

May 2025

## NEC4 Guidance in Relation to the Building Safety Act 2022

The Building Safety Act 2022 (BSA), the bulk of which came into force on the 28 April 2022 brings in several measures to make buildings safer for residents and was introduced following the tragic failures in building safety that led to the Grenfell Tower Fire.

It is primarily aimed at higher risk buildings which the BSA defines as a building in England that is at least 18 metres in height or has at least 7 storeys and, for the purpose of the part of the new regime that regulates occupied buildings, contains at least 2 residential units.

The Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 (Regulation 2) which come into force on 6 April 2023, specifies that hospitals, care homes and buildings containing at least two residential units will fall within the scope of the design and construction part of the new regime.

The Defective Premises Act 1972 (the Act) has been amended by the BSA to include refurbishment work and to extend the time period within which claims can be made from 6 years to 15 years for claims accruing after 28 June 2022. In addition, the BSA extends the limitation period to 30 years for claims under the Act accruing before 28 June 2022.

Under the ECC the *Contractor* is contractually liable to correct defects notified before the defects date stated in Contract Data part one. After the expiry of this period the parties' responsibilities in term of any latent defects discovered will be in accordance with the governing law of the contract and therefore in accordance with the extended periods in the Act where this applies.

The BSA has introduced the roles of “Principal Designer” and “Principal Contractor” which are the same terms as used in the Construction (Design and Management) Regulations 2015 (CDM Regulations) and though labelled the same they are distinct roles under each piece of legislation.

A client will need to ensure that parties are appointed to undertake these roles and will, in the case of higher risk buildings, need to keep a record of the steps they took to satisfy the competency of those appointed. It should be made clear in the scope of the applicable contract which party is to be appointed to which role.

There is no requirement to include, via secondary Option Z, an *additional condition of contract* to require a party to comply with the requirements of the BSA, or any subordinate or other legislation such as the CDM Regulations, as it applies to them. All parties have

to comply with the *applicable law* and this is not a contractual requirement but a legal requirement enforced by the relevant authorities.

The BSA introduced a “golden thread” which requires a digital record of information about a building to be created and updated throughout its design and construction. Requirements in respect of information that is needed to maintain this golden thread, including its form as it must be stored digitally, can be included in the scope as part of any NEC contract used in the development and construction of a higher risk building. The duty to ensure the golden thread of information is in place and updated during the design and construction process will rest with the *Client* or someone they engage to manage it on their behalf.

The BSA has created three “gateways” that higher risk buildings will need to pass through before they can be occupied. The gateways are operated by the Building Safety Regulator (BSR) part of the HSE.

- Gateway 1 – Land use planning matters related to fire safety
- Gateway 2 – Building control approval for higher-risk buildings
- Gateway 3 – completion certificate

At each gateway the *Client* will need to determine whether they or a member of their supply chain will engage with the BSR. Gateways 2 and 3 act as hold points ensuring that safety is considered at each stage of the building control process.

Gateway 2 has to be passed before construction work can commence. A client or their consultants will normally take responsibility for passing this gateway or responsibility for it could be passed to a contractor as part of a construction contract. This is more likely to occur when the *Contractor* is engaged on a design and build basis.

Gateway 3 requires the application for and issue of a completion certificate. A client or their consultants may take responsibility for passing this gateway or responsibly for it could be passed to a contractor as part of a construction contract. If the latter, the issue of the completion certificate should be included in the scope as part of the description of what the *Contractor* is required to do in order for completion to be achieved. If a client or their consultant takes responsibility for passing gateway 3, completion under the construction contract may occur before gateway 3 has been passed, though this will depend on how completion has been defined in the scope of the construction contract.

The allocation of responsibility for passing gateway 2 and 3 will be allocated via the scope with the default position being that it will reside with the *Client* unless stated otherwise.

The BSR will be an “Other” under an NEC contract and dealt with as any other third party that needs to be engaged as part of the relevant works or services. The dates when the BSR are expected to approve the gateway 2 and 3 applications will be shown on the Accepted

Programme. If Others do not work within the time shown on the Accepted Programme this will likely be a compensation event under clause 60.1(5).

Once a building has passed gateway 3 and is occupied the “Accountable Person” becomes responsible for coordinating the golden thread, keeping it updated and ensuring it is accurate and accessible. The *Client* engaging contractors or service providers to provide facilities management services will need to consider who will maintain and update the golden thread if there are any changes to the structure or fabric of the building. Once again, the default will be the *Client* unless the scope transfers this responsibility to the *Contractor* or *Service Provider*.

## **Acknowledgements**

### **Authors:**

**I. Heaphy, BSc (Hons), FRICS, FCI Arb, FCInstCES, MACostE**

**S. Jackson, LLB, LLM, MSc, FCI Arb, FCInstCES**

### **The NEC Contract Board is:**

**P. Higgins, BSc (Hons), CEng, FICE (Chair)**

**I. Heaphy, BSc (Hons), FRICS, FCI Arb, FCInstCES, MACostE**

**S. Jackson, LLB, LLM, MSc, FCI Arb, FCInstCES**

**M. Garratt, BSc (Hons), MRICS, FCI Arb**

**D. Evans, BSc, FICE, CEng, MBA**