

# DRAFT

## Annex B

# Setting the strategic context for building control oversight

## England

### Drafting Note:

This document represents a policy in development. It is iterative and will continue to evolve until final publication in Spring 2023.

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## Introduction

1. This is the strategic context for the Building Safety Regulator (BSR) oversight function. It supports the operational standards rules (OSRs). The OSRs are explained by section 58Z - 58Z10 of the Building Act 1984 (the act).
2. This document adopts the definitions contained in the Building Act 1984.
3. Any lists contained within this document are illustrative and not exhaustive.
4. This framework shows the connection between the competence of the unified building control profession and the oversight of building control. It explains the approach regulators should adopt for buildings and works outside of the higher-risk building regime. These regulators, jointly known as building control bodies (BCBs), are:
  - i) local authorities, defined by section 126 of the act
  - ii) registered building control approvers, defined by section 58N of the act.
5. It reinforces that it is the responsibility of those carrying out building works to comply with the Building Regulations 2010, as amended (building regulations). Dutyholders include clients, principal designers, principal contractors, designers and contractors. Risks include the breach of building regulations including those relating to building safety.
6. Although BSR's building functions are excluded from the OSRs, this framework reflects BSRs own approach to oversight and competence.
7. This framework guides regulatory prioritisation for the effective delivery of building control functions by setting out sensible, risk-based and proportionate steps. This will ensure:
  - i) risk ownership by those responsible for compliance with building regulations
  - ii) the safety of people in and around buildings
  - iii) the improvement of building standards
  - iv) building work is appropriately checked for compliance with building regulations
  - v) intervention and/or enforcement action is carried out consistently
  - vi) effective use of resource

## Scope

8. This document is an annex of the OSRs. It focuses on four objectives:

Objective 1 - clarifying the **roles and responsibilities** of:

- i) dutyholders
- ii) registered building control approvers
- iii) local authorities
- iv) BSR

Objective 2 - outlining the **risk-based approach** that BCBs should adopt with reference to *HSE's Enforcement Policy Statement (pending publication)*. This includes, for example, the need to target relevant and effective interventions focused on:

- i) influencing dutyholder behaviours
- ii) checking for compliance with building regulations and taking appropriate action
- iii) mitigating risks in the built environment as relevant to building control functions
- iv) an informed and intelligence-led understanding of emerging risks to building standards

Objective 3 - integrating **competence** requirements that BCBs should adhere to

Objective 4 - **monitoring** and assessing the performance of BCBs by using, for example:

- i) operational standards rules
- ii) BSR monitoring arrangements – reportable data and key performance indicators (see annex A of the OSRs)
- iii) guidance for the collection and publication of building control and built environment data (see annex C of the OSRs)

## Roles and Responsibilities

9. BSR establishes regulatory oversight of building control with a robust approach to building safety and standards. BSR oversees the competence and performance of BCBs and the unified building control profession. Registered building inspectors (section 58B of the act) are jointly referred to as the 'unified building control profession'.

## Dutyholders

10. Dutyholders are responsible for complying with the act. They include those identified by the Construction (Design and Management) Regulations 2015. They are:
  - i) client
  - ii) principal designer
  - iii) designer
  - iv) principal contractor
  - v) contractor
11. Building regulations are provided by Part I of the act, as amended.
12. BCBs should expect dutyholders to proactively demonstrate that their project will comply with building regulations. This should include an explanation of how the functional requirements of those regulations aim to be met (from design into occupation). This means BCBs should expect dutyholders to provide:
  - i) identified risks and their management arrangements
  - ii) explanations on what guidance has been used to inform design and construction
  - iii) explanations on how they have assessed the appropriateness of the guidance used for the specific element of compliance.
13. We anticipate that holding dutyholders to account will make sure that they are preventing, managing, and controlling their risks from design to demolition.
14. Dutyholders should engage with occupiers. This will help them check, improve and maintain the standard of their buildings in compliance with the act and building regulations.

## Regulators

15. There are three types of oversight in the regulatory system. They are (1) BSR, (2) local authorities and registered building control approvers, and (3) organisations that certify competent persons.

(1) BSR is the regulator for:

- i) BCBs
- ii) the unified building control profession
- iii) higher-risk buildings, as defined by section 120D of the act
- iv) buildings covered by a regulator's notice, as defined by section 91ZB of the act

BSR is accountable to the Department for Levelling Up, Housing and Communities (DLUHC) Secretary of State, and to Parliament.

(2) local authorities and registered building control approvers are the regulators for buildings or works outside of the higher-risk buildings regime.

(3) Specified building work as detailed in Schedule 3 of the building regulations can be carried out under competent person schemes. Competent person scheme operators are responsible for building work carried out under their self-certification schemes.

16. The role of BCBs is to assess compliance with the act and building regulations. Evidence could be collected by the BCB, provided by dutyholders and include views of relevant consultees.

17. BCBs will use their findings and professional judgements to support, encourage and where appropriate, hold dutyholders to account.

18. BCBs must make best use of their resources and work proactively with consultees. This helps to ensure compliance with the act and building regulations including building safety. BCBs should target their interventions and enforcement at dutyholders and at activities posing the most serious risks to compliance with the act and the building regulations.

19. BCBs should consider the primacy of other regulatory bodies and support them appropriately.

## A risk-based approach

20. BCBs will use their full range of powers when delivering their building control functions to drive dutyholder compliance with building regulations. Example measures could include (but are not limited to):

- i) behavioural nudges
- ii) published guidance
- iii) inspections
- iv) formal advice
- v) notices
- vi) cancellation / reversions of initial notices
- vii) regularisation of building work
- viii) testing of building work
- ix) publicising enforcement activity against dutyholders

21. BCBs will take a risk-based approach to deliver their building control functions. They will do this by applying regulatory principles to their building control functions.

The principles are:

- i) targeting
- ii) proportionality
- iii) transparency
- iv) consistency
- v) accountability

## Targeting

22. BCB interventions should target those dutyholders, buildings or activities that cause most concern. That means persons or situations:
- i) that cause the most serious risks of non-compliance with building regulations
  - ii) where risks of non-compliance with building regulations are least well controlled
23. BSR must publish a strategic plan, supported by an annual business plan. These plans will help BCBs focus on local, specific, and serious risks to take appropriate action. They will be informed by operational intelligence, data, analysis, science, and research to target interventions.
24. BCBs should use local and national intelligence to develop intervention plans. The intelligence they should use includes, for example:
- i) emerging issues
  - ii) past performance of dutyholders
  - iii) analysis of higher-risk activities
25. BCBs will work closely with fellow regulators such as the fire and rescue services to help target resource proportionately.

## Proportionality

26. BCBs should expect dutyholders to ensure building work complies with the building regulations.
27. Interventions and enforcement should be proportionate to the risk posed by non-compliance with the act and building regulations. They must consider the potential and actual harm those risks could bring about, and the seriousness of any breach of the law.
28. BCB interventions and enforcement activities should align with their own policies. These policies should be guided by the good practice outlined in *HSE's Enforcement Policy Statement (pending publication)*. BCBs' policies should differentiate between different levels of risk. Additionally, they will help BCBs assess what dutyholders have done to achieve compliance with the building regulations, reduce risks and guide judgements on how far below an expected standard a dutyholder has fallen.
29. BCBs should balance the risk of non-compliance against the time, cost, and physical difficulty to avert that risk. They should also consider the impact of any action (or lack of action) on dutyholders, residents and the public.
30. BCBs should act as a deterrent against those who do not ensure that buildings and building work comply with the act and building regulations. BCBs can achieve this with fair and consistent interventions.



## **Consistency**

31. BCBs can achieve consistency by:

- i) ensuring nationally published guidance applies to both local and national priorities
- ii) promoting a consistent approach to regulatory competence
- iii) setting clear expectations for delivery
- iv) allowing appropriate comparison and transparency via peer review (for example) or publishing of intervention and enforcement data

32. Maintaining a consistent approach to all building control functions ensures best use of resources. It also assures dutyholders that they are being treated consistently to achieve compliance with the law.

## **Transparency**

33. Transparency ensures dutyholders and BCBs know what they can expect from each other. It also ensures BCBs are clear about what BSR expects from them.

34. Published guidance for building control functions will help reassure dutyholders that they are being treated consistently.

35. Building control records should be kept digitally and updated regularly. This will help with business continuity and transparent decision-making.

## **Accountability**

36. BCBs should be open about their activities and processes by:

- i) publishing their enforcement procedures, principles and standards
- ii) sharing relevant and permissible information
- iii) inviting statutory and non-statutory consultation
- iv) using benchmarking
- v) peer reviewing
- vi) employing good practice

## Competence

37. Assessing compliance with building regulations can be managed effectively using a risk-based approach. To do this, persons delivering building control functions must be competent to recognise the difference between a significant risk of breaching the building regulations and trivial matters.
38. BCBs should plan for relevant training and professional development of all persons involved in the delivery of their building control functions.
39. BCBs should ensure their registered building inspectors meet their registration conditions and code of conduct.
40. BCBs should ensure persons delivering their building control functions are up to date with:
- i) technological advances
  - ii) modern methods of construction
  - iii) changes in dutyholder obligations
  - iv) changes in legislative requirements (and their practical application)
41. BCBs should implement advice and guidance provided by BSR and its committees.

## Monitoring

42. BSR will use a proportionate, risk-based, and intelligence-led approach to assess the performance of BCBs. Our approach includes:

- i) targeted monitoring activities
- ii) regular and ad-hoc data and information returns
- iii) inspection
- iv) auditing
- v) investigation
- vi) collaboration with partner regulators
- vii) voluntary reporting of relevant occurrences
- viii) sector-led intelligence
- ix) enforcement action
- x) sanctions

43. BSR expects BCBs to support and engage with the monitoring, analysis and evaluation of the effectiveness of their own performance.

44. BCBs will monitor the effectiveness of their building control functions regularly. The frequency and subject matter of any monitoring process should be informed by a risk-based approach to prioritisation. Monitoring should incorporate internal and external activities, including for example:

- i) verification of decisions reached by the BCB
- ii) audits
- iii) management system certification
- iv) leadership scrutiny
- v) peer review

45. BCBs should improve poor and inadequate performance within clear timescales.

46. BCBs may appeal against specific enforcement action taken by BSR if they consider it unreasonable or disproportionate. Appeals are explained by section 25 of the act.

47. BSR will publish its findings on the performance of BCBs. This should drive:

- i) BCB performance improvements
- ii) building safety improvements
- iii) improvements in compliance with building regulations including requirements relating to building safety