



Housing & Growth Committee

23rd March 2023

Title	Building Safety Act 2022
Report of	Chair of Housing & Growth Committee
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	None
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Summary

This report provides an update on the Building Safety Act 2022. Information regarding the Act has previously been included within the Fire Safety Updates regularly reported to Housing and Growth Committee.

Officers Recommendations

The Housing & Growth Committee is asked to:

1. Note the content of the report.
2. Note that the council (LBB) will be the 'Accountable Person' for the purposes of the Building Safety Act 2022 and ask Council to approve that the functions of the 'Accountable Person' be delegated to the Deputy Chief Executive and that the constitution be updated

3. Approve that the housing management agreement between the council and Barnet Homes be updated as some duties of the 'Accountable Person' will be carried out by them as agent for the council

1. Why is this report needed

1.1.1 The Building Safety Bill, which takes forward the government's commitment to reform the building safety system set out in Building a Safer Future, received Royal Assent on 28 April 2022 to become an Act of Parliament.

1.1.2 The Act introduces a new regulatory framework for high-risk buildings (HRB). These include:

- Health and Safety Executive (HSE) is a statutory consultee for planning applications
- Building Safety Regulator (BSR) will become the building control authority for high-rise buildings
- Decision points during design and construction
- Giving duty holders clear accountability and statutory responsibilities as buildings are designed, built, refurbished and occupied
- A golden thread of building information - identified, stored and updated throughout the building's life cycle
- Mandatory reporting of prescribed fire and structural safety occurrences to BSR

1.2 Building Safety Regulator

The new Building Safety Regulator (BSR) will regulate HRBs, these are buildings with 7 or more stories or that are 18 metres or higher and have 2 residential units. The BSR will have 3 main functions:

1. To oversee the safety and standards of all buildings
2. Helping and encourage the built environment industry and building control professionals to improve their competence
3. Leading implementation of the new regulatory framework for HRBs

As the Health and Safety Executive (HSE) is preparing to carry out these functions they will be asking for industry and local authority views on some of the new building safety laws and regulations.

Existing hospitals and care homes are excluded from the definition of higher risk buildings which are already in occupation as being workplaces they are already subject to safety legislation including strict fire safety regulations. Those meeting the height threshold will be included during the planning, design and construction stage.

1.3 Gateways

Three main gateways have been established as part of the Act; these introduce new requirements during construction. These gateways are described in the table below, highlighting the primary areas and processes of the organisation:

Gateway	Stage	Council Area	Process	Current Status
1 (In place)	Planning Application	Planning	Developers (including the Council itself) will now be required to consult with the Building Safety Regulator on any HRB developments, submitting additional documentation related to fire safety etc.	<ul style="list-style-type: none"> • Planning currently within Re are set to transfer back to LBB in April 23, they are currently consulting with HSE on all in-scope planning applications.
2 (Likely to come into force October 23)	Before Building Work Starts	Building Control	Building Control will be required to assess fire safety detail (including additional info required by BSR, and undertake checks and inspections, plus issue resulting certifications.	<ul style="list-style-type: none"> • Building Control have acquired funding to complete training. • All Building Control Surveyors within Building Control have commenced training to prove competency
3 (Likely to come into force October 23)	When Building Work is Completed	Accountable Person (TBA) Building Control	<p><u>Post-occupation</u> – The council will be required to register all in-scope residential buildings from April 2023 with the BSR, after which submit Building Safety Cases and obtain Building Safety Certificates for each building (timeframe TBA). There are currently 15 in-scope buildings within the council housing stock.</p> <p>BSR may also refer to Building Control (BC) for structural or complex matters, BC would sit on a panel that reviews the safety case (and recharge back to BSR)</p>	<ul style="list-style-type: none"> • BC Surveyors commenced training. • Barnet Homes looking to implement a digital data management system for keeping and maintaining building safety information. • BH with the council will investigate if this can be adapted to incorporate future in-scope buildings. • BH have prepared some draft Building Safety Cases for approval by HSE/BSR.

1.4 Duty Holders

Part 4 of the Building Safety Act identifies new duty holders, who will be known as 'accountable persons' (APs) for residential higher-risk buildings (HRBs). This will be the organisation or person who owns or has responsibility for the building. It may also be an organisation or person who is responsible for maintaining the common parts of a building, for example corridors or lobbies.

If a building has more than one AP, the AP responsible for the structure and exterior of the building will be the Principal Accountable Person (PAP). When buildings have a single AP, that entity or person is the PAP.

LBB is the Accountable Person for LBB owned properties. At present all 15 'in scope' buildings are managed by Barnet Homes.

The Act does not prohibit the delegation of the Accountable Person or Principal Accountable Person duties to other persons. In that regard, an individual or organisation appointed by LBB to discharge the dutyholders' duties may, in turn, arrange for the discharge of duties by its agent/ arm's length management organisation, Barnet Homes.

It is therefore proposed that the housing management agreement between the council and Barnet Homes be updated to enable Barnet Homes to carry out duties relating to the above role as agent for the council.

1.5 Golden Thread

The Act introduces the concept of a 'Golden Thread' of record keeping. The Golden Thread would include:

- the information about a building that allows someone to understand a building and keep it safe, and
- the information management to ensure the information is accurate, easily understandable, can be accessed by those who need it and is up to date.

The golden thread needs to be created before building work starts and must be kept updated throughout the design and construction process (for example where, through the change control process, the plans for the building work are changed). When the building work is completed, the golden thread must be handed over to the Accountable Person, who is responsible for the occupied building.

Barnet Homes have implemented an asset management system called PIMSS for Council Housing stock, this is due to go live in April 23 and will record all the data for all stock including 'in scope' buildings and later this year will be developed further to provide compliance information.

The council and Barnet Homes are working together to identify the most suitable system which can record all the data required to monitor in-scope buildings while also allowing for residents to easily view the information about the building. This system will need to accommodate any future changes to buildings in scope.

1.6 Insurance

The Act extends the limitation period for claims under section 1 of the Defective Premises Act 1972 (DPA) from 6 to 30 years for claims arising in relation to the construction. Claims can be made to anyone involved in the work, including building owners, landlords, developers, contractors, architects, and surveyors.

It introduces DPA to include refurbishment work and brings section 38 of the Building Act 1984 into force (15 years limitation) and extends the liability of a body corporate incurred under the DPA or section 38 of the BA or as a result of building safety risk to any of its sister or parent entities.

The council is adequately insured with Zurich.

1.7 The Building Safety Levy

The Act sets out a framework for a Levy which will be paid by developers and charged on new buildings requiring building control approval for the purpose of meeting building safety expenditure.

This part of the Act has not yet received an implementation date, it is anticipated that this will not be until 2024 with further detail released later in 2023. The council will need to identify resources to fulfil this role.

1.8 Resident Involvement

The HSE is required to set up a Statutory Residents Panel to ensure residents are placed at the heart of the new regulatory regime. Applicants included current residents of high-rise buildings and consist of a small group of 20 from different locations and housing types, supported by representatives from relevant organisations. Membership will last 2 years, the applications for this panel for 2023 and 2024 have now closed.

In addition, the Act requires that for each in scope building a Building Safety Resident Engagement Strategy will need to be developed. The new building safety regulator will sign off this strategy when issuing a building safety certificate under Gateway 3.

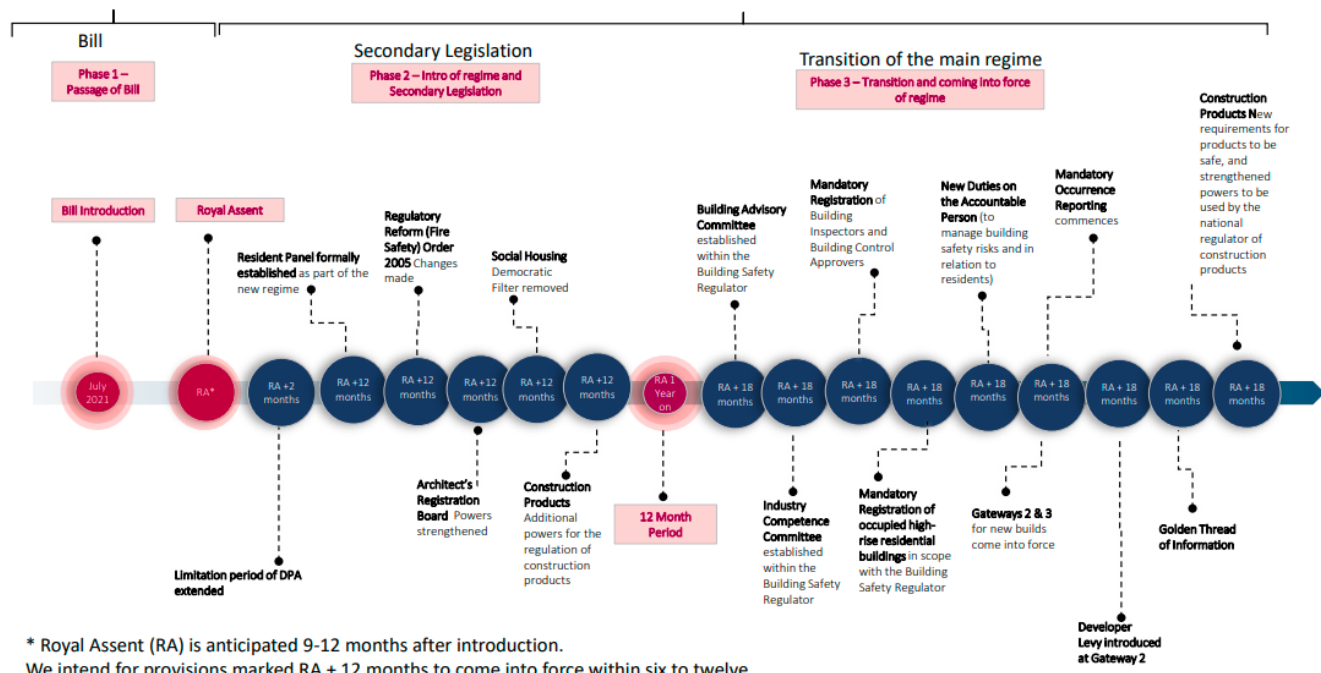
This strategy will be the responsibility of the Accountable Person and as noted above, it is expected that this will be delivered by Barnet Homes. Barnet Homes are currently preparing to recruit for a resident engagement role to fulfil these duties.

1.9 Other In scope buildings in Barnet

The council and/or Barnet Homes will be responsible for keeping 'Golden Thread' on council owned buildings. All other in scope buildings in Barnet that are not owned by the Council such as those owned by NHS, Registered Providers and private landlords will be responsible for their own Golden Thread. The Council will continue to monitor and report in addition to collecting data for DELTA (online system of data collection for DLUHC) where necessary on fire safety for private landlords and Registered Providers.

1.10. **Timescales**

1.10.1 The below image outlines the anticipated transition programme for the roll out of the Act, noting that Royal Assent was granted in April 2022. It should be noted that these timescales may be subject to change.



* Royal Assent (RA) is anticipated 9-12 months after introduction.
 We intend for provisions marked RA + 12 months to come into force within six to twelve months of Royal Assent.
 We intend for provisions marked RA + 18 months to come into force within twelve to eighteen months of Royal Assent.

Building Safety Bill & Transition

1.10.2 The HSE has highlighted the following key dates.

DATE	ACTION	Can the Council meet this deadline?
April 23	Registration for existing occupied High-rise Residential Buildings (HRB) opens.	Yes Estates Services have identified all the in-scope buildings, all buildings are currently managed by Barnet Homes. Barnet Homes are progressing with the preparation of building safety cases for each building. They have sent a sample of completed cases to the HSE and are awaiting feedback.
1 October 23	Registration deadline for existing occupied buildings. From now on all new buildings must be registered before being occupied. Building inspector and building control approver registers open	Likely Barnet Homes will provide the relevant information in order for the Accountable Person to register all buildings in-scope. Building Control have commenced the training process to prove competency with a view to be ready for registration.

	<p>BSR becomes the new building control authority for Higher-risk Residential Buildings</p> <p>From 1st October 2023 developers must apply to BSR for building control approval before commencing work on any HRB</p>	<p>Scheme of delegation and Management Agreement with Barnet Homes to be updated</p>
April 2024	<p>BSR starts to call in buildings for assessment and issue Building Assessment Certificates. The order of this process will follow a risk-based assessment of registered buildings, with those considered highest risk assessed first.</p> <p>Requirements related to registration for building inspectors and building control approvers become enforceable.</p>	<p>Likely Barnet Homes have completed a £52m programme of fire safety improvement works to higher risk blocks including those in-scope of the Act. These works are likely to mean that they are considered relatively low risk by the BSR. Barnet Homes are well progressed in completing technical assessments and developing Building Safety Cases for all blocks.</p> <p>Building Control Inspectors to prove competency and register.</p>

2. Reasons for recommendations

2.1 To ensure the Council delivers on its Statutory Building Safety obligations.

3. Alternative options considered and not recommended

The Council needs to comply with the requirements of the legislation.

4. Post decision implementation

4.1 All necessary actions to comply with the Building Safety Act will be carried out.

4.2 The Housing Management agreement between the council and Barnet Homes will be updated to enable Barnet Homes to discharge the responsibilities of the Accountable Person.

4.3 To include responsibilities of the Building Safety Act 2022 in pre contract arrangements with commissioned services returning in house to LBB.

4.4 Relevant performance monitoring indicators to be set up for Planning and Building Control regarding Gateway 1,2 and 3. The Building Safety Regulator will be drafting PI's which may become mandatory.

5. Implications of decision

5.1 Corporate Priorities and Performance

5.1.1 Caring for People, our places and the Planet: our plan for Barnet 2023-2026 sets out the requirements for Quality, Affordable Homes by investing in council housing and improving fire safety.

5.1.2 The Barnet Homes Annual Delivery Plan 2022/23 sets out the framework for the delivery of Housing Management, Homelessness and Development services to be provided by Barnet Homes. It relates to the seventh year of the ten-year Management Agreement between the council and Barnet Homes that commenced on the 1 April 2022.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 Building Control have received funding through Spending Review 2021 also known as SR21 to enable training for surveyors to become registered inspectors.

Once Building Control Surveyors are fully trained, costs for completing some elements of the "restricted functions" i.e. plan checking and site inspection may be recharged to the BSR. However, this detail is still unknown at this stage and will be reported in due course as up until now we have only submitted indicative hourly rates to the BSR in December 2022.

Additional resources required for the duties carried out by Barnet Homes will be met by Barnet Homes as covered by their management fee and the Housing Revenue Account business plan as approved by the Policy and Resources committee. This includes an annual sum approved of circa £900k of revenue funding to respond specifically to the requirements of the Act. This funding will be kept under review as part of the annual Barnet Homes management fee and HRA.

5.3 Legal and Constitutional References

5.3.1 The Building Safety Act 2022 received Royal Assent in April 2022 but not all parts of it are yet in force. The legislation reforms the building safety system and requires the Council to take on certain responsibilities, as well as other bodies.

5.3.2 The Housing Act 2004 (sections 3 and 4) require local authorities to keep the housing conditions in their area under review and to inspect the same if it considers a Category 1 or 2 hazard (as defined by the Act) exists and gives powers to intervene where they consider housing conditions to be in breach of the same. As noted above, Council will be asked to approve that the functions of the 'Accountable Person' be delegated to the Assistant Chief Executive and that the Constitution be updated accordingly. In addition, the housing management between the Council and Barnet Homes will need to be updated.

5.3.3 The council's Constitution, Article 7.5 Committees, Forums, Working Groups and Partnerships, sets out the functions of the Housing & Growth Committee:

(1) Responsibility for:

- Housing (including housing strategy; homelessness; social housing and housing grants; private sector housing and leasing; housing licensing and enforcement; HRA Revenue Account and Capital Programme).
- Regeneration Strategy and Overseeing Major Regeneration Schemes
- Asset Management
- Development of Council Land
- Fire Safety
- Economic Development including Employment Strategy; Business Support and Engagement; and Town Centres

(2) To submit to the Policy and Resources Committee proposals relating to the Committee's budget (including fees and charges) for the following year in accordance with the budget timetable.

(3) To make recommendations to Policy and Resources Committee on issues relating to the budget for the Committee, including virements or underspends and overspends on the budget. No decisions which result in amendments to the agreed budget may be made by the Committee unless and until the amendment has been agreed by Policy and Resources Committee.

(4) To receive reports on relevant revenue and capital expenditure, contracts, performance information and risk on the services under the remit of the Committee.

5.4. Insight

5.4.1 There is no insight relevant to this report.

5.5 Social Value

5.5.1 The Act gives residents and homeowners more rights, powers and protections so homes are safer.

5.6 Risk Management

5.6.1 The council has an established approach to risk management, which is set out in the Risk Management Framework.

Fines and Sanctions - the possibility of the organisation being fined for non-compliance. The BSR can also audit a Local Authorities Building Control service and put them into 'special measures' if not satisfied.

Imprisonment - Depending on how the Building Safety Regulator will exercise its powers with regulatory best practice, individuals may face imprisonment for breaches of health and safety law, with sentences of up to six months in the Magistrates' Courts and up to two years in the Crown Courts.

Loss Of Reputation - Any organisation which fails to comply with legislation runs the risk of a loss of reputation and with it the loss of customers.

Loss Of Current or Potential Staff - Expertise and knowledge may be lost to the Local Authority if we are not able to increase the competency of current staff and/or retain staff who may feel that the burden of new responsibilities is too heavy. Outsourced services returning to the Council will need to ensure job descriptions are reflecting the new responsibilities.

5.7 Equalities and Diversity

5.7.1 The Equality Act, 2010 outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between people of different groups.
- Foster good relations between people from different groups.

5.7.2 Relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

5.7.3 There are no implications for Equalities and Diversity in relation to this report.

5.8 Corporate Parenting

5.8.1 In line with Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council. There are no implications for Corporate Parenting in relation to this report.

5.9 Consultation and Engagement

5.9.1 There is ongoing engagement with Barnet Homes, Re and CSG to monitor the progress of Building Safety Act.

5.10 Environmental Impact

5.10.1 There are no direct environmental implications in relation to this report.

6. Background papers

13.1 17 January 2023, Housing and Growth Committee, Fire Safety Update, [Committee Report \(moderngov.co.uk\)](#)