

The new Building Control Landscape

Following the Grenfell Tower tragedy in 2017 and publication of Dame Judith Hackitt's '*Building a Safer Future*' report, significant changes have been made to fire and building-related legislation in England. This includes reform of the building control regime including:

- ❖ Creation of the *Building Safety Regulator* (BSR) within the Health & Safety Executive to regulate a new, more stringent building control regime.
- ❖ Registration of all existing Approved Inspectors as *Building Control Approvers*
- ❖ Registration of all individual building control professionals as *Building Inspectors*
- ❖ Publication of the Building Safety Act 2021 which also amends the Building Act 1984
- ❖ Amendments to the Building Regulations and associated Approved Inspector Regulations

Many of the headline changes to the building control regime relate only to high-rise, higher-risk buildings – i.e., those more than 18m or 7 storeys high containing at least 2 residential units, care homes or hospitals.

However, the regime for all building work, from simple domestic alterations and extensions to commercial buildings of all heights also changed significantly on 1st October 2023 when the regulatory amendments came into effect.

Dutyholders and responsibility for complying with the regulations

The person carrying out the building work – not Building Control – has always been responsible for ensuring compliance with the relevant building regulations.

The new regime clarifies the roles and responsibilities of the 'dutyholders' involved in the commissioning, design, and construction of building work, and reinforces the position of building control as the enforcement body.

Competence of dutyholders

Dame Judith's report identified a general lack of knowledge and understanding of the building regulations that underpin the guidance in the Approved Documents, and the new regime is intended to drive up standards and levels of competence across the industry.

Under the new regime, anyone appointed to provide design input (including architects and structural engineers etc.) and carry out the work (builders and sub-contractors etc.) is required to be sufficiently 'competent' for the scheme, and the person commissioning the work (i.e. the Client) is responsible for ensuring this is the case.

Competence is defined in the Building Regulations as the ability to plan, manage and monitor the work to ensure compliance with the requirements of the building regulations, and cooperate with other dutyholders to achieve this.

Notification of dutyholders (applicable to Initial Notices submitted after 1st October 2023)

The names and contact details of the designer, contractor and person commissioning the work (the Client) are required by the building control body when applying for building regulation approval or submitting an Initial Notice. Dates of appointment are also required.

The building control body will also need to be told within 14 days of any changes to the people appointed to the project.

Compliance declarations on completion (applicable to Initial Notices submitted after 1st October 2023)

When work is completed, the Client (the person commissioning the work), must provide a notice confirming the following information:

- ❖ Names and contact details of the Client, principal/sole contractor, and principal/sole designer
- ❖ A statement that the work is complete.
- ❖ A signed statement that, to the best of the client's knowledge, the work complies with all applicable requirements of the building regulations.
- ❖ Signed statements from the principal/sole contractor and principal/sole designer confirming that they have fulfilled their duties under Part 2A of the building regulations in terms of planning, managing, and monitoring the work, along with the dates (from/to) of their appointment

The building control body will not be able to issue a Final Certificate until all this information has been provided.

Commencement notification (applicable to Initial Notices submitted after 1st October 2023)

Formal notification is required of the intended commencement date at least 2 days before work starts.

A further notice is then required within 5 days of the work reaching a stage when it can be 'regarded as commenced'.

The work is 'regarded to be commenced' when:

- ❖ For new buildings and horizontal extensions (i.e. those which extend the footprint of the building) – all foundations and the ground floor structure.
- ❖ Other work (e.g., loft conversions, vertical extensions, internal alterations, and refurbishments etc.) – 15% of all work described in the Initial Notice.

Role and responsibilities of building control

The role of building control is clarified as one of periodically checking for compliance and enforcing the Building Act and Regulations where matters of non-compliance are found.

The new designations of Building Control Approvers and Building Inspectors are intended to clarify the role of building control as one of approving designs and inspecting building work for non-compliance.

Under the new regime, building inspectors are not permitted to offer design advice or solutions; this is the responsibility of the designer, who should remain involved in the project until completion.

This changes the expectations on designers and contractors:

- ❖ Designers (architects and engineers) should no longer add notes to drawings such as 'foundation design to be agreed with building control'; designs and supporting evidence for all aspects of the scheme should be presented to the building inspector so they can assess them for compliance.
- ❖ Designers should no longer withdraw from the scheme once their plans are deemed to be acceptable and are expected to assist the contractor where changes to details, specifications and building products are necessary.

- ❖ Contractors should no longer expect their building inspector to offer solutions to issues on site or agree to design changes during construction unless they are supported by evidence. If the contractor makes changes without consulting the designer, they take on the design role themselves and become responsible for the compliance of that design.
- ❖ Contractors working on without detailed plans on a 'Building Notice' basis, and those who depart from the design, must ensure they are competent to act as both the contractor and designer.
- ❖ Contractors should follow the plans provided to them and install the products and materials as specified. Any deviation from the plans should be agreed with the designer. This aligns the building regulations with the existing CDM regulations.

Reversion to the Local Authority for non-compliance and enforcement

Building inspectors are now expected to take a much less tolerant approach to issues of non-compliance, including concerns over the competence of the dutyholders.

Approved Inspectors (which will become Registered Building Control Approvers under the new regime) have no powers of enforcement and the threshold for cancelling Initial Notices and 'reverting' projects to the Local Authority for action has been lowered.

Contravening the building regulations is now an offence which can lead to a significant fine, and, in some serious instances, a custodial sentence.

Summary

Whilst Compliance Building Control will continue to take a pro-active approach as far as possible within the restrictions of the new regime, the extent to which design advice can be offered in future will be limited to commenting on whether a proposed design or work on site is compliant with the Building Regulations.

Ultimately, responsibility for compliance with the building regulations rests with the Client, and the designers and contractors they appoint.

A more detailed explanation of the changes to the Building Control regime can be found HERE and on the HSE Building Safety Reforms website: https://www.hse.gov.uk/building-safety/index.htm?utm_source=govdelivery&utm_medium=email&utm_campaign=bsr&utm_term=intro-2&utm_content=bsr-22-aug-23

Your CBC surveyor will be happy to discuss any questions or concerns you may have in relation to the upcoming changes.