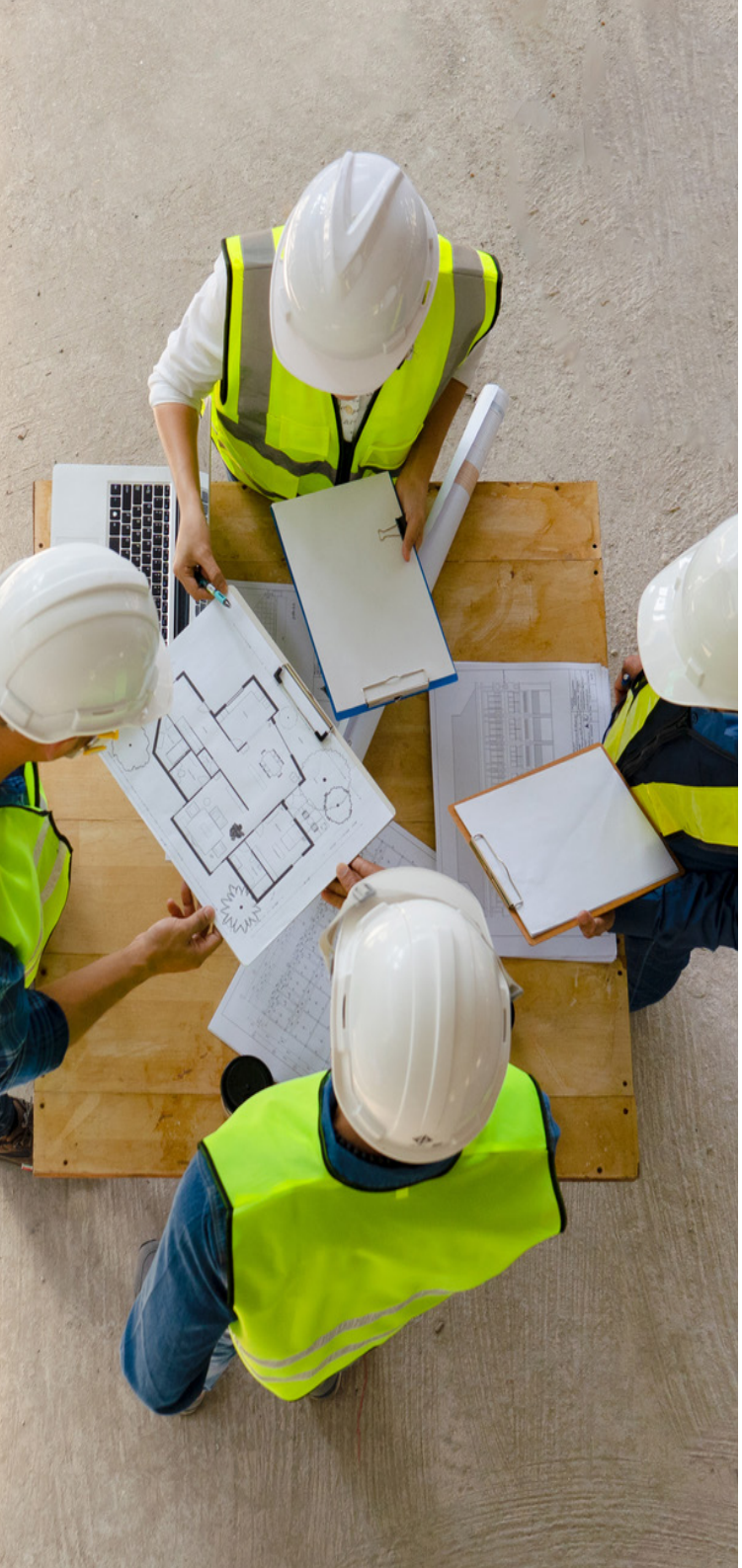
SQUIRE PATTON BOGGS

Local Connections. Global Influence.

# Building Safety F(ACT)s

Autumn 2025



# Preparing for the Building Safety Levy (England) Regulations 2025 – Are Developers Ready?

On 10 July 2025, the government published the draft Building Safety Levy Regulations 2025 together with accompanying guidance.

We have reviewed the draft regulations and guidance and summarised below the key issues for developers to consider in advance of the regulations coming into force.

## What Is the Building Safety Levy?

The draft regulations follow a series of government consultations. The Building Safety Levy arises from Section 58 of the Building Safety Act 2022, which empowers the government to impose such a levy.

The government estimates that the levy will raise approximately £3.4 billion over 10 years. The funds will be allocated to support the remediation of unsafe cladding and improve building safety.

## When Will It Apply?

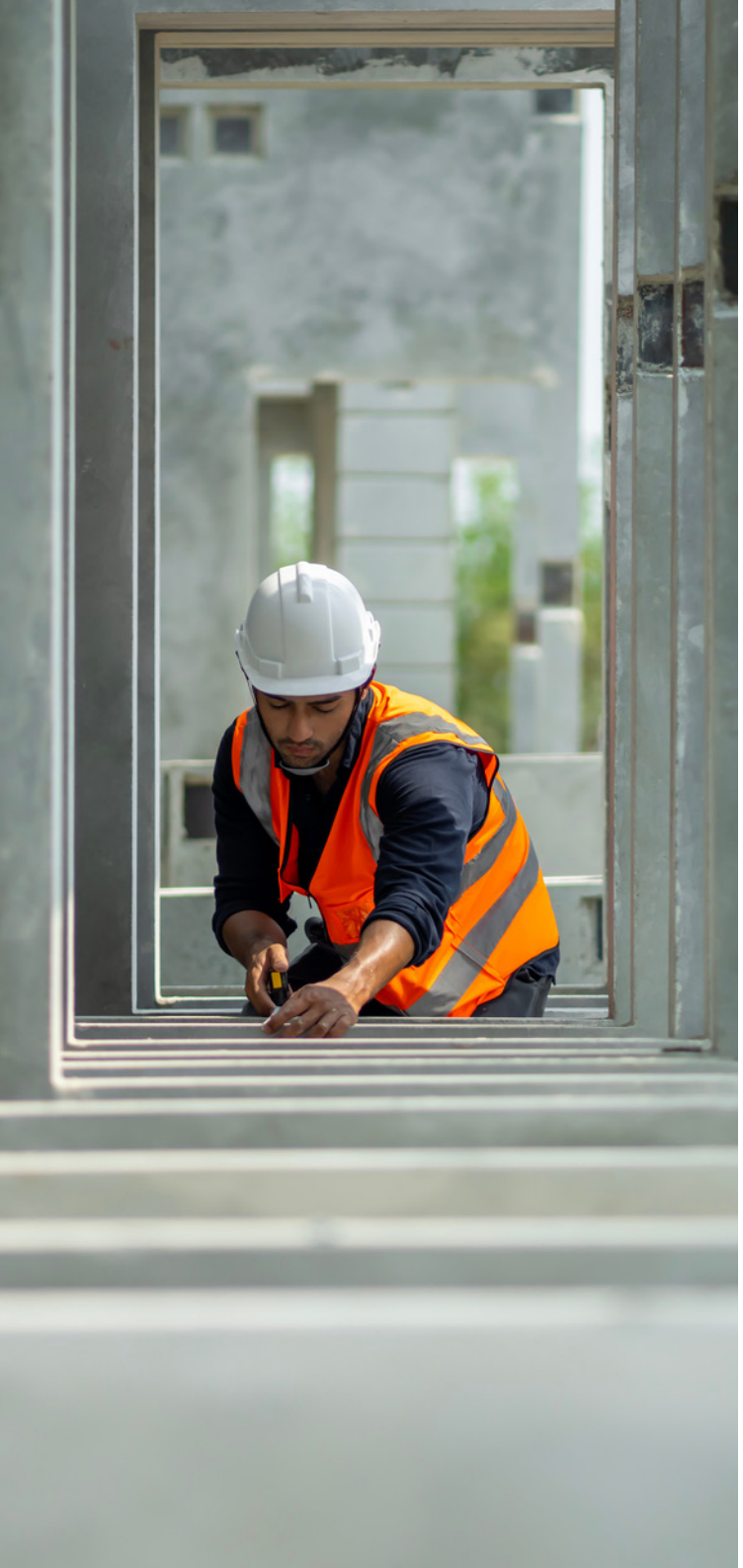
The levy will apply to all new residential developments in England that require building control approval, regardless of height. This includes developments containing 10 or more residential dwellings, or at least 30 bedspaces within purpose-built student accommodation. The levy applies whether the development is mixed-use or solely residential.

What Are the Exemptions From the Levy?

Nonprofit registered providers of social housing and their wholly owned subsidiaries will be exempt. Accordingly, the levy will not apply to those developments.

In addition, Schedule 1 (Exempt buildings) of the draft regulations specifies that a building will be treated as an "exempt building" if it is designed or adapted for use primarily as:

- School accommodation
- Care home
- Secure residential institutions
- Hospital
- Accommodation for victims of domestic abuse
- Children's home
- Hotel or hostel
- Almshouse
- Temporary accommodation for homeless people



## How Will It Work?

Developers will be required to pay the levy on building control applications before either the completion of the works or occupation of the building, whichever occurs first.

The levy will be collected by local authorities with building control responsibilities. The income generated will be used to address building safety defects across England, with the aim of ensuring resident safety.

## How Is the Levy Calculated?

Proposed levy rates for each local authority area (covering both previously developed and nondeveloped land) are set out in Schedule 3 of the draft regulations. The levy will be charged per square metre of chargeable floorspace in a chargeable development.

## What Does This Mean for Developers?

It is clear that the levy will represent a significant additional cost for developers, at a time when they are already under pressure to remediate unsafe cladding and other building defects under the Building Safety Act 2022. The levy may cause some developers to reconsider the viability of certain developments and, in some cases, developments may become unviable due to the additional charges.

To best prepare for the new regulations, developers should:

- Consider incorporating levy costs into financial modelling
- Undertake careful site selection
- Engage proactively with local authority building control and planning teams to understand specific local levy rates and the likely costs
- Keep up to date with the regulations, which remain in draft and may be subject to change

## What Is Next?

As currently drafted, the regulations will come into force on 1 October 2026. The levy will apply to building control applications submitted on or after that date.

However, the draft regulations remain subject to parliamentary approval and amendments may still be made before they take effect.

**Aston Kazlauskas**
Associate, Birmingham
T +44 121 222 3396
E aston.kazlauskas@squirepb.com

**Paul O'Kane**
Partner, Manchester
T +44 161 830 5239
E paul.okane@squirepb.com

# The Government's Remediation Acceleration Plan Update

In July 2025, the government published an update to its Remediation Acceleration Plan (RAP), which was initially published in December 2024. The RAP, among other things, sets out the government's plans on how it intends to accelerate remediation of unsafe cladding on residential buildings that have a height of over 11 metres.

The RAP has three core objectives:

1. Fix buildings faster

2. Identify all 11 metre-plus residential buildings with unsafe cladding

3. Support residents

The RAP July 2025 update sets out the progress made against the above objectives and sets out the various proposed measures to ensure they are met.

## Objective 1: Fix Buildings Faster

The government notes various barriers in making buildings safe in England. These include delays caused by landlords, limited regulatory capacity such as delays with Gateway 2 approval process by the Building Safety Regulator, and disputes between developers and other parties that were involved in the original construction process.

The government is clear that not remediating life-critical defects is not an option, and it intends to create stronger powers to ensure life-critical defects are remediated. To that end, a remediation bill will impose a statutory "legal duty to remediate" on landlords to remediate their buildings within fixed timescales. For failure to comply with the legal duty to remediate, the landlords will face criminal penalties. In addition, it intends to make it an offence for any person to obstruct another from assessing or remediating an unsafe building over 11 metres in height without a reasonable excuse.

To provide certainty for residents, by the end of 2029:

- Any landlord who has failed to remediate a building over 18 metres – without reasonable excuse – will face criminal prosecution, with unlimited fines and/or imprisonment.
- For buildings between 11 and 18 metres, those that have not been remediated or scheduled for completion by the end of 2029 will be escalated for investigation and enforcement.

The above timescales will be put into statute.

New remediation backstop powers will also be given to local authorities and Homes England, where they will be able to apply to the First-tier Tribunal for permission to undertake remedial works themselves directly and seek costs in relation to the same from the landlord. If the landlord fails to pay the costs of the action, then their building could be subject to an enforced sale to fund repayment.

The government will also help regulators hold responsible parties to account. As a result, a new dedicated Remediation Enforcement Unit will be established within the Building Safety Regulator. Their main duty will be taking enforcement action against parties in relation to buildings 18 metres or taller with unsafe cladding that are not progressing to RAP timescales.

The RAP also outlines the following:

- New legislation will be created to strengthen sanctions and bolster enforcements in relation to remediation orders.
- Metro mayors will be empowered to work in partnership with local authorities and regulators to drive remediation via local remediation acceleration plans (LRAPs).
- A joint plan with social landlords and regulators will accelerate remediation of social housing in England in order to free up the sector to build more affordable homes.
- There will be statutory standards and oversight of fire risk appraisals (FRAEWs). It will be a legal requirement for the FRAEWs to follow the PAS 9980 framework and be conducted by assessors who meet specified requirements, and audits will be undertaken to ensure consistency and quality. The aim is to reduce conflicting advice with regards to remedial work required, and to help remediation start sooner. An updated guidance on PAS 9980 is expected in early 2026.

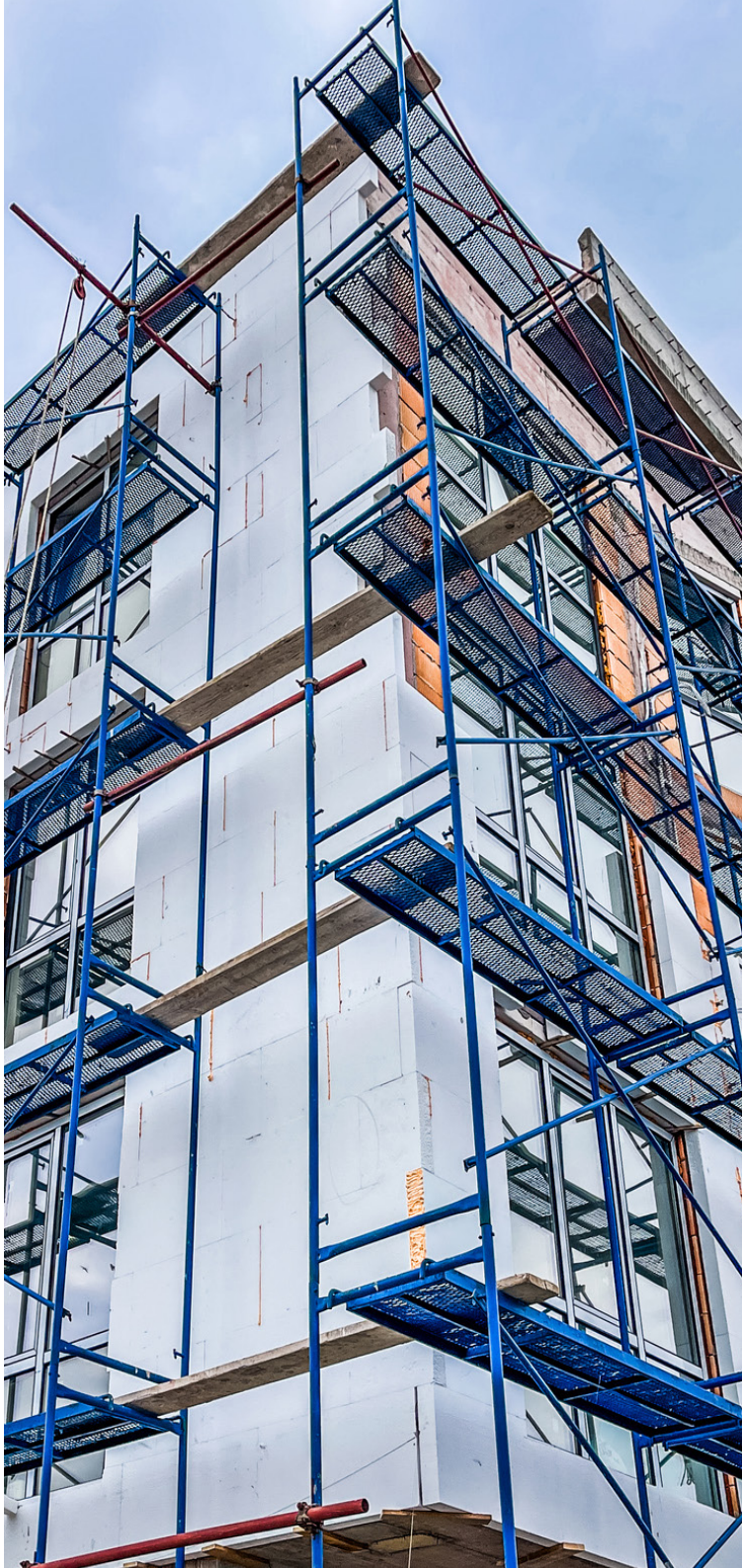
## Objective 2: Identify All 11 Metre-plus Residential Buildings With Unsafe Cladding

The government recognises that too many unsafe buildings remain unidentified, particularly those between 11 and 18 metres in height. In November 2024, a national identification drive was launched together with Homes England to locate buildings 11 metres or taller with unsafe cladding that may require remediation.

Buildings of four storeys or more identified in Ordnance Survey data have been reviewed for potentially unsafe cladding. Homes England is now investigating 4,700 buildings for unsafe cladding. In cases where cladding is identified and the building is not already part of a remediation programme, the responsible parties are being contacted through the Cladding Safety Scheme (CSS).

It is also worth noting that the Building Safety Fund (BSF), which launched in June 2020 to provide funding for the remediation of fire safety and cladding defects in buildings over 18 metres, closed on 1 September 2025. Going forward, all new applications for funding for buildings 11 metres or taller must now be made to the CSS.

It is also planned that the National Remediation System run by Homes England will become the single source of reference for all buildings over 11 metres to speed up confirmation of which buildings need addressing.



## Objective 3: Support Residents

As part of its plans to support residents, the government will among other things:

- Provide funding in exceptional cases where buildings over 11 metres have life-critical fire safety risks from cladding and there is no alternative route to funding.
- Strengthen the obligations of the Code of Practice for the Remediation of Residential Buildings. This autumn, it will outline the health and safety information residents should receive so the residents understand their rights, what to expect and how to raise concerns if they believe something is unsafe.
- Protect residents from high insurance premiums. As a result, the Fire Safety Reinsurance Facility has been renewed for buildings trying to find the best deal for their residents.
- Protect residents from costs of interim measures. Funding will be made available to fund fire alarms where they are needed. Access to the fund will be made easier through the National Remediation System.
- Create a new duty on fire and rescue services and local authorities to issue enforcement or improvement notices at the same time as evacuation orders. This is to ensure that landlords are under pressure to fix unsafe buildings promptly whether or not residents are in the buildings, and failure to comply with these notices is a criminal offence.
- Ensure the industry pays by introducing the Building Safety Levy – for more information on this, please see our article.

## What Is Next?

- The government is demonstrating serious intent to bring an end to the building safety crisis by introducing various new measures, which the construction sector should be aware of – in particular landlords.
- To deliver on its promise, the government will be bringing forward a remediation bill as soon as parliamentary time allows. The bill is a central component of the RAP, serving as a key mechanism to accelerate remediation of unsafe buildings. It will allow the government to compel landlords to address defective buildings promptly. In cases of noncompliance, the government will have the powers to impose significant penalties. At present, we do not have any timescales as to when the bill will become law, but it is expected it will be very soon, given the proposed timescales set for remediation of all defective buildings in England.
- We will be keeping a close eye on the developments and will provide timely updates on this.

**Aston Kazlauskas**
Associate, Birmingham
T +44 121 222 3396
E aston.kazlauskas@squirepb.com

**Paul O'Kane**
Partner, Manchester
T +44 161 830 5239
E paul.okane@squirepb.com

# Guide to Products Critical to Safe Construction

Against the backdrop of increased scrutiny of the regulation and safety of construction products, which has seen the UK government launch a Construction Products Reform green paper consultation (as reported in our last Building Safety F(ACT)s newsletter) the Chartered Institute of Building has published a guide on products critical to safe construction (the Guide). The Guide has been produced in collaboration with the Construction Products Association, Code for Construction Product Information, Institution of Structural Engineers and the Royal Institute of British Architects.

Helpfully, the Guide provides a definition of products critical to safe construction: "a product is critical to safe construction when its failure, omission or incorrect installation carries a risk of causing a serious injury or fatality". The Guide encourages, as one of the first steps when specifying products, to consider if the product, in itself, or as part of the end-use element or system, is critical to safe construction, i.e. whether the failure, omission or incorrect installation of the product would carry a risk of causing serious injury or a fatality. If answered positively, the product must be treated accordingly, and a risk assessment must be undertaken.

It is very rare that a single construction product is used in isolation and, as the Guide highlights, a combination of products, making up a system (and perhaps forming an element), may be required to provide the safety-critical function. The Guide provides the example of glass within a fire door leaf, which is in itself a product, but not one that provides a safety-critical function unless it is combined with other features of the door.

The Guide also outlines:

- The factors to be considered at the specification and installation stages to form an evaluation
- The responsibilities of the principal designer and principal contractor under the Building Regulations – roles established under the Building Safety Act 2022
- The identification of products critical to safe construction as one of the first steps in undertaking an evaluation
- The procurement process, including compliance questions to ask the manufacturer and/or supplier at the procurement stage
- The importance of proper communication of requirements in the supply chain to ensure compliance
- How the installation of the product is as important as the product's assembly, with the potential to undermine or negate compliance documentation
- The importance of comprehensive records and signoffs
- When selecting products, how essential it is to consider the product's whole life cycle – this should be prioritised over making decisions solely on initial cost

The Guide is primarily intended for designers and contractors involved in specifying and selecting products critical to safe construction. However, as the Guide emphasises, it will also be of interest to clients, project managers, installers and those responsible for procurement, installation and oversight, and those who have responsibilities as designers or contractors but not in a primary role. Manufacturers and suppliers of such construction products may also find the Guide useful, as an indication of the questions and demands for documentation that are likely to be placed upon them by customers.

It is worth noting that the government has also recently (6 November 2025) published regulations amending the EU Construction Product Regulation ((EU) 2011/305), as retained in Great Britain, and enforced under the Construction Products Regulations 2013. The amendments will come into force on 8 January 2026. They essentially provide that compliance with the new EU legislation governing construction products (Regulation (EU) 2024/3110 – which will revoke Regulation (EU) 2011/305) – will also comply with UK law. This is interesting from a Brexit perspective (because this is essentially ensuring continued alignment with the EU, despite the fact that the changes to the EU legislation do not automatically apply in Great Britain because they are happening post-Brexit) but is separate to the scrutiny of construction products in the UK under the Building Safety Act 2022 and the associated green paper consultation noted above.

**Nicola Smith**
Partner, Birmingham
T +44 121 222 3230
E nicola.smith@squirepb.com

*Thanks to Abigail Harcombe, trainee solicitor in the Environmental, Safety & Health team in our Birmingham office, for her contribution to this article.*

# The Building Safety (Wales) Bill and What It Could Tell Us About the Building Safety Act

The Building Safety (Wales) Bill (Bill) was introduced to the Welsh Parliament this summer. This Bill is currently at stage one, and likely has a fair way to go before it is enacted.

Most will already know that the English law, the Building Safety Act 2022 (Act), was enacted around three and a half years ago. It created a new regulatory regime for high-rise residential and mixed-use properties.

The Welsh Parliament decided to wait until the Grenfell Tower Inquiry (Inquiry) had concluded to publish its version, with the objective of seeking to reflect the Inquiry's recommendations in the new legislation. The UK Parliament did not have that luxury, as it needed to act more urgently, due to having many thousands of high-rise buildings. However, as some may already know, the UK government is reviewing the definition of "higher-risk building" under the Act on an ongoing basis, following the conclusion of the Inquiry. The Inquiry found that relying on the height requirement alone was "essentially arbitrary in nature" (see Phase 2 Volume 7). The plans for the review were initially due to be published in summer 2025, but this has been delayed and will be published by the end of 2025.

It appears there may be divergence between the two regimes, if and when the Bill becomes law. In its current form, the Bill differs from the Act in an important way; there is no height requirement for a building to come within its scope, so all multioccupied residential and mixed-use buildings (containing two or more residential units) in Wales are proposed to be within scope according to the current draft. However, height measurement as an indicator of risk has not been abandoned entirely. Three separate categories of risk are proposed, where the tallest buildings fall into "Category 1" and are subject to stricter regulation than shorter buildings falling into "Category 2" or "Category 3".

It may be that the Bill provides some insight into what the UK Parliament could do with the definition of a higher-risk building; for example, not abandoning height measurement entirely, but instead using it as an indicator of the severity of risk and in turn the required risk-reduction measures needed for a building, rather than as a criterion for the application of the Act entirely, as is presently the case.

If the Bill becomes law, buildings in Wales will have to comply with the new building safety law in the near future. The Bill may be an indicator of future changes to English law that may extend building safety duties to residential and mixed-use buildings of any height in England too. That could have far reaching consequences that will increase costs for building owners and landlords, as more onerous duties may be imposed upon them with the potential for significant criminal penalties for noncompliance with them.

**Oliver Bristow**
Associate, Manchester
T +44 161 830 5332
E oliver.bristow@squirepb.com

# A Bright Line on Building Safety – Can Cladding Remediation Costs Be Passed to Leaseholders Under the Building Safety Act 2022?

The recent decision of the Upper Tribunal (UT) in *Almacantar Centre Point Nominee No.1 Ltd & Anor v. Penelope de Valk & Others* [2025] UKUT 298 (LC) offers clarity on how the courts will interpret the recovery of cladding remediation cost through service charges under the Building Safety Act 2022 (BSA 2022).

## The Facts

Almacantar Centre Point Nominees No.1 Limited and Almacantar Centre Point Nominee No.2 Limited (Almacantar) are the freehold owners of Centre Point House, 15A St Giles High Street, London, WC2H 8LW (CPH). Around 1987, a substantial part of CPH, which was constructed in the 1960s, was converted into residential leasehold flats, and it currently contains 36 duplex flats.

CPH has a hardwood timber-framed window façade, which has deteriorated over several years. Almacantar proposed a scheme to address the deterioration of the façade and sought a determination from the First-tier Tribunal (FTT) as to liability for the costs of the proposed works to remedy the defective façade.

The FTT held that the proposed works did fall within the landlord's repairing obligations, and the leaseholders would be liable under the service charge provision to contribute to the remediation costs. However, the FTT found that several of the leaseholders, who held qualifying leases, were entitled to rely on the "leaseholder protections" under the BSA 2022 and were not required to pay any part of the service charge attributable to "cladding remediation".

Almacantar appealed the decision.

## Upper Tribunal Decision

### Relevant Defect

A central issue for the UT was whether Paragraph 8 of Schedule 8 of the BSA 2022, which exempts qualifying leaseholders from paying service charges for cladding remediation, should be interpreted independently of sections 116 and 122 of the BSA 2022. These sections provide that only certain service charges linked to "relevant defects" are not payable; "relevant defects" would include works carried out in a 30-year period from when the provision came into force, so from 28 June 1992.

The UT held that Paragraph 8 is clear and unambiguous – it protects qualifying leaseholders from payment of the cost of remediation of unsafe cladding. Paragraph 8 was not limited by reference to "relevant defect", and no additional qualification should be read into it.

The UT held that, although other parts of the BSA 2022 provide a structured package of leaseholder protections to the 30-year limit, Paragraph 8 operates separately and does not fall within that package of remediation. It was held that Paragraph 8 mitigates against the time-limit in respect of unsafe cladding.

## Cladding System or Not?

Almacantar raised a technical argument that the façade of CPH is not separate cladding that could form part of any "cladding system" under Paragraph 8 of Schedule 8 of the BSA 2022. It argued that the façade at CPH is not an outer skin, instead it forms the exterior of the building itself. Accordingly, the proposed works would not constitute cladding remediation works.

The UT held that the question of whether a building includes cladding is one of fact. The requirement under Paragraph 8 that cladding remediation involves the "outer wall of an external wall system" does not require two separate systems. It was held that the FTT correctly classified CPH's cladding as a cladding system.

## Meaning of Unsafe

The definition of "cladding remediation" under Paragraph 8 of Schedule 8 of the BSA 2022 includes the removal or replacement of any part of a cladding system that is "unsafe". Almacantar argued that the term "unsafe" should be narrowly interpreted to mean inherently unsafe cladding, primarily posing a fire risk and should not cover cladding becoming unsafe over time through degradation or structural decay over time. A broader interpretation, it said, would have sweeping consequences, capturing many older buildings, which it claimed Parliament could not have intended.

The UT held that the use of the term "unsafe" is broader than a limitation to fire risk; they agreed with the FTT that unsafe means something more than simply out of repair and encompasses a range of threats to building safety, residents and the public. In this case, evidence showed serious degradation at CPH, including loose panels, failing timber and compromised external seals, which created a real safety risk.

## Qualifying Leases

The status of the leases was initially uncertain; however, the FTT relied on the presumption outlined in Paragraph 13 of Schedule 8 of the BSA 2022 and determined that the leaseholders held "qualifying leases" as defined in Section 119 of the BSA 2022. As a result, they were entitled to the protections afforded to qualifying leaseholders. Almacantar argued that the FTT had wrongly made an unqualified factual finding about which leaseholders held qualifying leases, instead of merely applying the presumption. On this point, the UT held that the FTT's application of the presumption stands. Almacantar did not take any action to challenge this presumption, such as requesting a "leaseholder deed of certificate" from the tenants in accordance with the Building Safety (Leaseholder Protections) (Information etc) (England) Regulations 2022.

## Takeaways

- The UT has confirmed that leaseholder protections under the BSA 2022 stretch further than many expected, meaning cladding remediation costs may be more likely to sit with landlords.
- Paragraph 8 of Schedule 8 of the BSA 2022 is a clear standalone shield, meaning that qualifying leaseholders cannot be charged for cladding remediation costs irrespective of the defect's age.
- Early due diligence and legal input are critical. Landlords should review lease terms now, request the "leaseholder deed of certificate" early, and challenge qualifying lease status where possible to limit future exposure.

Note that permission to appeal to the Court of Appeal has been granted.

**Mobeen Amin**
Senior Associate, Birmingham
T +44 121 222 3202
E mobeen.amin@squirepb.com

# Building Safety Act (BSA) – A New Chapter in Contribution Claims and Supply Chain Liability?

There has been much discussion of the Supreme Court's judgment in *URS Corporation Ltd (URS) (Appellant) v. BDW Trading Ltd (BDW)* (Respondent) [2025] UKSC 21.

The practical impact of the judgment in the context of contribution claims, and the time in which stakeholders have to bring them has not been given detailed consideration. In this article we do just that.

## Background

Following the tragic events of Grenfell, BDW undertook a review of its portfolio and discovered defects in two of its high-rise residential developments – Capital East in London and Freemens Meadow in Leicester. BDW was the developer; meanwhile, URS provided structural designs for those two developments.

At the time of the discovery of the defects, BDW no longer possessed an interest in the two developments; however, BDW proactively and voluntarily carried out remedial works to address the defects. In March 2020, BDW sought to recover the costs of remedying the defects, by bringing a claim against URS. The initial claim was brought on the basis of negligence, because both the contractual claims and claims under the Defective Premises Act 1972 (DPA) were time barred (this was prior to the enactment of the BSA, which, among other things, extends limitation periods retrospectively).

The Technology and Construction Court found in favour of BDW and ruled that the alleged losses were actionable in negligence, and that the cause of action occurred at practical completion. However, once the BSA came into effect, BDW added further claims to encompass DPA claims and the Civil Liability (Contribution) Act 1978.

URS appealed to the Court of Appeal, with no success, and again to the Supreme Court.

## Appeal to the Supreme Court – Expanding the Scope

The appeal explored various issues; however, the ground that this article explores is ground four. This ground explored the question:

"Is BDW entitled to bring a claim against URS under Section 1 of the Contribution Act when there has been no judgment or settlement between BDW and any third party, and no third party has ever asserted any claim against BDW?"

URS' position was that the grounds for a claim in contribution is not triggered unless BDW's liability has been proven through a judgment, admission or settlement.

Lord Leggatt handed down the leading judgment on this appeal ground, and reaffirmed that the right to recover contribution only arises when:

1. Damage has been suffered by the claimant for which both defendants are liable.

2. Defendant 1 has paid, been ordered to or agreed to pay, compensation in respect of the damage to the claimant.

Importantly, it was held that contribution claims can arise in multiple circumstances, including where a party makes or agrees to make a payment (including a payment in kind in the form of performing remedial works, as was the case with BDW).

For those in the supply chain, such as developers, consultants and contractors, it means that they can seek contribution from third parties even where judgment has not been entered against them and they have, for example, undertaken remedial works.

## What Is the Limitation Period in Respect of Contribution Claims?

Under Section 10 of the Limitation Act 1980, the party seeking to claim a contribution must do so within two years, but when does this two-year period run from? As above, the basis for a contribution claim can arise in circumstances where no judgment has been handed down or settlement reached. The court's judgment demonstrated that the clock can start ticking as soon as remedial works are undertaken.

This leads to some uncertainty. If for example, remedial works are begun, stop due to an unforeseen issue and then resume and are ultimately completed, from when does the two-year period run?

One may assume that the two-year period runs from completion of the works; however, until there is legislative or judicial guidance on this point, stakeholders should reasonably err on the side of caution, and, if remedial works are begun, any party should be prepared to commence proceedings for contribution within two years of the commencement of those works.

## What Are the Practical Implications?

Parties involved in construction projects must ensure that they are aware of the short window within which they can bring compensation claims following the assumption of responsibility (for example, voluntarily undertaking remedial works) for defective works. Importantly, this principle runs across BSA and non-BSA related claims and associated remedial works.

Two years is not a long time to prepare for bringing what will no doubt, in many cases, be a claim that is complex, requiring expert and legal input. Consequently, stakeholders should have this consideration at the forefront of their minds when considering how to address claims under the BSA or otherwise.

From the outset, stakeholders should ensure:

1. An analysis is undertaken of other parties in the supply chain who could be the subject of future contribution claims.

2. Clear records should be maintained, which will only assist in any future claim alongside assisting with future issues of culpability, causation and mitigation.

3. They do not deal with claims (including those relating to the BSA) narrowly. A holistic strategy should be adopted, and our firm's expert team of specialist lawyers are well positioned to assist.

**James Lewis**
Associate, Manchester
T +44 161 830 5000
E james.lewis@squirepb.com

*Thanks to Julia Koziel, trainee solicitor in the Construction & Engineering team in our Manchester office, for her contribution to this article.*

# The Building Safety Act 2022 – Implications for the Construction and Insurance Sectors

## Foreword

Squire Patton Boggs (**SPB**) are pleased to have Henry Gallacher of Cape Insurance as guest editor to contribute to our newsletter. In this article, Henry provides his views on topical issues in the construction insurance market and how the insurance industry is evolving following the coming into force of the Building Safety Act. The views expressed in this article should not be construed as forming any advice or opinion (legal or otherwise) provided or endorsed by SPB.

## The Building Safety Act

The Grenfell Tower disaster exposed critical gaps in building regulation and safety. The resulting Building Safety Act (BSA) 2022 has since reshaped how the UK construction industry manages accountability and risk. For developers, consultants, and contractors, its impact is not only regulatory – it is directly influencing the professional indemnity insurance (PII) market and the way insurers approach risk selection, pricing and claims.

## From Compliance to Proof

The BSA marks a fundamental shift in responsibility. Under the old system, compliance relied on prescriptive checks and signoffs. Today, dutyholders must actively demonstrate that buildings have been designed and constructed safely and by competent professionals.

For PI insurers, this shift has significant implications. Firms are now increasingly being assessed not just on claims history, but on their governance, documentation quality and supervision standards. The ability to produce auditable evidence of design decisions and competence management is increasingly central to securing affordable and broad cover.

## The Golden Thread – Documentation as Defence

A central principle of the BSA is the creation and maintenance of a "golden thread" of building information. This refers to the secure, digital record of a building's design, construction and safety information, which must be updated and preserved throughout its life cycle.

While the detailed regulatory requirements for maintaining a golden thread apply specifically to higher-risk buildings (HRBs) – generally those over 18 metres in height or seven storeys, containing residential units or certain institutional uses – the underlying concept extends across the entire construction sector.

For projects outside the HRB definition, maintaining clear, traceable records of design decisions, materials and safety measures remains best practice. Increasingly, insurers and clients alike view strong information management as a mark of competence and professionalism.

From an insurance perspective, firms that can evidence a clear golden thread – even for non-HRB projects – are better positioned to defend claims and demonstrate higher levels of professionalism by providing underwriters with documentation at renewal.

## The Gateway Regime and Its Consequences

The introduction of gateways – three formal decision points at planning, construction and completion – has increased regulatory oversight, particularly for HRBs. Gateway 2 applications must now include comprehensive design documentation, fire and structural safety strategies, and formal competence declarations.

This process has added both time and complexity. Where information is incomplete or inadequate, the Building Safety Regulator can delay or reject applications. These bottlenecks are likely to contribute to longer claim processes and settlements, higher temporary accommodation costs and broader remedial works – factors that are driving up insurers' loss ratios and influencing future PII premiums.

## Prolonged Claims and Rising Costs

Recent defective cladding cases show that fire safety-related claims can be highly protracted. Extended approval timelines and mandatory remedial works often result in additional expenses far beyond the initial defect, including full façade replacements, sprinkler systems and fire alarm upgrades.

For insurers, this has translated into longer-tail liabilities and significant funding commitments. Consequently, underwriters will look to price risk with greater caution – particularly where exposure to HRBs or legacy cladding issues exists.

## Expanding Dutyholder Liability

The BSA formalises the concept of dutyholders, assigning clear responsibility to those in control of design, construction and management phases. Principal designers and contractors must now certify not just the quality of work, but their competence and compliance processes.

This expansion of liability has direct implications for PII coverage. Insurers are increasingly focused on evidence of staff competence, professional training and documented governance frameworks. A lack of clarity or oversight in these areas is leading to tighter wordings, reduced capacity and higher excesses – particularly for consultants in fire safety, façade design or cladding remediation.

## Understanding "Any One Claim" vs "In the Aggregate" Cover

When reviewing or renewing PII, it is important to understand how cover limits are applied. An "any one claim" policy provides the stated limit of indemnity for each individual claim made during the policy period. This structure offers broader protection, as multiple unrelated claims can each be covered up to the full policy limit.

By contrast, an "aggregate" policy applies the limit once across all claims within the policy year. Once that limit is exhausted, no further indemnity is available until renewal. In the current UK market, any one claim cover remains standard for most professional indemnity placements, but insurers are increasingly restricting certain high-risk activities – particularly cladding, fire safety and façade design – to aggregate limits or sublimits.

Firms should check the basis of cover carefully and consider whether additional limits or reinstatements are appropriate, especially where multiple projects or legacy exposures could trigger separate claims under the BSA.

## The Market Outlook

After several years of constrained capacity and elevated premiums following Grenfell, the PII market has stabilised. Broader construction risks – without cladding or HRB exposure – are now seeing competitive rates and improved terms. However, the BSA's extended liability periods and the evolving regulatory framework mean that underwriters remain cautious for higher-risk activities.

The BSA extends limitation periods for claims under the Defective Premises Act 1972, to 30 years retrospectively and 15 years prospectively, meaning claims can arise decades after the original work. However, PI insurance is claims-made, so it only responds if a claim is notified while a policy is active, regardless of when the work was undertaken. Currently the UK market cannot guarantee PI availability for the full duration of these extended limitation periods, and future cover will depend on market appetite and the nature of historic work. This creates a potential gap where liabilities may exist, but PI capacity or affordability may not. As a result, firms must plan for long-term risk by maintaining continuous cover and considering the cost and practicality of run-off insurance.

Contractors and consultants who can demonstrate strong governance, thorough documentation and compliance with the BSA's dutyholder requirements will continue to attract the best pricing and widest cover. In the post-BSA environment, evidence, competence and record-keeping are not just regulatory necessities – they are the foundation of insurability.

## Collaboration and the Path Forward

Despite the additional regulatory burden, the BSA should ultimately enhance safety, consistency and transparency across the industry. For insurers and professionals alike, collaboration will be key to achieving this.

At Cape Insurance, we recommend firms focus on three key actions ahead of renewal:

1. **Legacy risk mapping** – Identify all historical HRB and façade-related projects that may fall within the extended limitation period.

2. **Gateway readiness** – Maintain complete, traceable documentation to support regulatory submissions and insurance disclosures.

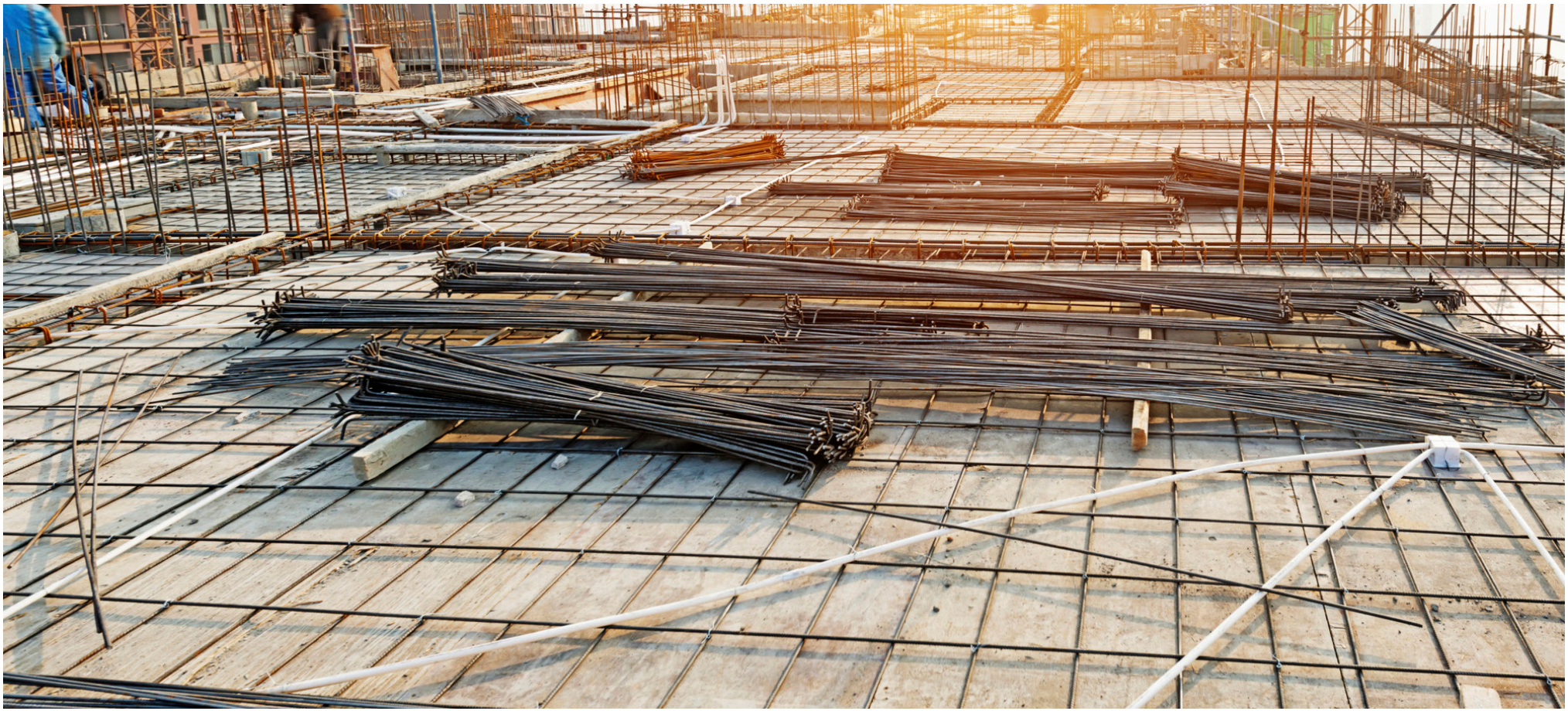
3. **Contract clarity** – Review dutyholder responsibilities, limitation clauses and indemnities to ensure alignment with BSA standards.

# In Summary

The BSA has redrawn the relationship between compliance, liability and insurance. Claims are now likely to be longer, more complex and costlier – and underwriters are responding with greater selectivity.

However, firms that can demonstrate robust governance, competence and control are still achieving competitive renewal terms and broader coverage. In today's environment, documentation is not just a compliance tool – it is the foundation of insurability.

Henry Gallacher is founder and managing director of Cape Insurance, having spent over 20 years advising clients in the built environment on all aspects of risk and insurance. He has particular expertise in acting for employers and contractors in designing appropriate insurance programmes on projects, along with professionals working within the built environment sector. He regularly advises lenders and funders on the risk and insurance aspects to new and existing projects, and provides insurance due diligence reporting to support robust lending decisions.



# Contacts

For further information, please contact:


**Michelle Adams**
Partner, Birmingham
T +44 121 222 3137
E michelle.adams@squirepb.com

**Charlotte Higham**
Partner, Manchester
T +44 161 830 5352
E charlotte.higham@squirepb.com

**Nicola Smith**
Partner, Birmingham
T +44 121 222 3230
E nicola.smith@squirepb.com

**Mobeen Amin**
Senior Associate, Birmingham
T +44 121 222 3202
E mobeen.amin@squirepb.com

**Oli Bristow**
Associate, Manchester
T +44 161 830 5332
E oliver.bristow@squirepb.com

**James Lewis**
Associate, Manchester
T +44 161 830 5000
E james.lewis@squirepb.com

**Mark Barker**
Partner, Manchester
T +44 161 830 5082
E mark.barker@squirepb.com

**Paul O'Kane**
Partner, Manchester
T +44 161 830 5239
E paul.okane@squirepb.com

**Aston Kazlauskas**
Associate, Birmingham
T +44 121 222 3396
E aston.kazlauskas@squirepb.com

**Helen Saunders**
Associate, Manchester
T +44 161 830 5374
E helen.saunders@squirepb.com

**Lauretta De Feo**
Professional Support Lawyer, Birmingham
T +44 121 222 3560
E lauretta.defeo@squirepb.com




SQUIRE PATTON BOGGS

squirepattonboggs.com

68924/11/25