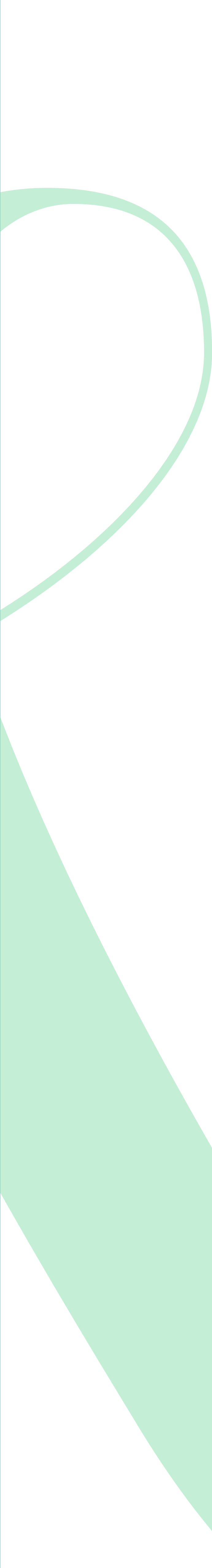


FERBRACHE &  
FARRELL


*Building safety law:*

A brief  
comparative  
overview between  
England and the  
Bailiwick of  
Guernsey

September 2024



Following the tragic events of 14 June 2017, and the devastating loss of 72 lives at Grenfell Tower, and following the publication of the Phase 2 Report of the Grenfell Tower Inquiry on 4 September 2024, it was timely to consider the legal issue of building safety on a cross-jurisdictional basis.



# Background and Context

Whilst the context of building safety in England needs no introduction, from its origins in at least 1965 and before, it may be helpful to focus very briefly on the second location forming the subject matter of this short article.

By way of background, the Bailiwick of Guernsey is a Crown Dependency and a self-governing entity. Within the Bailiwick there are three jurisdictions, namely Guernsey, Alderney and Sark. They hold a high degree of legal interest for those constitutional lawyers amongst us and particularly given the archaic link to the Duchy of Normandy.

This article is concerned however with the jurisdiction of Guernsey with its circa 65,000 inhabitants residing in the Island, in the Bay of Saint-Malo, and who are around an hour from London by plane.

From a planning law and a building control perspective, there are several landmark multi-storey office buildings in Guernsey, but multi-storey residential apartment blocks are limited.

Fire though makes no distinction between jurisdictions, as we are mindful locally of the desperate Jersey residential tower block explosion in 2022 that saw ten lives lost, and the 2024 evacuation in Jersey of 30 people following a fire in an apartment block there.

# England: The Building Safety Act 2022

The landmark piece of legislation arising from the Grenfell tragedy is the Building Safety Act 2022, which came into force on 1 October 2023 (the **BSA 2022**).



It is fair to say that the interplay between primary and secondary legislation is very complex in this area. It is the subject of multiple textbooks and many, many thousands of column inches, and the deliberations and cogitations of the finest minds.

Not only does a legal practitioner need to be familiar with the BSA, but they must also have regard to the myriad regulations and Circulars.

From the now called Ministry of Housing, Communities and Local Government and published at [www.gov.uk](http://www.gov.uk) these documents include, but are certainly not limited to, *the Approved Document B (Fire Safety); 2025 Approved Document B amendment booklet (in force 2 March 2025, subject to transitional provisions); Circular number 03/2024; 2026 Approved Document B amendment booklet (in force 30 September 2026); Circular numbers 01/2024 and 04/2024; 2029 Approved Document B amendment booklet (in force 2 September 2029), Circular number 05/2024.*

And notwithstanding the above, those in the industry must consider the practical application of the law that may transpose into daily practises through *BS 99001 (quality management systems in the built environment), BS 9991 (Fire safety in the design, management and use of residential buildings: Code of Practice), BS 9999 (Code of Practice for Fire*

---

*Safety in the design, management and use of buildings (non-residential), and the ubiquitous ISO 9001.*

A principal aim of the BSA 2022 is to attempt to bring a regulatory framework that is *'simpler, clearer and more effective...{and} because {of} the complexity of modern buildings, the actions of any one person could compromise the safety of the system as a whole'* **[1]**

Readers can be the judge of that for themselves but suffice to say the BSA 2022 is becoming a standing agenda point for CPD providers due to scope for practitioners to fall foul of its requirements.

Whether acting for the buyer or for the seller, key considerations are (1) the scope of the retainer (2) the drafting of the letter of engagement (3) the wording of any report on title (in the case of the buyer) (4) how advice given will trigger protection from professional indemnity insurance, and (4) how replies to pre-contract enquiries (TA7/LPE1, or CPSEs, as the case may be) will be completed.

As far as the letter of engagement is concerned, special care should be taken to set out what will be done, and what will not be done in the context of the BSA 2022.

As practitioners of law, it would be an invidious position that a conveyancer somehow finds themselves, for example, as having to determine if a structure is a 'Higher Risk Building' for the purposes of the BSA 2022 or alternatively finding themselves in having to advise on highly technical points relating to service charges. A conveyancer will properly need to rely on information provided by a BSA 2002 defined 'Accountable Person' such as a landlord, management company, freeholder or resident management company, for example.

With all of these non-exhaustive points in mind, the current thinking is that great care must be taken in dealing with any property where liability under the BSA 2022 could be engaged.

# Guernsey: The Building (Guernsey) Regulations, 2012 and the Guernsey Technical Standards

Unsurprisingly, safety of persons is paramount in the Bailiwick.

The very great difference though between England and Guernsey is that the latter is a customary law jurisdiction, although more recently supported by statutory infrastructure. As a brief recap, customary law (per Black's Law Dictionary, 2007) is defined as being:

*'law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws'*

Clearly, with the speed of technical advances in building construction and the 21st century commensurate risks to life that change equally rapidly, the medium of Guernsey customary law is (on this occasion) inappropriate to provide a swift solution.

To that end therefore, Guernsey has the ability to look to any jurisdiction that it likes to provide potential answers. This flexibility can act as a

---

catalyst for intellectual rigour to problem solve, whilst providing the legislative draftsman's signpost to a local answer to an issue that requires a statutory solution.

Guernsey does not have the equivalent of the BSA 2022.

Instead, the protection to life in building construction terms is through *The Building (Guernsey) Regulations, 2012 (Part B: Fire Safety)*, as supported by *the Guernsey Technical Standards* (the **GTS**).

In general terms, the GTS draw very heavily on the English building regulations to an almost granular similarity by referencing 'Parts', as on the mainland. They are roughly equivalent in Guernsey as they are in England.

Where appropriate, the States of Guernsey Building Control also rely on British Standards, and in the present case this will be *BS EN 13501-2 (Classification of Construction Products...from Fire Resistance...Tests)*, or the relevant parts of BS 476, being the suite of standards relating to fire resistance.

As one might expect, there are some local differences and non-resident applicants will need, for example, to be cognisant of the fact that in the Bailiwick, *the Equality Act 2010 and the Equalities Act 2010 (Disability) Regulations 2010* (as amended or replaced) will not apply. Equally, Guernsey does not have approved

---

building regulations inspectors, so the *UK Building (Approved Inspectors, etc.) Regulations 2010* are not binding locally.

For the purposes of this article, we are concerned with the Parts A, B and M of the GTS. *Part A* details Structure (notably loading, ground movement, and disproportionate collapse); *Part B* regulates Dwellings and Buildings other than Dwellings, and *Part M* deals with Access to and Use of Buildings (including access and use, and access to extensions to buildings other than dwellings). Readers will note that the age of the Regulations (i.e. 2012) is somewhat dated, although the system does work well.

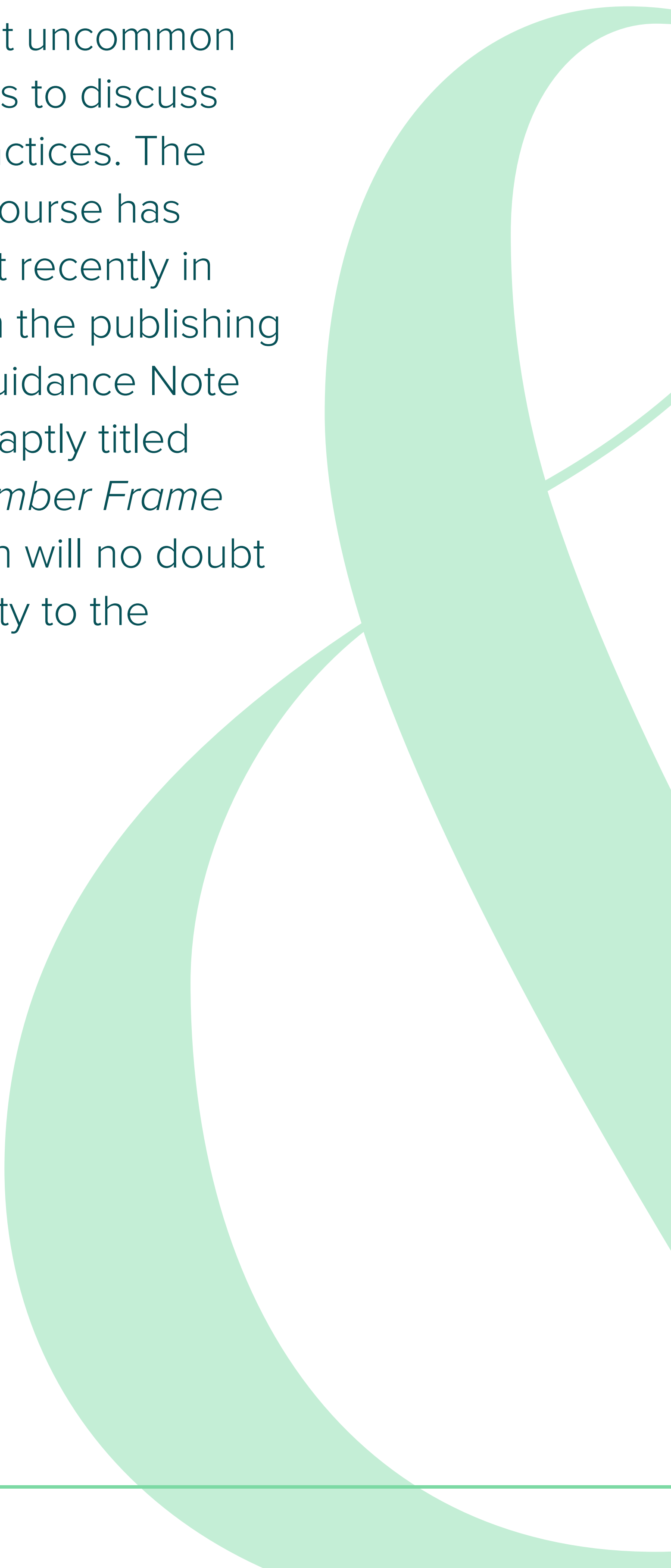
For public safety, there is also a very close synergy with the requirements of the Health and Safety Executive, and variously the *Construction (Design and Management) Approved Code of Practice 2020*, the *Health and Safety at Work (General)(Guernsey) Ordinance 1987* (as amended).

In terms of fire legislation, the statutory landscape is very restricted. The soon to be replaced *The Fire Services (Guernsey) Law, 1989* (as amended) has been relatively fit for purpose, although Grenfell has brought into sharp focus the need for change.

---

Such updating is likely to take place in 2025, particularly in respect of houses in multiple occupation, and a regulatory framework around passive means of fire protection.

As a small community, there is a great deal of co-operation between regulators and the various industries, and it is not uncommon to have regular forums to discuss and promote best practices. The outcome of such discourse has been evidenced most recently in September 2024 with the publishing of Building Control Guidance Note 24 (version 09.2024) aptly titled “*Fire Resistance of Timber Frame Structures*”, and which will no doubt provide valuable clarity to the industry generally.



# Conclusions

Regardless of the location, whether England or the Bailiwick, the protection of human health in construction terms cannot be underestimated.

It is, in both jurisdictions, a political consideration, a matter for the judiciary, and a key factor in building practices.

Any efforts to prevent a repeat of Grenfell, or any means to mitigate existing risks, can only be a good thing. Whilst the routes to those outcomes will be different between jurisdictions, if the end result is similar, then this will be a positive platform on which to build in future.

*(This article has also been published in Solicitors Journal).*

*The information provided in this document does not, and is not intended to, constitute legal advice.*

**[1]** General Editors: Andrew Butler KC and Ian Quayle, 'Building Safety Act 2022, A Guide for Property Lawyers' (The Law Society, 2024), p.3

