

Building Safety Act 2022 – Update on the Devolved Nations

November 2023

Introduction

CIOB's policy and public affairs team has compiled information on the [Building Safety Act \(BSA\) 2022](#) aspects that relate to the devolved nations and what actions the devolved nations are taking to address building safety.

UK Government Position

Following the Grenfell Tower fire, the UK Government announced an [Independent Review of Building Regulations and Fire Safety](#) led by Dame Judith Hackitt DBE. Following the review, the Building Safety Bill 2019-20 was drafted which became a formal piece of legislation, the Building Safety Act 2022, on 28 April 2022.

The BSA is a huge piece of legislation with 6 sections, over 170 clauses and 11 schedules and introduces significant changes to the way in which building safety is regulated, with significant consequences for developers, owners, landlords and tenants of residential buildings. The BSA is now "in force" although many of the statutory instruments will be fleshed out over the next 12 to 18 months, perhaps longer.¹ These statutory instruments will be decided through secondary legislation and includes areas such as the retroactive extension of the time limit for Defective Premises Act claims from 6 years to 30 years, and for future buildings to 15 years and service charge protections for leaseholders.

Welsh Government Position

While the UK BSA 2022 did not extend to Wales, in March 2022, the Welsh Government voted to adopt the Building Safety Bill in a legislative consent motion. This means that the BSA will be adopted into Welsh legislation, and Welsh Ministers will need to establish and maintain a register of building control approvers and building inspectors. Welsh Government will also need to consider the effect of the altered definition of higher-risk buildings and higher-risk building works, the need for greater cooperation and information sharing between Wales and England on building information, and the extension of the Defective Premises Act to 30 years amongst others.

Crucially the BSA makes provisions for the Welsh Government to amend, repeal or revoke any Act relating to building safety in Wales passed before the BSA with a view to create new legislation that aligns with the principles of the Act.

This process began in early 2021 as the Welsh Government consulted on changes to introduce a new building safety framework through the [Safer Buildings White Paper](#).² Much of the White Paper aligned with the principles of the then emerging BSA including the introduction of a dutyholder role and the implementation of a golden thread of information. The White Paper was based on reforms set out by the Welsh Government's Building Safety Expert Group in their report '[Road Map to Safer Buildings in Wales](#)'.

Having adopted the BSA in a legislative consent motion, the Welsh Government is free to build on it and tailor it to a specifically Welsh context. Key additions include:

- The Welsh Government introduced a two-tier system: buildings 18 metres/6 storeys and above fall into Category 1; any other residential building with two or more dwellings falls into Category 2.

¹ Department for Levelling Up, Housing and Communities, [Timeline for Transition Plan](#)

² CIOB responded to this consultation in alignment with the CIOB Wales Hub



- Welsh Government has introduced an “accountable person” for any building with two or more dwellings.
- Annual fire risk assessments.
- Greater regulation for buildings under 18 metres.

Furthermore, the Welsh Government has already implemented a Welsh Building Safety Fund. The Fund’s purpose is predominantly to ensure that all identified buildings with ACM cladding have or will soon be remediated at no additional costs to leaseholders. As of 2021 the Fund has made £10.5m available to remediate affected buildings in the social sector. As of May 2022, the removal of non-compliant cladding has been completed on three social buildings and is planned for 12 private buildings. According to the Welsh Minister for Climate Change, Julie James MS, an additional £357m has been allocated to repairs to avoid leaseholders having to pay for cladding remediation.

CIOB is currently engaging with the Welsh Government representatives to discuss their approach to fire safety in the construction industry in light of a lack of UK-wide approach. We have also responded to several parallel consultations, including the Welsh Housing Quality Standard 2023 (WHQS2023) which accounts for new safety, security, and fire safety measures in social properties across Wales.

More recently the Welsh Government has consulted on the definition of High Risk Buildings in Wales. The outcome of the consultation can be found [here](#). Currently the Welsh Government is consulting on Part B (Fire Safety) of the Building Regulations. The consultation looks for feedback on a number of key issues including introducing an Evacuation Alert System (EAS), limiting the use of combustible materials on certain buildings and amending the ban of combustible materials in and on external walls. You can respond to the consultation by 9 January 2024 [here](#).

Scottish Parliament Position

The UK BSA does not extend to Scotland, however, there are certain elements they need to be aware of such as the amendments to the Health and Safety at Work Act 1974, extended liability relating to construction products, the new architects registration board and the implementation New Homes Ombudsman Scheme. Notably there are not many aspects of the BSA that apply to Scotland including the extension of the Defective Premises Act which currently does not apply to Scotland at all.

In 2017 the Scottish Government announced its own independent review of [Scottish building standards and its fire safety regime](#). Since the release of this review the [Scottish Government’s Building and Fire Safety Ministerial Working Group](#) has been meeting to oversee a review of fire safety frameworks, regulations and guidance.

Law firm Womble Bond Dickinson have listed the various actions taken by the Working Group to date which include:

- New requirements for smoke and heat alarms to be fitted in all homes from 2021.
- A new review panel on fire safety standards which has resulted in substantial changes to building safety including cladding requirements on buildings above 11m.
- A new fire safety regime review advisory group aiming to ensure better protection for residents in high-rise buildings.
- A new Building Standards Futures Board focusing on longer-term building standards system changes to improve regulatory compliance.
- A new Technical Working Group developing advice on determining fire risks posed by external wall systems in existing multi-storey residential buildings.

Despite not adopting the BSA, the Scottish Government has been meeting with the UK Health & Safety Executive (HSE) to understand whether they would act as the regulator for Scotland. As of August 2022, the HSE has confirmed that its Scottish branch will not be the regulator in Scotland.

The Scottish Government has been accused of 'dragging their heels' on the issue of cladding replacement by the Scottish Labour Party. This accusation comes on the back of a statement by Mark Griffin MSP, Scottish Labour's housing spokesman who claimed that the Government has not done enough to remove combustible cladding from residential buildings as the vast majority of the £180m pledged by the Government will not be allocated until 2025/26 with only £30m being allocated in the short term to deal with such a pressing issue.

CIOB is currently engaged with the Scottish Government, having joined its Cladding Stakeholder Working Group. We have issued a joint response to the letter written by the Scottish and Welsh governments on fire safety, highlighting CIOB's work on building quality and safety and our willingness to partner with Governments as initiatives develop.

In November 2023, the Scottish Government published their draft [Housing \(Cladding Remediation\) Bill](#). The Bill, in its current form, seeks to settle issues with accessing buildings that need cladding remediation as well as establish powers to assess and remediate buildings with unsafe cladding through a Single Building Assessment process. It would also establish a "Responsible Developers" scheme to encourage developers to pay for and carry out remediation work. A consultation has been launched in parallel to gain views on the draft bill. The Scottish Government is welcoming evidence and responses on the draft bill by 8 December 2023. You can respond [here](#).

Northern Irish Parliament Position

The current regulations for Northern Ireland (NI) are the [Building Regulations \(Northern Ireland\) 2012](#), which came into operation on 31 October 2012.

The UK BSA does not extend to NI, however, there are certain elements they need to be aware of such as the adoption of the New Homes Ombudsman Scheme, increased information sharing between NI and England, increased liability relating to construction products and the new architects registration board.

Despite not adopting the BSA, the NI Assembly has to date received around £33.4m for cladding remediation from the UK Parliament. Alongside this, the Assembly has committed a further £1m fund to pay for the removal of ACM cladding on private buildings higher than 18m.

CIOB is currently engaging with the Chair of the new panel on building safety in NI with a view to joining. The new expert panel will review building safety in NI in response to Dame Judith Hackitt's independent review for the UK Government.

The new panel is being constituted to help improve the NI regime for building safety; ensure a robust future regulatory system and framework; and provide assurance to residents that the buildings they live in are safe.

The panel will be required to:

- Confirm whether, and to what extent, the findings of Dame Judith Hackitt's reports on Building Safety are applicable to NI.
- Confirm whether and to what extent subsequent measures and developments in building and fire safety in Great Britain and the Republic of Ireland are applicable here and how these might best be delivered.
- Review the current arrangements and structures for building standards and regulations and confirm if these are fit for purpose to deliver the applicable recommendations.
- Understand if the current arrangements/structures are not fit for purpose, provide recommendations to identify the most appropriate structures and delivery mechanisms to implement the recommendations.
- Identify the scope of application: whether recommendations should apply to high-rise residential buildings, or to a wider range of residential and, potentially, other buildings.

- Develop a high-level plan to implement the recommendations and any potential necessary structural changes.

Building Safety Act 2022 Compliance Checklist

The table below indicated which sections of the Act applies to each of the devolved nations.

Building Safety Act 2022			
Parts	Scotland	Wales	Northern Ireland
Part 2 – HSE as the Regulator	✗	✗✓ Building Safety (Fees) Regulations will allow the Building Safety Regulator (BSR) to charge for certain services in England, although BSR enforcement powers also cover Wales	✗
Part 3 – Building Safety Act 1984	✗	✓	✗
Part 4 – Higher Risk Buildings	✗	✗	✗
Part 5 – New Homes Ombudsman	✓ New Homes Ombudsman provision will apply to Scotland, as with regulations applying to construction products and the formation of the Architects Registration Board	✓ New Homes Ombudsman provision will apply to Wales, as with regulations applying to construction products and the formation of the Architects Registration Board	✓ New Homes Ombudsman provision will apply to Northern Ireland, as with regulations applying to construction products and the formation of the Architects Registration Board
Part 6 – General	✗	✓ The Act makes provisions available for the Welsh Government to amend, repeal or revoke any existing building safety legislation that does not align with the BSA	✗
Schedule 1 – Amendments of the Health and Safety at Work Act 1974	✓ Applies across the UK except Northern Ireland	✓ Applies across the UK except Northern Ireland	✗
Schedule 2 – Authorised officers: investigatory powers	✗	✓	✗
Schedule 3 – Cooperation and information sharing	✗	✓	✓
Schedule 4 – Transfer of approved inspectors' functions to registered building control approvers	✗	✗	✗
Schedule 5 – Minor and consequential	✗	✓	✗

amendments in connection with Part 3		This includes amendments to the Building Act 1984 which applies to Wales	
Schedule 6 – Appeals and other determinations	✗	✓	✗
Schedule 7 – Special measures	✗	✗	✗
Schedule 8 – New Homes Ombudsman	✓	✓	✓
Schedule 9 – Construction Products Regulations	✓	✓	✗