeys; and
- “of a description specified in regulations made by the Secretary of State”.

This is expected change to require the building to contain at least two residential units, be a care home or be a hospital but excluding:

- secure residential units;
- temporary leisure establishments; and
- military premises.



## “Higher-risk Buildings”

“Higher-risk buildings” are defined in Part 4 of the Act as those:

- over 18 metres in height; or
- having at least 7 storeys; and
- which contain “at least two residential units”.

A residential unit is defined as:

“a dwelling or any other unit of living accommodation”.



## How is the height of a building determined?

“...the height of a building is to be measured from ground level to the top floor surface of the top storey of the building (ignoring any storey which is a roof-top machinery or plant area or consists exclusively of machinery or plant rooms)”.



## Who will be impacted by the Act?

The scope of the Act is not limited to “higher-risk buildings” and will impact:

- anyone involved in the construction, development and ownership of property;
- how construction projects are carried out and regulated;
- how data and information is collated and stored during the lifecycle of certain projects; and
- how the risks associated with any given project or property are managed.



# Building Safety Regulator

A division of the Health and Safety Executive, the Regulator will:

- oversee the safety and performance of all buildings;
- act as the building control authority for work relating to higher-risk buildings;
- regulate the building control profession; and
- exercise enforcement powers in relation to non-compliance with the Building Regulations.



# Prosecution of individuals

The Act allows the prosecution of directors, managers, partners, any “similar officer” and any person purporting to act in any such capacity if:

- an offence is committed with the consent or connivance of the individual; or
- is attributable to any neglect on the part of that individual.





# Enforcement Policy Statement

The Regulator's enforcement objectives will include:

- ensuring action is taken immediately to deal with serious risk;
- promoting and maintaining sustained compliance with the law; and
- ensuring that those who breach the law, including individuals who fail in their responsibilities, may be held to account.



# Civil Liability for Breach of the Building Regulations

If brought into force, s. 38 of the Building Act 1984 will expose builders to civil liability for damages arising from non-compliance with the Building Regulations.

- When will liability arise?
- What damages are recoverable?
- Within what period must a claim be brought?



# Civil Liability in relation to Dwellings

s. 2A of the Defective Premises Act 1972 exposes any person who “takes on work in relation to any part of a relevant building” to a duty to see the work is done in a workmanlike or professional manner, with proper materials and so that any associated dwelling is fit for habitation.

- When will liability arise?



# Civil Liability in relation to Dwellings

A defence to a claim under s. 2A of the Defective Premises Act 1972 may be available if:

- the builder or tradesperson who carried out the work did so in accordance with instructions given by or on behalf of the person instructing the work; and
- to the extent the builder or tradesperson had a duty to warn the person instructing the work of any defects in the instructions, the builder or tradesperson does so.



# Civil Liability in relation to Dwellings

In relation to claims under s. 2A of the Defective Premises Act 1972:

- What damages are recoverable?
- Within what period must a claim be brought?



# New Homes

The Act introduces:

- an obligation on developers of new build homes to provide the purchaser with a new build home warranty; and
- the New Homes Ombudsman, which:
  - will administer the New Homes Ombudsman Scheme; and
  - may enforce the New Homes Quality Code.



# Building Liability Orders

## A Building Liability Order:

- may be granted by the High Court in relation to liabilities arising:
  - under s. 38 of the Building Act 1984 (which is not yet in force);
  - under the Defective Premises Act 1972; or
  - in relation to a “building safety risk”;
- will impose the liabilities of one body corporate on “associated” body corporates; and
- will only be granted where it is “just and equitable” to do so.



# Managing Risk and Practical Tips

- What is the risk?
- Immediate risk management:
  - carry out a review of current and historic projects now;
  - implement a system for ensuring and evidencing compliance with the Building Regulations;
  - review corporate structuring; and
  - watch out for “pro-employer” contract terms.
- Future planning and risk





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