

**Response to the Government’s Consultation, ‘Building a Safer Future:
Proposals for reform of the building safety regulatory system’**

Name

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Are you an individual or organisation

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The Proposed Scope

Q.1.1: I do not support the proposal for the new regulatory system to only apply to multi-occupied residential buildings of 18 metres or more for several reasons.

- height is not the only factor that could undermine a building's safety in the event of a fire e.g. its location, refurbishment history, or type of occupiers are all as relevant
- the recent Barking fire (9 June 2019) on a 6-storey block was *under 18 metres in height* and would have been excluded from the proposed system, yet it featured many of the issues present at Grenfell including residents' safety concerns being ignored
- government data proves many fires are spreading beyond two floors in blocks of four storeys or higher, which means a serious compartmentation failure has occurred
- government data shows more fire deaths occur in low rise dwellings than any other building type – sprinklers should be mandatory in all new homes as in wales – especially HMO's and multi-occupancy buildings.

Proposal: All new buildings and refurbishments should immediately be covered by gateway points 2 & 3. Safety case requirements should be phased in starting with 10 stories and reducing by 2 stories per year over 5 years. This would enable recruitment of resource and set out a clear timetable for building owners to budget for the work.

Proposal: If height is to be used as a cut-off for inclusion in the system long term then this would make 11 metres (about three storeys) the only logical safe height as most fire brigades only carry 13.5 metre ladders which reach up four storeys, and guidelines state that 11 metres is the highest safe working height on these ladders in a fire scenario.

The Duty holder Regime

I support the creation of a duty holder regime that sets legal safety responsibilities on different people and organisations during a building's life-cycle (Qs2.1-2.2). I also support the creation of Gateway Points (at planning, full building design, and before occupation) where the Regulator would be able to halt unsafe developments.

I also agree that:

- where the dutyholder is a legal entity like company, a named individual should be responsible for building safety (Q2.3)
- building control and fire and rescue authorities should become statutory consultees at the planning permission stage (Q2.5) on all proposed high-risk developments and those within the 'near vicinity' (Q2.7)
- planning applicants should submit a Fire Statement as part of their planning application (Q2.6)

Proposal: this should be implemented without delay. It should go beyond vehicular and water access issues to include wider fire safety considerations relating to Part B of the building regulations to allow the public and the fire service to properly scrutinise these issues before full building design takes place – this would be outline building control approval to match outline planning approval (Q. 2.11)

- the Regulator should be able to (i) impose a ‘hard stop’ (Q. 2.15) prior to construction beginning to ensure proper safety management, (ii) require work carried out without approval to be pulled down or removed during inspections to check building regulations compliance (Q. 2.17), (iii) prohibit building work from progressing unless non-compliant work is first remedied (Q. 2.18) - I support the immediate inclusion of this in legislation

- the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans (Q. 2.21) – this should also include a Fire Engineer if not following prescriptive guidance – and to notify the Regulator of proposed major changes that could compromise fire and structural safety for approval before carrying out the relevant work (Q. 2.22, Q.2.23)

I support the creation of an accountable person in law for fire and structural safety of every individual building and also agree that:

- the accountable person must apply to register and meet additional requirements (if necessary) before occupation of the building can commence (Q. 2.29)

- it should be a criminal offence for the accountable person to allow a building to be occupied before they have been granted a registration for that building (Q. 2.30)

Existing buildings and refurbishment

I agree that the same new regulatory system should equally apply to refurbishment of buildings (Q. 2.32) but am concerned that this would only be for ‘significant major refurbishment’ as:

- no definition is offered as to what ‘significant’ or ‘major’ refurbishment means

- any kind of refurbishment can render a high-rise building unsafe – for example cutting downlights and speakers in a fire protected ceiling.

Proposal: I believe the new system should apply to any kind of refurbishment i.e. any work to existing buildings included in the new system.

Proposal: I want the new system to bring all existing buildings up to the highest regulatory standards and believe that the concept of consequential improvement should apply – eg if the owner is spending money on the building a proportion of that must be used to address any outstanding safety case issues.

The Safety Case

I agree that:

- a safety case should be scrutinised by the Regulator before a building safety certificate is issued (and before occupation is permitted) (Q.3.1), and it should cover ALL areas of the building (Q.3.2.)
- the building certificate and safety case be reviewed every 5 years (Q.3.3)

However, I propose:

- **the building control body must make its inspection records available as part of this process, and show how any non-conformances identified have been closed off.**
- **this must not simply be a desk-based sign-off of paperwork but must involve physical inspection including for example smoke tests of the smoke control and smoke stop doors with the results placed in the public domain for scrutiny by residents**
- **the safety case should also be ultimately signed off by the building insurer who will have a vested interest in properly checking for compliance with laws and regulations**
- **an annual fire risk assessment should be conducted by the properly qualified chartered fire engineers and sent to the fire service to follow up on any recommendations.**

I am also very concerned about the suggested lighter-touch safety case regime for existing buildings “in order to avoid placing unreasonable requirements on existing building owners where information has not been handed over” after construction phase or from a previous owner” (para 132, page 54) because existing buildings that have undergone refurbishment will arguably pose more risk than new buildings erected under the proposed system.

Proposal: I believe the accountable person should have to demonstrate an acceptable (and full) safety case to the Regulator as soon as practicably possible, conducting intrusive inspections in vacant dwellings to build that information. A period of 5 years is the maximum that this should take to produce the full safety case documentation.

Costs of remediation

Tenants and leaseholders should NOT have to pay for the costs of crucial safety works to rectify problems discovered by the safety case review (Q. 3.4).

Proposal:

- **the costs of these failings should be borne by the legal duty holder and if a building owner / landlord is found responsible for costs, this should not result in increased rents and service charges for residents**
- **full consideration should be given to the safety of residents (and workers) during the refurbishment there should be a decanting and like-for-like rehousing strategy (same tenure, rents and property size) prepared as part of the safety case in the event that remediation works require the building to be evacuated and no resident liability for the costs.**

Identifying the accountable person

I am concerned about the proposed approach for identifying the accountable person (Q. 3.5) and how this will work in practice (Q3.6) as there are potentially many layers of ownership and management of a multi-occupied residential building (landowner, building owner, leaseholders, shared ownership, right to manage companies, and other kinds of management companies like TMOs, ALMOs, private contractors) and it is not clear which entity will be deemed to be the accountable one in law.

Proposal: in principle, the designated accountable person should be the building owner (or landlord if a different entity). The naming of an accountable person for a building should not end the accountability of any contractors acting on their behalf.

I agree that:

- the accountable person requirement should be introduced for existing as well as new residential buildings (Q.3.7) as soon as possible

I propose that existing buildings should all be subject to a safety testing regime now and the accountable person regime should begin as soon as possible alongside an existing building fire safety improvement plan. Initially it could be that the current Fire Risk Assessment should be submitted to the regulator for assessment along with a plan of action to undertake remedial works (no longer than 5 years)

- only the building safety Regulator should be able to transfer the building safety certificate from one person/entity to another (Q.3.8)

- the building safety manager should be directly accountable to residents (3.9)

- the building safety manager should be properly trained and resourced and not be stretched across dozens of blocks

I propose that the Regulator must set strict guidelines on how many buildings, flats and residents one person can safely manage and how competency is managed.

- in certain circumstances, the Regulator could appoint an independent building safety manager (Q.3.12)

I propose that this can only happen if the Regulator remains an independent body for residents to make representations to when complaining about building safety. In particular this will be an issue if the Local Authority is a regulator and additionally has an interest in placing residents in the block or has a financial involvement in the block. Ideally the regulator should be a national body overseeing independence of all relevant parties not a LA.

- the registration scheme involving the issue of a building safety certificate is an effective way to provide assurance and transparency (Q. 3.17)

- the building safety certificate should apply to the whole building (Q. 3.19) to remedy the weaknesses of the Fire Safety Order which only applies to common parts
- building safety certificates should be reviewed every 5 years (Q. 3.21) or when residents raise concerns about safety in their building (Q. 3.22)

Information sharing and the Golden Thread

I fully support the proposal for a golden thread of accurate and up-to-date information about the design.

I also agree that:

- the key dataset for all buildings should be made open and publicly available (Q. 4.4) and that relevant parts of the golden thread be made available on request (Q. 4.5) - this is vital for accountability and transparency

I propose that all buildings should display a certificate that contains a quantitative rating of how fire safe the building is according to the Regulator and what measures would need to be taken for it to have a maximum rating to enable residents to identify the improvements needed and who to lobby for them. EG the same as an EPC.

- a 'just culture' is necessary for an effective system of mandatory occurrence reporting (Q. 4.10) - whistle-blowers must be protected
- where an occurrence has been identified, duty holders must report this to the building safety Regulator within 48 hours (Q. 4.11)
- the Regulator should be made a prescribed person under Public Interest Disclosure Act 1998 (PIDA) (Q.4.16)

I propose that this needs to ensure that residents are also protected from bullying, harassment, revenge eviction and threats of legal action prosecution when they report contractors and the accountable person to the Regulator

- duty holder roles and the responsibility for compliance with building regulations should be applied to all building work, not just on high-rise buildings (Q. 4.20) as the present standards of design and construction in the building industry are very poor – we do not want to a two-tier system as this could incentivise companies to place their unskilled workers in the less regulated part of the industry with potentially disastrous consequences

Resident engagement strategy

I agree that the following information should be proactively provided to residents (Q. 5.1):

- a) the measures in place to mitigate potential fire and building safety risks to residents;
- b) how to reduce the risk of fire in individual dwellings;
- c) the process for reporting a fire risk and/or raising any other safety concerns;
- d) procedures to follow where a fire occurs in the building, including for evacuation;
- e) different roles and responsibilities of the accountable person, building safety manager and residents;
- f) contact details of the accountable person and building safety manager.

Proposal: Every household should be provided with a fire safety pack that contains all of the above information written in the appropriate language(s) for the household, and include an A4 or A3 checklist of the essential fire safety information for their inside front door like a hotel. Ideally there would be a fire safety app for their smartphone to enable residents to do their own safety checks and safety drills, and have direct and fast communication with the building safety manager.

I agree in principle with the proposed culture of openness for sharing building safety information with residents (Q. 5.2). However, I am concerned that the proposed exemptions to information sharing will be abused by the accountable person when seeking to hide information from residents and others that could embarrass or incriminate them.

Proposal: the golden thread should also be written in an accessible way from the outset and any highly technical information and intellectual property that might end up being redacted should still be summarised with a clear explanation of why they have been redacted.

I also agree:

- that a nominated person who is a non-resident should be able to request information on behalf of a vulnerable person who lives there. They could be any of the below and indeed all of them simultaneously: a) Relative, b) Carer, c) Person with Lasting Power of Attorney, d) Court-appointed Deputy, e) Other: MP, Councillor, solicitor (Q. 5.3)

- with the proposed set of requirements for the management summary (Q. 5.4) and the engagement summary (Q5.5.)

I propose that there is a clearly defined and resourced role for democratically-elected resident-led organisations in this system who play a vital role in representing tenants and leaseholders

I am very concerned about the proposal for a new legal requirement on residents to co-operate with the accountable person (and the building safety manager) to allow them to fulfil their duties specific to fire and structural safety in the new regime (Q. 5.6.):

- those legal requirements should already exist with respect to tenancy and lease agreements and are backed up by a number of legal routes for the landlord to take action against the tenant

- any new legal requirement to cooperate with the landlord must not give the landlord grounds to bully, intimidate, harass or evict tenants, or the freeholder more power to cancel a lease on forfeiture grounds.

Proposal: if such a new requirement for residents to co-operate was introduced, a safeguarding measure to protect residents (Q.5.8.) would be for the Regulator to oversee the process and allow residents to ultimately seek a Judicial Review with automatic qualification for legal aid.

I agree with the proposed requirement for the accountable person to set up an internal process for raising safety concerns (Q. 5.9), and for the proposed right of residents to escalate their safety concerns to the Regulator (Q. 5.10). It is vital that residents can go direct to a Regulator whose statutory role is to protect life and intervene to enforce safety. If this had been in place prior to June 2017, the Grenfell disaster may not have happened.

Proposal: To work effectively residents should: be able to ring an emergency number for an urgent fire or structural safety concern with an imminent threat to life or serious injury; be empowered to film, photograph and audio-record where they are documenting safety concerns or suspected breaches. Any attempt to intimidate or prevent that evidence-gathering should be subject to enforcement by the Regulator.

What is missing from the proposals is a compensation system for residents who may have had their lives taken over by these issues with loss of earnings and job, stress and health deterioration, and devastation to family life.

Proposal: the new regulatory regime should be able to impose fines on duty holders and award compensation to residents. This will not only incentivise duty holders to comply, it will also incentivise residents to report issues to the Regulator that could save lives.

The Regulator

I fully support the creation of a new building safety Regulator with teeth but it is very important that the Regulator is independent of both political and commercial interference.

Proposal: I would urge (Q.6.3.) that some of the Regulator's proposed functions be delivered by advancing legislation and creation of a new body. It is essential that Local Authorities cannot have a role in overseeing buildings in which they have an interest.

I agree there should be an overarching competence framework with formalised national standards (Q. 7.1). However, I am concerned at the proposal for an 'industry-led committee' to drive competence.

Proposal: To work properly, the Regulator should not be advised solely by industry and so-called technical experts. The BCA advice note 16 is an example of industry making up its own rules and lowering standards. Whilst industry is best placed to write technical guidance there should be a role for the regulator in checking and authorising this guidance. For example industry bodies could put up guidance for adoption as an "approved document". This previously happened with the Approved document for basements for example. This would encourage industry to take ownership, but there would be an oversight to ensure standards are not being watered down.

Proposal - There must also be a strong residents voice at the heart of the new regulatory system to advise the Regulator and represent residents' views and interests. I am in favour of a democratically elected or mandated panel of residents' representatives to perform this.

Enforcement, compliance and sanctions

I agree with the proposed three-step process (informal support and guidance followed by formal intervention and monitoring and finally enforcement action) for addressing non-compliance within the new system (Q. 9.1) and:

- that criminal offences should be introduced for (i) an accountable person failing to register a building; (ii) an accountable person or building safety manager failing to comply with building safety conditions or their own license/accreditation conditions; and (iii) duty holders carrying out work without the necessary gateway permission (Q. 9.2)

· an enhanced civil penalty regime should be available under the new building safety regulatory framework to address non-compliance with building safety requirements as a potential alternative to criminal prosecution (Q. 9.4)

Proposal:

· **where serious non-compliance is detected, the informal stage should be skipped to prevent duty holders from being allowed to cover up their non-compliance and criminal behaviour**

· **a civil penalty regime should not enable the larger and already powerful companies in the building industry and real estate sector to absorb fines whilst smaller companies are forced out of the sector. The HSE prosecution model should be adopted that links the size of the fine to the profitability and turnover of organisations and the potential economic advantage gained from the breach, so that large organisations are fined much more than genuine small organisations**

I agree that formal enforcement powers to correct non-compliant work should start from the time the work was completed and for latent defects from the time they are discovered (Q. 9.5). However, I do not see the justification for time limits to bring prosecutions or make enforcement orders.

Financing and resourcing the system

I am concerned that apart from the proposal that accountable persons will have to pay to register their buildings, there is no detail on how the estimated £425million annual cost of setting up, running and complying with the new regulatory regime will be met.

· 90% of these annual cost are expected to fall onto social owners, private owners/leaseholders and developers/industry

Unless the current lack of government subsidy for social housing and the crisis of local authority finance is reversed, it is impossible to see how councils and other social landlords will be able to comply with the new system without either raising rents and service charges, and / or demolishing stock and /or and selling off stock and land. We are already seeing demolition planned for some tower blocks following post-Grenfell inspections – this is not what residents want, and it cannot be the intended consequence.

Reforming the existing building regulations on fire safety

While I welcome a stronger system to enforce fire and structural safety regulations on residential buildings, that system will only be as good as the regulations it is policing. It is essential that the new body recruits the best staff from AI and LABC and that AI staff are not lost from the system. A role for AI is essential to ensure that the system does not grind to a halt, and there is along term plan for recruitment and training of staff in the new system.

Builders should not be able to choose who provides the checking service, but having a municipal only system creates delay especially if a LA has recruitment or retention problems.

Proposal – the new regulator should set the minimum fees required for the service, levels of required performance and service standards. They should check that the BCB has the necessary competence, resources and is fully independent prior to appointment.

The Regulator should then confirm the builders chosen appointment of the BCB, the regulator should take payment from the builder and pay the BCB. The BCB should not be paid directly by the builder, and if they are paid direct for any other services this should result in sanctions for breach of independence.

Conclusion

I support the proposed direction of travel but the wholesale system change is unwieldy and is preventing adoption. The proposed regime is likely to take years to implement especially recruiting and training staff. This is causing delay, uncertainty, preventing early adoption and putting lives at risk.

To overcome the issues we need to have a staged implementation plan with immediate reforms to the existing system whilst the new system is developed further.

Proposal

Step 1 Immediate action – changes to system

- **require all new buildings to comply with gateway's 2 & 3 immediately and cease the use of building notices. Simply introduce regulations making it an offence to commence without approved plans and to occupy without BC and Fire service sign off of completed works for all new buildings.**
- **require the release of all past and current fire risk assessments and action plans to the fire service for review and enforcement under RRO if actions are not implemented.**
- **require landlords to run annual fire drills and train resident representatives as fire wardens**
- **amend regulation 9 to require all Building Control bodies to be independent and make a statement when appointed that there are no conflicts of interest and that they are not providing any other consultancy services (both directly or within a group structure) such as design, sound tests, air test's, warranty, etc so there is no pressure / benefit to cross sell services at a discount.**

Step 2 Technical changes - as part of review of ADB (within 12 months)

- **require sprinklers in all new residential buildings**
- **require that all new buildings over 11 metres in height have a second staircase or evacuation lift as a means of escape, and retrofit them where possible**
- **require fire detection and audible alarm systems in both flats and communal areas with phased evacuation to replace stay put**

Step 3 Full implementation of Hackitt Review (within 5 years)

Name _____ Signed _____ Date _____