



Ministry of Housing,
Communities &
Local Government

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Government Select Committee
House of Commons
London
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Lord Greenhalgh

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Dear Clive,

DRAFT BUILDING SAFETY BILL: PRE-LEGISLATIVE SCRUTINY

Let me start by thanking you for the ongoing excellent work of the HCLG committee on the pre-legislative scrutiny of the Building Safety Bill. I have been following the oral evidence sessions with interest and look forward to seeing you myself on 19th October.

When my officials briefed you earlier this month, they agreed to provide further information on the proposed approach to the funding of the new Regulator. I attach a factsheet on this subject.

In addition, some of those giving evidence have raised the matter of the interaction and potential overlap between the new higher risk regime proposed in the Building Safety Bill, and the existing Regulatory Reform (Fire Safety) Order 2005 – known as the Fire Safety Order. I attach a further factsheet which I hope provides a useful overview of the work we are doing to improve the wider fire and building safety regimes, and ensure that they work together effectively.

We know that this is a complex programme of reform and it is important that we get it right, both in the legislative approach and in the future implementation of the detail. My officials, both in the Home Office and Ministry of Housing, Communities and Local Government will continue to work closely with each other, as well as with the HSE as shadow regulator, local authorities and Fire Service representatives.

LORD GREENHALGH

Draft Building Safety Bill – Factsheet 7

Interaction of Fire, Building and Housing Safety Regimes

“Together, the Fire Safety Bill, the draft Building Safety Bill and the fire safety consultation will create fundamental improvements to building safety standards and ensure that residents are safe and feel safe in their homes.”

James Brokenshire
Fire Safety Bill – Third Reading
September 2020

What we are doing

The Government is delivering fundamental reform of building and fire safety, through a range of measures:

- The Building Safety Bill will create the first national Building Safety Regulator and will overhaul the way buildings in scope of the new regime are designed, built, and managed when occupied. The starting scope of the new regime will be multi-occupied residential buildings of 18 metres or more or more than six storeys in height.
- The Fire Safety Bill will amend the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order) to clarify its application to the non-domestic parts of multi-occupied residential buildings and ensure that we can take forward the necessary secondary legislation to implement the recommendations of Phase 1 of the Grenfell Tower Inquiry.
- The Fire Safety Consultation sets out the legislative proposals for implementing those recommendations, further strengthening the Fire Safety Order to improve compliance, and strengthening the regulatory framework for how Building Control bodies consult with Fire and Rescue Authorities. The consultation closes on 12 October 2020.
- Government is also currently reviewing the Housing Health and Safety Rating System (HHSRS). A key objective of this review and overhaul is to ensure that the HHSRS provides an effective way of assessing all hazards in residential properties, including Fire. In its current form, the HHSRS can be complicated to use and stakeholders have reported that it is inefficient, partly due to outdated methodology. HHSRS guidance does not cover the assessment of cladding and predominantly focuses on assessing the risk of hazards within individual dwellings, rather than helping local authorities assess the common parts of the building, including the exterior of the building. As the review progresses, work on the assessment of the Fire hazard will be prioritised.

The provisions of the Fire Safety Order will be retained for all regulated premises, with the addition of the more stringent regime for higher risk buildings under the Building Safety Bill. The Housing Act 2004 will remain the main way standards are enforced in occupied residential properties out of scope of the Building Safety Bill and will continue to play an important role in managing the overall safety of residents alongside the Fire Safety Order.

Our approach is intended to ensure that these regimes work together in all regulated buildings, creating a layered regulatory approach to building and fire safety that will be

consistent and proportionate to risks, and ensuring there is no gap or loophole between regimes. This is a comprehensive and complex programme of reform.

How are we addressing the overlap between regimes?

The draft Building Safety Bill includes a statutory requirement on dutyholders sharing a building subject to overlapping regimes to cooperate and coordinate a whole-system approach to the management of safety for the entire building – this will be key for mixed-use buildings. We will publish guidance to support dutyholders to comply with their respective duties.

The overlap between the work of the Building Safety Regulator and that of local authorities or Fire & Rescue Authorities will also be addressed effectively through:

- Reciprocal duties to cooperate and powers to share information.
- Provision for local authorities and Fire & Rescue Authorities to provide assistance to the new Building Safety Regulator when regulating buildings in scope, supported by national guidance. This close working will support flexible decision-making on the most appropriate intervention on a case-by-case basis.

We will develop a cross-government framework agreement to set out how the different regulators will cooperate – covering the powers of the new Building Safety Regulator, as well as existing powers in the Fire Safety Order and the Housing Act 2004. This will seek to address the detailed circumstances of any regulatory overlap and how the enforcement regimes will be applied both to manage this and ensure that there are no gaps in enforcement.

How are we addressing the relationship between the Accountable Person and Responsible Person?

The Responsible Person will be required to identify themselves as part of the Fire Risk assessment, and likewise the Accountable Person must do the same as part of the building registration process for buildings in scope.

In many cases, the Responsible Person and Accountable Person will be the same person for buildings in scope of the new Regime, or will be required to cooperate. We are aware that for some buildings with complex ownership models, it may not be easily possible to identify a single Accountable Person for the entire building. We are working with stakeholders and experts to clarify accountability in these cases and plan to amend the draft Bill, prior to introduction, to ensure responsibilities are clear and transparent.

The draft Building Safety Bill contains reciprocal duties on Accountable Persons and Responsible Persons in the same building, where they are not the same person, to cooperate and coordinate their duties to deliver a holistic approach to the management of building and fire safety risks in their building. We will also publish guidance to support them to comply with their respective duties.

Draft Building Safety Bill – Factsheet 8

Funding of the Building Safety Regulator

What are we going to do?

- We are going to provide the funding required to set up the Building Safety Regulator and enable it to deliver.
- This includes funding HSE to set up the regulator in shadow and fully-fledged form, as well as ensuring that local authorities and Fire & Rescue Authorities (FRAs) are compensated for assistance that they will be expected to provide to the Building Safety Regulator in relation to the higher-risk buildings in scope of the new, more stringent regulatory regime.
- The draft Building Safety Bill ensures that this funding can be provided through cost-recovery from regulated parties and Government funding.

Background

- Under current arrangements, Approved Inspectors and local authority building control charge developers for providing building control services to a building project.
- Dame Judith Hackitt's Independent Review recommended that the regulator for buildings in scope of the more stringent regulatory model should operate a full cost-recovery model. This reflected that: "The regulatory framework must also incentivise dutyholders to do the right thing....there should be a proportionate approach where those whose work needs the highest level of intervention and oversight should pay the highest cost."
- The Government intends to implement the recommendation of the Independent Review around cost-recovery to the full extent permitted under Managing Public Money principles.
- The Government is working closely with Health and Safety Executive (HSE) to develop the policy around cost recovery. This builds on HSE's strong track record in successfully delivering cost recovery regimes.
- The Secretary of State for Housing, Communities and Local Government committed in the House of Commons on 20 January 2020 to provide HSE with the funding required to set up the Building Safety Regulator.
- The Government is currently undertaking a Comprehensive Spending Review. Detailed budgets for future years will be determined following that process.

How do we intend the Building Safety Regulator to be funded?

The initial 'shadow' regulator phase (before legislation comes into effect)

- The Government has made £16.4m available this year to enable HSE to establish the Building Safety Regulator in 'shadow' form, and to ensure that it will be ready to operate as soon as possible following the commencement of the measures in the draft Bill.

- Budgets for the remainder of the 'shadow' running period (ahead of legislation coming into force) will be determined following the Comprehensive Spending Review.

The fully-fledged regulator (after legislation comes into effect)

- We intend that the fully-fledged regulator will be funded through a combination of substantial cost recovery from regulated parties, and some Government funding (grant-in-aid) where cost-recovery is not practicable.
- The draft Building Safety Bill creates broad powers for the Secretary of State to enable the Building Safety Regulator to charge in respect of its functions, with the detail to be set out in secondary legislation.
- Details of preliminary work undertaken to estimate achievable cost-recovery rates across each Building Safety Regulator function are set out in the Impact Assessment that we published in July. Work to refine those estimates continues. Based on the fees and charges guidance in Managing Public Money we estimate an initial cost-recovery rate of 70% for the Building Safety Regulator's work to implement the new, more stringent regulatory regime for higher-risk buildings in scope, rising to 90% as the regime matures. We currently estimate that the cost-recovery rates for the regulator's other functions will be lower, reflecting that certain regulatory work may be unsuited to cost-recovery, usually because there is no obvious regulated party to charge for the work (for example, development of national technical guidance, and analysis and advice to Ministers).
- Detailed budgets will be determined following the Comprehensive Spending Review.
- Funding provided for the Building Safety Regulator will not be used to cross-subsidise HSE's other functions, and funding provided for HSE's other functions will not be used to cross-subsidise its activities as the Building Safety Regulator. We are working with HSE to put in place appropriate monitoring and governance arrangements to ensure that Building Safety Regulator funding is spent well to improve building safety and standards.

Benefits

- The Government is making funding available (including £16.4m this financial year) to enable the Building Safety Regulator to be set up quickly.
- The cost-recovery system will be designed using HSE's expertise in this area, with a view to recovering costs to support regulatory activity, being proportionate, and incentivising regulated parties to do the right thing.

Questions and Answers

How will local authority and FRA work to assist the Building Safety Regulator be funded?

- The draft Bill provides for broad fee-raising powers enabling the Secretary of State to make regulations for the Building Safety Regulator to charge for the costs of

regulating buildings in scope, including the costs of local authorities, FRAs and any private sector contractors supporting the regulator to deliver on a project.

- The draft Bill makes provision for these local authority and FRA costs to be met through reimbursement by the Building Safety Regulator or grants by the Secretary of State. Grants may be appropriate to build capability.
- It is right that the Building Safety Regulator should charge regulated parties for its activity, where possible. We believe that it would be better for regulated parties to receive a single bill from the Building Safety Regulator - calculated using a clear, published methodology - than to receive separate bills from several regulators after each regulatory decision.