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9 September 2020

DRAFT BUILDING SAFETY BILL: PRE-LEGISLATIVE SCRUTINY

Thank you for your time on Monday to discuss scrutiny of the Draft Building Safety Bill. As mentioned on the call, ahead of the informal briefing session my officials are providing to the Select Committee on 10 September I have attached some factsheets that provide more detail on areas of the Bill where the committee has chosen to focus. I hope these are helpful to the Committee as you continue your evidence gathering.

They cover:

1. the Building Safety Regulator;
2. scope of the regime;
3. ensuring residents are listened to when they have concerns;
4. enforcement and sanctions;
5. leaseholder costs (Building Safety Charge); and
6. construction product testing.

Finally, I understand that the Clerk has confirmed to my officials that the committee intends to publish its report before the end of November. I would appreciate it if you could confirm this timeline.

LORD GREENHALGH

Draft Building Safety Bill – Factsheet 1

The Building Safety Regulator

“We will begin immediately to establish the new building safety regulator. This new regulator will be established within the Health and Safety Executive, which is an experienced regulator and is committed to introducing the new regulatory regime at pace.”

Rt Hon Robert Jenrick MP
Secretary of State for Housing, Communities and Local Government
Oral statement to the House of Commons, 20 January 2020

What we are going to do

Establish a Building Safety Regulator to oversee a strengthened regulatory system that will improve the safety and standard of buildings.

Background

- The Independent Review recommended improvements to the regulation of buildings.
- The Government's July 2019 consultation proposed to implement these changes (and in some areas, go further) through a new Building Safety Regulator.
- In January 2020, the Government announced that the Building Safety Regulator would be part of Health and Safety Executive (HSE), in line with independent advice from Dame Judith Hackitt.
- Establishing the Building Safety Regulator within the HSE will enable it to mobilise more quickly than setting up a new organisation; to use HSE's reputation with industry; and to build on HSE's experience, including in collaborating with other regulators.

What are we going to do?

- The draft Bill would establish the Building Safety Regulator with three core functions:
 - o Implementing the more stringent regulatory regime for higher-risk buildings in scope.
 - o Overseeing the safety and performance of all buildings.
 - o Promoting the competence and organisational capability of professionals, tradespeople and building control professionals working on all buildings.
- The Building Safety Regulator will be a new division embedded in HSE, headed by the first national Chief Inspector of Buildings.
- There are provisions in the Bill for the Building Safety Regulator to be supported by expert committees, including a Residents' Panel.
- The Government has made £16.4m available this year to enable HSE to establish the Building Safety Regulator in 'shadow' form; ensuring it will be ready to operate as soon as possible following the commencement of the measures in the draft Bill.

- The shadow regulator is playing an increasingly prominent role in the Government's Building Safety Programme, including work led by the National Fire Chiefs Council to assess the fire risk of every high-rise residential building by end 2021; the development of mechanisms to prioritise buildings according to their fire and structural risks; and working with industry early adopters to trial features of the new regime. HSE has also supported work to draft the Building Safety Bill.
- The draft Bill contains powers to enable the Building Safety Regulator to recover costs from regulated parties, reflecting the Independent Review's recommendation.
- The draft Bill also includes provisions to enable the Building Safety Regulator to work with Local Authorities and Fire & Rescue Services and draw on their expertise in delivering the more stringent regulatory regime for higher-risk buildings.

Benefits

- Introducing a national Building Safety Regulator with stronger enforcement powers and input from a resident panel will ensure more effective oversight of the safety of and standard of buildings across England.
- It will make it clear that the new regulator is responsible for all regulatory decisions affecting the higher-risk buildings that will be in scope of the more stringent regulatory regime.

Questions and Answers

When will the regulator be up and running?

- HSE is taking a phased approach to establishing the Building Safety Regulator, which has begun to operate in shadow form. HSE has begun to develop the infrastructure required to deliver the new regime, appoint the top team and to deliver regulatory functions where it has the powers to do so, including running pilots of the new regime with industry early adopters and developing guidance for industry and other regulators on how the new regime will operate. Over coming months, the shadow regulator will engage stakeholders to ensure they know how the new regime will operate, what they need to do to prepare for it and when the changes come into effect.

When will the first Chief Inspector of Buildings be in post? Who will it be?

- The role will be integral to the regulator's successful operation and HSE will launch the recruitment campaign for a high-calibre individual later this year. HSE has already made senior executive appointments to the regulator, including the Director of a re-structured Building Safety and Construction Directorate, and a Programme Director dedicated to establishing the new organisation within HSE.

Draft Building Safety Bill – Factsheet 2

Scope of the scheme

“These reforms will improve safety and performance standards across all buildings. However, certain buildings warrant even closer oversight because the potential for significant consequences should a fire spread or the structure fail. It is right that we have a more stringent regime where the risk is deemed greatest, to protect the greatest number of people. Initially the scope of the more stringent regime will apply to multi-occupied residential buildings of 18 metres or more in height or more than six storeys, whichever is reached first. We have designed the new regime so its scope can be changed if the evidence base or operational experience suggest it should.”

Rt Hon Robert Jenrick MP
Secretary of State for Housing, Communities and Local Government
Written Ministerial Statement, 20 July 2020

What we are doing

We are introducing a more stringent building safety regime for buildings where the risk to life from fire is considered to be the greatest; with the ability to extend the scope of the scheme to include more buildings, if needed.

Background

- The Independent Review recommended that the “new regulatory framework should apply to residential properties which are 10 or more storeys high in the first instance.”
- Stakeholder feedback was that this did not go far enough; the Government agreed and proposed that scope should start with multi-occupied residential buildings over 18 metres or more than six storeys (whichever is reached first).
- The proposed regime focuses on risk, based on fire statistics which suggest the rates of fires are considerably higher in apartment blocks over 18 metres (43 fires per 1,000 buildings between 18 metres and 30 metres over seven years) (366 fires per 1,000 buildings 30 metres and above over seven years) in comparison to apartment blocks of any height (9 fires per 1,000 buildings over seven years).
- The taller the building, evacuation plans become more complex and intervention from fire and rescue services become more challenging.
- We have engaged key stakeholders to establish how ‘residential’ should be defined based on (generally speaking) where someone lives and sleeps permanently.
- The Secretary of State has the power to extend/amend this term, based on risk and independent advice from the Building Safety Regulator.
- In the *Building a Safer Future* consultation, it also said that “it will also be important to ensure that government can respond quickly in the future, where necessary, to broaden this definition in light of either critical new information emerging (e.g. through incident reporting or whistle-blowing) or experience of operating the new regime.”

- The new regime is specifically focused on height as an initial parameter for determining buildings in scope, which is an industry-accepted way of identifying the buildings where the consequences of a fire may be most risk. We have started the regime with blocks of flats as the Fire Safety Order has limitations in residential settings. This contrasts with the full application of the Order in other buildings like hospitals and care homes.
- We are also carrying out research into additional objective risk factors – such as occupancy, use and building materials – to understand whether there are other buildings might face the same major incident risk and should also be subject to greater oversight.
- If needed, the bill can be amended to include these buildings within scope, but it may be preferable to address them through powers under the Fire Safety Order.

How the bill addresses this issue

- It establishes new requirements to ensure the safety of all buildings; with additional interventions and check points for a subset of “higher risk buildings”.
- Scope is defined in terms of higher risk buildings in clause 19 of the Bill, and we will further define this in secondary legislation.
- We intend to start the scope of the bill focusing on residential buildings of 18 metres or more in height or more than six storeys. For clarity, we will publish the day one scope Statutory Instrument in draft alongside the Bill when it is introduced.
- The methodology for measuring height or counting storeys is set out in Approved Document B and is already known across the sector/
- We have defined a test with two parameters (height in metres and storeys) to address concerns of gaming by intentionally building a residential building over six storeys just under the height threshold.

Benefits

- We are starting with high rise residential buildings to address stakeholder concerns and provide greater protection where there are gaps in the legislation (the Fire Safety Order only applies to common parts).
- The potential impacts associated with a fire are much greater in multi-occupancy residential buildings than in, for example, single residential dwellings; we are starting the regime to address the greater risk first.
- Industry and other key stakeholders are used to working with height/storeys and the definitions set out in the Approved Documents.
- The expansion powers in the Bill create a more dynamic regime which can flex with the evidence base and future-proof the regime.

Draft Building Safety Bill – Factsheet 3

Engaging with residents and putting them at the heart of the new building safety system

“[The Bill] will also ensure that the residents of high-rise buildings have a stronger voice, alongside giving them better access to safety information about their building, clarifying their rights and providing recourse to raise safety concerns directly to the regulator.”

Rt Hon Robert Jenrick MP
Secretary of State for Housing, Communities and Local Government
Written Ministerial Statement, 20 July 2020

What we are doing

Creating a new, transparent system with clear accountabilities and requirements to keep residents informed; to engage with residents; and to provide a clear complaints process so residents can escalate any concerns about their building's safety. This will ensure that residents are safe and feel safe in their homes.

Background

- Following the Grenfell Fire, it emerged that residents had raised concerns about the safety of their building – but that their concerns had not been addressed.
- The Independent Review was clear that residents needed to be at the heart of a new regulatory system. They should be able to have access to information about the safety of their building; to understand their role and responsibilities in keeping the building safe; and there should be a clear complaints process for them to be able to raise concerns.
- The Independent Review also said that residents should be more involved in decisions about building safety.
- Secondary legislation will detail provisions for how the complaints system will operate in practice, including timescales; the process for making complaints; and escalating complaints to the regulator.

How the bill addresses this issue

- The Bill includes a requirement for the accountable person to appoint a building safety manager with relevant skills, knowledge and expertise to be responsible for the day-to-day management of the building and act as a point of contact for residents. The building safety manager's name and contact information must be notified to residents and should be displayed in the building.
- The accountable person must ensure that residents are provided with information about the safety of their building.
- They must also ensure that there is a resident engagement strategy and that residents receive information on fire safety in an accessible manner.

- The accountable person for a building must set up a complaints system where residents can raise concerns about building safety issues – and they must respond within specific timescales to ensure issues are acknowledged and dealt with in a timely manner.
- Residents will be able to escalate their concerns to the Building Safety Regulator if they are not satisfied with the way in which their complaint has been dealt with, or if it has not been dealt with by a specified timescale.

How this will make residents and their homes safer

- Residents will be more informed about the protections that are in place to help keep their building safe; including about their own responsibilities for keeping themselves, the building, and their neighbours safe.
- Residents will have more opportunity to engage and will be consulted ahead of major changes to the building's safety.
- There will be a stronger complaints process – internally and with further escalation to the regulator to ensure that residents' concerns are taken seriously, so residents will be empowered to challenge building owners on issues of fire and structural safety.

Draft Building Safety Bill – Factsheet 4

Enforcement and Sanctions

“The Bill will provide a stronger framework to make sure those responsible for managing building safety risks in higher-risk buildings are held to account, with stronger enforcement powers and sanctions where those rules are not followed.”

Rt Hon Robert Jenrick MP
Secretary of State for Housing, Communities and Local Government
Written Ministerial Statement, 20 July 2020

What are we going to do

We intend to give regulators tougher powers to enforce the rules and act against those who seek to flout them, so that they can clamp down on poor practice among those who design, construct and manage buildings.

Background

- Dame Judith Hackitt’s Independent Review found that existing regulatory oversight and enforcement powers are inadequate:
 - o the complexity of a building project does not inform how it is overseen by regulators;
 - o where enforcement is necessary, it is often not pursued; and
 - o where enforcement is pursued, the penalties are weak and do not act as a deterrent.
- The provisions in the Bill will supplement existing enforcement powers that regulators can use in multi-occupied residential buildings, including:
 - o powers at the disposal of local authorities under the Housing Act 2004, as assessed using the Housing Health and Safety Rating System (HHSRS); and
 - o powers at the disposal of Fire and Rescue Services under the Regulatory Reform (Fire Safety) Order 2005.
- The Bill provides powers for the Building Safety Regulator, local authorities, Fire and Rescue Services and relevant partners to share information and cooperate. This will ensure that any enforcement action taken is coordinated, targeted and as effective as possible.
- We have separately introduced the Fire Safety Bill in March 2020, which affirms the role of the Fire and Rescue Services to take enforcement action against owners or managers of multi-occupied residential buildings who have not complied with their duties under the Fire Safety Order with respect to the external walls and flat entrance doors in their building.
- Proposals in other parts of the Building Safety Bill and Programme aim to increase the professionalism of those working in industry, leading to better built and run buildings, reducing the need to take enforcement action.

How we are addressing this in the bill

- The new regime will **place legal duties on those who build and manage buildings**, with tougher enforcement to deter and penalise those who seek to flout the rules.
- The Building Safety Regulator will be able to use the new **compliance notices**, requiring action by a set date, at all stages of their supervision of buildings in scope. They will also be able to use **stop notices** during design and build if compliance notices are not followed or where there are serious issues.
- The Building Safety Regulator will have **powers to enter premises** and to **require the production of documents**.
- Local Authorities will also be able to use compliance and stop notices, where they are the building control authority.
- Breach of any of these notices, or failing to supply information, will be a **criminal offence, punishable by up to two years in prison** – which will **also apply to directors and managers of companies** breaking the law.
- Where there are significant problems with the management of an occupied higher-risk building, the Building Safety Regulator will ultimately be able to put the building in special measures to **replace the Accountable Person with a special measures manager**, who will be able to take control of service charges and other funds, such as ground rent income, and use those funds to make the building safe.

Overall enforcement approach

- Enforcement across the new regime, by the Building Safety Regulator and local authorities, will typically be a three-stage approach. The first stage is informal engagement to encourage good practice, backed up at the second stage with intervention in the form of compliance or stop notices and underpinned at the final stage with prosecution in the criminal courts, potentially resulting in imprisonment for those deliberately flouting the rules.
- The enforcement powers in the Bill are proportionate, enabling strong action to be taken immediately in cases where the regulator judges that there is a sufficiently high safety risk. This could include the regulator requiring that all work on a site cease, or urgent action to make safe an occupied high-rise residential building.
- In cases where a local authority or the Building Safety Regulator does prosecute a corporate body for an offence, using powers set out in either the Building Act or the new legislation, and where that offence has been committed with the consent or agreement of a director or manager of that corporate body, or is attributable to their neglect, they will be able to prosecute that person as well as the corporate body.
- The Building Safety Regulator will have the resources and the skills to take effective enforcement action and support local building control authorities, where required.

Enforcement powers: Design and Build

- The Bill would extend the time period in which contraventions of building regulations can be enforced by regulators from one/two to ten years after completion of the work.
- Local Authorities and the Building Safety Regulator will have the power to issue compliance and stop notices during the design and build phase. These will function as lighter-touch but

formal measures to ensure compliance before resorting to prosecution. Failure to comply with these notices will be a criminal offence, with a maximum penalty of an unlimited fine and/or two years in prison.

Enforcement powers: High-rise residential buildings in Occupation (including “Special Measures”)

- The Building Safety Regulator will oversee the safety of higher-risk buildings from the point that occupation is planned, through the building registration certificate and safety case. These will require the Accountable Person and building safety manager to take a proactive, ongoing approach to managing fire and structural risks.
- The Building Safety Regulator will have the necessary enforcement powers and resources to ensure compliance with the certificate and safety case. These include issuing compliance notices and in particular, the Building Safety Regulator will be able to prosecute immediately where those breaches cause immediate danger to those in or about the building.
- As a last resort, the Building Safety Regulator will trigger a “special measures” provision, to appoint a special measures manager to carry out some or all of the functions of the Accountable Person.
- A special measures manager will be able to take control of service charges and other funds related to the building, such as ground rent and building safety charges, and use those funds to make the building safe.

Benefits

Strong, coordinated enforcement powers and sanctions will support clearer, improved safety throughout the entire design, construction and occupation phase and lead to improved building safety for residents.

Draft Building Safety Bill – Factsheet 5

Leaseholder costs

“The draft Bill proposes a new ‘building safety charge’, which will give leaseholders greater transparency around costs incurred in maintaining a safe building. We want these to be fair and proportionate, which is why I have deliberately included numerous powers in the Bill that will enable us to limit the building safety costs that can be re-charged to leaseholders.

The Government is clear that it is unacceptable for leaseholders to have to worry about the cost of fixing historic safety defects in their buildings that they didn't cause...We must remove barriers to fixing historic defects and identify financing solutions that protect leaseholders from unaffordable costs; but we must also ensure that the bill does not fall on taxpayers. We will update on any further measures required before the final Bill is introduced to Parliament.”

Rt Hon Robert Jenrick MP
Secretary of State for Housing, Communities and Local Government
Written Ministerial Statement, 20 July 2020

What we are doing

We are introducing a mechanism which will ensure that the costs leaseholders pay for building safety measures are transparent and reasonable; with the ability to challenge these costs via a First-tier Tribunal. Separately, we are accelerating engagement with leaseholders and industry as we work towards developing options for financing historic safety remedial works for high rise residential buildings.

Background

- It is common for leaseholders to pay for routine building safety work through service charges.
- The accountable person must also take steps to apply for any available financial support, to mitigate building safety costs - and where they have received financial support, this amount must be deducted from the building safety charge payable by the leaseholder.
- Funds collected from leaseholders must be kept on trust in a separate account.
- If costs for building safety works are not reasonable, the charge payable is limited to the amount that would be.
- The Secretary of State has powers to exclude specific costs from being re-charged to leaseholders, providing further protection against unfair or disproportionate costs. Secondary legislation will be used to designate which costs this will apply to.
- Leaseholders will also be able to challenge costs through the First-tier Tribunal.
- Currently there can be ambiguity around what can and can't be passed on in relation to building safety costs via service charges. Establishing the Building Safety Charge provides clarity and makes it clear what costs are specifically for safety measures. This should lead to less litigation and disputes between freeholders and leaseholders in the long term.
- The government's position is that it is unfair for leaseholders to face unaffordable costs to repair historic building safety issues that they are not responsible for.
- We want to protect leaseholders from unaffordable costs for building safety work that they are currently being asked to pay up-front or over a short period of time.

How the Bill addresses this issue: building safety charge

- A new 'building safety charge' will mandate greater **transparency** around the costs that leaseholders may be expected to pay as part of maintaining a safe building (such as hiring a Building Safety Manager or producing a building safety case).
- Specifically, the landlord must provide leaseholders with information on:
 - o what building safety measures have been carried out and the costs
 - o the total building safety charges due from all leaseholders in the building
 - o the charges payable by and received from the individual leaseholder
 - o any financial contributions towards the costs received or made by the landlord
 - o any remaining balance in the account, which must be used towards charges in the next annual accounting period
- The accountable person must also take steps to apply for any available **financial support**, to mitigate building safety costs - and where they have received financial support, this amount must be deducted from the building safety charge payable by the leaseholder¹.
- Funds collected from leaseholders must be kept on trust in a **separate account**.
- If costs for building safety works are not **reasonable**, the charge payable is limited to the amount that would be.
- The Secretary of State has **powers to exclude specific costs** from being re-charged to leaseholders, providing further protection against unfair or disproportionate costs. Secondary legislation will be used to designate which costs this will apply to.
- Finally, leaseholders will also be able to **challenge** costs through the First-tier Tribunal.

How the Bill addresses this issue: protecting leaseholders from unaffordable historic building safety remedial works

- We are rapidly identifying financing solutions that protect leaseholders from unaffordable costs, but we must also ensure that the bill does not fall on taxpayers
- We will provide further detail when the Bill returns to Parliament.

Questions and answers

Is paying charges within 28 days reasonable?

- The draft Bill includes a reference to leaseholders having to “pay to the landlord, within 28 days of a demand, any building safety charges that are required be paid by the tenant.”² We are keeping this under review, but a leaseholder is not in arrears of the charge if they are in dispute about its veracity or its reasonableness, until the issue of payability is determined by a court of tribunal.

How much will the Building Safety Charge cost per year?

- In our Impact Assessment we estimate that the cost to leaseholders will be between £100-£400 per year with a central estimate of £200. As is good practice and to reflect likely changes to the draft Bill when it returns to Parliament, we will update our estimations in due course.

The impact assessment puts total estimated costs for leaseholders at £78,000 – is this not excessive or unreasonable?

- This is a hypothetical figure of the maximum estimated costs. **Buildings should not require such extensive remediation work.** The figure was created by adding all the average costs of every activity which might be required to bring buildings into compliance

¹See section 17P of the Landlord and Tenant Act 1985, as inserted by clause 89 (1)

² 17A, (3) In the lease there is implied a covenant by the tenant— (a) to pay to the landlord, within 28 days of a demand, any building safety charges that are required be paid by the tenant in accordance with sections 17G to 17X

with existing standards; and dividing this by the average number of leaseholders in a building. The average cost per leaseholder is estimated to be £9,000 – wherever possible, building owners should not pass these on to leaseholders. We are also actively looking at funding solutions to further protect leaseholders from unaffordable costs.

Draft Building Safety Bill – Factsheet 6

Construction product testing

“Products must be properly tested and certified, and labelled and marketed appropriately.”

Building a Safer Future
The Independent Review of Building Regulations and Fire Safety
May 2018

What we are doing

We are bringing more construction products under the regulatory framework to ensure greater safety, testing, and oversight of products used in buildings through a more comprehensive regulatory system.

Background

- The existing regulatory regime for construction products requires manufacturers to test products, declare their performance, and put in place systems to ensure that claimed performance standards are consistently met. This can include factory production control and 3rd party inspection and sample testing.
- However, this currently only covers construction products where there is a harmonised EU standard in place. For example, no harmonised product standard is in place for Aluminium Composite Material (ACM) cladding, so this product currently falls outside of the existing regulatory regime for construction products.

How the bill addresses this issue

- The Bill would create powers that enable more construction products to be brought under the regulatory framework.
- The Government intends to work with the construction product industry, in consultation with the Building Safety Regulator, Fire and Rescue Authorities, local building control, Trading Standards and devolved administrations, to identify safety-critical products that are not covered by the existing regulations.
- We will ask the British Standards Institution to review relevant existing standards or develop appropriate new ones for the identified products. We will then bring these products under the scope of regulation.
- After an agreed implementation period, manufacturers will be required to declare the performance of their products and ensure that the claimed performance is consistently met. Where products do not meet the claimed performance, manufacturers will be required to take action to correct, withdraw or recall them.
- We will also create a national construction products regulatory role, responsible for market surveillance and oversight of local enforcement action, enforcement action with manufacturers, where issues are judged to be national and/or significant; and providing

advice and support to the industry to improve compliance as well as providing technical advice to the Government

Benefits

- This means that more safety critical construction products will be subject to regulation to ensure that they declare their performance and consistently meet the claimed standard. Manufacturers must correct, withdraw or recall products that don't meet this requirement, and a new national regulatory role will help to enforce this and encourage compliance.
- This will improve the reliability of information available to building professionals when selecting a product for use in a building.

Questions and Answers

Does the Bill improve the product testing regime in a way that will command the full confidence of the sector?

- The new regime for construction products will mean that more safety critical products will be required to be tested before they can be placed on the market. The standards to be used will be reviewed and new standards created where an appropriate standard does not already exist.
- Manufacturers of these products will be required to put in place factory production controls to ensure that products consistently comply with the required standard, which may include periodic sample testing by a third party where this is appropriate. Manufacturers will be required to correct, withdraw or recall products where this is not the case.
- A new national regulatory role will help to ensure more effective enforcement of these requirements.
- We are setting up a Construction Products Standards Committee, it will provide advice and recommendations on the conformity assessment process and product test standards. One of the committees functions will be to advise on the assumptions and weaknesses within the current testing regime, including the effectiveness and accuracy of current tests.

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