

ePaper:

Building Safety Regulator/
Launch of Strategic Report
2023-2026: A cold wind
following a perfect storm



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Introduction

It is typically colder after a storm due to a combination of precipitation being colder than ground level air (rain feels cold), evaporation (which requires energy from the air, making it...colder) and the related downward (cold) air movement (friction between the rain and air pulls the cooling air downwards).

After the construction sector's perfect storm of 2023, we now face a chilling start to the New Year as a result of the strategic plans of the Building Safety Regulator (BSR), that look to increase cost and uncertainty, at a time when it is needed least.

Executive Summary

- The Building Safety Regulator was formed arising out of the [Building Safety Act 2022](#) ("BSA").
- Part 2 of the BSA sets out the duties, objectives and regulatory principles of the BSR and importantly, empowers the BSR to make proposals to the Secretary of State for the making of regulations and requires the production of a strategic plan (<https://www.legislation.gov.uk/ukpga/2022/30/part/2/enacted>).
- The BSR published its [Strategic Plan: 2023-2026](#) in November 2023 ("the Plan").
- The Plan anticipates requires a cultural change within the construction sector, placing emphasis on participants in the sector (those who design, plan or construct) taking ownership of building safety, beyond fire risk. It anticipates further codification (whether by regulations or further legislation) and makes clear that the BSR will flex its muscle in order to achieve its stated objectives.

This epaper does not constitute legal advice and therefore should not be relied on as such. The reader should always take legal advice based on the specific circumstances that it is facing.





Background

The Building Safety Regulator (BSR), formed out of the Building Safety Act 2022, published its Strategic Plan: 2023-2026 in November 2023. Cutting through the fat, the BSR threatens “*real and serious consequences*” for building owners and developers who do not meet their obligations in a timely fashion, it sets itself the ambitious target to change the culture of the Built Environment “system”, extending its reach to ensure that high rise buildings are not only “*safe*”, but also “*feel safe*” and are [of good] “*quality*”.

The Plan is clear that the BSR will flex its enforcement powers with some vigour, seek further, continued legislative change to widen regulation and weaponise itself with further, more substantive enforcement powers. This is not a regulator that intends to suffer from a toothless bite.

Further, it reveals that the BSR will seek regulatory change in the future. Such change could come relatively soon, once the BSR has had time to digest the eventual Grenfell Inquiry Phase 2 Report, which is currently being prepared by the Inquiry. It is almost inevitable that the Plan will be revised following the publication of that report.

BSR’s goals & strategy

The Plan states that its goals are to;

1. Improve the safety and standards of all buildings;
2. Make sure residents of higher-risk buildings are safer and feel safe where they live; and
3. Help restore trust in the built environment sector.

The BSR will achieve those goals by:

Delivering consistent standards within the building control profession by creating an accountable, regulated building control profession

This is aimed at creating new requirements and standards that will apply across both public and private sector building control providers, aiming to increase the competency of the profession and attempting to make it an attractive career option. The Plan makes reference to the Building Inspector Competence Framework, published in April 2023, that sets out a standard for the development and assessment of building inspectors.

The BSR has also developed and published Operational Standards Rules (“the Rules”), allowing the BSR to monitor the delivery of building control functions in the public and private sectors. The Rules require building control bodies to provide data to the BSR, which, the BSR will then use to identify the frequency and scale of problems arising. The Plan states that there will be improved compliance and enforcement of building regulations and standards.

Overseeing and driving improvements across the built environment by proactively understanding innovation, new and emerging legacy issues, their impact and what action is required

Quite what they mean by “*proactive understanding*” is not known. What is clear is that they will prioritise action on the highest risks. The BSR states that it will provide “*expert advice*” on building safety and standards, including bringing forward proposals to amend existing regulations. It will lead policy relating to Approved Documents (these are technical standards and associated statutory guidance) and produce technical advice on building regulations, ensuring such advice is kept up to date with emerging trends in the sector.

The Building Advisory Committee (“the Committee”) was established in December 2022 to provide advice and information to the BSR on emerging issues in the built environment. The Plan emphasises that the Committee will play an active role in ensuring participants in the built environment “*step up and take responsibility*” for compliance with the building regulations. Again, the Plan notes that the BSR will make recommendations for legislative change where evidence in relation to emerging issues supports it. This is a moveable feast, evidenced by the Strategic Plan’s admittance that a programme of work is already underway reviewing fire safety guidance.

The BSR will be liaising with Michael Gove and the Department for Levelling Up, Housing and Communities in respect of policy priorities and presumably further legislation, with the first anticipated to relate to energy efficiency and toilet provision. The BSR also announces that it will produce reports on the condition of electrical installations, stairs and ramps, emergency egress of disabled persons and automatic water fire suppression systems in relevant buildings.

The Industry Competence Committee was set up to monitor and help to improve industry competence by establishing forums, producing guidance and advising the BSR. It is they who have the unenviable task of convincing all those working in the built environment that such substantive and continual change is necessary and beneficial to the sector.

Regulating and planning, design and construction of new higher-risk buildings

The BSR is the statutory consultee for fire safety matters for planning applications and will advise local planning authorities about fire safety matters. The BSR will have the authority to reject applications if they fail to meet building regulations and will be responsible for granting final building control approval before a new higher risk building can be occupied. It is anticipated that the functional requirements of building regulations will be considered at each stage of the design and construction of a higher risk building. This puts architects and design professionals (and their PI insurers) on notice that their work will need to be compliant at every juncture.

Planning Gateway One was introduced via amendments to secondary planning legislation (Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021). It requires developers to submit a fire statement setting out fire safety considerations when applying for planning permission. It also established the Health and Safety Executive as a statutory consultee for relevant planning applications. The Plan says that in the first two years of Planning Gateway One (August 2021 to 2023) the BSR has commented on over 3,000 planning applications and that data is showing a substantial improvement in the quality of applications being submitted i.e. planning applications are now being crafted to avoid objections.

As the BSR is the building control authority for higher risk buildings, duty holders must obtain building control approval from the BSR before starting work, before significant changes are made during construction and when building work is *completed*.

Those who develop, build and work on higher risk buildings will be held responsible by the BSR for ensuring that the legal requirements are met. The BSR states that this will require a “shift in culture in those carrying out design and construction work”. Where the BSR is not happy that the requirements are being met, they will refuse to allow the building to be constructed or occupied and commence enforcement action, if required.

Ensuring those who are responsible for higher-risk buildings manage risk so that residents are safe

The BSR will ensure that organisations responsible for higher risk buildings (the “Accountable Persons” per the BSA) manage building safety risks appropriately, engage with occupiers in a collaborative and responsive way and ensuring they have a voice in key decisions affecting them.

Ambitiously, the BSR states that it will assess all existing higher risk buildings within five years (presumably of the date of the Plan), prioritising buildings based on height and number of dwellings. They will also assess new buildings and conduct investigatory work based on “intelligence”.

The Plan promises to deal with occupier’s complaints about building safety risks quickly and effectively. That will require substantial investment in recruiting and training suitable staff to deal with large scale complaints.

The BSR will undertake assessments to make sure that the Accountable Persons are identifying and managing building safety risks, complying with their duties and keeping occupiers safe. Interesting, they note that they “understand some Accountable Persons will need support with understanding their requirements and reaching compliance”, suggesting some leniency for Accountable Persons in an attempt to prevent a situation where nobody wants to be one.

The BSR intends to assess the performance of all Accountable Persons for all existing buildings in or around the next five years. Again, that is an ambitious target and there is some doubt whether that is achievable from a standing start. The Plan states that by April 2026, any work on remediating dangerous cladding will be completed or underway and the BSR will take action on those that are not compliant.

Accountable Persons are obliged to issue Mandatory Occurrence Reports to the BSR in the event of structural and fire safety occurrences. The Strategic Plan tells us that it will be a criminal offence for an Accountable Person to not make a Mandatory Occurrence Report when legally required to do so.

The roadmap for the next year

In early 2024, all residual duties applying to Accountable Persons and Principal Accountable Persons in respect of higher risk buildings will come into force. The Residents’ complaints system will open and the BSR will start commencing action against unremediated higher risk buildings. The BSR will also have, by then, created the national register of higher risk buildings in England, providing a searchable portal of the same for the first time.

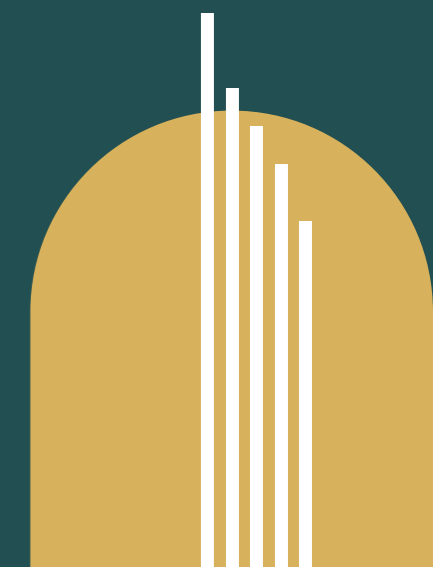
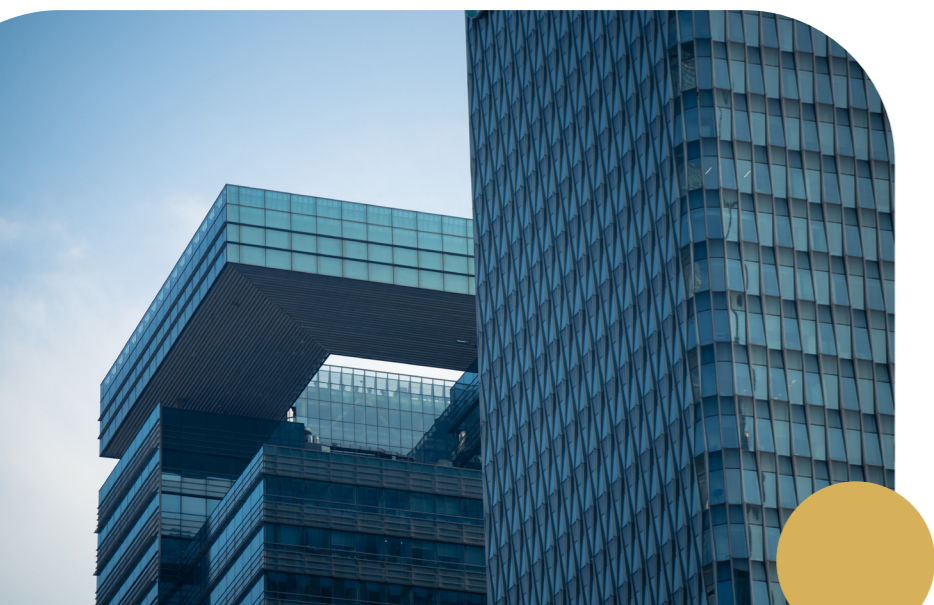
From April 2024, there will be a period of consolidation, during which the BSR will enforce the regulatory regime and establish the regulated building control profession. The BSR will start to assess higher risk buildings and where the standards have been met, the BSR will issue a Building Assessment Certificate.

Ambitiously, in the year April 2024 to March 2025, the BSR aims to have assessed “about” 20% of higher risk buildings. This will represent 37% of residential dwellings that fall within that category. Those with unremediated ACM cladding will be assessed in the first year.

Building Inspector and building control approver registration will become mandatory.

The BSR will investigate allegations of non-compliance with rules, regulations and codes relating to the building control profession and 20% of all local authorities and Building Control Approvers will be inspected in the year to March 2025.

If you have any questions or need any advice please email us at contactus@ridgemont.co or call us on 0203 909 9590.





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