

'BUILDING A SAFER FUTURE' – GOVERNMENT'S RESPONSE TO CONSULTATION AND BIGGEST CHANGE IN BUILDING SAFETY FOR A GENERATION

WHAT ARE THE PROPOSALS?

On 6 June 2019 the Government published the 'Building a Safer Future' consultation, which detailed proposals to achieve long-term reform of the building safety system. The consultation was extensively promoted with residents of high-rise residential buildings and the fire safety and built environment industry. It closed on 31 July 2019 and received 871 response in total submitted by a range of stakeholders including residents' groups and representatives from the fire safety and built environment sector.

Following closure of the consultation, on 2 April 2020 the Government published its response setting out plans for bringing what is described as "the biggest change in building safety for a generation to ensure residents are safe in their homes". New measures are designed to incentivise compliance and to better enable the use of enforcement powers and sanctions. These proposals are described in further detail below:

NEW NATIONAL BUILDING SAFETY REGULATOR TO BE ESTABLISHED TO PROMOTE BUILDING SAFETY AND THE SAFETY OF PERSONS IN AND AROUND THE BUILDING

One of the main changes proposed in the Government's response document is the introduction of a new Building Safety Regulator, the main role of which would be:

- to implement and enforce a more stringent regulatory regime for multi-occupied residential buildings of 18 metres or more in height or more than six storeys;
- to provide stronger oversight of safety of all buildings;
- to promote competence across industry and within building control; and
- to engage and communicate with residents through a mandated Resident Engagement Strategy.

In addition to the above, the Regulator will also be required to carry out the following functions, which, according to the Government response document, can only be sensibly delivered at national level:

- to establish a national register of buildings in scope and other national systems that will be required;
- to ensure that any residents' complaints relating to safety issues for buildings in scope, which have been escalated to the Regulator, are duly investigated and dealt with, including by working with other regulators and redress schemes;
- to produce advice to help duty-holders in managing the safety risks of buildings in scope to discharge that responsibility;
- to advise on current and emerging safety risks in buildings in scope; and
- to host centres of excellence to strengthen enforcement, including specialist expertise to assist with prosecuting complex cases, and to develop best practice on resident engagement.

The new Building Safety Regulator is to be responsible for all major regulatory decisions made at key points during the design, construction, occupation and refurbishment stage of the buildings in scope. Such decisions will include whether to allow a building to be constructed and whether appropriate actions to mitigate and manage fire and structural risks have been taken so that the building can be safely occupied.

It will also have a duty to keep the scope of the new regime under constant review and to advise the Government if the evidence suggests that it should be extended. Any such changes will be laid in Parliament and will allow for a suitable transition period during implementation.

The Government's response confirms that work has already begun to establish the Building Safety Regulator and that Dame Judith Hackitt will be chairing a new Board to oversee the transition to the new regime.

MORE STRINGENT REGULATORY REGIME TO APPLY TO ALL MULTI-OCCUPIED RESIDENTIAL BUILDINGS OF 18 METRES OR MORE IN HEIGHT AND/OR MORE THAN SIX STOREYS (WHICHEVER IS REACHED FIRST)

The next proposal is an introduction of a more stringent regulatory regime, which will apply to all multi-occupied residential buildings of over 18 metres (inclusive) or more than 6 storeys (whichever is reached earlier). The new regime is designed to place greater responsibility on those designing and constructing buildings to explain how any safety risks are managed. It will apply throughout the lifecycle of new builds and at the occupation stage to existing buildings in scope, following a suitable transition period.

The new regime is to be delivered by introducing a new system of duty-holders, who will have clear responsibilities at each stage of the building lifecycle, including during design and construction, during occupation, across the lifecycle of the building and during any refurbishment.

Together the responsibilities of the duty-holders are described as to "form a robust and challenging set of responsibilities designed to keep residents safe by providing accountability for compliance with the new regime on specific individuals or legal entities".

NEW NATIONAL CONSTRUCTION PRODUCTS REGULATORY ROLE TO BE ESTABLISHED TO STRENGTHEN THE OVERSIGHT AND ENFORCEMENT OF THE EXISTING CONSTRUCTION PRODUCTS REGULATORY REGIME

The response also covers the Government's proposal to strengthen the oversight and enforcement of the existing construction products regulatory regime. This is proposed to be achieved by introducing a new national construction products regulatory role, which is to be responsible for:

- market surveillance and oversight of local enforcement action;
- enforcement action with manufacturers, where issues are judged to be national; and
- providing advice and support to the industry to improve compliance as well as providing technical advice to the Government.

In addition, the Government is also proposing to implement a wider programme of reforms, including the establishment of a new construction Products Standards Committee, which is to be comprised of technical experts and academics. The Committee will be required to advise the Secretary of State for Housing on whether voluntary industry standards for construction products should also become UK regulatory standards.

HOW DOES IT ALL "FIT TOGETHER"?

The Government's response indicates that it intends to address concerns about the issue of interaction between the existing enforcement regime under the Housing Act 2004 and the Fire Safety Order in multi-occupied residential buildings. This will be done by making sure that there is clear guidance about the applications of each regime and that there are effective local agreements in place between the regulators on how the regimes will be enforced and how intelligence is shared to ensure that residents feel, and are, safe in their homes.

It further provides that the new regime is designed to supplement, rather than replace, the existing requirements that are currently in place for multi-occupied residential buildings and both existing regimes will continue to play a role in managing the overall safety alongside the new regime.

WIDER MEASURES ON BUILDING SAFETY

At the end, the response also covers a number of legislative and non-legislative measures designed to be delivered to ensure a "fundamental reform of the wider building safety system". These are to include:

- Fire Safety Bill, which will affirm that Fire and Rescue Authorities have the relevant enforcement powers to hold building owners and managers to account and will provide a firm foundation for the implementation of the relevant recommendation of the Grenfell Tower Public Inquiry Phase 1 Report requiring law changes;

- testing of non-ACM cladding systems designed to improve understanding of the burning behaviour of non-ACM materials;
- updates to Approved Document B, which will include increased fire safety measures in high rise flats. The response notes that the Government has also published a plan for the full technical review of Approved Document B and is now beginning to commission the required research for this review; and
- wider changes to the Building Act, designed to make improvements to other parts of the legislation where this will further the objective of improving building safety; make legislation clearer and more understandable; and so, strengthen compliance and help enforcement.

WHAT NOW? KEY CONSIDERATIONS FOR DUTY-HOLDERS INVOLVED IN THE CONSTRUCTION, OWNERSHIP OR MANAGEMENT OF BUILDINGS

Duty-holders, anticipating the effects that forthcoming regulatory changes will have, should review their current approach to fire safety carefully.

Lifetime building risks should be considered at the design stage of new construction projects in order to minimise the risk that future regulatory scrutiny will lead to significant rectification costs.

Fire safety regulators will be well aware of the changes and, in light of the current climate, are adopting a stance that heavily scrutinises decisions made under the Regulatory Reform (Fire Safety) Order 2005 which already requires that all reasonable precautions be adopted to minimise fire safety risks, and which should therefore be informed by the state of industry knowledge.

Full response document can be found here:

[A reformed building safety regulatory system – Government response to the 'Building a Safer Future' consultation](#)

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