

COMBUSTIBLE MATERIALS AND THE BUILDING (AMENDMENT) REGULATIONS 2018 - THE YEAR IN REVIEW

16 January 2020

Shortly before the turn of the New Year it was the anniversary of the coming into force of the Building (Amendment) Regulations 2018^[1]. As 2020 begins, we look back on the status of those regulations, relevant developments during the course of their first year in force and a brief look towards what we expect to see in 2020.

The Building (Amendment) Regulations 2018

We first reported on the significant changes to the Building Regulations 2010 in our December 2018 update, [The ban on combustible materials in the external wall of buildings](#).

Here we summarised the key changes to the Building Regulations 2010 following the publication of the Hackitt Final Report in May 2018. Those changes were followed by, and now need to be read alongside, a "**clarified version**" of the Approved Document B guidance, which was published in July 2019 following a consultation period with industry that closed in March 2019 requesting feedback on the technical fire safety aspects of the new building regulations (see, [Fire safety in high rise buildings - the next steps](#)).

One area that remains open to interpretation is the combustibility of materials used in fixtures and devices attached to an external wall (as opposed to those forming part of the external wall itself), which are designed to reduce a building's heat (for example, shutters, blinds and awnings). Following judicial review and a judgment released in November 2019^[2], the British Blind & Shutter Association successfully overturned that part of the Building Regulations relating to such fixtures^[3].

We noted that further legislation is expected to address all 53 of the recommendations from the Hackitt Report. A Building Safety Bill was announced in the Queen's Speech (see, [The Queen's speech sets out what's next for building safety reforms](#)) as was a proposal that developers of new build high rise buildings will be obliged to join a New Home Ombudsman^[4]. With the Government now having a majority, we are hopeful that there will be announcements in this area shortly.

Do Approved Inspectors owe a duty of care?

We also considered whether or not Approved Inspectors (exercising their functions under Part II of the Building Act 1984) owe a duty under s1(1) of the Defective Premises Act 1972. In our article, [Do Approved Inspectors owe a duty under s1\(1\) of the Defective Premises Act 1972 in the exercise of their building control functions?](#), we highlighted that the Court of Appeal^[5] had provided binding and persuasive authority that Approved Inspectors do **not** owe such a duty under s1(1). If parties do not have a contractual relationship with the Approved Inspector they will have to look elsewhere for recovery of losses arising out of a failure of their properties to comply with the building regulations.

Can the building's insurer be pursued?

The separation of liability for remedial works between the freeholder(s) and leaseholder(s) of high rise buildings is an area that is often complex. Whilst each case will turn on its own facts and policy wording, a recent Court of Appeal judgment has provided some guidance (and comfort for builder owners and occupiers) as to the circumstances in which a building insurer can be pursued for remedial costs incurred in removing and replacing combustible materials. We commented in our article [The Court of Appeal's approach to the limits of a structural defects insurance policy](#) on i) the circumstances in which a building insurer (Zurich in this case) was found to be liable for the costs of rectifying deficient fire protection, ii) the liability cap under the relevant insurance policies and iii) some of the important considerations to bear in mind when interpreting an ambiguously worded policy.

What we might expect in 2020

We anticipate further (and perhaps radical) changes to the regulatory system in 2020, with the Government expected to maintain its focus on improving building safety in high rise buildings. Two such changes may be the introduction of a new Building Safety Regulator and criminal sanctions for non-compliance with regulations. Movement on the

new Building Safety Bill is expected in this parliamentary session.

Recommendations from Phase 1 of the Grenfell Tower Inquiry are likely to be implemented through legislative reform to the Fire Safety Order (2005) and Phase 2 of the Inquiry commences early this year, which will no doubt lead to further recommendations.

In terms of height-specific considerations, two further possible changes include whether the Government will i) reduce the mandatory height for requiring sprinklers in new high rise buildings from 30m to 18m and ii) follow Scotland in reducing the height from which a building is considered 'high rise' from 18m to 11m (as recommended in Phase 1 of the Grenfell Inquiry).

All such proposals are considered a positive move for the industry.

Please contact Sue Ryan or Tom George if you have any queries.

Footnotes

[1] 21 December 2018

[2] See, [British Blind & Shutter Association , R \(on the application of\) v Secretary of State for Housing Communities and Local Government](#) [2019] EWHC 3162 (Admin) dated 21 November 2019:

[3] Regulation 2(2) of the 2018 regulations and the introduction of new regulation 2(6)(b) (ii) into the 2010 regulations.

[4] [The Queen's Speech and associated background briefing, on the occasion of the opening of Parliament on Monday 14 October 2019](#)

[5] Following review of the Court of Appeal judgment in [The Lessees and Management Company of Herons Court v NHBC Building Control Services Limited](#) [2019] EWCA Civ 1423 (handed down on 14 August 2019).

NOT LEGAL ADVICE. Information made available on this website in any form is for information purposes only. It is not, and should not be taken as, legal advice. You should not rely on, or take or fail to take any action based upon this information. Never disregard professional legal advice or delay in seeking legal advice because of something you have read on this website. Gowling WLG professionals will be pleased to discuss resolutions to specific legal concerns you may have.

Related [Construction & Engineering, Real Estate](#)

Author(s)

Sue Ryan

Partner - [London](#)

 Email

sue.ryan@gowlingwlg.com

 Phone

+44 (0)370 733 0648

 vCard

Sue Ryan

Tom George, FCI Arb

Principal Associate - Birmingham

 Email

tom.george@gowlingwlg.com

 Phone

+44 (0)121 393 2152

 vCard

Tom George, FCI Arb