The Building Safety Act and Scaffolding Contractors

Background

In February 2017, Professor John Cole CBE published a report into the defects that led to the closure of 17 schools in Edinburgh. Just a few months later, in June 2017, the tragic fire at Grenfell Tower in London claimed the lives of more than 70 people. Both incidents were followed by official inquiries, and their subsequent reports made for uncomfortable reading for all those in the industry. These incidents have placed the construction industry under the microscope and highlighted the need for an urgent review of the way in which quality and safety are managed.

In July 2020, the Government published the Draft Building Safety Bill, which was designed to take forward fundamental reform of the building safety system and address the issues identified by Dame Judith Hackitt DBE in her independent review, Building a Safer Future.

Following Parliamentary scrutiny and input from industry stakeholders, the Building Safety Bill received Royal Assent and became an Act of Parliament (the Building Safety Act 2022) on 28 April 2022.

Evolution of the Building Safety Act

The Building Safety Act 2022 (BSA) is the primary legislation which establishes in law a framework for building safety both during design and construction and in occupation. Other pieces of legislation, such as the Fire Safety Act 2021, have also been passed since the Building a Safer Future independent review. The Building Safety Act was implemented in stages over 18 months following the legislation receiving Royal Assent in April 2022. As of 1st October 2023, some of the final duties outlined have now become law.

Key Requirements of the Building Safety Act on Construction

The BSA is primarily concerned with the regulation of 'higher-risk' buildings, those that are 18m or 7 storeys (or higher) and contains two or more residential units; or is a hospital, or care home.

The Act introduces the Building Safety Regulator (BSR) which will have responsibility for overseeing a new regime for the design and construction of higher-risk buildings, including the introduction of stop/start gateways at key points in the design and construction of higher risk buildings to ensure that they are designed and built safely.

During the design and construction phase of a building, the duty holders, for example, client, principal designer, and principal contractor, must maintain their documentation to comply with building regulations in a digital and accessible format.

A safety case report summarising major fire and structural hazards and risk management measures is now mandatory for each higher-risk building. Principal accountable persons must have identified

and assessed risks to health and safety, determined how incidents can be prevented and measures to mitigate their severity.

The principal designer or principal contractor must establish a Mandatory Occurrence Reporting system, detailing communication with other accountable persons, arrangements for reporting to BSR, and summaries of incident reports.

Phase 3 of the Building Safety Act introduces amendments to the Regulatory Reform (Fire Safety) Order 2005. These changes enhance cooperation and coordination among responsible persons, improve the recording and sharing of fire safety information, simplify enforcement against non-compliance and ensure residents have access to comprehensive fire safety information.

Fire Safety in Construction

The Health and Safety Executive (HSE) published a revised version of the publication Fire Safety in Construction (HSG168) in 2022, and it is strongly advised that the contents are read and understood by scaffolding contractors. The contractor fire safety roles and responsibilities under CDM 2015 are set out in the guidance:

- Co-ordinate and co-operate with the principal contractor and others working on site to ensure that fire mitigation measures are maintained and additional risks are not created.

- Assess and manage fire process safety risks under their control, such as the use of solvents or fire spread.

- When there is only one contractor, ensure that a site-specific fire risk assessment is carried out and reviewed.

There are segments within HSG168 that are specific to scaffolding and which often require the client and principal contractor to liaise with the scaffolding contractor at design stage.

Temporary scaffold-based escape routes need to be protected from fire within the building, for example windows need to be protected with fire-resisting material, and any adjacent doors at ground level would need to be fire-resistant and self-closing (please see figure 2).

The important requirement is that the external wall against which the stairway is erected must be imperforate and afford a nominal period of 30 minutes' fire resistance for the stairway and 1.8 m either side and above, as measured from the stair treads, as illustrated in the shaded section in Figure 2.

This means that all doors, apart from the uppermost one leading onto the external stairway, must have 30 minutes' fire resistance and be self-closing. Any other openings, including windows, that are not of fire-resisting construction, must be suitably protected (e.g. with plasterboard, proprietary mineral fibre-reinforced cement panels or steel sheets).

If a scaffold is intended as part of the means of escape the scaffold sheeting must be to a flame-retardant standard, specified by the principal contractor, and you must carefully consider the extent of the sheeting. Do not use the sheeting to enclose scaffold stair towers or escape ladders. This is to minimise smoke and make access easier for emergency services (please see figure 1).

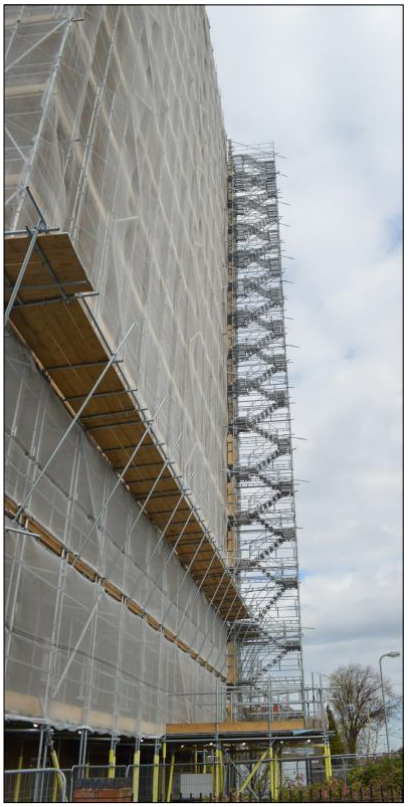


Figure 1

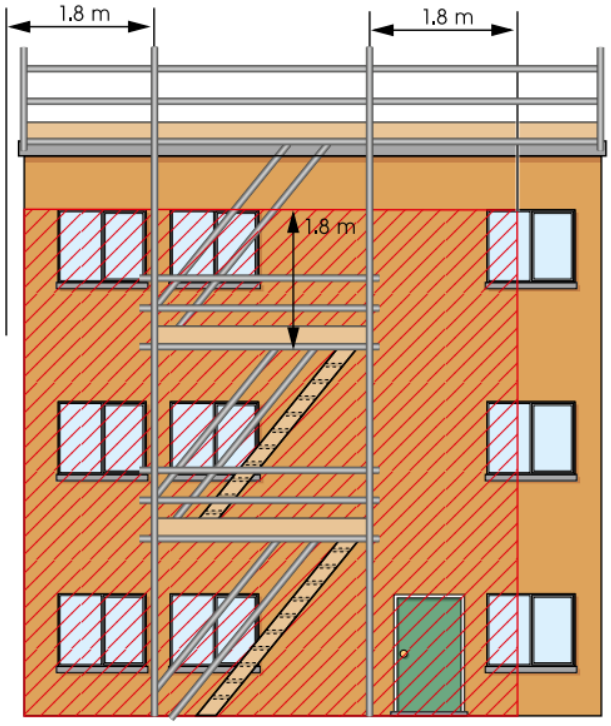


Figure 2

In the event of a fire on a construction site, all designated escape routes from a structure should give direct access to an unenclosed space in the open air at ground level. From here there must be an unobstructed passageway from the structure to a place of safety where people can assemble and be accounted for.

The legislation places responsibilities on the employer for the safety not only of employees, but of any person lawfully on the site, or in the immediate vicinity, and at risk from a fire on the site.

All contractors must manage and monitor their own work and check the competence of all their appointees and workers. Contractors must train their own employees and provide information to their workers about fire risks and associated controls.

Practical Considerations for Scaffolding Contractors

Everyone throughout the supply chain is held accountable. Regulators will be assessing who is in control and what systems and procedures are in place to deliver safety throughout a project. For construction work, it is ultimately the principal contractor who's in control. Of course, everyone in the supply chain will be held accountable, but the principal contractor will need to have taken reasonable steps to satisfy the regulator that their supply chain has the skills, knowledge, experience, and behaviours necessary to fulfil their duties.

The HSE acting as the Building Safety Regulator in response to the Act has identified a series of focus areas that may well affect all scaffolding contractors working on High-Risk Buildings.

Fire Prevention and Spread:

Scaffolding contractors must comply with HSG168 and the client's requirements in regard to fire prevention and spread.

When anchor ties are required to be installed during the erection phase of a scaffold, the client's contractors are responsible for removing a section of cladding to enable scaffolding contractors to erect the tie and these contractors are also responsible for installing any required additional fire stopping measures after the tie has been fixed. Similarly, during the dismantle phase, after each tie is dismantled and removed, the client's contractors must check that any required fire stopping is in place before replacing cladding.

Under the Construction (Design and Management) Regulations 2015, a Principal Contractor should carry out a comprehensive risk assessment to ensure that the works they are undertaking do not present an unacceptable risk. If the building is occupied whilst the works are ongoing, then the risk assessment should include the occupants.

That risk assessment should include issues such as the introduction of combustible materials during the works (e.g., scaffold boards, scaffold sheeting, or more) and try to ensure that the risk is reduced as much as possible.

It may also be necessary for the client and principal contractor to consider at tender and design stage the use of flame-retardant timber boards on tube & fitting scaffolds or the use of steel staging decked platforms on system scaffolds. NASC guidance TG10 provides detail on flame retardant treatment for timber scaffold boards, although flame retardant boards are not a legislative requirement, there are a growing number of contracts which will specify the need for flame retardant boards which should be taken into consideration during the tender stage.

However, please note that the risk of fire because of scaffold boards is very low. The Principal Contractor's site-specific fire risk assessment will determine what controls are required, which will be an output from the three basic principles of identifying sources of ignition, oxygen and sources of fuel.

Therefore, the fire risk assessment should also consider storage and work methods, such as:

- If the work includes removal of combustible insulation, where is it stored once removed?
- Are there any other risks?
- Will the works affect any existing fire precautions, such as smoke vents?
- Is there any required "hot work" which may require permits? (Permit work may require as a minimum that all cutting work should cease an hour before the end of the shift, and the area checked for signs of smoke or smouldering material.)
- How will smoking be prohibited and how will this be monitored and enforced?
- What will be the method for ensuring that combustible waste, including paper and cardboard, produced by other trades (or residents) is removed from the scaffold as soon as practical?
- This is not an exhaustive list.

These points should be given serious consideration before any works start and control measures put in place where required by the Principal Contractor's site-specific fire risk assessment.

Additional risks, such as the presence of scaffolding for providing a means of access and egress from a building in the event of a fire will usually be addressed in the principal contractor's Fire and Emergency Evacuation procedure, and if flame-retardant scaffold sheeting is required.

Competency:

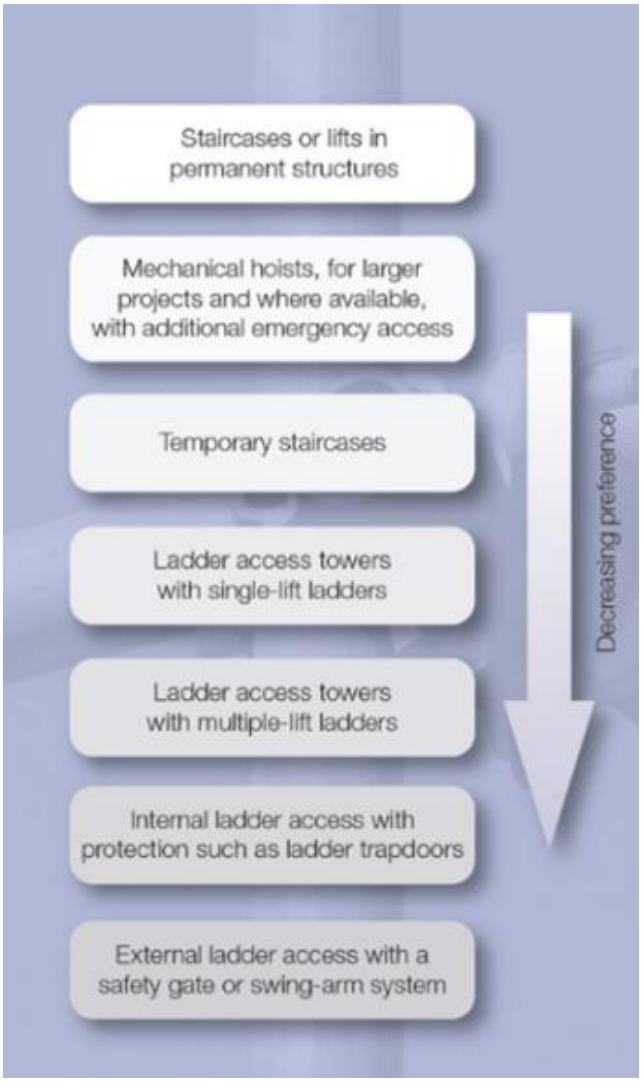
Competence of individuals will be prioritised, so ensuring that at all stages of the project lifecycle operatives are deemed suitable and sufficient for their role. This may in turn result in more stringent control processes in the site induction process, ensuring that all operatives have a recognised competency accredited under the CITB Competency Framework. For NASC members and scaffolding contractors CISRS would be the default requirement for training cards for CITB. Competency is not only measured through training and certification, but other variables also such as experience must be considered.

For scaffolding contractors, the CISRS (Construction Industry Scaffolders Record Scheme) is the default requirement for training for scaffolding operatives, supervisors and managers. Links: https://cisrs.org.uk/cisrs-cards/ https://cisrs.org.uk/cap609-info/

The client/principal contractor may also require other training for Supervisors and Managers to demonstrate competent supervision and management in line with their requirements, and this requirement should be issued to scaffolding contractors at tender stage.

Access & Egress

The TG20 Operational Guide (and SG25) sets out the requirements for safe access & egress. The hierarchy for methods for providing access and egress for scaffolds, as detailed in TG20 and SG25, is illustrated below. Clients, Principal Designers, Principal Contractors, Designers, Contractors should use this hierarchy, in conjunction with the project risk assessment to determine the most appropriate method of access and egress to employ (which may also form the method of escape in the event of a fire). Full information should be provided for the scaffolding contractor at design and tender stage of the project.


Staircases or lifts in permanent structures
Mechanical hoists, for larger projects and where available, with additional emergency access
Temporary staircases
Ladder access towers with single-lift ladders
Ladder access towers with multiple-lift ladders
Internal ladder access with protection such as ladder trapdoors
External ladder access with a safety gate or swing-arm system
Decreasing preference

Review of technical standards:

Regular inspections of stairs and ramps in relevant buildings, emergency egress of disabled persons and egress in general shall be conducted by the Building Safety Regulator. The NASC also recommend that scaffolding contractors should promote the hierarchy detailed above, but it is the main duty holders (e.g. Clients/Principal Contractors) who ultimately decide on access requirements for a project. Therefore, it is good practice for the scaffolding contractor to advise the client and principal contractor on the hierarchy of access and the minimum requirements of NASC guidance (for example by issuing them with a copy of SG25).

Golden thread of information:

The golden thread is defined as 'the information that allows you to understand a building and the steps needed to keep both the building and people safe, now and in the future. When a building is being developed, information must be kept that describes the building and shows how it complies with regulations.

The BSA is mostly focused on those that manage the building lifecycle. As all our works are classed as temporary works and all our materials are usually removed at the end of a project, it is currently not confirmed if there will be any expectation for scaffold contractors to engage in the 'golden thread' process of storing information.

However, it is advised that scaffold contractors do electronically store, as a minimum, copies of handover and off-hire certificates, approved drawings, compliance sheets, records of competency of operatives involved in the erection and dismantling of scaffold structures, anchor pull test and calibration records, temporary works registers, and RAMS (risk assessments and method statements) specifically for projects that are classified and registered as 'higher-risk' buildings.

References and Further Guidance

Industry Guidance:

- https://www.constructionline.co.uk/navigating-the-building-safety-act/
- https://www.rics.org/news-insights/building-safety-act-information-centre
- https://www.ciob.org/industry/policy-research/resources/Building-Safety-Act-Advice-and-Guidance

HSE Guidance:

- HSG168, link: https://www.hse.gov.uk/pubns/priced/hsg168.pdf

NASC Guidance including:

- TG20 Operational and Design Guide link: https://nasc.org.uk/shop/
- TG10 Fire Retardant Treatments for Timber Scaffold Boards and Battens, link: https://nasc.org.uk/shop/
- SG25 Access & Egress from Scaffolds via Ladders & Stair Towers etc.

Construction Industry Scaffolders Record Scheme (CISRS):

- https://cisrs.org.uk/
- https://cisrs.org.uk/cisrs-cards/
- https://cisrs.org.uk/cap609-info/

Further Reading

- https://www.hse.gov.uk/building-safety/index.htm
- https://www.gov.uk/government/publications/fire-safety-act-2021