



EXECUTIVE BOARD DECISION

REPORT OF:	Executive Member for Growth and Development
LEAD OFFICERS:	Strategic Director of Growth & Development
DATE:	7 December 2023

PORTFOLIO/S AFFECTED:	Growth and Development
WARD/S AFFECTED:	All
KEY DECISION:	N

SUBJECT: New Building Control Regime

1. EXECUTIVE SUMMARY

- 1.1 The Building Safety Act (BSA) 2022 came into force in April 2023, and impacts Local Authorities in three main ways: in the delivery of Council-led development projects; the provision of Building Control services applicable to all construction projects requiring Building Regulation approval; and through the Council's relationship with the new Building Safety Regulator (BSR). The new BSR comes under the umbrella of the existing Health and Safety Executive.
- 1.2 The BSA amends the Building Act 1984 to create powers to prescribe requirements on those who procure, design, plan, manage and undertake building work, also known as duty-holders; and introduces new enforcement powers for building control authorities.

2. RECOMMENDATIONS

That the Executive Board:

- 2.1 Notes the impacts of the Building Safety Act and associated regulations on Blackburn with Darwen Borough Council.

3. BACKGROUND

- 3.1 The Building Safety Act 2022 came about in the wake of the tragic Grenfell Tower fire of June 2017, which cost the lives of 72 London residents, including 18 children. In May 2018, Dame Judith Hackitt published her report *Building a Safer Future, Independent Review of building regulations and Fire Safety*, which in turn led to the Act and over 32 pieces of secondary legislation. In her Report Dame Judith Hackitt also asked industry for change; she asked for a change of mindset to reprioritise safety, a change of culture and the introduction of measurable competence.

3.2 The BSA is a high-level enabling Act that led to new regulations applicable to England which completely remodels the culture and practices of the industry. Some changes affect Higher Risk Buildings only, but many changes affect all construction.

Higher Risk Buildings

- 3.3 From 1st October 2023, the BSR became the new building control authority for Higher Risk Buildings, instead of local authorities. This is one of the most significant impacts of the Building Safety Act, in the context of the strengthening of the building control regime. The definition is complex, but in simplified terms, Higher Risk Buildings are buildings which are **over 18 metres in height or contain more than seven storeys, and have two or more residential units**. There are believed to be four Higher Risk Buildings in Blackburn with Darwen, none of which are owned by the Council. The building owners of all Higher Risk Buildings were required to register them with the BSR by 1st October 2023, and they must not be occupied unless they're registered.
- 3.4 Local Authorities are required to assist the BSR as part of multi-disciplinary teams alongside the Lancashire Fire and Rescue Service and other appointed professionals when handling developments at Higher Risk Buildings. The BSA requires that any local authority staff involved in providing assistance to the BSR must have the "appropriate skills, knowledge, experience and behaviours." (Building Safety Act Section 15(2)).
- 3.5 If the local authority is reluctant to assist in the terms set out above, the BSR can "direct" the local authority to do so with the consent of the Secretary of State.
- 3.6 Since 1st October 2023, the new building control regime must be followed if the Council or any other developer plans to build a new Higher Risk Building; to create one through change of use or alteration / extension; or plans to undertake building work to an existing Higher Risk Building.

Building Control Profession and Management

- 3.7 The introduction of the Building Safety Act 2022 (the Act) means that there is a significant increase in work for Building Control Teams, not only because of the additional requirement of regulation of Higher Risk Buildings, the much more rigorous approvals regime and stronger enforcement powers; but also because of the increased regulation by the BRS of Building Control Officers who will be known as 'building control approvers'. Whilst the existing roles of what are described in the Act as the current 'approved inspectors' are to transfer to the newly described 'building control approvers', the regulations bringing that into force have not yet been made to allow time for the qualification process to take place. It will be a challenging period of change for everyone in both the public and private sectors as the new requirements are implemented over the next few months until 1st April 2024.
- 3.8 The new BSR will be the regulator and also the registrar for the entire building control profession. The Council will be required to take the advice of a Registered Building Inspector (i.e. 'approver') before issuing certification or to carry out plan assessments and site inspections; therefore the Council's existing qualified Building Control Surveyors are all required to register with the BSR at an appropriate classification level. There are currently 4 no. classifications, each relevant to the complexity of the scope of works being undertaken. Registration with the BSR will need to occur by April 2024. Registration is likely to have a significant impact, and all Local Authority Building Control (LABC) surveyors will need regular formal assessment of competence as part of the process. This will also require updates to Key Requirements / Job Descriptions of the Council's building control inspectors to reflect the additional responsibilities.

3.9 For the first time, local authorities and individual senior managers / directors will be independently regulated. BSR has stated that its role will be to, 'support, encourage, advise and hold Building Control Bodies (including local authorities) and individual building control professionals to account', and it has introduced, after a period of consultation, the following:

- Operational Standards Rules, including key performance indicators and the strategic context for building control oversight;
- code of conduct and competence framework for RBIs;
- professional conduct rules for Registered Building Control Approvers.

The Council's Building Control Officers could be the subject of a professional conduct investigation by the BSR if there is a complaint and a matter is referred to them. Sanctions include suspension/cancellation of registration or a fine. If a registered person carries out restricted activities which are outside the scope of their registration they could be prosecuted in a criminal court and the sentence is a fine. Practising without being registered is also a criminal offence. The Council or an individual Building Control Officer could be subject to investigation for breach of the Operational Standards Rules which could, in the end, if lack of compliance continues, lead to disciplinary measures against the officer or in the case of the authority, a transfer by the Secretary of State of its functions to another local authority or to the Secretary of State i.e. a 'special measures' type intervention.

3.10 All local authority building control teams will require investment in:

- continuous formal learning and structured professional development to ensure professional staff pass their competence and registration exams; and
- back-office processes and IT links with the BSR and fire and rescue authorities to meet statutory KPI's in terms of BSR operational standards rules.

Duty-holders

3.11 The Act sets out a regime of newly-defined duty-holders which apply to all buildings. Duty-holders are legally obliged to ensure that works to their buildings are safe and compliant with building regulations. Where a duty-holder is a corporate entity, such as a local authority, individuals within the organisation may also be prosecuted where a breach has been committed with their consent or as a result of their neglect.

3.12 Specified duty-holders are the client, principal designer, designer, principal contractor, contractor, and principal accountable person (for Higher Risk Buildings). The Council can have responsibility for all of these key roles with the exception of principal accountable person at present. Therefore it's important to note that during design and construction of a project, the duty-holders must plan, manage and monitor the work; they must co-operate with other duty-holders; and ensure that they, and the people they appoint, are competent.

Golden Thread

3.13 One of the key aims of the new regime is also to manage information which is critical to building safety, from design, construction, occupation, routine maintenance, repair and eventual demolition. The client is responsible for this golden thread, i.e. the Council in the case of Council-owned and managed buildings.

3.14 A continuous unbroken thread of information must be maintained throughout the building's life. Evidence must be captured to demonstrate that the constructed building is in accordance with the design, and a new process has been implemented for managing any changes.

4. KEY ISSUES & RISKS

- 4.1 The most experienced building control surveyors will become sought after within other professions, including private sector Building Control, and their jobs will need reviewing to ensure staff retention. Furthermore, some very experienced and qualified surveyors may not wish to undertake the required additional registration. This may also result in the strong possibility that individuals may leave the industry altogether either via early retirement or by seeking employment in other construction disciplines.
- 4.2 The additional requirements of the new regime may lead to delays in the processing of building control applications and, if the pool of Registered Building Inspectors is not sufficient in range and depth of classification, then the scope of construction projects being able to be legally delivered by the Council may be restricted, all of which could impact on departmental fee earning income.
- 4.3 Back-office and IT systems need to be fit-for-purpose to meet the change in operational statutory requirements and KPI's imposed by the BSR operational standard rules.
- 4.4 The additional requirements of the golden thread will require implementation through the Council's property management and maintenance procedures, for any new building projects.

5. POLICY IMPLICATIONS

- 5.1 None.

6. FINANCIAL IMPLICATIONS

- 6.1 There will be additional training, IT and staff costs, to be assessed and potentially covered by increasing building control fees from January 2024.

7. LEGAL IMPLICATIONS

- 7.1 The Building Safety Act (BSA) 2022 received Royal Assent on 28 April 2022 and it amends the Building Act 1984 and the Building Regulations significantly (amongst others). There are 171 sections of the Act but some of these themselves contain a large number of additional sections which have now been inserted into the Building Act 1984. For example section 42 contains 26 new sections to add to the Building Act 1984. The Act also has 11 Schedules. Some of the Act came into force on the date it received Royal Assent and some e.g. appointment of the regulator i.e. the BSR (HSE) 2 months after that (s170 of the Act). Some provisions came into force on separate later dates but the majority of sections are now in force except the registration requirements etc. relating to the regulation of the members of the building control profession. There are currently 5 sets of commencement regulations and there will be more and so far 5 additional supporting sets of regulations which were made by the Secretary of State under the Act. This is a very complex and radical change to the current regime.
- 7.2 It is notable that the new regime will assist in the enforcement of breaches of building control by building control officers, because a breach of building regulations now attracts a higher sentence and is punishable by an unlimited fine and up to 2 years' imprisonment. In addition the strict time limit from the date of the breach has been removed and it is now possible to pierce the corporate veil and prosecute individual managers and directors where a limited company is in breach.

7.3 Further extensive legal research and training is needed to establish the full effect of this legislation and the risks that arise in law.

8. RESOURCE IMPLICATIONS

8.1 The existing Building Control team will manage the transition to the new regime, and will devote time to the training requirements. However, the potential need to seek further resource support in terms of additional staff recruitment may need to be addressed as the new BSR regime rolls out. This will have an effect on other Council services such as legal services as more legal advice and assistance will be needed to carry out any resulting legal proceedings which would be above current capacity including training in this area of law.

9. EQUALITY AND HEALTH IMPLICATIONS

9.1 The Council has carried out an equality impact analysis checklist. This assessment concluded that the contents of this report would not negatively impact on any particular group in a disproportionate way. As such no full assessment was required. The Council considers that it has complied with its duty under the Equalities Act 2010.

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

10. CONSULTATIONS

None.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

VERSION:	2
CONTACT OFFICER:	PMO Growth, Nick Bargh
DATE:	7 th December 2023
BACKGROUND PAPER:	None