

# Regulatory Predictions for 2020

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## A New Regulator

On 22<sup>nd</sup> January 2020 the Housing Secretary Robert Jenrick, speaking in the House of Commons announced the creation of a “Building Safety Regulator” to sit within the HSE. Its task will be to raise building safety and performance standards, including overseeing a new, more stringent regime for higher-risk buildings. This will include the design, construction and occupation of high risk buildings to ensure the safety of residents.

The HSE has been tasked with establishing the new regulator in shadow form immediately however, given the acknowledged recruitment issues the HSE currently have, it will be interesting to see how they do this in practical terms. The Government website also suggests that they “*will draw on experience and the capabilities of other regulators to implement the new regime*”. Dame Judith Hackitt will chair a board to oversee the transition.

There is limited information about the new regulator. The HSE are yet to publish any material or guidance and there will inevitably be a transition phase. The regulator will be backed by criminal sanctions and it will aim to:

- Provide clearer accountability for, and stronger duties on, those responsible for the safety of high-rise buildings throughout design, construction and occupation
- Give residents a stronger voice in the system, ensuring their concerns are never ignored and they fully understand how they can contribute to maintaining safety in their buildings
- Strengthen enforcement and sanctions to deter non-compliance with the new regime in order to hold the right people to account
- Require that developers of new build homes must belong to a New Homes Ombudsman

## The Health and Safety Executive

The HSE have confirmed their priorities for 2020 in their recently published [Business Plan](#).

1. Continue to focus on tackling ill-health as part of the Health and Work Programme
2. Promote proportionality in health and safety management
3. Share learning from expert science and research with those who can influence workplace health and safety performance

As well as supporting the government’s fundamental reform of the building safety system the HSE will contribute to government-wide activities on the UK’s departure from the EU, as well as targeting their inspections on specific issues and activities including a sustained focus on work related ill-health.

2019/20 marks the third year of the HSE’s focus on tackling three major causes of work-related ill health - musculoskeletal disorders (MSDs), occupational lung disease (OLD) and work-related stress (WRS). In an attempt to reduce the 30.7 million working days lost every year, each of these focus areas has its own [priority plan](#) and we anticipate there may be a move towards enforcement after two years of guidance and awareness.

## Cases

***R (on the application of Maughan) v Her Majesty’s Senior Coroner for Oxfordshire*** - In July 2018 the High Court heard the case of Maughan and considered the test for suicide and decided that Coroners/juries have to be satisfied according to the civil standard of proof (more probable than not that the person intended to die). Whereas, the test for unlawful killing remains at the criminal standard. In May 2019 the Court of Appeal agreed. The family have since appealed this decision and the Supreme Court will hear the appeal at the end of February 2020. Changing the burden of proof for unlawful killing to the civil standard may result in more cases being referred to the CPS to consider criminal charges.

**Building Works Certificates** - One of the largest Approved Inspectors in the UK is being prosecuted for allegedly recklessly issuing a final certificate for building works. The trial is due to conclude in September.

**Maritime and Coastguard Agency v Mr David Marr (re-trial)** - Mr Marr, the skipper of a commercial trawler, was prosecuted following an incident with an open top fishing boat resulting in the death of three people. A re-trial has been listed as the jury could not come to a verdict. The matter is listed for five days starting 20 July 2020.

**Drayton Manor** - Following the conclusion of the Inquest into 11 year old Evha Jannath's death, the HSE have confirmed they will be prosecuting Drayton Manor Theme Park for alleged breaches of Section 3 of the Health and Safety at Work etc. Act. The Inquest concluded the death was accidental however the Coroner has written to all theme parks with similar rides to warn them about the issues raised such as inconsistency in the monitoring of CCTV and staff training.

**R v Pret A Manger** - The company has pleaded not-guilty to one charge of selling food not of the substance demanded, contrary to section 14 of the Food Safety Act 1990. A customer allegedly suffered a severe allergic reaction to sesame in a curried chickpea and mango sandwich on 26 November 2017. This case follows a series of high profile inquests in which food outlets have been embroiled in food labelling issues. A trial has been set for 2<sup>nd</sup> November 2020.

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