

Winter 2023

Covernotes

Explaining issues that affect insurance

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Making buildings fit for the future

Current situations and issues within the construction and development world have created a sector burdened with uncertainty. The UK is experiencing a housing and development crisis, and at the heart of this lie two factors: current building stock deemed high risk; and a planning process that is ineffective, outdated¹ and highly discretionary².

The legislative hand has been somewhat forced with regard to the first issue. The Grenfell Tower tragedy catapulted the urgent need for safety improvements into the spotlight, highlighting buildings unfit for habitation at a safety level. Significant flaws in building standards and the regulatory scheme were then exposed by the Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt.

The Building Safety Act

The review's recommendations have led to the introduction of the Building Safety Act³, passed in 2022 and being introduced to a pre-agreed timescale. Backed by the establishment of a Building Safety Regulator (BSR) within the Health and Safety Executive⁴, an Act described as "groundbreaking and transformational"⁵ is ushering in a new era for the planning, design, management and operation or occupation of higher risk buildings. Its intention is to strengthen controls in place within the building sector, and to make property owners more accountable for their buildings and safety both within and around them.

By 30 September 2023, it was necessary for all higher-risk buildings in England and Wales to have been entered onto an official register. In the eyes of this law, a higher-risk building is one over 18 metres or

7 storeys in height, with at least two residential units.⁶ No building of this type that remains unregistered can now be legally occupied.

Those responsible for such buildings have to appoint an Accountable Person or Principal Accountable Person, who must handle safety reporting and management and be the official duty holder responsible for creating a 'golden thread' of information.⁷ Their role is to capture all information relating to a building's design, build and management, and ensure this is upheld throughout its lifetime, as well as being stored digitally for accessibility. Other duties are also expected of them, including creating a Residents' Engagement Strategy.

Within the golden thread, they also need to prepare a Safety Case Report, intended to contain all information relating to fire hazards and their management, as well as providing a focus on structural safety, on an ongoing basis.

Completion certificates and claims limitation

Part of BSR's role is that of reviewing and considering planning and construction applications, thereby tightening building regulations and fire and general safety standards. It will also enforce building compliance and take action against offenders. BSR will inspect each completed building and only issue a Completion Certificate, to allow for its occupation, if satisfied that all standards have been met. The process through which BSR and a contractor or property owner can together arrive at this stage will be through three gateways. Satisfying BSR requirements at each one is necessary, before any work can continue to pass the project through the next gateway.

This is not all the Building Safety Act has done. It has also extended the period of time in which a claim that a building is unfit for habitation under the Defective Premises Act 1972 (DPA), or in breach of the Building Act 1984's Building Regulation, can be made. Whereas previously the limitation period was only six years, it is now 30 years for any project completed before 28 June 2022, or 15 years for those completed after this date.

Meanwhile, a new DPA Section 2A extends the potential of liability to refurbishment or extension projects carried out by a business, where the claim falls after 28 June 2022. An affected party will have 15 years to make a claim.

¹ <https://www.newstatesman.com/spotlight/economic-growth/regional-development/2023/05/wrong-uk-planning-system-keir-starmer>

² <https://www.centreforcities.org/publication/a-very-short-guide-to-planning-reform/>

³ <https://www.gov.uk/guidance/the-building-safety-act>

⁴ <https://www.hse.gov.uk/building-safety/index.htm>

⁵ <https://www.allianz.co.uk/news-and-insight/insight-and-expertise/buildings-safety-act-2022-10-key-changes.html>

⁶ <https://www.gov.uk/guidance/applying-to-register-a-high-rise-residential-building>

⁷ https://www.allianz.co.uk/content/dam/onenamarketing/azuk/allianzco.uk/business/docs/pdfs/buildings-safety-act-2022-information_acom9897.pdf

Next steps for developers

It is important that developers, builders and contractors study this legislation in detail, noting new liabilities and aspects of protection for leaseholders. Ensuring high-risk buildings meeting the Act's definition have been registered, and an Accountable Person or Principal Accountable Person appointed and aware of what is expected of them, is the first step to take.

Whether or not this Act goes far enough in embedding fire and structural safety at the heart of building stock is being debated. Some insurers argue the height of a building is not the sole determinant of its level of risk and that more needs to be done to embed safety within the planning system. Any circumvention of building regulations, because of a relaxation in Permitted Development Rights, has to be carefully managed, to ensure safe buildings and safety for the occupants of those buildings.

Insurability of buildings

With insurance and risk so entwined, a case is also being put forward for insurance considerations to be built into the planning process as a legal requirement.⁸ In this way, buildings and homes would not face a potential situation in which they are uninsurable at some point in the future, or become “costly white elephants”, as they have been described.

Making buildings insurable is as important in terms of flood risk as for fire risk, in the eyes of leading players within the insurance sector, who have, since 2021, been advocating more joined-up thinking at the heart of planning.

Their fear is that a drive to deliver on housing targets — specifically the 300,000 new homes promised annually by the current Government — will lead to building development that is not considering flood risks, climate change and the need to future-proof buildings through materials and methods used within construction.

The need for planning reform

With the planning system not having had the shake-up promised by Boris Johnson, these experts also fear that steps forward, such as the Environment Act 2021⁹, could potentially become less effective in its intention, if overridden by conflicting planning decisions.

A cross-section of insurance industry experts have put forward five suggestions, with regard to sustainability and the future insurability of buildings. As well as making it a legal responsibility to ensure that buildings will be insurable, they want to see the 18 metre/7-storey criteria within the Building Safety Act removed, so the Act applies to buildings of any height.

Secondly, they have put a focus on Modern Methods of Construction (MMC) — techniques that are alternatives to traditional housebuilding, whether in terms of construction processes or materials. The experts wish to see the establishment of a transparent database that hosts information and which details best practice within MMC, as well as providing an early-warning vehicle through which emerging safety concerns can be highlighted. All MMC properties would be included, along with details of all materials used within them.

Flood risk and SUDs

The third recommendation relates to flood-risk areas. The insurance experts do not wish to see development taking place in such high-risk areas, wanting to see flood resilience becoming a mandatory part of planning decisions and building regulations for both residential and commercial developments. They point to the potential for mass future catastrophe as climate change greatly increases the amount of rainfall impacting the UK, where 5.2m homes and businesses already face a flood risk.

Furthermore, they want swift action to increase the use of Sustainable Drainage Systems (SUDs) within developments and recognise the need for such SUDs to be included with projects submitted for planning consent. The call is for schedule 3 of the Flood and Water Management Act to be passed, to increase standards within drainage and establish an approving body for such systems.



⁸ AXA UK Building for the future – Recommendations for safe and sustainable planning (002).pdf (available under Housing Sustainability and Planning header) at <https://www.axa.co.uk/newsroom/reports-and-publications/>

⁹ <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted>



SMEs and skills gaps

The fourth recommendation is intended to help smaller developers compete in the construction marketplace, to help deliver on new home targets. Adding diversity in the sector should drive up standards, but SMEs currently struggle to navigate the planning labyrinth. The insurance experts want to see the introduction of a specific fund, as well as named contacts within planning departments, and together this could assist the renaissance of SME involvement in the housing sector.

Finally, safety and sustainability are seen as only being achievable if the sector has the skills to deliver both. With skills gaps in general, and a low-carbon skills gap in particular, plus chronic shortages of professionals such as architects and planners, a new skills strategy is required. The experts believe that addressing the skills shortage requires action not just within apprenticeship strategies but also within schools and higher education establishments.

STEM subjects need to become more attractive, in pupils' eyes, as pathways to careers. Only then will the sector have the capacity required to deliver sustainable and safe homes and commercial buildings.

Summing up

The message is that it is not sufficient to deliver just any home or building, without considering the wider implications for safety and future environmental impact. Yet without the overdue and greatly needed overhaul of the UK planning system, the current fire safety criteria of the Building Safety Act and the pressure to deliver 'volume' to meet set housing and low-carbon are worrying to many. Too many properties currently face becoming uninsurable and, therefore, redundant for occupation or use.

Having current planning regimes shoot holes in ambitious housing and environmental targets makes no sense, yet it is the most likely outcome, unless reform is swiftly introduced and the voices of leading experts are heard. Planning reform, safety considerations and sustainability need to become the new construction trinity.

Speak to your broker today if you need help.



Clock ticking on 3-Star HGV vision requirement

Opting to use telematics to manage fleet drivers' behaviours comes with many benefits — reducing insurance premiums and vehicle downtime, providing a means to defend insurance claims and enhancing hazard awareness, being just some. However, sometimes telematics are also mandatory.

The Direct Vision Standard will be familiar to any HGV fleet manager operating vehicles over 12 tonnes within Greater London. The 2020 initiative aims at reducing the number of fatal collisions between HGVs and vulnerable road users, primarily cyclists and pedestrians, by tackling vehicle blind spots and encouraging the use of technological detection and alert systems.¹

Qualifying HGV fleet vehicles are rated according to drivers' visibility through their cab's windows. Originally, if vehicles met the criteria of one star, or fitted a Safe System, they were granted a safety permit. Given the success achieved, halving fatal collisions in which vision was a contributing factor (2018-2023) the criteria is now tightening.²

As from 28 October 2024, HGVs will need to have a 3-star rating — something that will lead to an estimated 173,000 trucks needing to be updated.³

Any vehicle rated at 2 stars or under, must provide evidence of satisfying the requirements of a Progressive Safe System (PSS). This places more attention on the detection of a vulnerable road user in front of the vehicle, with the ultimate goal of achieving zero deaths and serious injuries on London's transport network, by 2041.⁴

1 or 2-star rated vehicles must be registered and evidence of an appointment to fit PSS equipment, scheduled before 21 January 2025, submitted. In effect, this provides a three-month grace period in which to achieve compliance, for both UK and overseas-registered vehicles. The Penalty Charge Notice fine for non-compliance is up to £550.

The new Progressive Safe System requires more vehicle telematics than the initial Safe System.⁵ Camera monitoring systems should now use both systems, must eliminate any remaining blind spots and visually alert the driver to any approaching vulnerable road user.

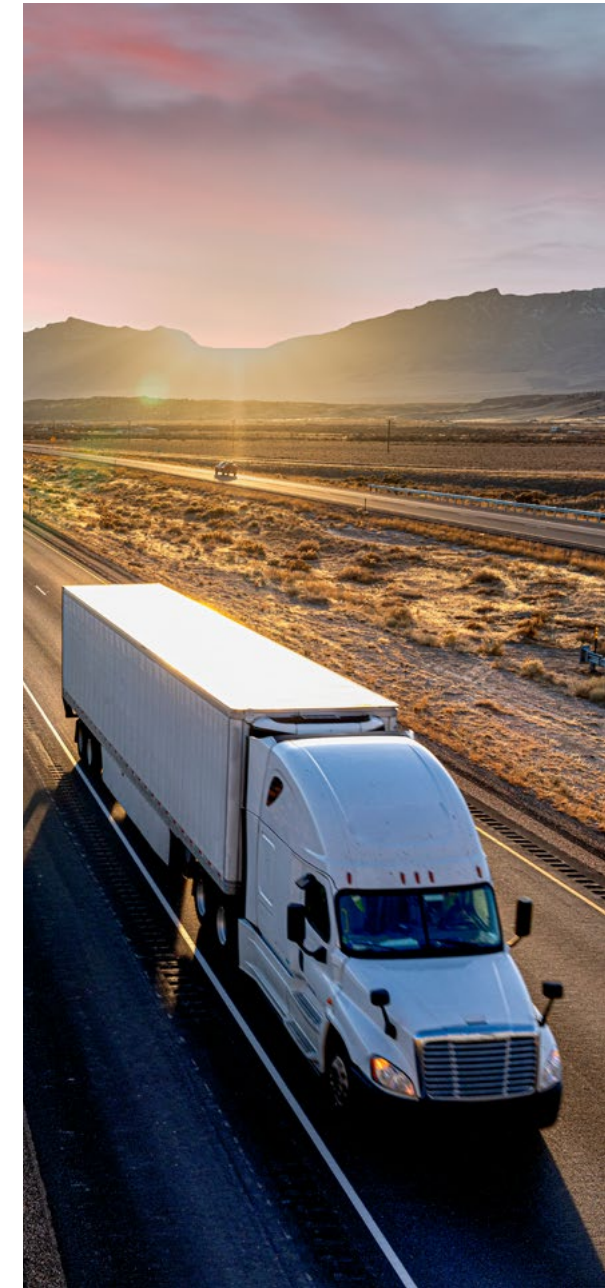
Meanwhile, sensors must ensure full coverage down the nearside of rigid vehicles, to detect pedestrians or cyclists.

Sensors must not issue false alarms, by reacting to street furniture or stationary vehicles. If a vehicle is articulated, sensors must be fitted to the front tractor unit. However, it is also recommended they be fitted to the trailer.

As most road users under 5'5" in height cannot be seen by an HGV driver when within two metres in front, Transport for London (TfL), the authority behind the Direct Vision Standard, wishes to ensure any cyclist or pedestrian is aware of an HGV driver's intended manoeuvres.⁶ HGVs will require audible vehicle manoeuvring warnings – something previously only stipulated for left-hand-drive vehicles.

HGVs also need to have Moving Off Information Sensors (MOIS) fitted to their front, to prevent accidents when pulling away.

The message to HGV fleets is to 'act now', as the clock is ticking. Talk to your broker for telematics advice, even if your HGV fleet never ventures near London. Ultimately, this will reduce your risk, probably improve driver behaviour and typically lead to premium reductions.



¹ https://tfl.gov.uk/info-for/deliveries-in-london/delivering-safely/direct-vision-in-heavy-goods-vehicles?qclid=Cj0KQCIw4bipBhCvARIsAFsIeCxAGMWAeDUJcAUMHWthYTPHPohaPJRfoh06nFWYXA1DCqTWJlIYaAi50EALw_wcB

² <https://www.fleetnews.co.uk/news/truck-news/2023/02/15/tfl-proposes-changes-to-hgv-direct-vision-standard>

³ <https://www.fleetnews.co.uk/news/car-industry-news/2023/07/10/fleets-are-being-handcuffed-by-tfl-over-direct-vision-standard>

⁴ <https://tfl.gov.uk/info-for/deliveries-in-london/delivering-safely/direct-vision-in-heavy-goods-vehicles#:~:text=Summary%20of%20Progressive%20Safe%20System&text=This%20provides%20a%20visual%20alert,in%20the%20blind%20spot%20area>

⁵ <https://tfl.gov.uk/info-for/deliveries-in-london/delivering-safely/direct-vision-in-heavy-goods-vehicles#progressive>

⁶ <https://vuegroup.org/direct-vision-standard-changes-what-do-they-mean-for-your-fleet/>

Refresh your construction site fire risk practices

Despite construction site fires being an ever-present and major risk, some contractors may be unaware of regulatory changes from August 2022 and January 2023. Those who are aware of the 10th edition of the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation¹ changes may need further advice.

The regulations require more of those working on projects with an original contract value of £2.5m or higher, or smaller contracts comprising part of a larger project worth £20m or more. Regardless of contract size, however, adopting the regulatory guidance is deemed best practice and may be what an insurer wants to see.

Various new obligations apply. Trained fire marshals, to cover staff absences, need to be appointed. Use of deep fat fryers is prohibited in temporary buildings and accommodation. A new comprehensive hot work section has introduced requirements including a continuous fire watch, stretching over several hours and supported by thermographic camera images.

Electric vehicles with lithium-ion batteries should only be charged in safe locations. Buildings over 18m in height need to have firefighting systems.

The updated regulations focus heavily on combustible materials, requiring a thorough fire risk assessment, covering fire risk from cladding materials, green roofing/walling and insulated panels. Selecting alternative non-combustible temporary materials is recommended.

Strong fire planning is required, to ensure safe evacuation routes, early use of fire alarms on site, adequate firefighting equipment, access to water and trained personnel. A Responsible Person also needs to be appointed. A separate arson risk assessment should be carried out and video surveillance implemented, using BS 8418 (ref 21) compliant systems or an approved insurer alternative.

Suppliers of modular buildings have queried what the regulations mean, in terms of modular building location and stack height. It is understood that BS476 will no longer be the test standard for modular unit fire resistance going forward, with BSEN 13501-2 replacing it as the benchmark standard. Units can still be situated within 6 metres (preferably 10m) of an existing structure, but if the code is updated in 1 January 2025, it may need to meet the tougher standard.



Single height modular units still currently need walls and a roof that offers 30 minutes of structural fire resistance, if situated within 6m of an existing structure. This 30 minutes will soon have to satisfy BSEN 13501-2 standards.

Where double stacking takes place, 30-minute vertical separation between units is now required, regardless of separating distance, to reduce fire spread, allowing personnel to exit safely, and prevent toppling.

For units over 6m away from existing structures, the requirement is for the vertical separation of just walls, roof and supports, not the entire structure.

Within high-rise constructions, the requirement for horizontal fire compartmentation at minimum 10-floor intervals has been amended to one-hour fire resistance, from the previous 30-minute requirement.

Contractors should download the code, check all regulations and assess what BSEN 13501-2 requires. Deliver on what your insurer wants to see, with regard to fire risk mitigation and check your policy terms. Help is at hand, however, with an experienced broker able to guide you through your cover's requirements and assist with your risk management. Access this support now and achieve greater peace of mind.

¹<https://www.thefpa.co.uk/advice-and-guidance/free-documents>

Insurance that will come to a property owner's defence

Property owners and management companies have plenty to think about, whether that is maintenance, lettings or safety. However, it would pay for many to also think about management liability protection (MLP).

MLP is often overlooked by property professionals, who do not typically consider all the ways in which they could be involved in a legal or regulatory process that quickly eats into their budget.

Investigations or prosecutions are just one risk faced. Complying with legislation such as the Housing Maintenance Code and Multiple Dwelling Law is an essential part of property ownership and management.¹ Meanwhile, regulators such as the Health and Safety Executive (HSE), HMRC, the ICO, police, fire service and local authority are always in the background, ensuring standards and laws are upheld. A slip up with any of these bodies could result in a costly and time-consuming process that requires expert legal representation.

Both the Fire Safety Act 2021 and Building Safety Act 2022 have placed a greater onus on property professionals to ensure buildings are fire safe. If over 18 metres high, there is a legal requirement to register the building and ensure all aspects relating to its fire safety are digitally recorded and part of a 'golden thread' of information that is part of fire safety law. Failure to do so will have legal ramifications.

Data protection is another and potentially hard-to-manage duty, but it is not the only possible pitfall. Any breaches of employment laws, such as not adhering to minimum wage legislation or IR35 rules, could be equally problematic at a legal level. Failing to pay due sums to HMRC could spark a tax investigation; a breach of landlord leasing regulations could also occur, or accusations of discrimination in letting policy might arise. The possibilities are numerous.

Cost will be a consequence of any such incident or investigation. Professional legal advice and representation typically comes with a hefty price tag. However, without such assistance, a case could be lost or the ultimate penalty higher than if a convincing defence had been mounted. Typically, there is no option but to appoint a legal adviser and suffer the financial hit.

That is, unless MLP is in place. This insurance covers costs incurred in defending a claim, investigating a scenario or funding an appeal against a ruling. It also provides legal advice and crisis line access 24/7, to proactively try to prevent any legal problem occurring. Expert claims handling services are another benefit.

This sort of protection is available to property owners and property management companies, but a special policy also exists for Residents' or Tenants' Associations, which can be invaluable when disputes need settling.

MLP can protect the assets of both a business and the individual who might be personally held liable. Your broker can explain how it can cover Directors & Officers Liability, Employment Practices Liability and Corporate Legal Liability, to keep you and your business robustly protected. With so much regulation surrounding the property market, it is probably time to have that conversation today.

¹WTW Networks Focus on Growth 2.0 – AXA MLP & radar property owners presentation, October 2023



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