



COUNCIL: 14 December 2022

Report of: Corporate Director of Place & Community

Relevant Portfolio Holders: Councillor Anne Fennell / Councillor Nicola Pryce-Roberts

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SUBJECT: THE BUILDING SAFETY ACT 2022

Wards affected: Borough wide interest

1.0 PURPOSE OF THE REPORT

1.1 To inform Council of the introduction and implications of the Building Safety Act 2022, and to seek appropriate delegations are put in place.

2.0 RECOMMENDATIONS TO COUNCIL

2.1 That the Corporate Director of Place and Community be given delegated authority to administrate and enforce the relevant provisions of the Building Safety Act 2022.

2.2 That the Corporate Director of Place and Community be given delegated authority to appoint officers where appropriate under the Building Safety Act 2022.

3.0 BACKGROUND

3.1 The Building Safety Act 2022 (the Act) received Royal Assent on 28 April 2022 and was published on 13 May 2022. The Act is a hugely significant piece of legislation which overhauls the way residential buildings are constructed and maintained in the UK [following the Grenfell Tower disaster in 2017] while protecting the rights of leaseholders.

- 3.2 The Act makes the most significant changes in the building regulatory regime since the introduction of the Building Act 1984 and will impact all levels of the construction industry imposing wide-ranging new duties designed to increase the accountability, transparency, and oversight of industry participants and the construction and development of higher-risk buildings.
- 3.3 The Act creates a new building control authority; the Building Safety Regulator (BSR), which has been established within the Health & Safety Executive. The BSR will have responsibilities for monitoring the safety of all buildings in England. The Regulator has wide-ranging powers to regulate standards for buildings and construction work, including powers to investigate and prosecute breaches. The newly created Chief Inspector of Buildings will have responsibility to head up this new regulator to:
- Deliver the new regime for high-risk buildings
 - Increase competence of professionals working on all buildings and ensure effective oversight of the building safety environment
- 3.4 For the first time, the entire Building Control profession will need to be registered with the BSR and their competence regularly assessed and validated. The Council's Building Control team will therefore face new operational standards, with sanctions from the regulator if they fail to meet them. The BSR will establish and maintain a register of all practicing Building Inspectors and Building Control Approvers (formerly Approved Inspectors). This new regime aims to ensure all building control professionals are competent to undertake their work profile so that oversight of building work is robust, proportionate, and sufficient to ensure compliance with regulatory requirements.

4.0 CURRENT POSITION

- 4.1 Section 91 of the Building Act 1984 places a duty on local authorities to bring the Act into execution and enforce the building regulations within their area. The Act, places additional duties on the Council in terms of providing support to the BSR where applicable, and in ensuring their staff are registered to undertake restricted activities.
- 4.2 At time of writing, secondary legislation is being prepared and the Council will need to be prepared for its introduction, which is likely to be in place by the latter part of 2023. Accordingly, this report is presented to Council to inform Members of the implications of the Act and to seek the initial delegations needed to administer its provisions. Future reports and/or updates will be submitted to Council as required.

5.0 ISSUES

Building Control Officer competence

- 5.1 The Act creates 'restricted activities' that will only be able to be undertaken by appropriately qualified and registered professionals. These include primarily plan appraisals, site inspections and the issuing of decision notices.

- 5.2 To perform a 'restricted function' (e.g., issuing a completion certificate) the Local Authority must obtain the advice of a suitably competent Registered Building Inspector. In practice this will mean that the Council's Building Control team will need to undertake and pass a full day validation examination to become a Registered Building Inspector.
- 5.3 It is proposed there will be three levels of Registered Building Inspector:
- Band A - (Domestic)
Where the surveyor can work on: Dwelling houses (excluding flats) of traditional construction up to 3-storeys high and not having more than one basement storey.
 - Band B - (General)
Where the surveyor can work on: Premises of any type and form of construction, where the guidance contained in the Approved Documents can be applied and being within certain size restrictions.
 - Band C - (Specialist)
Where the surveyor can work on: Premises of any type, height, size, form of construction and method of design – including any premises that will be within the scope of the Building Safety Regulator.
- 5.4 Accordingly, the Council's Building Control team will seek individual validation at Band B. Efforts are already underway to support staff to ensure the team achieve this standard prior to the legislation coming into force.

High Risk Buildings

- 5.5 The Act also introduces the concept of a 'high-risk building', which will be subject to greater regulation. Such buildings are defined as residential buildings of two or more units that are at least 7 storeys or 18 metres tall (whichever is reached first) and including hospitals and care homes meeting those height requirements for their design and construction stages. The scope of buildings considered 'high-risk' is likely to be extended.
- 5.6 All occupied high-risk buildings must be registered with the BSR by October 2023, and it is a criminal offence if a building is occupied but not registered after this date. The Council currently has one high risk building within its boundaries that falls under the scope of the Act, this is Ainscough Mill in Burscough, which falls within scope due to the tower, although the tower section of the building is unoccupied.
- 5.7 Any high-risk buildings will require the Council to provide resources to work within a multi-disciplinary team supporting the BSR. This means that the BSR may request resources from the Council's Building Control Team in relation to this or any other future 'high-risk' building within West Lancashire.
- 5.8 The Act also provides the framework for an additional approvals process in relation to "higher-risk buildings". Two additional "Gateways" are to apply to such

buildings in addition to approvals currently required at the planning application stage (referred to as “Gateway One”).

- Gateway Two will apply prior to commencement of building work and requires the Building Safety Regulator to be satisfied that designs and construction proposals satisfy the requirements of the Building Regulations and the Act. Variations instructed during the course of construction work may also need to be submitted for Gateway Two approval, albeit with a quicker turnaround time (4 weeks instead of 12 for an initial Gateway Two application).
- Gateway Three will apply when building work is complete and requires the Building Safety Regulator to be satisfied that the works as built comply with the Building Regulations and that the finished building is safe to occupy. Once Gateway Three has been passed, the Building Safety Regulator will issue a completion certificate. The Act makes it a criminal offence for a building to be occupied prior to this certificate being issued.

Council owned buildings

5.9 The Act also makes crucial changes to the way fire safety is regulated and does not just impact on the Council's Building Control Service. The Act will also change the way that the Council manages its buildings, which include buildings such as sheltered schemes.

5.10 The scope of actions for the Council include:

- Carry out assessments of building safety risks in and around the buildings
- Take all necessary steps to control and manage the risks, particularly those referring to fire spread and structural failure
- Register the building and apply for a building assessment certificate (when directed by the BSR – likely to be over a 5-year period for occupied buildings)
- Establish and operate a Mandatory Occurrence Reporting system
- Keep information about higher-risk buildings
- Produce a Residents Engagement Strategy

5.11 Whilst the Council does not own and operate high rise buildings, it is important to consider the other Regulations which have recently come into force which coincide with the Act and the obligations the Council has for ensuring building safety, specifically:

Fire Safety Act 2021 – addresses key gaps in the Regulatory Reform (Fire Safety) Order 2005 for multiple occupancy buildings regardless of height. The Act provides more stringent measures for building safety and ensuring fire risk assessments consider building structure, external walls, and fire separation between common areas/communal doors/flat entrances.

Fire Safety Regulations 2022 – implements the recommendations to come out of the Grenfell Tower enquiry and will come into force 23rd January 2023. The Regulations set out the requirements for high rise residential buildings in respect

of building plans, external wall systems, lifts, fire fighting equipment, information boxes, way signage, fire door checks and fire safety instructions.

Social Housing Regulations Bill – refers to the changes contained in the White Paper, such as: the greater accountability to residents, building and resident safety, a strengthened ombudsman and social housing regulator, and new proactive regulations which explicitly include guidance on how social housing providers should be engaging with residents on safety issues.

6.0 SUSTAINABILITY IMPLICATIONS

6.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

7.1 There are no significant financial or resource implications arising from this report. However, the Act sets in place new requirements for staff registration, training and competence. This is in addition to any resultant compliance matters for the Council's own building assets. A further report will be presented to Council should any implications for resources arise from the Act as it comes into force.

8.0 RISK ASSESSMENT

Building Control service risks

8.1 The introduction of the Act will have significant impacts for the Council's Building Control service and the wider Council. Building Control is a front-line service undertaking a range of statutory and non-statutory functions. It is unique in that, despite being a regulatory service, it is in direct competition with private sector providers to undertake specific chargeable functions. In addition to the chargeable functions, the Building Control team undertakes a range of statutory non-fee earning works including formal enforcement (including dealing with contravening works reverted from AI's), demolitions, and attending dangerous structures. It is therefore paramount that the Council maintains this in-house expertise and with sufficient resources within the Building Control team to administer the Act to avoid any operational, legal and reputational risks.

Compliance risks

8.2 Recent tragedies, in particular the Grenfell Tower fire on 14 June 2017, has shone a spotlight on the UK regulatory system for building control. Not all local authorities (like West Lancashire Borough Council) have high rise residential buildings, however no member of the public should be exposed to foreseeable compliance risk and subsequent potential risk to life.

8.3 Residents and businesses alike want to be assured that those with responsibility for oversight of their building works, which are often the biggest financial outlay

they ever make, are competent to do so and that once works are complete and signed off they can feel confident that works are compliant and safe.

- 8.4 Residents and businesses also rely on the Council to react to incidents, providing time critical technical advice and support in often the most extreme circumstances and the local authority must ensure they have people competent to fulfil their statutory function when called into action.

The Council must be aware of the risks associated with non-compliance and the importance of ensuring the building control service is “fit for purpose.” It must also be aware of the competitive environment the building control team operates in and the pressure this places on the recruitment and retention of staff who fulfil such an important public service role.

- 8.5 It is therefore essential that the Council have the expertise to plan, implement and manage the risks associated with the Act and Regulations regarding building and fire safety. Currently there is not a dedicated resource within the Housing Service team to implement the actions received from the fire risk assessments, or the in-house competency to both educate the public and residents residing in Council managed buildings or engage directly with the Regulator for Social Housing on building safety matters.

9.0 HEALTH AND WELLBEING IMPLICATIONS

- 9.1 There are no health and wellbeing implications arising from this report.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Appendices

1. Equality Impact Assessment

Appendix 1

Equality Impact Assessment Form



Directorate: Planning and Regulatory Services		Service: Building Control
Completed by: Iol Aitchison		Date: 29/09/22
Subject Title: THE BUILDING SAFETY ACT 2022		
1. DESCRIPTION		
Is a policy or strategy being produced or revised:	No	<i>*delete as appropriate</i>
Is a service being designed, redesigned or cutback:	No	
Is a commissioning plan or contract specification being developed:	No	
Is a budget being set or funding allocated:	No	
Is a programme or project being planned:	No	
Are recommendations being presented to senior managers and/or Councillors:	Yes	
Does the activity contribute to meeting our duties under the Equality Act 2010 and Public Sector Equality Duty (Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations):	No	
Details of the matter under consideration:		
<p><i>If you answered Yes to any of the above go straight to Section 3</i></p> <p><i>If you answered No to all the above please complete Section 2</i></p>		
2. RELEVANCE		
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	Yes	<i>*delete as appropriate</i>
If Yes , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered Yes go to Section 3</i>	Council owned buildings will also need to comply with the requirements of the Act	
If you answered No to both Sections 1 and 2 provide details of why there is no impact on these three groups: <i>You do not need to complete the rest of this form.</i>		
3. EVIDENCE COLLECTION		
Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	The Council's Building Control team. All relevant building operators, including the Council's own buildings	
If the work being carried out relates to a universal service, who needs or uses it most? (Is there any particular group affected more than others)?	Legislation is applicable to all who operate relevant buildings	

Which of the protected characteristics are most relevant to the work being carried out?	<i>*delete as appropriate</i>
Age	No
Gender	No
Disability	No
Race and Culture	No
Sexual Orientation	No
Religion or Belief	No
Gender Reassignment	No
Marriage and Civil Partnership	No
Pregnancy and Maternity	No
4. DATA ANALYSIS	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	All relevant building operators, including the Council's own buildings
What will the impact of the work being carried out be on usage/the stakeholders?	New legislative requirements for building operators, the Council and the Council's building control team.
What are people's views about the services? Are some customers more satisfied than others, and if so what are the reasons? Can these be affected by the proposals?	Proposals enact legislation that has been subject to appropriate scrutiny.
What sources of data including consultation results have you used to analyse the impact of the work being carried out on users/stakeholders with protected characteristics?	Proposals enact legislation that has been subject to appropriate scrutiny.
If any further data/consultation is needed and is to be gathered, please specify:	N/A
5. IMPACT OF DECISIONS	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	None.
6. CONSIDERING THE IMPACT	
If there is a negative impact what action can be taken to mitigate it? (If it is not possible or desirable to take actions to reduce the impact, explain why this is the case (e.g. legislative or financial drivers etc.).	N/A
What actions do you plan to take to address any other issues above?	No actions <i>If no actions are planned state no actions</i>

7. MONITORING AND REVIEWING

When will this assessment be reviewed and who will review it?

N/A as the proposal enacts new legislation.