

Government Response to Consultation on Building Safety Levy Suggests it May Not Just Apply to ‘Higher-Risk Buildings’ in England

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In this article, we discuss the key findings from the UK government’s response to the consultation on its new powers to impose a ‘Building Safety Levy’ (“Levy”) under the Building Safety Act 2022 (“BSA 2022”).

The BSA 2022 established the power for the UK government to create the new Levy, with the principle purpose of reclaiming the costs that the government has or will incur in the remediation of building safety defects.

Following the government’s launch of a consultation on this proposed Levy in November 2022, the results of such consultation and the government’s response (the “Response”) was released in January 2024, which sought to cover more details regarding the Levy, such as the methodology for its calculations, the collection process, managing disputes and further exemptions.

Background to the Levy

BSA 2022 was ultimately the result of the tragic fire that befell on Grenfell Tower in 2017, with the legislative power to impose the Levy being created to allow the government to ensure that financial assistance to fund the various building safety remediation works needed did not fall on the taxpayers.

As highlighted in the Response: *"the government's building safety approach is focused on protecting leaseholders. In our view, it is fair that the industry that caused the cladding problem have profited from government support and gain from the restoration of confidence in the housing market should contribute to remedying the problems they have caused"*.

Application of the Levy

Whilst the Levy was originally intended to apply only to ‘higher-risk buildings’, the scope of its application now cover ‘all relevant buildings’ built in England that comprise or contain (a) one or

more dwellings, or (b) other accommodation including temporary accommodation. Specifically envisaged within this scope are buildings that are being converted to residential use, private retirement housing, built-to-rent developments, purpose-built student accommodation, hotels and certain hospitals.

The Response does however specify some exemptions, which include affordable housing, non-social homes built by not-for-profit Registered Providers, NHS facilities (including hospitals, medical homes and GP practices), criminal justice accommodation, children's homes, domestic abuse facilities, armed forces accommodation, care homes and nursing homes, and developments of fewer than 10 units (or, with respect to purpose-built student housing, buildings with fewer than 30 bedspaces).

Further exclusions are being sought in the latest consultation, which include hotels, non-NHS hospitals and temporary accommodation for the homeless.

Methodology of calculation

Whilst we yet to have details of the amount or figures for the Levy, the Response does now provide details of the principles applicable to its calculation.

Charged on a square meter basis, the Levy is intended to fairly reflect the difference in value between different sizes of new development. Further clarification on how size is to be calculated is being sought in the latest consultation.

Payable by the developers to the relevant local authorities as collection agencies, the rate per square meter of the Levy to be determined by each local authority (as opposed to a blanket rate across England). The purpose of this is to then allow local authorities to apply a rate that best reflects local land values and house prices.

Methodology of process

The Response details that specified levy information (including floor areas) will need to be included as part of the initial application for building control approval; failure to provide such information may result in immediate rejection of the application. The local authority will then have five weeks from submission of the levy information to serve either a 'notice of levy liability' or confirmation that no payment is due/no Levy is applicable.

Developers will then have 28 days to request an independent review by the local authority, with a further 28 days for the local authority to conclude the review. If the developer is still dissatisfied with the decision, it will have 21 days to launch a challenge at the First Tier Tribunal.

To the extent that there is liability, the Levy will become payable after works have commenced. The Response also favours a single payment of the Levy as opposed to a two-step payment process that was originally proposed by the government, the intention being to provide the developer with some flexibility and discretion as to when the payment is made, provided that the Levy is paid before a completion certificate is issued. To the extent that the Levy is payable but is not paid, the primary sanction would be to withhold or reject the developments' final building control certification.

Commencement

There is currently no indication as to when the Levy will become effective, or when it is likely to be effective. The Response did also come with the announcement of a further consultation being launched. As such, further, and potentially more confirmatory, details regarding the Levy is expected from the government's response to such consultation. Once these are published, we shall follow up with a further update as we look to explore how the new Levy will impact developers in respect of existing and future property financings.

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