

DRAFT BUILDING SAFETY BILL / FIRE SAFETY ORDER CONSULTATION



REPORT OF THE CHIEF FIRE OFFICER

For Information

1. PURPOSE OF REPORT

- 1.1 In the wake of the Grenfell Tower tragedy, the Government has published a draft Building Safety Bill containing a wide range of changes to law covering building safety during design, construction and occupation, and the creation of a new regulatory framework for high-rise residential buildings.
- 1.2 The Government has also published a consultation on changes to the overlapping Fire Safety Order which covers safety in workplaces and other premises.
- 1.3 This report highlights the key issues, the recommendations and proposals, and the consultation questions.

2. RECOMMENDATIONS

- 2.1 That the Cleveland Fire Authority note:
 - the Government's consultation on proposals regarding a wide range of changes to legislation covering building safety during design, construction and occupation, and the creation of a new regulatory framework for high-rise residential buildings;
 - the Government has also published a consultation on changes to the overlapping Fire Safety Order which covers safety in workplaces and other premises; and
 - the CFA response (as approved by the Chair of the CFA) to the Government's consultation on the draft Building Safety Bill and the reforms to the Fire Safety Regulatory Reform Order.

3. DRAFT BUILDING SAFETY BILL

3.1 Introduction

The tragic fire in the Grenfell Tower in 2017 gave rise to an independent review into the UK's building and fire safety frameworks and other related matters, as reported in 2018.

- 3.2 This review made a wide range of recommendations to improve the safety of design, construction and occupation of buildings. The Government accepted all of the recommendations and has already put some into place. The draft Fire Safety Bill, which can be found at: <https://www.gov.uk/government/publications/draft-building-safety-bill>, takes forward a number of further recommendations. It firstly contains a range of changes intended to tighten up controls over all actors involved in the building process. It also establishes a special, more stringent, regime for high-rise residential buildings aimed at dealing with the significance and particular nature of the risks inherent in such buildings.

The key elements of the amended regime (either set out in the draft Bill or anticipated in secondary legislation) are explained below and apply mainly to England only.

3.3 Executive Summary

The draft Building Safety Bill takes forward the Government's commitment to fundamental reform of the building safety system. The draft Bill gives effect to policies set out in the Building a Safer Future consultation response, published in April 2020. This detailed how the Government intends to deliver the principles and recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, published in May 2018.

The draft Bill also acts as the vehicle to introduce a requirement that developers of new build housing belong to a new homes ombudsman and to remove the need for social housing residents to pass through the 'democratic filter' in order to access the Housing Ombudsman.

The objectives of the draft Bill are to learn the lessons from the Grenfell Tower fire and to remedy the systemic issues identified by Dame Judith Hackitt by strengthening the whole regulatory system for building safety.

This will be achieved by:

- Creating a more effective regulatory and accountability framework and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety;
- Introduce stronger and 'clearer' standards and guidance;
- Put residents at the heart of the new system of building safety ensuring residents have a stronger voice; and
- Driving industry culture change and incentivising compliance
- Help create a culture of change and a more responsible building industry.

Part 1 provides an overview of the Bill. The draft Bill contains five parts and eight schedules addressing a range of issues relating to building safety and standards. The draft Bill makes a number of changes to existing legislation, most notably the Building Act 1984.

Part 2 establishes a new Building Safety Regulator within the Health and Safety Executive. It also defines the scope of the regime with respect to the definition of risks that it is intended to manage and creates a power to set out in secondary legislation the buildings that are included in the scope of the regime.

Part 3 deals with amendments to the Building Act 1984 as it applies to England. It sets out the provisions for the new regulatory regime during the design and construction phase for higher-risk buildings, and provides for the registration of building inspectors and building control approvers to improve competence levels in the building control sector by better regulation.

Part 4 is concerned with higher-risk buildings when they are occupied, defines and places duties on the Accountable Person (the dutyholder in occupation) and Building Safety Managers in relation to building safety risks in their building.

Part 5 details supplementary information, including provisions to require a new homes ombudsman scheme to be established. It creates powers to make provision about construction products. It allows disciplinary orders made against architects by the Professional Conduct Committee (PCC) of the Architects Registration Board to be listed alongside an architect's entry in the Register of Architects. It also removes the 'democratic filter' which requires social housing residents to refer unresolved complaints to a 'designated person' or wait eight weeks before they can access redress via the Housing Ombudsman.

Building Safety Bill Key Issues

- Draft Bill proposes changes to general building safety rules:
 - New competency requirements for building contractors and designers, and new duties to ensure building regulations compliance
 - Automatic lapsing of building approvals after 3 years
 - New safety liabilities for corporate directors
- Draft Bill proposes new regime for High Rise Residential Buildings (HRRB):
 - Gateway points for compliance with building safety rules
 - New Building Safety Regulator responsible for HRRBs
 - New duties to keep 'golden thread' of building information from design to occupation
 - New 'Accountable Person' responsible for building safety upon occupation, with requirement to appoint Building Safety Manager
 - Building Assurance Certificate to demonstrate fitness for occupation
- Fire Safety consultation to improve integration of Building Safety and Fire Safety regimes:
 - Requirement for Responsible Persons (fire safety) to identify themselves, and co-operate with Accountable Persons o Strengthening requirements for regular checks and provision of information
- Fire and Rescue Service Issues
 - FRS part of the new regime
 - Impact on Risk Based Inspection Programme (RBIP) and workload

- Secretary of State has powers to direct
- Competency of Officers
- Narrow Scope
- Overlap of existing regime

4. GENERAL CHANGES TO BUILDING SAFETY FRAMEWORK

4.1 *Dutyholders*

The draft Bill will introduce powers to set competence requirements for the following categories of dutyholder under the Construction (Design and Management) Regulations 2015 (CDM 2015): Principal Designer, Principal Contractor, Designers and Contractors. Although they will apply to all buildings, the requirements will be more stringent for high-rise buildings. Significantly, Clients would be required to sign a declaration that they are satisfied that the Principal Designer and Principal Contractor are competent.

Building regulations will include duties on the dutyholders to co-operate and share information, and importantly, to ensure the work complies with building regulations (and these duties will also apply to works carried out during building July 2020 occupation). It is not yet clear how the duties would be divided between the dutyholders and this will be dealt with in due course in regulations. This goes significantly beyond the current requirements of the CDM 2015 which concentrate on managing health & safety of the process of carrying out the work, rather than how safe the resulting building is.

4.2 *Building control process*

Buildings other than high-rise residential buildings (for which see further below) will continue to be broadly subject to the current regime of building control, although the draft Bill makes some changes that are applicable to the building safety framework for all types of building. It also provides powers for future building regulations to amend the framework more extensively.

Building approvals (deposit of plans, initial notices, and plans certificates) will, in future, automatically lapse after 3 years, rather than allowing local authorities to declare them ineffective after such time.

Approved Inspectors are to be subject to a new registration scheme, required to meet minimum standards, and will be rebadged as Building Control Approvers. In addition, a new function of registered building inspector will be created to perform an advisory role in relation to the decisions of local authority building control officers, Building Control Approvers and the new Building Safety Regulator (see below).

4.3 *Liability*

Significant changes to the liability structure are contained in the draft Bill. New provisions are included to make corporate directors and managers liable for offences under building safety legislation where breaches are due to their consent, connivance or neglect. This is a formulation commonly seen in environmental and

other health & safety contexts and will increase pressure on all companies involved in the development process to prioritise building safety issues.

Time limits for enforcing / prosecuting breaches of building regulations will also be extended under the draft Bill from 12 months / 2 years (respectively) to 10 years.

4.4 ***Other changes***

Currently construction products are covered by the EU Construction Products Regulation only where EU harmonised standards apply. The draft Bill will extend control to all construction products introducing a power to regulate safety critical products, and a requirement on manufacturers to ensure all construction products are safe. This regime will be managed centrally by the Building Safety Regulator rather than, as at present, relying on local Trading Standards officers.

The Bill also increases regulation of the architect's profession.

5. **NEW REGIME FOR HIGH RISE RESIDENTIAL BUILDINGS**

- 5.1 Key among the provisions of the draft Bill is the creation of a new regulatory framework for high-rise residential buildings overseen by a new dedicated regulator. The key elements of this new regime (either set out in the Bill or anticipated in secondary legislation) are set out below.

5.2 ***Which buildings and safety risks does the new regime apply to?***

Following consultation the Government has decided to only apply the new regime to fire and structural integrity risks in high-rise residential buildings (HRRBs), set at a minimum of 6 storeys, or 18 metres in height. Residential, for these purposes, would include student accommodation. Significantly, the regime could be extended to different types of buildings and risks in due course (e.g. to all high rise buildings, and to explosion risks).

The regime will apply to new buildings immediately, while existing buildings will be 'transitioned' into the regime although it is not clear yet how this transition will work.

5.3 **New Building Safety Regulator**

The Bill establishes a new Building Safety Regulator (BSR) specifically to oversee all elements of the building safety regime applicable to HRRBs (in place of local authorities or Approved Inspectors (in future, Building Control Approvers). The BSR may also take responsibility for other buildings where it agrees. Developers of large schemes which feature a mix of uses including high-rise residential, will need to consider whether it makes sense to apply to the BSR to oversee the whole scheme.

5.4 **Design and construction of the building**

Dutyholders

The existing dutyholders under the CDM 2015 will all have duties under the new framework including the Client, Principal Designer, Principal Contractor, Designers and Contractors.

Gateway points

A series of gateways will be established through which safety will have to be demonstrated.

5.5 Gateways to Approval for High-Rise Residential Buildings***Gateway One: Planning Application Stage***

- Information on building safety incorporated into planning application through a new Fire Statement
- Acts as statutory consultee
- Stage only applies if express planning permission required

Gateway Two: Commencement of Construction

- Key information submitted to BSR
- Construction cannot begin until BSR satisfied design meets the building regulations and that safety management proposals are realistic

Gateway Three: Completion

- BSR assesses the building to determine whether the work conforms to building regulations
- BSR issues a completion certificate once satisfied

When the process is completed, relevant documents relating to building safety (see below the Golden Thread of information) are then given to the Accountable Person (see further below).

An appeal route will lie to the Secretary of State and subsequently to the First Tier Tribunal (directly to the FTT for HRRBs) where the BSR fails to make decisions on plans or works within prescribed deadlines for approval. This may be important in some cases for developers since it will in future be an offence to begin HRRB development at risk (before building control approval is obtained).

Given the potential legal liabilities and reputational implications now attaching to HRRB owners, where owners are appointing a third party developer to design and construct a HRRB, we expect that development agreements will become more prescriptive in relation to the new regulatory framework and owners will seek to impose as much liability as is legally possible upon the developer. Developers will likewise be looking to pass this risk on down the supply chain to contractors and consultants.

5.6 Occupation of the building***Accountable Person***

The Accountable Person is the dutyholder during occupation of the building. It is clear that there may be more than one such person although the provisions in the draft Bill are somewhat unclear. It seems that the Accountable Person will be one or more of the freehold owner and any other sub-landlord, tenant or management company with substantive repairing obligations of the common parts unless they have delegated those obligations to another in a long lease.

Key duties of the Accountable Person/s are to:

- Register the building with the BSR before it is occupied (this obligation will also apply to existing buildings that are occupied or at the point when they are occupied);
- As soon as the building is occupied, assess building safety risks (and continue to do so on an ongoing and regular basis); prepare a Safety Case Report to evidence how they intend to meet the above responsibilities including mitigating risks, and provide a copy to the BSR, updating it when necessary – the safety case is a proven concept borrowed from controls placed on high risk industrial facilities; Where the BSR considers the Safety Case Report to be inadequate, and problems are not addressed, it will be able ultimately to take enforcement action against the Accountable Person;
- More generally take all reasonable steps to prevent major incidents occurring;
- Apply to the BSR for a Building Assurance Certificate (BAC) – the BAC will give residents an indication that the building is fit for occupation from a safety perspective; this application has to be made within a 'prescribed period' after the building is registered (this period remains to be set). Certain information about compliance with its duties (including a copy of the Safety Case Report) will have to be supplied with the application; • Once issued, display the BAC prominently in the building;
- Retain the 'golden thread' information about the building (see further below); and
- Ensure that the building has adequate insurance to cover losses associated with building safety risks. Modern lease structures for multi-let buildings including residential buildings can be complex. Parties to such lease structures and repair obligations (for both new and existing buildings) may need to consider the extent to which the draft Bill provisions would put them in the frame as an Accountable Person and the associated obligations and responsibilities flowing from that categorisation.

Building Safety Manager

The Accountable Person must appoint a Building Safety Manager (BSM) with appropriate skills, knowledge and experience, to help them in the day-to-day management of fire and structural safety for the building. More particularly, the BSM will have to manage the building in compliance with the Safety Case Report and BAC. However, appointment of a BSM is not a means to remove or divest responsibility – while the BSM will be responsible for certain duties, ultimate responsibility for building safety will always lie with the Accountable Person. The Accountable Person can appoint itself as BSM where appropriate.

Particular duties of the BSM include keeping the Accountable Person's risk assessment under review, and notifying the Accountable Person when the assessment appears to have become invalid or upon significant changes to the building.

A proposed appointment must be notified to the BSR who will be able to veto the appointment.

Golden Thread of information / Occurrence reporting

The Bill introduces a principle that there should be a continuous 'golden thread' of information about safety relevant to the building that is created through all the design, construction and occupation phases. The dutyholders must compile relevant safety information during design and construction. This will include the Safety Case Report, among other information, and it will be held in digital form and be passed to the Accountable Person who must keep it up-to-date. The Accountable Person must then pass the golden thread on to any subsequent Accountable Person.

Mandatory Occurrence reporting

The Accountable Person will have to create a framework for mandatory reporting of dangerous occurrences during occupation of the building. Dangerous occurrences might include the discovery of structural safety or fire safety-related defects. The BSM would pass on relevant information to the BSR. The intention is for a similar system to apply to dutyholders during the design and construction phase.

Implications for Residents

A key theme of the reforms is to create a partnership between the Accountable Person, their Building Safety Manager, and residents of the building, particularly in respect of providing relevant information. Among new obligations is a requirement for the Accountable Person to maintain a Residents' Engagement Strategy to identify how safety will be managed in practice and how any complaints can be addressed.

In addition, residents will have clearer duties to keep relevant parts of their flats in repair and not to damage building safety items.

The Landlord and Tenant Act 1985 is being amended to imply a term into long leases (over 21 years) in favour of each tenant, requiring landlords to carry out necessary safety works; and in return for landlords to be able to recover the costs of such work (suitably apportioned) from tenants subject to certain controls. This will apply to existing leases and it is not yet clear whether any transitional period would apply for such leases. This could have significant monetary implications for tenants who find themselves hit by sizeable bills from their landlords for new safety works.

Enforcement

The BSR will have a range of enforcement powers to ensure non-compliance with building standards or other requirements is corrected, including compliance and stop notices and powers of prosecution, since failure to comply with many duties under the amended regime will result in a criminal offence being committed (with the potential for fines and terms of imprisonment). The BSR will also have default powers to replace the Accountable Person and BSM in case of serious failures.

6. REGULATORY REFORM FIRE SAFETY ORDER 2005

6.1 Introduction

Hand-in-hand with the changes mentioned above, the Government is consulting on changes to the Fire Safety Order (FSO).

The FSO is a wide and flexible piece of legislation which provides the regulatory framework for a broad range of building types, from workplaces to non-domestic parts of blocks of flats, through obligations on 'Responsible Person' (RPs) and others in control of a building, which is generally the person who has control of premises (usually the owner or landlord) and the employer of any workplace in the premises where the employer has a level of control over the premises (e.g. of a floor leased by a business).

In this context, comprehensive, clear and accessible guidance on the FSO has a significant and necessary role to ensure awareness compliance and effective enforcement for all those statutory responsibilities under the FSO.

However, there are layers of complexity that confirm the crucial need for clear rules and guidance on the relevant duties, and for co-ordination and cooperation between the parties to ensure overall building safety. For example, there may be different Responsible Persons within one building, and any particular Responsible Person may or may not be an Accountable Person under the draft Building Safety Bill.

Clearly there is the potential for overlapping responsibilities of Accountable Persons under the draft Bill and Responsible Persons under the FSO, and this will be particularly evident in a mixed use building containing residential flats and other uses such as offices or hotels. Add into the mix the Housing Health and Safety Rating System under the Housing Act 2004, which looks at broader safety issues, and the potential complexity of the combined framework is clear.

The proposals within the consultation are intended to support the new regime to ensure that the building as a whole is effectively managed. The proposals include:

6.2 Proposals for all Buildings

The consultation makes a number of proposals with this aim. Key proposals affecting the FSO regime in relation to all buildings include:

- Ensuring that Accountable Persons and Responsible Persons will be required to co-operate and share information relevant to fire safety (this is being taken forward in the Building Safety Bill);
- Competency requirements for the person carrying out the Responsible Person's risk assessments;
- Requiring Responsible Persons to identify themselves to other Responsible Persons in the same building, and to Accountable Persons and Building Safety Managers; and

- Exploring use of Approved Codes of Practice similar to those used in health & safety legislation – these are useful for setting a benchmark for satisfying legal obligations.

6.3 Proposals for Blocks of Flats

Additional changes apply to blocks of flats (including mixed use buildings containing flats). Among other new precautions, key proposals include requiring Responsible Persons to:

- Provide risk assessment and other information to residents;
- For HRRBs (to be defined using the same height threshold as the draft Building Safety Bill), provide details of building design to the local Fire and Rescue Service (LFRS), digital versions of floor plans, risk and risk mitigation information relating to external walls;
- Install a Premises Information Box HRRBs containing relevant plans, and risk assessment, evacuation plans and contact information;
- Carry out more regular checks on all lifts, dry risers, smoke control systems in HRRBs, and on fire doors in all buildings over 11m in height; and
- Draw up evacuation plans for HRRBs and send them to the LFRS (this might possibly be extended to smaller buildings) – this has not been a specific requirement previously. Responses to the consultation must be made by 12 October 2020. Separately from the consultation, a Fire Safety Bill is going through Parliament and is aimed at clarifying that the FSO applies to the structure, external walls and individual flat entrance doors in blocks of flats.

7. CONSULTATION

On the 20 July 2020, Lord Greenhalgh, Minister of State for Building Safety, Fire and Communities, announced the launch of the Fire Safety Consultation, which builds on the Fire Safety Bill currently progressing through Parliament and is another important and necessary step towards delivering the Grenfell Tower Inquiry Phase 1 report recommendations. The Fire Safety Consultation includes proposals to: strengthen the Fire Safety Order and improve compliance; implement the Inquiry's recommendations that require a change in law; and improve arrangements for consultation between building control bodies and fire and rescue authorities in relation to building work and arrangements for the handover of fire safety information. This is alongside an existing commitment to overhaul supporting guidance for the Order.

The Fire Safety Consultation was open for a period of 12 weeks closing on 12 October 2020. As the main regulatory and enforcing authorities under the Order, fire and rescue authorities are encouraged to raise awareness of the Fire Safety Consultation amongst colleagues and are invited to respond and set out their views.

To assist and guide a response to the consultation document, the CFA Executive Committee considered and forward views that they wished to raise on the Fire Safety Bill and Fire Safety Order Reforms.

The CFA response to the consultation is available [here](#).

8. CONCLUSION

The Building Safety Bill and Fire Safety Order consultation are but two of a wide range of changes underway to improve the safety of high-rise residential buildings. While these changes should go a long way to clarifying and strengthening fire safety duties, a more ingrained culture of 'safety first' in all respects, and by all actors, in respect of building design, construction and occupation is also needed to help ensure that a tragedy like that at Grenfell Tower can never happen again.

The Government timeline for moving these matters forward is attached at Appendix 1.

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