

Building Safety Act 2022

The year ahead

January 2025

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URS v BDW: Potential Supreme Court Decision

URS Corporation Ltd's appeal against BDW Trading Ltd was heard by seven Justices in the Supreme Court at the end of 2024.

The Supreme Court was asked to consider key aspects of construction law and negligence, including the scope of an engineers' duty of care, the Defective Premises Act 1972, the Building Safety Act 2022's retrospective 30-year limitation period and the meaning and effect of the Contribution Act 1980. The decision will mark the Supreme Court's first consideration of both the Defective Premises Act and Building Safety Act, and will be of significance to the construction, real estate, and insurance sectors – watch out for the Judgment which may land this year!

For more details of the issues considered, see our [Law-Now](#).

Building Safety Act – implementation in Wales

The Building Safety (Wales) Bill is scheduled for introduction in 2025. Following the publication of the Grenfell Tower Inquiry Phase 2, the Welsh Government announced that, while the development of the Bill is advanced, it was taking time to reflect on the recommendations to identify where it may wish to revise its policy.

The Cabinet Secretary for Housing and Local Government in Wales has indicated that the Bill will include tighter regulations of higher-risk buildings, dutyholder roles, gateways, the golden thread of information, mandatory occurrence reporting and compliance, and stop notices. A consultation was originally planned for the end of this year but will now be launched in Spring 2025. However, the Bill is still to be introduced before summer recess in 2025, as originally planned.

For further information on recent developments, see our [Law-Now](#).

Building Safety Levy

The Scottish Government plans to introduce a new [Building Safety Levy](#) to fund Scotland's Cladding Remediation Programme. This levy, similar to the UK Government's Building Safety Levy for England, will function as a devolved tax paid by developers constructing new-build residential properties, including homes, build-to-rent properties, and purpose-built accommodation such as student accommodation. It will operate on a self-assessment basis, with developers obliged to submit tax returns to Revenue Scotland.



Amendments to Approved Document B of the Building Regulations 2010

Amendments to ADB will come into effect from 2 March 2025. These will require increased record keeping, stricter performance standards for materials and products used in all buildings and mandatory sprinkler systems in care homes. Failure to comply with the amendments could result in prosecutions with unlimited fines, or enforcement action.

Housing (Cladding Remediation) (Scotland) Act 2024

[The Housing \(Cladding Remediation\) \(Scotland\) Act 2024](#) came into effect on 6 January 2025. The Act aims to accelerate the remediation of buildings with potentially defective external wall cladding. It introduces Single Building Assessments (SBAs), a Cladding Assurance Register, and powers to create a Responsible Developers Scheme. An SBA can be undertaken on residential buildings to determine whether there is a risk to life caused or worsened by external wall cladding and to recommend whether remedial work is required. The Cladding Assurance Register will contain information on buildings that have completed SBAs and indicate whether remedial work has been completed.



Retrospective Effect of the BSA – Leading Building Safety Act Cases to be Contested in Court of Appeal

In March 2025, two of the leading cases that consider the Building Safety Act's retrospective effect are due to be heard in succession by the Court of Appeal by the same panel of judges.

The first case, *Adriatic Land 5 v Lessees of Hippersley Point*, will allow the Court of Appeal to reconsider whether Schedule 8 of the BSA (which provides that "no service charge is payable" in respect of many provisions) has retrospective effect.

This case will immediately be followed by *Triathlon Homes LLP v Stratford Village Development Partnership* where the decision to allow a Remedial Contribution Order (RCO) to be made to retrospectively recover costs incurred prior to the BSA coming into force is being contested. Other grounds for appeal in this case also include the First Tier Tribunal's narrow interpretation of when it is considered "just and equitable" to make a RCO.

For more information please see our [Law-Now](#).

Judicial review permission hearings: Leasehold and Freehold Reform Act 2024

Hearings to determine whether a number of freeholders seeking permission for judicial review concerning the Leasehold and Freehold Reform Act 2024 will take place on 29-30 January 2025.

These hearings will address significant legal challenges to the Act, which has introduced substantial changes to leasehold and freehold property rights. Key issues include the new regulations on ground rents, enfranchisement processes, and the extension of lease terms. The outcomes of these hearings could have far-reaching implications for property owners, developers, and investors.

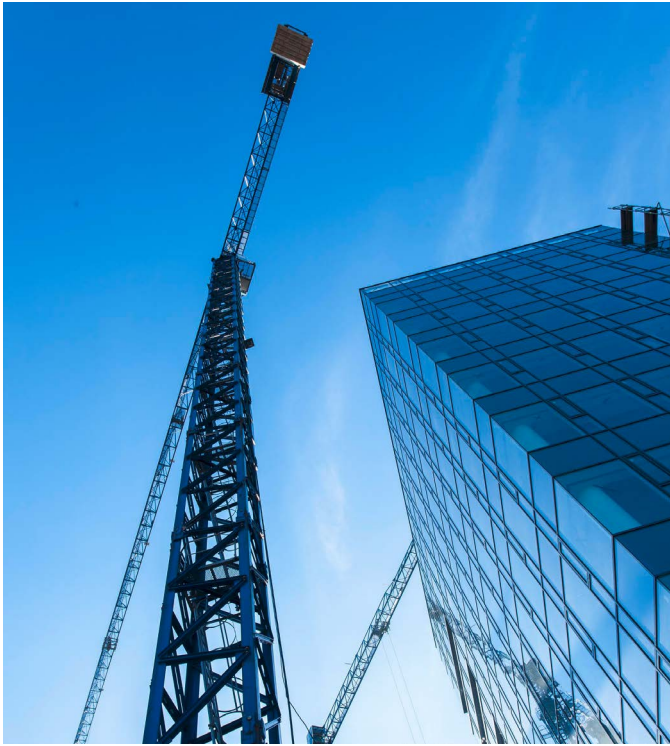
The Building Safety Levy – intended to come into force in Autumn 2025

The purpose of the Building Safety Levy is for those profiting from property development to contribute to the cost of remediating defects in historic developments. The plan is for a single payment prior to the issuing of the building control certificate, and the levy will be calculated on the floorspace area of a property.

The levy follows on from two consultations, the second of which concluded in February 2024, and the power to enact it is provided in section 58 of the Building Safety Act 2022 with secondary legislation to be brought in to provide the detail on levy rates and other matters.

The Government intends the levy to raise around £3.4 billion to contribute towards making buildings safe. The intention is for the levy to come into force in Autumn 2025.





Government response to the final report following the public inquiry into the Grenfell tower disaster

On 4 September 2024 the public inquiry into the Grenfell Tower disaster (the “**Inquiry**”) released its [final report](#) (the “**Report**”). The Inquiry recommended wholesale updates to the regulation of the construction industry, including the introduction of a new “Construction Regulator”, and proposed an urgent review of Approved Document B (“ADB”), which the Inquiry found to be inadequate and unhelpful. Our [Law-Now](#) provides a high-level overview of the Inquiry’s key findings and recommendations.

In his statement following the publishing of the Report, Keir Starmer promised that the Government would respond to the recommendations within 6 months (i.e. by March 2025).

The Fire Safety (Residential Evacuation Plans) (England) Regulations 2025

If brought into effect, the Regulations would require all “responsible persons” in “specified residential buildings”, those above 18m with 2+ residential units or those above 11m with a simultaneous evacuation strategy, to use reasonable endeavours to identify relevant residents (those with cognitive or physical conditions compromising their ability to evacuate) and offer them a person-centred fire risk assessment. Where requested, a PCFRA must assess risks in the residential demise, common parts and the ability of the resident to evacuate as well as implementing mitigating measures.

Responsible Developer’s Scheme

The introduction of draft secondary legislation on the Responsible Developer’s Scheme, introduced by the Housing (Cladding Remediation) (Scotland) Act 2024, is expected. Similar to the Responsible Actors Scheme in England, this scheme seeks to ensure that developers take steps to mitigate the risks to life created by external wall cladding on residential buildings. Developers associated with buildings that have unsafe or defective cladding will be eligible to register, provided they have committed to financing or carrying out the necessary remediation work. It is anticipated that the prohibitions will be similar to those in England.

Remediation Acceleration Plan – a further progress update to be provided in the Summer of 2025

To address delays to remediating life-critical fire safety defects on high rise residential properties, on 2 December 2024, Angela Rayner, Deputy Prime Minister and Secretary of State for Housing, Communities and Local Government announced the government’s [Remediation Acceleration Plan](#) (“**RAP**”).

The RAP focused on forcing developers and those with repairing obligations (including landlords and freehold owners) to speed up remediation. Our [Law-Now](#) summarises the key aspect of the RAP.

With recognition that “*the scale and importance of the challenge is so significant*”, the Secretary of State plans to announce a long-term strategy on accelerating remediation of social housing properties in Spring 2025 and promises to provide a further progress update in the Summer of 2025.



For more information please get in touch



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Invitation

Building Safety Act Conference

Wednesday 19 March 2025

Time:

16:00 Registration

16:30 Conference

18:30 Networking drinks

Venue:

CMS

Cannon Place

78 Cannon Street

London

EC4N 6AF

After the success of last year's sell out Conference, CMS is again bringing together clients from across the industry to hear from industry experts and each other about all the latest developments. The conference will cover the next phase of regulation, how the BSA is impacting development and construction and how the Courts are applying the legislation.

Please click the button below to register for this event.

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