

Briefings

Building a Safer Future – proposals for the reform of the building safety regulatory system

MHCLG consultation paper





Building a Safer Future – proposals for the reform of the building safety regulatory system

1. Introduction

The consultation is a key element in the Government's response to the Hackitt Review of Building Regulations and Fire Safety, which was prompted by the Grenfell fire. The proposals apply to England only, and the Government will discuss with devolved governments about how element may be relevant to their regimes. The consultation closes on 31 July.

This is an extremely significant consultation, which could usher in huge changes in the way high rise residential buildings are built and maintained. The consultation period is only 8 weeks, which is very short for such an important issue. It could be said to conflict with the Government's Consultation Principles, published in March 2018:

E. Consultations should last for a proportionate amount of time. Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the proposal. Consulting for too long will unnecessarily delay policy development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1.pdf

In view of the size of the document, and the complexity of the proposals, this briefing focuses on how buildings will be managed once construction is complete. Before that though, section 2 provides an overview of how the new regime is intended to make sure new buildings are designed and built with safety in mind; and section 3 explains what needs to be in place before a building can be occupied. Section 4 is about how residents should be informed and involved in safety management.

In Sections 3 and 4, the paragraphs are numbered, to help link them to questions in our survey about this consultation. The survey questions are also included and are numbered separately.

2. Overview of the proposed regime

A new body, the **Building Safety Regulator**, would be created to oversee the design and management of all buildings to which the new regime applied. They'd be responsible for the regulatory regime, including a register of affected buildings; setting standards; advising Government on whether new buildings or new elements should be included; and overseeing work to increase the skills and knowledge of professionals and trades across the built environment.



The proposed regime would apply to **buildings over 18m high, or around 6 stories**. This is an increase in scope, compared to the Hackitt recommendations. The new regime is intended to be expandable over time, to bring more buildings into scope. This could include, for example, buildings where vulnerable people sleep; or buildings that are complex, but not high rise.

At all stages of the building lifecycle, there would be **dutyholders** involved in the design, build (or refurbishment) and management of the buildings.

During the design and build stage, there would be 5 dutyholders, which would align with the existing roles under the Construction (Design and Management) Regulations 2015. They would have to show that they are complying with building regulations, promote building safety in the way building work is monitored and managed, and demonstrate that they themselves are competent and employ competent people. They would have to produce a **safety case** to show how building safety risks are being reduced as far as reasonably practicable. This would be checked at a series of **gateways**, and would have to be cleared before the development could go ahead:

- **Gateway 1** would only apply to buildings of 30m or more (around 10 stories). It would require the applicant to submit a 'fire statement' with their planning application, which would be checked by the fire and rescue authority before planning permission could be granted.
- **Gateway 2** would need to be cleared before construction could start. It would require the dutyholder to produce full plans and supporting documents on how they would comply with building regulations.
- **Gateway 3** would need to be cleared before the building was occupied. Dutyholders would need to hand over all building safety information about the final 'as built' building, and the client would need to get a provisional registration of the building from the **Building Safety Regulator**. The Regulator would need to be satisfied that risks had been addressed, and that arrangements were in place for the building to be occupied and managed safely.

Once the building was occupied the dutyholder would be referred to as the **Accountable Person**, and they would appoint a **Building Safety Manager** (see part 3 below for specific plans for occupied buildings).

Throughout the life of the building certain elements would remain in place, to support the different duties and responsibilities in the new regime:

- The **safety case approach** should make it clear who is responsible for managing and mitigating fire and structural risks at all stages in the building's lifecycle, as well as what is being done to make the building safe.
- During the design and construction phase, the Building Safety Regulator will check on the safety case through each of the gateways. Once it's ready for occupation, the Building Safety Regulator will decide whether to issue a **building**



safety certificate. The certificate will include conditions to make sure that building safety is actively managed while the building is in use.

- A **golden thread of information** would be created to make sure that the safety features that were part of the original design weren't damaged by later changes, and ideally that they were improved. This would include a specified list of key information that would have to be held in a particular format, so that the Building Safety Regulator could easily analyse the data. The golden thread for every building would be held digitally.
- All the dutyholders, including the accountable person would need to support **mandatory occurrence reporting**, which would involve systems making it easy for workers to report issues around fire and structural safety. Workers would have **whistleblowing protections**.
- There is already a system for **Confidential Reporting on Structural Safety** (CROSS). The consultation paper is proposing to expand this to include fire engineering safety. This would require all dutyholders to make sure people they appoint have the necessary skills, knowledge and experience to fulfil their responsibilities in building safety. Including the dutyholder themselves. The consultation paper is asking for views on how these competence requirements could be overseen.
- They are also considering a **statutory objective** for all those involved, to promote building safety, and the safety of people in and about buildings.

3. **Buildings that are ready for occupation**

- 3.1 Before being occupied, every building would need to pass Gateway 3 by getting a Building Safety Certificate approved by the Building Safety Regulator. This would require an Accountable Person (see below) to produce a **Safety Case** showing details of the building, how its safety was being managed, and how residents and others could raise concerns or get involved in safety issues. Some of this information would be part of the golden thread (see above)

Link to Q6. Do you agree that a safety case should be subject to scrutiny by the building safety regulator before a building safety certificate is issued? Please say why.

- 3.2 Once a Certificate was in place, and the building was registered, it would need to be kept up to date. As a rule, this would involve a review every 5 years. However, it might also need to be reviewed if concerns had been raised or if there had been refurbishment work. Or the Accountable Person might want to get the regulator's views about changes to how the building was managed or maintained.



Link to Q7. Do you agree that this is a reasonable approach for assessing the risks on an ongoing basis? If not, please say why not or suggest a better approach.

3.3 Every building to which the new regime applied would need to have an **Accountable Person**, responsible for keeping the building safe. This person would have to make sure the building was registered with the Building Safety Regulator, and that a competent Building Safety Manager was appointed. The Accountable Person would normally be the building owner, and if the owner was a company or corporate body (like a local authority) there would need to be a named individual at Board level. Failing to register a building and its Safety Manager would be a criminal offence for which the Accountable Person would be liable. Only the Building Safety Regulator could transfer the Building Safety Certificate to a different Accountable Person, even if the building was sold.

3.4 However, building safety is managed, and whatever other organisations were involved, the Accountable Person would remain responsible.

Link to Q 8. Do you agree with the proposed approach in identifying the accountable person? Please support your view.

Link to Q9. Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an accountable person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.

Link to Q10. Do you agree that the accountable person requirement should be introduced for existing residential buildings as well as for new residential buildings? Please support your view.

3.5 The **Building Safety Manager** would make sure the building was safely managed and maintained day to day, which would include engaging with residents, overseeing works, and anyone involved in providing services in the building. Their responsibilities for the building would be set out in the Safety Case; and registered with the Building Safety Regulator. They would only be registered if they had the right skills and experience. If the Accountable Person failed to register someone, then the Building Safety Regulator would appoint someone and recover the costs.

Link to Q11. Do you agree with the proposed duties and functions of the building safety manager? Please say why or why not.



Link to Q12. Do you agree with the suitability requirements of the building safety manager? Please say why or why not.

Link to Q13. Is the proposed relationship between the accountable person and the building safety manager sufficiently clear? Please say why or why not.

Link to Q14. Do you agree with the circumstances outlined in which the building safety regulator must appoint a building safety manager for a building? Please say why or why not.

Link to Q15. Do you think there are any other circumstances in which the building safety regulator must appoint a building safety manager for a building? Please provide examples.

Link to Q16. Under those circumstances, how long do you think a building safety manager should be appointed for?

Link to Q17. Under what circumstances should the appointment be ended?

Link to Q18. Under those circumstances, how do you think the costs of the building safety manager should be met? Please say why.

3.6 Existing buildings would also need to identify an Accountable Person who would need to appoint a Building Safety Manager; produce a Safety Case; and register their building with the Building Safety Regulator. Failing to do this would be a criminal offence, but there would be a transition period. Getting the information to create a golden thread could be quite challenging; and preparing the safety case might reveal some issues that need addressing. This could mean extra costs for landlords and leaseholders, which need to be considered as part of the wider work on leasehold and service charges.

Q19. Do you agree that the accountable person requirement should be introduced for existing residential buildings as well as for new residential buildings? Please say why or why not.

3.7 Significant refurbishment of an existing building would also have to be regulated. Where a planning application was required, the proposal would need to pass Gateway 1. In cases where a refurbishment was happening under Permitted Development, the proposal would need to start at Gateway 2.

Q20. Do you agree with the proposal for refurbished buildings? Please say why or why not.



4. Involving residents in building safety

4.1 Chapter 4 of the consultation is all about 'how residents will be empowered by the new building safety regime'. It covers how the Accountable Person through the Building Safety Manager would:

- make sure residents get the information they need, and
- be required to put and open and transparent **Resident Engagement Strategy** in place, as part of the requirements for getting a Building Safety Certificate.

It also covers some clear expectations about residents' responsibilities regarding safety, and proposals for a quick escalation route if residents have concerns about building safety.

4.2 *Information provision*

Accountable Persons (see above) will be required to provide information for building residents explaining:

- the measures in place to manage and reduce fire and building safety risks;
- how to reduce the risk of fire in individual dwellings (e.g. By not storing flammable materials);
- the process for reporting a fire risk and/or other safety concerns;
- the procedures to follow in case of fire, including evacuation;
- Different roles and responsibilities of the Accountable Person, Building Safety Manager, and residents
- Key information from the Resident Engagement Strategy (e.g. Contact details of the accountable person and building safety manager.)

Q21. Do you agree that the list of information above should be proactively provided to residents? If not, should different information be provided, or if you have a view on the best format, please provide examples.

- This information will need to be on display in every building registered with the Building Safety Regulator.
- The Accountable Person will have to make provision for vulnerable people, or those who are disabled or don't speak English.
- There won't be a standard format, but there will be guidance.

4.3 *Culture of openness*

The Accountable Person/Building Safety Manager will also need to provide more detailed information on request. This might include

- Full, current and historical fire risk assessments;
- Planned maintenance and repairs schedules;
- Outcome of building safety inspection checks;
- How assets in the building are managed, e.g. frequency of lift maintenance;
- Details of preventive measures, e.g. smoke alarms;
- Fire protection measures in place, e.g. sprinklers, fire extinguishers;



- Information on the maintenance of fire safety systems;
- The fire strategy for the building;
- Structural assessments; and
- Planned and historical changes to the building.

- 4.4 They would have to have a process in place, covering how information would be provided, including timescales. The process would need to allow vulnerable people to nominate an advocate, care giver or representative to request information on their behalf.
- 4.5 The expectation is that all information would be made available, particularly any information that was part of the Golden Thread (see above). But there would be some exemptions, such as where information could put the safety of buildings or residents at risk; breach resident privacy; or breach intellectual property rights.
- 4.6 Residents would have the right to appeal to the Building Safety Regulator if they don't agree with how the exemptions have been used.

Q22 Do you agree with the approach proposed for the culture of openness alongside exemptions to the openness of building information to residents? If not, do you think different information should be provided? Please provide examples.

Q23. Should a nominated person who is a non-resident be able to request information on behalf of a vulnerable person who lives there? If you answered Yes, who should that nominated person be?

a) Relative,

b) Carer,

c) Person with Lasting Power of Attorney,

d) Court-appointed Deputy,

e) Other (please specify).

4.7 *Requirements for resident engagement strategy*

The Accountable Person through the Building Safety Manager would have to produce a Resident Engagement Strategy, and work with residents in partnership to make sure they're involved in decisions about their building's safety.

- 4.8 The Resident Engagement Strategy would have two parts:
1. A management summary, saying how involvement and participation will be delivered, the approach to communication and to measuring success



2. An engagement plan showing how it will work in practice in their building, how to get involved, what to expect, and how to raise concerns
- 4.9 Without a resident engagement strategy, no Building Safety Certificate would be issued, and the building wouldn't be registered with the Regulator. It would be a criminal offense for the Accountable Person not to register the building.
 - 4.10 The Building Safety Regulator will review, approve and sign off the engagement strategy as part of issuing the certificate for new buildings, or approving the safety case for existing buildings.
 - 4.11 A copy of the strategy would be part of the golden thread of information for the building, reviewed as part of all future reviews of the building safety case, or when the Regulator was investigating concerns.
 - 4.12 Once the Building Safety Certificate had been issued, the Building Safety Manager would be responsible for delivering the engagement plan day to day, providing the plan to all residents, and providing updates to the plan when required.
 - 4.13 The Accountable Person will have to make provision for vulnerable people, or those who are disabled or don't speak English.
 - 4.14 There would also be specific requirements for the two parts of the Resident Engagement Strategy.
 - 4.15 **The Management Summary** would have to include:
 - a) The overall aims and objectives of the Strategy, and how those responsible for it will demonstrate commitment to genuine resident engagement and participation.
 - b) The approach to:
 - Communicating with residents, including the various channels in which different information will be shared;
 - Complaints handling, covering the building safety issues which are the responsibility of the building safety manager;
 - Resident participation in decision making and how they will encourage resident involvement;
 - What steps they will take to ensure that they take account of the diverse needs of their residents;
 - How they will measure the success of the strategy, the satisfaction of their residents and demonstrate a commitment to continuous improvement;
 - Where there are instances of intermediary landlords between residents and accountable persons, how the building safety



manager will make sure there is effective cooperation on building safety.

Q24. Do you agree with the proposed set of requirements for the management summary? Please say why.

- 4.16 The Engagement Plan** will have to set out:
- a) The roles and responsibilities, and contact details, of those responsible for the safe management of the building;
 - b) What communication and engagement residents can expect from their building safety manager, how often, and how residents can then get more involved if they want to;
 - c) How the building safety information (see Q 5.1) will be proactively provided to residents;
 - d) How residents can access the extra information that they are entitled to see on request as outlined above;
 - e) Details of the internal complaints process and how issues can be escalated where the accountable officer is unable to resolve the issues as set out below;
 - f) How the building safety manager will report the results of safety case reviews and other safety checks to residents; and
 - g) How the building safety manager will measure the effectiveness of their resident engagement.
- 4.17 The Resident Engagement Strategy could be a stand-alone document, or it could be part of a different document for new and existing residents, such as a tenants' handbook. There will be guidance on the detail.

Q25. Do you agree with the proposed set of requirements for the engagement plan? Please say why.

4.18 Residents' responsibilities

Fire and structural safety can only be managed properly in partnership with residents; both in terms of their responsibilities towards their own homes, and in terms of their opportunities to hold the Accountable Person to account.

- 4.19 There are already various responsibilities in leases and tenancy agreements for freeholders, leaseholders, landlords and tenants. This would include the freeholder's responsibility for the structure, and the residents' obligation (for example) not to use their homes as commercial premises, or to get permission for structural alterations.



- 4.20 Several groups that were consulted before producing these proposals said that residents (who could be leaseholders, social tenants or private tenants), don't always cooperate with landlords and building managers in providing access for safety checks.
- 4.21 The consultation proposes a new requirement to cooperate with the Accountable Person/Building Safety Manager on fire and structural safety. It would probably include providing access for safety inspections (with reasonable notice), allowing necessary work such as fitting sprinklers, and providing details of any work that's been done inside the home.

Q26. Do you think there should be a new requirement on residents of buildings in scope to co-operate with the accountable person (and the building safety manager) to allow them to fulfil their duties in the new regime? Please say why.

Q27. What specific requirements, if any, do you think would be appropriate? Please say why.

Q28. If a new requirement for residents to co-operate with the accountable person and/or building safety manager was introduced, do you think safeguards would be needed to protect residents' rights? If yes, what do you think these safeguards could include?

4.22 *Raising concerns and the quick escalation route*

The Resident Engagement Strategy needs to include details of how residents can raise concerns about safety with their Accountable Person. The **internal process** should include

- How it will handle fire or structural safety concerns with an understanding of the specific risks facing buildings in scope of the new regime;
- How it will handle other types of concerns that the Building Safety Manager is not adhering to the mandatory conditions of the safety certificate for that building, for example by failing to provide a Resident Engagement Strategy;
- How to raise a concern, including what information the complainants need to provide;
- Timescales for initial response, investigations and a final resolution of concerns, recognising the potentially urgent nature of some concerns;
- Details of how this process and decisions within it will be communicated to residents and handled in a transparent way; and
- How to escalate concerns to the building safety regulator where they have not been resolved by the accountable person through their internal process for raising safety concerns.



4.23 Usually, a concerned resident would need to go through the internal process before escalating to the Building Safety Regulator (and/or other authorities, who would cross-refer to the building safety regulator). However, if it's an urgent problem placing people at risk (e.g. A blocked fire escape etc), they could escalate their concerns more quickly. In this case, the Building Safety Regulator may decide to launch an investigation about whether the internal process is fit for purpose.

Q29. Do you agree with the proposed requirements for the accountable person's internal process for raising safety concerns? Please say why.

- 4.24 Providing an **escalation route** for concerns about how the Accountable Person is working is a key role for the Building Safety Regulator. If residents have concerns that haven't been addressed, it's important that they can escalate them quickly.
- 4.25 If the concerns aren't resolved, the Building Safety Regulator will review the building's Safety Certificate. Residents will have access to a transparent appeals process for the Building Safety Regulator's decisions.
- 4.26 Residents could also report a situation where the Accountable Person appears not to be complying with the conditions of a Building Safety Certificate. Where there are systemic issues, the Regulator will review the Building Safety Certificate.
- 4.27 If a Building Safety Certificate is cancelled, the regulator could step in and take on the role of Accountable Person by appointing a Building Safety Manager until a new certificate could be granted.
- 4.28 Even if residents raise concerns in the 'wrong' place, their concerns will find their way to the building safety regulator. A **duty to cooperate** will be set up for existing redress schemes, regulators and local authorities, to make sure this happens. There's quite a bit of change going on in relation to consumer redress in housing, so the duty to cooperate will be extended to any new bodies that might be set up as part of this.

Q30. Do you agree to our proposal for an escalation route for fire and structural safety concerns that accountable persons have not resolved via their internal process? If not, how should unresolved concerns be escalated and actioned quickly and effectively?

Q31. Do you agree that there should be a duty to cooperate as set out above, to support the system of escalation and redress? If yes, please provide your views on how it might work. If no, please let us know what steps would work to make sure that different parts of the system work well together.