brownejacobson

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



Gavin Hoccom Senior Associate

gavin.hoccom@brownejacobson.com +44 (0)330 045 2413



brownejacobson.com



linkedin.com/company/brownej

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.





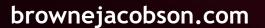


Building Safety Regulator

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?





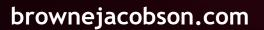


Civil Liability in relation to Dwellings

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







brownejacobson

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



Gavin Hoccom Senior Associate

gavin.hoccom@brownejacobson.com +44 (0)330 045 2413



brownejacobson.com



linkedin.com/company/brownej