



SHARPE PRITCHARD

Building Safety Update

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Welcome to our building safety update

The Building Safety Act 2022 (BSA) was introduced in response to the Grenfell fire tragedy and the recommendations set out in Dame Judith Hackitt’s report ‘Building a Safer Future’.

The BSA is reshaping responsibilities and introducing new regulatory processes and oversight, representing a radical change to not only the design and construction of buildings but also the occupation and maintenance of them.

This update brings together some of the key building safety issues being considered in the Courts and provides a summary of key government announcements, new regulations and updates from the Building Safety Regulator.

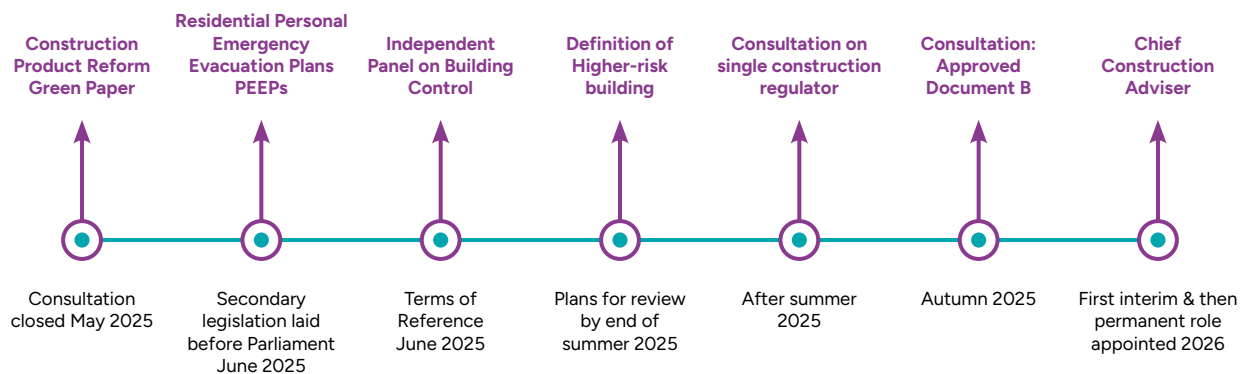
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Phase 2 Recommendations – Government’s First Progress Report

The Grenfell Inquiry Phase Two report was published on 4 September 2024 and sets out 58 recommendations. The government has confirmed it will publish quarterly progress reports against those recommendations until implementation has been achieved – which is expected to take at least four years. We set out below some of the key updates contained in the government’s first progress report.



Construction Products Reform Green Paper

Click the link [here](#) to read our earlier article on the suggested reforms.

The consultation closed on 21 May 2025.

Residential Personal Emergency Evacuation Plans (PEEPs)

Fire Safety (Residential Evacuation Plans) (England) Regulations 2025 are new regulations, which were laid on 4 July 2025 and will come into force on 6 July 2026 applying to England only. These regulations impose additional responsibilities on the Responsible Person (under the Regulatory Reform (Fire Safety) Order 2005) (RP).

These new regulations will apply to all buildings that contain two or more sets of domestic premises, and which is either:

- (a) at least 18 metres in height or has at least seven storeys; or

- (b) is more than 11 metres in height and has simultaneous evacuation strategies in place (i.e. where all residents are to leave the building immediately in the event of a fire).

These regulations are designed to improve the fire safety and evacuation of ‘relevant residents’ who would have difficulties evacuating a building by themselves in the event of a fire.

On identifying ‘relevant residents’, RPs will need to complete a person-centred fire risk assessment for each relevant resident who requests it which must include:

- an assessment of the risks relating to the relevant resident and the premises, in light of that resident’s cognitive or physical impairment or condition; and
- consideration of the resident’s ability to evacuate the building (without assistance) in the event of a fire.



RPs are required to agree an emergency evacuation statement with the 'relevant resident' and keep this under review and also provide certain information to the local fire and rescue authority.

The RP is also required to produce an evacuation plan for the building and provide a copy to the local fire and rescue authority. This plan must be reviewed at least annually.

Government has also developed a toolkit to support RPs which includes examples of person-centred fire risk assessments and guidance on how to engage with relevant residents. Access to the toolkit is [here](#).

Independent Panel on Building Control

The Building Control Independent Panel is an independent expert advisory panel (chaired by Dame Judith Hackitt) providing analysis and advice to government on the future of the building control system in England as a result of questions and issues raised in the Grenfell Inquiry final report.

These being:

- (i) whether it is in the public interest for building control functions to be performed by those who have a commercial interest in the process; and
- (ii) whether all building control functions should be performed by a national authority.

Working with Ministry for Housing, Communities, and Local Government (**MHCLG**), the Building Safety Regulator (**BSR**) and stakeholders, the panel will gather evidence on the prevalence and impact of the conflicts of interest and capacity pressures effecting the building control system in England identified by the Grenfell Inquiry.

Call for evidence: On 29 July 2025 the Building Control Independent Panel launched a call for evidence which will close on **29 August 2025**. The evidence collected will be used to inform the panel's report to government later this year. The call for evidence includes 16 broad questions focusing on the skillset required for building control, how building control should function, and what changes to compliance, monitoring and enforcement are needed. The panel will consider the evidence to reach a view on what level of building control oversight and supervision is appropriate for different types of buildings and building work, focusing on what is proportionate and deliverable and over what timeframes. They will consider what existing statutory powers are available to address issues and if new powers are needed.

A link to the online survey can be found [here](#).



Definition of HRB

Government confirmed it is working with the BSR to agree the criteria for any change in the definition of 'higher-risk building' (**HRB**). It is expected that the BSR will set out plans for the review at the end of summer 2025.

The application of the definition of what is a HRB has been considered in the First Tier Tribunal (Land Chamber) (**FTT**) where it held that a roof top garden should be considered a storey when determining whether a building is a higher-risk building. You can read our article on this case [here](#).

Following the FTT case, the Ministry of Housing, Communities and Local Government (**MHCLG**) has updated its guidance notes on determining whether a building is a 'higher-risk building' for the design and construction phase and the in-occupation phase to state:

“ The department recognises the need to provide clarity within the legislation. We are consulting the Building Safety Regulator and other relevant stakeholders on a proposal to amend the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 to make it clear that roof gardens should not be considered a storey when determining whether a building is a higher-risk building under section 120D of the Building Act 1984 and section 65 of the Building Safety Act 2022. In the meantime, the department's view remains that roof gardens are not storeys for these purposes.”

Single Construction Regulator

Government confirmed that work is underway to design the setup and parameters of what a single regulator structure should contain. This work is ongoing in partnership with industry, residents, regulators and experts.

This design work will inform a Regulation of the Built Environment Prospectus. The prospectus is due to be published later this year and will set out proposals for the design of the single regulator and the legislation required to establish it.

Chief Construction Adviser

A new Chief Construction Adviser role is to be created to help drive transformation across the sector to help embed processes and advise the Secretary of State on matters affecting Building Regulations and statutory guidance.

Government intends to appoint an interim Chief Construction Adviser (appointment expected this summer) for a fixed period working on priority areas such as the design and implementation of the single regulator. The permanent Chief Construction Adviser is expected to be appointed in 2026.



Approved Document B

On 2 March 2025 amendments to Approved Document B came into effect. This is part of the update to Approved Document B, published on 14 January 2025, which consolidates the 2019 edition, including amendments from 2020 and 2022, along with the amendments for 2025, 2026, and 2029. The amendments are colour coded within Approved Document B and copies can be found [here](#).

The 2025 changes (**blue colour**) focus on the following fire safety provisions:

- a. Regulation 38 and fire safety information.
- b. Removal of national classes for reaction to fire and roofs.
- c. Introduction of new provisions for sprinklers in care homes meaning that all new care homes, regardless of height, must be equipped with sprinklers/fire suppression.

The 2026 amendments (**purple colour**) will come into effect on 30 September 2026. These include a new requirement for more than one common staircase to be installed in residential buildings of at least 18 meters and building design provisions supporting the use of evacuation lifts in those buildings.

The 2029 amendments (**orange colour**) will take effect on 2 September 2029. These amendments focus on fire resistance, specifically the removal of national classes for fire resistance.

Separately, the BSR has developed plans for the review of Approved Documents. The government expects there to be a further consultation on changes to Approved Document B in the autumn.





Building Safety Regulator (BSR) Update

The BSR was established in April 2023. Part of its role is to oversee a new building control gateway regime for higher-risk buildings (HRBs).

All projects involving HRBs must navigate three critical safety checkpoints, known as 'Gateways'. This means that approval is required at:

- the planning stage (Gateway 1);
- before building work can commence (Gateway 2); and
- before a building can be certified complete and occupied (Gateway 3).

This process is designed as a 'hard stop' point until approval is received. In practice, it is taking the BSR a significantly longer period than the statutory prescribed periods (i.e. 12 weeks for 'HRB work' and 8 weeks for 'work to existing HRB') to review and approve gateway two applications.

According to the BSR, this is the result of a combination of factors, including:

- A higher than expected number of existing HRBs falling within the BSR's jurisdiction due to certain insolvencies of building control companies.
- Delays in setting up Multi-Disciplinary Teams due to a lack of skilled resources within the building control sector.
- Poor quality applications which do not adequately evidence building regulations compliance.

BSR has previously stated that applicants need to factor around 18-20 weeks for building control into their project plan¹.

As part of new transparency data, MHCLG will be publishing quarterly reports on BSR performance. The first set of data was published on 9 July 2025² for the period October 2023 – March 2025 inclusive. The data shows the following:

1. The backlog of cases to determine grows by approximately 250 cases every quarter and is now over 1200 applications.
2. The mean determination time for a new build is 36 weeks – three times the statutory limit.
3. The mean determination time for applications relating to works to existing HRB is 24 weeks – three times the statutory limit.
4. Slow determinations for remediation schemes – only 1 scheme out of 205 live applications.

[Analysis provided by Fulkers Bailey Russell³]

Call for evidence: Such are the delays the House of Lords Industry and Regulators Committee launched an inquiry into the BSR following sector wide concerns on the delays experienced for approvals. The inquiry has asked for written contributions by 31 August 2025 which can be submitted [here](#).

¹ BSR chief tells industry to raise its game on building safety | Construction News

² Building Safety Regulator building control approval application data October 2023 to March 2025 - GOV.UK

³ [FulkersBaileyRussell_BSR-Data-Q1-2025-Report_July-2025.pdf](#)



BSR reforms: On 30 June 2025, the government announced a package of reforms to BSR including:

1. New fast track process: the aim being to reduce the current backlog and reduce delays in approvals.
2. Appointing Andy Row KFSM as a new non-executive chair of a new board of MHCLG to take on the functions of the BSR. A new arm's length body to MHCLG is being established with the intention for this to take on the functions of the BSR from the Health and Safety Executive.
3. Appointing Charlie Pugsley as new Chief Executive Officer for the BSR, replacing Philip White.

Construction Industry Council and BSR

On 21 July 2025 the Construction Industry Council (in collaboration with the BSR) issued a set of guidance to be used alongside preparing and making an application. This brings together other previously published guidance on the building control approval application for HRBs. The guidance sets out the following:

1. In respect of the level of design details required for a successful application it is expected that the design needs to be taken to a point where performance to the requirements of the functional requirements of the Building Regulations *"can be confidently confirmed without having to have a particular product specified or absolute final detailed drawings/documents provided. This is*

eminently possible especially where there are several manufacturer's products that have the relevant tested performance and can be used in the layout and dimensional limits set by the submitted building plans."

2. **Application Information Schedule:** It is recommended that an applicant uses and submits an 'Application Information Schedule'. This goes beyond the statutory documents which are required for a Gateway 2 application. An example Application Information Schedule is included as an annex to the guidance with the intention that the schedule is used to help align project information and documentation to the requirements of the Building Regulations.

3. **Application Strategy:** It is recommended that as part of any staged application to the BSR that an 'Application Strategy' be submitted as a summary document to assist with any early discussions and engagement with the BSR on the staged approach. An example Application Strategy is included as an annex to the guidance.

A copy of the guidance can be found [here](#).



Remediation Acceleration Plan – July update from government

The Remediation Acceleration Plan (RAP) was published on 2 December 2024. This sets out the government's plans to accelerate the remediation of residential buildings with unsafe cladding in England through three key objectives.

Objective 1: fix buildings faster

Objective 2: identify all 11m+ residential buildings with unsafe cladding; and

Objective 3: support leaseholders and residents of buildings with unsafe cladding.

As part of that plan, the government committed to publishing an update to report on progress and outline additional measures to support the delivery of the RAP. The government's July update provided the following information:

Objective 1 – fix buildings faster

- a. A **new joint plan** between government, social landlords and regulators setting out 22 commitments that – alongside new funding – will help to accelerate remediation. At least 110 social landlords have already signed up to the joint plan.
- b. The **Cladding Safety Scheme** rules now enable (as at 17 July 2025) social landlords the same access to government remediation funding as private landlords so that:
 - Social homes in 11m+ residential buildings will be eligible for funding support regardless of whether the resident is a social tenant or a leaseholder.
 - Social buildings will be eligible for cladding remediation funding without having to demonstrate that the social landlord would otherwise be in financial distress due to the cost of carrying out remedial works.

- c. A **Remediation Bill** is to be brought forward (albeit no further details on when) which will focus on accelerating remediation including creating certainty about which buildings need remediating and introducing a '**Duty to Remediate**' with consequences for non-compliance. Key features include:

- By the end of 2029, any landlord who has failed to remediate a **building over 18 metres** – without reasonable excuse – will face criminal prosecution, with unlimited fines and/or imprisonment.
- Making it an offence for any person to obstruct another from assessing or remediating an unsafe building over 11m in height, without a reasonable excuse.
- For **buildings between 11 and 18 metres**, those that have not been remediated or scheduled for completion by the end of 2029 will be escalated to regulatory partners for investigation and enforcement with a long stop date for completion of remediation for those buildings being 2031.
- Enabling named bodies such as Homes England and local authorities the ability to step in and complete remediation works where landlords are failing to comply through applications to the First Tier Tribunal.
- Establishing a new dedicated **Remediation Enforcement Unit** within the BSR. The unit will take forward the enforcement of 18m+ buildings with unsafe cladding that are not progressing sufficiently and help enforce the Duty to Remediate.



Objective 2 – identify all 11m residential buildings with unsafe cladding

- a. Approximately 60% to 91% of buildings requiring remediation are having remediation monitored by MHCLG. There are between 500 to 3,400 buildings with unsafe cladding left to bring into a remediation programme. The RAP originally estimated this to be between 4,000 to 7,000 buildings.
- b. Establishing a **National Remediation System (run by Homes England)** – a single dataset covering information on all relevant residential buildings over 11m.

Objective 3 – Support Residents

- a. Building on the Waking Watch Replacement Fund, new funding is to be made available to deliver a longer-term and more sustainable approach to funding common fire alarms where they are needed. Access to funding for all eligible buildings will be made easier and more efficient through integration into the National Remediation System.
- b. Current consultation on measures to **require that landlords provide leaseholders with specified information on their buildings insurance contract**. This includes measures such as increasing transparency of service charges and scrapping the presumption that the leaseholder should pay their landlords' litigation costs. The consultation is open for responses until **26th September 2025**. A link to the consultation is [here](#).





The Court of Appeal has handed down two significant judgments on the Building Safety Act 2022 (BSA) relating to Remediation Contribution Orders (under section 124 of the BSA) and leaseholder protections (Schedule 8 of the BSA). We set out below a summary of the two judgments. Such were the overlap of issues the two appeal cases were heard sequentially by the same Appeal Court constitution albeit separate judgments were handed down.

Adriatic Land 5 Limited v Long Leaseholders of Hippersley Point [2025] EWCA Civ 856

Hippersley Point is a 10-storey building containing a commercial unit on the ground floor and 32 residential flats held on long leases.

Adriatic, has been the freehold proprietor since 2017. Fire safety defects were identified in late 2020 and as such significant remedial works were needed. The leases at Hippersley Point contained service charge provisions that allowed Adriatic to recover the costs of expenditure from the leaseholders. This recovery is restricted by various provisions of the Landlord and Tenant Act 1985 (LTA) including s.20 (requirement to consult).

In 2021 Adriatic applied to the First Tier Tribunal (FTT) for any s.20 LTA consultation requirements to be dispensed with in respect of the remedial works needed. Dispensation was given pursuant to s.20C of LTA. FTT then revised its dispensation to it being dispensation conditional on Adriatic not being entitled to recover the costs of the dispensation from any of the leaseholders and removed reference to it being pursuant to s.20C of LTA.

Adriatic was granted permission to appeal the revised dispensation to the Upper Tribunal (Lands Chamber) (UT). The UT held that the FTT decision was wrong in law and procedure but highlighted the new leaseholder protection under paragraph 9 of schedule 8 of the BSA (which came into force on 28 June 2022 and restricts legal and professional costs of relevant defects being recovered through service charges from

leaseholders of qualifying leases) meant that Adriatic could not recover the costs of the dispensation application from qualifying leaseholders.

Adriatic then appealed to the Court of Appeal in respect of the applicability of paragraph 9 schedule 8 on three grounds:

1. Are the costs of the dispensation application within the scope of paragraph 9 of schedule 8 BSA?

The Court unanimously held that the costs of the dispensation were within the scope of paragraph 9.

Adriatic was seeking dispensation from consultation requirements as regards works which were a "relevant defect". In the circumstances *"the application can, in my view, fairly be said to have "related to" "the liability (or potential liability) of [Adriatic] incurred as a result of a relevant defect", and the costs of the application will also have so related."*

The intent of schedule 8 is seeking to relieve tenants from liabilities to pay service charges arising from "relevant defects" and these costs were related to that liability.

2. To what extent does paragraph 9 apply in relation to costs which were incurred before it came into force – i.e. before 28 June 2022?

In terms of retrospectivity, the Court found by a majority that under a qualifying lease those categories of costs can be recovered provided the landlord had already incurred the costs and had made a demand for payment to the leaseholders before 28 June 2022 (i.e. the date schedule 8 paragraph 9 of the BSA came into force). From 28 June 2022 onwards no service charge is payable under a qualifying lease for those category of costs. This is the position no matter when the costs were incurred provided that those service charges had not already been paid by 28 June 2022.

3. Where it is found to have retrospective effect, is this compatible with Article 1 of Protocol 1 of the European Convention on Human Rights – i.e. the right to peaceful enjoyment of possessions?

The Court acknowledged the fact that the position adopted in terms of retrospectivity interfered with the rights and remedies available to a landlord, but it balanced this with the aim of protecting leaseholders from having to pay substantial service charges for building safety defects. In balancing the purpose of the BSA, applying the protections retrospectively as outlined would not violate Article 1 Protocol 1.

Triathlon Homes LLP v Stratford Village Development Partnership [2025] EWCA Civ 846

Triathlon Homes provides affordable housing and has long leasehold interests in five residential blocks in East Village, Stratford. Stratford Village Development Partnership (SVDP) (as original developer) and Get Living PLC (now in effect the owner of SVDP) (GET) were required under Remediation Contribution Orders (RCO) to pay substantial costs of remedying fire safety defects relating to those five residential blocks.

The five residential blocks are managed by East Village Management Limited (EVML). The main effect of the RCOs is to require SVDP and GET to pay to EVML, what would've been Triathlon Home's share of the costs incurred by EVML, had the BSA not been in force. This decision by the FTT

to award RCOs was appealed to the Upper Tribunal (Lands Chamber) (UT), but the UT agreed at the joint invitation of the parties to dismiss the appeal and grant permission to appeal to the Court of Appeal, essentially leap-frogging the UT.



There were two grounds for appeal:

1. The FTT erred in concluding that it was just and equitable to make the RCOs

The Court of Appeal dismissed the entirety of the appeal.

Whilst the government has put in place funding to enable building safety defects to be remedied it was not put in place to displace the provisions of the BSA. In this case the funding for the remedial works had already been received from the Building Safety Fund and this shouldn't be a factor in determining whether it was just and equitable to award an RCO. In fact the Court clarified that the governments standard funding agreement requires applicants to use '*all reasonable endeavours*' to recover the costs of the remedial works and reimburse the fund. The fund is to be considered '*a last resort*'.

SVDP argued that the FTT had to balance the interests of the parties applying for an RCO and it should not make an order without understanding why it was being asked for. The Court confirmed in general '*parties who have legal rights or remedies are entitled to pursue them without having to explain why...*' and for this case there was no dispute that Triathlon falls within the meaning of 'interested party'. In fact it was noted that Triathlon made the RCO application due to

EVML being unable to agree within its board how to progress meaning Triathlon took the initiative. The Court confirmed "*The fact that it was Triathlon, rather than EVML... who sought the order did not change the nature of the order sought; and I do not think it changed the answer to the question whether it was just and equitable to make such an order.*"

SVDP argued that the original developer was actually Olympic Delivery Authority (ODA) through its then subsidiary SVDP and GET. The investors who are now the beneficial owners of GET are not the same as those who initially bought SVDP from ODA. The Court confirmed that "*if you invest in a company, you take the risk of unforeseen liabilities attaching to that company*".

SVDP argued that Triathlon should have been required to pursue other claims first in circumstances where the work was being funded and were already underway. The Courts confirmed that the policy of the BSA is that costs for remediation should fall on developers and in respect of RCO this was not intended to await the outcome of other claims. As such 'interim funding' should be borne by the developer and not the public purse (i.e. in this case the Building Safety Fund).



2. The FTT erred in concluding that an RCO can be made in respect of costs incurred before the relevant part of the BSA came into force on 28 June 2022

This ground relates to the £1.1m of Triathlon's claims that relate to costs incurred before the relevant part of the BSA came into force. It was argued that s.124 BSA does not have retrospective effect and as such those costs are irrecoverable.

The Court stated that an RCO can be made in respect of costs incurred before s.124 BSA came into force stating *"It is far more consonant with the purposes of the Act to interpret section 124 as providing the statutory mechanism... to pass on the costs they have already incurred – whether before or after the Act came into force."* SVDP sought to argue that the application of s.124 could mean that an RCO is pursued, for example, on replacement fire doors carried out some 25 years ago – the costs of which will have long since settled. The Court confirmed that in those circumstances the 'safety-valve against unfairness' is the just and equitable test.

Takeaways from the cases

1. The purpose and intent of the BSA is continuing to be a major factor when it comes to the Courts rationale for reaching its decision. There is a strong policy intent which is to enable protection for leaseholders, holding developers and landlords to account. The government

funding available isn't there to displace the requirements of the BSA and all reasonable endeavours by funding applicants need to be made to pursue recoverability from those responsible for building safety defects.

2. In respect of RCOs the Court was clear that changing ownership or arguments focusing on lack of involvement in the original works are unlikely to be successful where it is found to be just and equitable to award an RCO. It is therefore incumbent on prospective purchasers of existing residential buildings to ensure they have carried out their due diligence at the point of purchase to ensure they fully understand the extent of the liabilities they are taking on.
3. Leaseholders and building owners may now be bolstered by this judgment and will now look more closely at whether an RCO is applicable to their circumstances.
4. The extent of the remedial works at East Village are reported to be over £400m with GET issuing over 50 claims in an attempt to recover costs from those involved in the original construction. Those claims will take considerable time to litigate and as such calls into question the extent to which GET will be able to absorb those liabilities in the meantime.



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Sharpe Pritchards' Construction and Real Estate teams are working with clients to help navigate the legal and practical changes following the introduction of the BSA. Our expertise includes advising on fire safety defects, transactional advice and risk management for works involving the gateway regime and providing advice on duties and responsibilities as a landlord and Accountable Person under the BSA.

The legal landscape for building safety continues to change and evolve and our building safety team are here to provide clear practical advice to help manage your risks. For further information, please do not hesitate to get in touch.



Rachel Murray-Smith

Partner

020 7405 4600

rmurray-smith@sharpepritchard.co.uk



Helen Arthur

Senior Professional Support Lawyer

020 7405 4600

harthur@sharpepritchard.co.uk

 [sharpepritchard.co.uk](https://www.sharpepritchard.co.uk)

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