



Title: Sector Risk Profile

Report of: Interim Managing Director

Purpose of Report

1. To provide an overview of the Regulatory requirements regarding the sector risks associated with council landlord services.

Background

2. The Sector Risk profile was published by the Regulator 2018. The sector risk profile covers strategic and operational risks for both housing associations and councils.
3. Those most relevant to Gateshead Council as Landlord are summarised below.

Sector Risk profile

4. Landlords are responsible for ensuring that housing services are governed effectively, and an appropriate risk management framework is in place. This is essential, not only to meet the requirements of the regulatory framework, but also to ensure that the HRA can remain financially viable and continue to meet Council objectives.
5. The Sector Risk Profile sets out a wide range of common risks facing the social housing sector.
6. A copy of the full document can be accessed via the following link: - <https://www.gov.uk/government/publications/sector-risk-profile-2018>
7. A few risks are increasing in importance for council landlords, namely:
 - Health and safety risks: Landlords are ultimately responsible for ensuring the safety of tenants and employees. Significant investments in fire safety measures are taking place in the aftermath of the Grenfell Tower fire, but it is equally important that Councils have the appropriate controls in place to ensure compliance with the full range of health and safety requirements
 - Reputational risk: The social housing sector is under greater scrutiny than ever before. It is therefore vital stakeholders' expectations should be

considered in decision making

8. Council landlords should consider the management and mitigation strategies that underpin both the assumptions and the development of the HRA business plan. HRA priorities and key business planning decisions should be considered alongside the sector risk profile and the risks to the HRA business plan as set out in the HRA risk management framework.
9. Council landlords should have a robust understanding of the range of strategic and financial risks that the HRA faces, partly to ensure continued compliance with the regulatory standards, but more fundamentally to ensure that risks are managed that could prevent the service from achieving its objectives over the long term. This is particularly important in Gateshead given that the current projections are that the HRA will reach its minimum balance in (the medium term) 2025/26.

The sector risk profile highlights the following risks:

A. Health and safety

10. Landlords must demonstrate that they understand their statutory responsibilities (including, but not limited to, gas safety, fire safety, electrical safety, asbestos, Legionella and lift safety, as well as employee safety). If necessary, providers should take professional advice to ensure that they are clear about their responsibilities.
11. Landlords must be clear on the responsibilities, for stock that they own and manage, and they should understand what each property needs in terms of statutory safety checks and risk assessments. This includes confirmation that checks are being undertaken and demonstrating compliance, even if it has commissioned another organisation to carry them out.
12. Contracting out delivery of services does not contract out responsibility to meet the requirements of legislation or standards, and so landlords need robust systems in place to give assurance of compliance across what can be complex subcontracting arrangements.
13. Following the Grenfell Tower fire, there are expected to be significant changes to the health and safety requirements that landlords will need to fulfil. The independent Hackitt review of high-rise building regulations and fire safety commissioned in the wake of the Grenfell Tower fire has set out a number of important recommendations for building safety. Registered providers need to consider the impact that these recommendations, and the government's response to the review, will have on their businesses.
14. Landlords of social housing are generally organisations with objectives to provide a good service to their tenants, invest in the homes they own and manage, regenerate their communities and build much needed new housing. The aftermath of the Grenfell Tower fire has seen unprecedented scrutiny of the social housing sector, landlords' relationship with their tenants, and public interest in the sector's wider social role. This culminated in the publication of the government's Social Housing Green Paper in August 2018.

B. Data

15. Strategic risks arise from landlords' collection and use of data. It is important that providers ensure that their data is accurate, comprehensive, up to date and in an easily accessible format for the purposes for which it is required.
16. Data accuracy is an important factor in enabling landlords to ensure that they comply with all applicable health and safety requirements.

C. Existing stock and stock quality

17. The Home Standard requires landlords to meet all applicable statutory requirements that provide for the health and safety of occupants in their homes. Boards and councillors are also responsible for ensuring that tenants' homes meet the requirements of the Decent Homes Standard or, where relevant, any higher standards of design and quality that applied as a condition of publicly-funded financial assistance when the home was built. They must also ensure that they provide a cost-effective repairs and maintenance service to homes and communal areas, and that they have a prudent, planned approach to repairs and maintenance.
18. Effective planning and delivery of responsive and planned major repairs is important for effective management of the stock. It is vital that landlords understand the level of investment in existing stock that is required to meet the Home Standard, and that this is reflected in their long-term business plans. A well-integrated, strategic approach to asset management, based on a good and up to date understanding of stock condition, helps landlords avoid the long-term financial problems associated with underinvestment in stock.
19. As well as posing risks to tenants, a failure to provide accommodation that is well managed and of appropriate quality, or to promptly and effectively respond to complaints about this, can have significant implications for tenants' trust and confidence in their landlord. It can also significantly damage reputation.

D. Consumer Regulation

20. The Government has promised action to beef up consumer regulation to help rebalance the landlord-tenant relationship and deliver a better deal for residents.
21. The Government has decided to act and has already outlined its core objectives for future consumer regulation:
 - Speeding up the complaints process
 - Arming residents with information on landlord performance
 - Strengthening choice over services
 - Understanding what a good service looks like
 - Strengthening regulation of consumer standards
 - Greater scrutiny of local authority landlords
 - Embedding good customer service and neighbourhood management.
22. It is expected that more detail will be revealed when the Government publishes its response to the Social Housing Green Paper consultation.

Next Steps

Building a safer future: an implementation plan

23. Following the Grenfell Tower fire, there are planned changes to the requirements that landlords will need to fulfil.
24. The independent Hackitt review of high-rise building regulations and fire safety commissioned in the wake of the Grenfell Tower fire has set out a number of important recommendations for building safety.
25. Landlords need to consider the impact that these recommendations, and the government's response to the review, will have on their businesses.
26. On 18 December 2018, Secretary of State for Communities James Brokenshire announced the creation of a stronger and more effective regulatory framework to improve building safety, implementing the recommendations made by Dame Judith Hackitt following the Grenfell Tower fire.
27. This will mean tougher sanctions for those who disregard residents' safety, more rigorous standards and guidance for those undertaking building work, and a stronger voice for residents.
28. 'Building a safer future: an implementation plan', commits the government to a programme of reform which will:
 - Take forward all the recommendations in the Hackitt review.
 - Create a more effective regulatory and accountability framework.
 - Introduce clearer standards and guidance, including a new Standards Committee to advise on construction product and system standards and regulations.
 - Put residents at the heart of the new system of building safety, empowering them with more effective routes for engagement and redress.
 - Help create culture change and a more responsible building industry, from design, through to construction and management
29. The government has published its proposals for a radically new building and fire safety system. These provide a strong indication on areas in which they can expect to see long awaited changes. They are set out in a comprehensive consultation and are intended to overhaul the system for the design, construction and management of high rise residential buildings by:
 - Mandating clearer responsibilities for those building or managing these buildings
 - Giving a stronger voice in the system and better information for residents
 - Having greater oversight by regulators
 - Tougher enforcement when things go wrong
30. The CIH briefing sets out the detailed areas of the consultation. A copy of the briefing and areas for consultation are attached at Appendix 1 to this report.

31. Attached at Appendix 2 is the views of Eamon McGoldrick, Managing Director of the National Federation of ALMOs on the briefing. This was an article from Inside Housing on 20 June 2019
32. The government will establish a Joint Regulators' Group to trial elements of a new regulatory system, bringing existing regulatory bodies together to work with developers and building owners, residents and tenants. This will include: Local Authority Building Control, The National Fire Chiefs Council, the Health & Safety Executive, the Local Government Association (which includes the fire and rescue authorities), and others as required.
33. A full review of fire safety guidance within the building regulations has also been launched. The government has issued a call for evidence and is also inviting views from residents and those who manage buildings about how to improve fire and structural safety.
34. James Brokenshire MP said "My plan for stronger, tougher rules will make sure there is no hiding place for those who flout building safety rules. By making people responsible and more accountable for safety, we will create a more rigorous system so residents will always have peace of mind that they are safe in their own homes."
35. You can see the full plan at:
<https://www.gov.uk/government/publications/building-a-safer-future-an-implementation-plan>
36. This plan sets out changes the government intend to consult on including: -
 - For those who live in high-rise residential buildings: an assurance that safety is actively managed and a means of recourse if safety concerns are being ignored; and more information on the safety measures in the building and clarity on their role in ensuring their homes are safe.
 - For those who regulate the buildings: greater powers to intervene and greater ability to pursue those who do not follow the requirements.
 - For those who develop the buildings: a requirement to be explicit about how safety is incorporated in buildings, a clear set of gateway points to engage with the regulators and a transparent recording and handover of safety information.
 - For those who own existing buildings: an active demonstration that the ongoing safety of the building is being managed effectively.
 - For those who provide materials used in construction: greater oversight that products are safe and are being marketed as safe.
 - For all the above, a clearer set of responsibilities with accountabilities at the right level and clearer guidance to operate within
37. Attached at Appendix 3 is the Northern Housing Consortium briefing that explains the latest proposals from the Government that will change the way that homes are managed and will herald new responsibilities for Boards and for those working in health and safety and building safety.
38. The briefing explains the key changes and the new responsibilities and sets out actions that are required.

Links to Values

39. This report is aligned to the following Company values: -

- Customer Focused
- Open and Honest
- Accountable

Equality and Diversity Implications

40. There are no equality and diversity implications directly arising from this report.

Financial Implications

41. There are no financial implications directly arising from this report.

Impact on Customers

42. The successful implementation the Regulatory requirements will have a positive impact on customers.

Risk Management Implications

43. Risk management implications are highlighted throughout the report.

44. Audit committee agreed, at its meeting on 3 July 2019, a new Health and Safety Operational Risk Register within the Property and Assets Directorate. This underpins the existing health and safety strategic risk.

45. A new suite of key performance indicators is currently being agreed with the Council.

Value for Money Implications

46. There are no value for money implications directly arising from this report.

Health Implications

47. There are no direct health implications arising from this report although the successful implementation of the Regulatory requirements would have a positive impact on the health and well being of Gateshead residents.

Consultation Carried Out

48. The sector risk profile has been shared with the Council.

49. The Council is compiling a response to the areas for consultation from the CIH. The company has informed this with comments on the new duty proposed for leaseholders.

Recommendation

50. The Board is recommended to note the sector risk profile and highlighted risks.
51. The views of the Board are sought on the proposals contained within the Building a safer future consultation document in order to inform next steps.



CIH briefing on Building a safer future: proposals for reform of the building safety regulatory system

More than two years on from the tragic fire at Grenfell Tower, the government has published its [proposals](#) for a radically new building and fire safety system. These provide a strong indication on areas in which we can expect to see long-awaited changes. They are set out in a comprehensive consultation and are intended to overhaul the system for the design, construction and management of high rise residential buildings by:

- Mandating clearer responsibilities for those building or managing these buildings
- Giving a stronger voice in the system and better information for residents
- Having greater oversight by regulators
- Tougher enforcement when things go wrong

This **briefing** sets out further details on the areas of the consultation that CIH want your views on. It summarises what is in the relevant proposal and then sets out some key questions that we would like you to consider.

Alongside this briefing, we have developed an [online survey](#) to capture your views to help inform our response to the consultation – the questions in this briefing are replicated in the survey for ease.

We appreciate that many of our members will be responding directly to the government consultation. However, we would appreciate your views on how the proposals could work in practice, the impact on your business and the key challenges that you think that specific proposals will raise. The focus of this briefing and the accompanying survey is specifically on the proposals that relate to the duties when people are living in the building in scope (occupation).

Download the full consultation [here](#)

The deadline for the consultation is 31st July 2019. We would appreciate if you could complete the online survey by 22nd July to give us time to feed your views into our response. If you want to discuss any of the detail in the briefing please contact debbie.larner@cih.org

Your views on specific proposals

1. Scope of the new regulatory system



The Hackitt review initially recommended that the new regulatory system should apply to buildings of 30 metres and above (10 storeys). The government proposes that this should be extended to apply to all residential buildings **18 metres and above** (6 storeys).

1. **Do you agree that the new regime should apply to residential buildings of 18 metres or more?**
2. **What will the impact of extending the proposed for your organisation (number of buildings in scope, resource implications)?**

The government is also considering whether to include some categories of supported/ sheltered housing in the new regulatory system.

3. **Do you support this proposal – if yes, on what basis should government determine what categories should be in scope?**
4. **Is there any other comment you want to make about the scope of the new regulatory system?**

2. Introduction of a safety case

It is proposed that a new **safety case approach** is introduced which manages the risk in buildings in scope and includes:

- a comprehensive description of the building – including information on preventive measures and protective systems
- an understanding of the life-critical risks (for fire and structural safety) and evidence about how they are being proactively and proportionally managed for safe occupation; ‘as built’ information
- evidence gained through regular inspection, reviews and maintenance of the building
- the safety management system for the building, which sets out the management structure employed
- evidence of continuous improvement over time i.e. a living document that references the most up-to-date versions of supporting evidence
- mandatory occurrence reporting – similar to what is practiced in the Civil Aviation industry where systems are in place to facilitate whistleblowing and reporting of fire and structural safety issues by staff
- emergency preparedness so that appropriate actions are taken to mitigate hazards and minimise incidents
- evidence that legislation, requirements, standards and policies applicable have been met or complied with reference to other documents, such as a Resident Engagement Strategy, a Fire and Emergency File and any relevant structural or



fire safety inspections.

5. Do you agree with the proposed content for the safety case (set out above)?
6. Is anything missing that you would expect to be included?
7. What are the challenges in compiling and maintaining the safety case for your existing buildings?
8. Is there any other comment you want to make about the safety case proposals?

3. Duty holder/ accountable person

Government propose to introduce a new dutyholder regime across the life cycle of the building. During the occupation phase government intends to create in law an **accountable person** who will be legally responsible for ensuring building safety risks to occupants are reduced “as far as reasonably practical”. The accountable person must:

- ensure that buildings which are in scope of the new regime and are under their control are registered with the building safety regulator
- ensure that the building safety regulator has been provided with an address in England or Wales at which the building safety regulator can serve notices on the accountable person
- ensure that a named building safety manager is appointed for each of those buildings, that the building safety manager meets the competency requirements set by the building safety regulator and are registered with the regulator
- ensure that adequate measures are in place to manage building safety in those buildings, including ensuring that the building safety manager has access to the funding and co-operation necessary to carry out their function
- comply with all requirements in the building safety certificate that will be issued by the building safety regulator
- carry out and provide the building safety regulator with a safety case demonstrating that they, as the accountable person, are taking action to ensure that the building safety risk to occupants is reduced so far as is reasonably practicable and complies with all requirements arising from the safety case
- be responsible for the “golden thread” of building information

9. Do you agree with the minimum requirements of the accountable person (set out above)?

The accountable person will be the person who has the right to receive funds (rent, service charges etc) which “contribute to the cost of maintenance and upkeep of the

structure of the building” and has “control of the building”. This can be an individual, partnership or corporate body.

10. Are there any examples of building ownership and management arrangements where it might be difficult to identify/ apply the role of accountable person?
11. Who in your organisation would you see as being the accountable person?
12. What training/ support would they need to fulfill the requirements listed above?
13. Is there any other comment you want to make about the role and function of the dutyholder or accountable person?

4. Building safety manager

The consultation proposes that the accountable person appoints a **building safety manager** to “carry out the day to day functions of ensuring that the building is safely managed and maintained, including engaging residents and overseeing safety works, and others employed in management, maintenance or checks of the building”.

Duties and functions to include:

- ensure that those employed to maintain and manage the building have the necessary skills, knowledge and experience
- maintain information management systems to facilitate safe management of the building
- maintain the safety case for the building so that risks are proactively identified and mitigating measures put in place and maintained
- ensure that necessary and appropriate building remediation is undertaken to ensure that the conditions set out in the building safety certificate are met
- engage with residents in safe management of their building through a Resident Engagement Strategy that includes routes of escalation for resident concerns
- ensure that fire risk assessments for the whole building are undertaken and reviewed regularly and any recommendations are undertaken in a timely manner
- be responsible for reporting mandatory occurrences to the building safety regulator.



14. Do you think that with the proposed duties and functions of the building safety manager (set out above) are deliverable?
15. What would the resource and capacity issues of this new role be for your organisation?
16. How easy do you think it would be to recruit a person to this role (with the right level of experience, competence and qualifications)?
17. Is there any other comment you want to make about the role and function of the building safety manager?

5. Building safety certificate

Government is proposing that all buildings in scope will need to be registered and obtain a **building safety certificate** from the new building safety regulator.

The certificate will identify the accountable person, the building safety manager, the buildings in scope and the conditions for ensuring the building is safe for residents. These will include mandatory, voluntary and special conditions.

It will be mandatory for a summary of the building safety certificate to be displayed in a prominent part of the common parts of the building, so that occupants can readily identify who is responsible for the safety of their building and the conditions that must be complied with.

Mandatory conditions are likely to mandate the **accountable person** to:

- ensure those employed in the maintenance and management of the building's safety have sufficient skills, knowledge and experience to meet the building safety requirements
- secure and provide sufficient funds and co-operation to ensure appropriate building safety management
- establish or maintain information management systems including provision of the golden thread
- operate a safety case regime where risks and mitigations are proactively identified and mitigated
- engage residents in the safe management of their building through a Resident Engagement Strategy including routes of escalation for concerns, and providing required information to residents
- ensure fire risk assessments are undertaken for the whole building and reviewed regularly and any recommendations are undertaken in a timely manner



- establish and operate a mandatory occurrence reporting regime

18. Do you agree with the proposal to mandate that all buildings in scope must be registered and obtain a building safety certificate?

19. Do you foresee any challenges in complying with the mandatory conditions (set out above)?

20. What are the practical challenges of introducing this approach?

21. What do you think is a reasonable transition period for the registration of existing buildings?

22. Is there any other comment you want to make about building registration and/ or the building safety certificate?

6. Information for residents

Government is committed to ensuring that residents have access to the **information they need** about building safety in a clear and accessible way and to also make clear the role that residents should play in keeping their buildings safe.

As a minimum, the following information will need to be proactively provided to residents:

- measures in place to mitigate potential fire and building safety risks to residents, e.g. fire precautions
- how to reduce the risk of fire in individual dwellings e.g. by not storing flammable material
- process for reporting a fire risk and/or raising any other safety concerns
- procedures to follow where a fire occurs in the building, including for evacuation
- the 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

23. Do you agree that the list of core information that must be provided to residents (set out above) covers the right things? Is there anything missing?

24. If you currently provide some (or all) of this information - what formats do you use to ensure it is understandable and accessible?



25. Would you intend to provide this information to just your residents or would you include others (sub-tenants, visitors, other occupiers)?

26. Is there any other comment you want to make on the proposals to provide information to residents on building safety?

7. Residents' responsibility

Government are considering introducing a new **requirement on residents** to “co-operate with the accountable person/ building safety manager”

27. How do you envision that this requirement would work in practice?

28. Are there any specific requirements that you would consider appropriate?

29. What measures would you need to be in place to enforce this requirement?

8. Building safety regulator

The new regime will be overseen by a **new building safety regulator**. It is proposed that the regulator will have broader responsibilities than initially proposed – including oversight of the work to drive high standards and increased competencies. The model, structure, home, lines of reporting, capacity and expertise of the building safety regulator have yet to be determined.

At a national level the building safety regulator will be responsible for:

- Oversight of the enforcement of a more stringent regulatory regime for buildings in scope of the new regime including:
 - maintaining a register of buildings in scope and who the dutyholder(s) are for those buildings
 - ensuring an effective system is in place for inspecting buildings and building safety information to ensure that dutyholders are complying with the regime throughout the lifetime of the building
 - providing guidance for dutyholders relating to buildings in scope
 - ensuring that whistle-blowing, resident concerns and mandatory occurrence reports are effectively collected and acted upon by regulators and industry appropriately
 - advising the government on changes that should be made to the scope of the more stringent regime
- Oversight of the competence of professions and trades working on buildings



- including:
- establishing a committee, comprising of industry bodies, independent experts, building owners, and residents to provide cross-discipline peer review, support and challenge functions to drive competence
 - maintaining a register of those competent to undertake key roles in the new regulatory system for buildings in scope of the new regime (Principal Designer, Principal Contractor and building safety manager)
 - providing guidance on selecting competent people and signposting dutyholders to organisations which approve competent individuals to work on buildings in scope
- Oversight of the building safety and wider regulatory system as a whole, including:
 - monitoring and driving improved performance across the building safety and wider regulatory system
 - advising on and preparing proposals for changes to building regulations as needed
 - overseeing development of appropriate technical guidance
 - championing building safety and quality, and the interests of residents, including working with the construction industry to spread best practice and encourage innovation
 - advising industry and Government on research into new or emerging risk
 - working with other regulators and enforcement bodies to achieve safety and other outcomes for buildings
 - reporting regularly on the performance and overall health of the building regulatory system

30. Do you think there is anything missing from the proposals for the new regulator's role (set out above)?

31. Do you agree that the regulator should have oversight of the competencies of professions and trades? If not – who should be have this function?

32. How do you see the interaction between the new building safety regulator and existing regulators (e.g. Regulator for Social Housing)?

33. Is there any other comment you want to make about the building safety regulator?



Your overall view of the proposals

- 1. Taken as a whole, what challenges do the proposals raise (including practical application, resource, capacity and funding)?**
- 2. Are you clear on the potential legal and regulatory liabilities proposed in the new regime?**
- 3. How do you think the transition to the new system might work (including timeframes)?**
- 4. Do you think the proposals give assurance/ clarity about how to deal with issues across all tenures (including private sector landlords and leaseholders)?**
- 5. Do you think the new regulatory and legal powers proposed are sufficient to support the deliver of the new regime?**
- 6. Are there any specific issues you are concerned about not covered in the consultation?**

“The Hackitt Review changes will be significant but we need clarity now”



Comment piece in Inside Housing, 20.06.2019
Eamon McGoldrick, Managing Director of the NFA

Last week saw the publication of *Building a Safer Future*, which is a government consultation on proposals for reform of building safety management following the Hackitt Review.

This consultation has taken a long time to come to fruition, but it is a very thorough document comprising 192 pages and goes a long way to answering some of the questions about future management and regulation of high-rise and complex buildings.

The consultation document outlines which types of buildings will come under the new regulatory arrangements, what the new regulatory framework will look like, how residents will be kept informed and how they can escalate any concerns they may have on safety issues. It also proposes how the new regulator will sanction and penalise failure by developers and landlords.

The consultation is broadly in line with what we had anticipated, but there are a few points worth highlighting:

First, Dame Judith Hackitt had proposed that any changes should be brought in for buildings over 10 storeys or 30 metres. The government has decided to go a step further and wants the new regulatory regime to apply to all multi-occupied residential buildings of 18 metres and above (six storeys).

This is a significant change and potentially brings hundreds, if not thousands, of additional blocks into scope. It will also in theory impact more landlords who originally said they didn't have any tower blocks.

Second, in the construction phase there will be five duty holders and a series of 'gateways' to be passed before construction starts or a building is handed over for occupation.

Third, for the buildings in scope, the regulatory regime is going to be very intensive and more challenging than I thought it would be.

For example, every building will have to be registered with the new regulator and hold a building safety certificate renewable every five years. The owner will have to identify a duty holder, or accountable person, who will be fully responsible for the safety of these buildings and maintain a safety file.

They can employ a building safety manager to help them record work and liaise with residents, but they will not be able to delegate ultimate responsibility. Landlords will have to publish a resident engagement strategy for each block, stating how residents can access information about safety in their homes and the regulator will only issue a building safety certificate when it is satisfied with the quality of the resident engagement strategy.

Whistleblowing will be encouraged and residents will have direct access to the new regulator where they feel their landlord has not answered their concerns.

My initial concerns can be grouped into three areas:

First, everyone is crying out for clarity on which products are safe to use in construction and refurbishments. On products such as cladding and fire doors, we need urgent clarity and certification so that we all know what to buy and install.

The fact that we do not have a range of certified composite front doors and clarity on high-pressure laminate two years after Grenfell is a disgrace.

Second, many buildings in scope have high proportions of leaseholders, many of whom sublet their homes. There is still no requirement for them to show proof of an annual gas check and many continue to thwart freeholders' attempts to change front doors or install sprinklers. How is the duty holder going to guarantee safety in this context?

Finally, we already have a regulator who oversees safety in the home under the existing consumer standards, so the remit of the new regulator in this area needs total clarity. We cannot have two regulators monitoring the same issue.

There is a lot for landlords and residents to think about and many of the 125 questions raised in the consultation document are very technical.

The National Federation of ALMOs will compose a detailed response, but the closing date is 31 July so landlords need to move quickly to gather their thoughts on this important subject.

The government wants to start the legislative process by the end of this year.

Eamon McGoldrick, managing director, National Federation of ALMOs

Your Guide to Building Safety Reforms - Implications for Boards



These proposals will change the way that homes are managed and herald a big ask for Boards and for those employed to look after buildings – this briefing tells you the key changes you need to know.

Following Dame Judith Hackitt’s Independent Review of Building Regulations and Fire Safety, which came out last year, the Government has taken on board all the Hackitt recommendations – and gone further – and launched a consultation,

which closes on 31 July, proposing reform on building safety across five broad areas. This includes putting residents at the heart of a new system.

The consultation, [Building a Safer Future: Proposals for Reform of the Building Safety Regulatory System](#), was published on 6 June – just before the second anniversary of the Grenfell Tower fire.

At the same time, the Home Office is consulting on the [Regulatory Reform \(Fire Safety\) Order 2005](#) with a call for evidence open to 31 July 2019. The RRO regulates fire safety in a wide spectrum of non-domestic premises, including workplaces and the parts used in common in multi-occupied residential buildings. The call for evidence is intended to complement the *Building a Safer Future* consultation.

The consultation (192 pages with 122 questions) has a shorter than usual consultation period at only eight weeks with the Government promising rapid implementation of legislation to follow.

Key noteworthy points:

Building Height changed to 18 metres

The proposals recommend that all multi-residential buildings of six storeys or greater (approximately 18 metres) need to be covered – a broader scope than the Hackitt review which referenced 30 metres. If this proceeds into legislation, it will impact thousands of additional buildings than first thought and will also target a higher number of large new build projects. In responding to the consultation, Boards will need to consider:

- Do you support the new regime applying to residential buildings of 18 metres or more?
- What will the impact be of extending the proposed for your organisation (number of buildings in scope, resource implications)?

Duty holder / Accountable Person

Duty holder roles will be required across the life cycle of the building, aligned to construction, design and management as well as an “accountable person” during the occupation stage.

Duty holders will be required to keep a ‘Golden Thread’ - a set of key documents held digitally and feature all relevant pieces of information about the building. This includes plans, materials used, issues during construction, compliance reports, and inspection notes. The Golden Thread must be accessible to emergency services and relevant information must be shared with residents on request.

The consultation suggests various sanctions on duty holders, with regulator intervention, stop notices and prosecutions all being considered.

The accountable person, responsible for the occupation stage of the building, will in most cases be the relevant building owner. Where the accountable person is a legal entity rather than an individual, the consultation proposes that there should be a single accountable person “at Board level”. Where a building is owned commonhold, the accountable person is likely to be the Commonhold Association.

It is proposed that in the selection of the accountable person, this will be the person who has the right to receive funds (rent, service charges etc) which “contribute to the cost of maintenance and upkeep of the structure of the building” and has “control of the building”.

Responsibility is a key driver to the proposed changes in both process and regulations so that named individuals can be held responsible should things go wrong.

Those who may find themselves in line to become a duty holder will certainly have questions around their own protection, where their responsibilities end, and about the additional responsibilities and costs of maintaining these proposals.

An accountable person can delegate functions to a building safety manager, but not accountability – that rests with that person, whatever the circumstances. That means the accountable person needs to be someone with authority within that role and it needs to be set at the right level within the governance of an organisation. Where responsibility lies with a legal entity the accountable person will be a board member. Where a council owns the building, with an ALMO managing the property, the council would be the legal entity appointing the accountable person with a building safety manager placed at the ALMO.

Issues to consider:

- Who in your organisation would you see as being the accountable person?
- What training/ support would they need to fulfil the requirements listed above?
- What are the opportunities/ challenges/ concerns?
- Are there any examples of building ownership and management arrangements where it might be difficult to identify/ apply the role of accountable person?

Building Safety Manager (BSM)

The accountable person will appoint a building safety manager to “carry out the day to day functions of ensuring that the building is safely managed and maintained, including engaging residents and overseeing safety works, and others employed in management, maintenance or checks of the building”.

The BSM will be required to have specific competencies yet to be determined and will be registered with the new regulator. Issues to consider:

- Do you think that the proposed duties and functions of the building safety manager are deliverable?
- What would the resource and capacity issues of this new role be for your organisation?
- How easy do you think it would be to recruit a person to this role (with the right level of experience, competence and qualifications)?
- How will this role align with existing health & safety roles and procedures?

Building Safety Regulator

A new building safety regulator will have oversight of the new regulatory regime of the new regime and setting standards.

The model, structure, lines of reporting, capacity and expertise of the building safety regulator have yet to be determined.

It will also be required to advise the government on changes to the scope of the regime and have oversight of work to drive increased competency of professions and trades.

- Do you agree that the regulator should have oversight of the competencies of professions and trades? If not – who should be have this function?
- How do you see the interaction between the new building safety regulator and existing regulators (Regulator for Social Housing)?

Building Safety Certificate

All buildings in scope will need to be registered and obtain a building safety certificate from the new building safety regulator. Although still at consultation stage, it is thought that the requirement for a certificate will proceed to legislation.

Anything which undermines the certificate will need to be reported to the regulator within 72 hours. Response to the consultation will be expected to comment on whether this is workable. Issues to consider:

- Do you agree with the proposal to mandate that all buildings in scope must be registered and obtain a building safety certificate?
- Do you foresee any challenges in complying with the mandatory conditions?
- What are the practical challenges of introducing this approach?

- What do you think is a reasonable transition period for the registration of existing buildings?

Resident responsibility

Government is considering introducing a new requirement on residents to “cooperate with the accountable person/ building safety manager”. Comments will be invited on what this means in practice where this is not a requirement of a tenancy agreement. It also brings into focus issues around access to property. Issues to consider:

- How do you envision that this requirement would work in practice?
- Are there any specific requirements that you would consider appropriate?
- What measures would you need to be in place to enforce this requirement

Reaction to the Proposals

The overarching theme of *Building A Safer Future* is that residents need to feel safe in the buildings they call home, they must have a way of raising concerns with building managers, and also have a higher power to go to if they need to.

There are some questions to be raised during the consultation to refine the proposals but mostly it is thought that what is included will happen. It is still important for organisations to respond to this consultation, particularly around the practicalities to be imposed.

The proposals clearly require an holistic approach across an organisation for the accountable person to be aware of all issues on an ongoing basis. Organisations are frequently not currently structured in such a way having separate departmental responsibilities, however compliance within this regime will require a structure of coordination and cooperation across different service areas.

This is a significant responsibility for board members and aims to change the culture of organisations, as Dame Hackitt had intended, and not just replicate what is already there.

It is likely to create a property management industry as there will be an influx of a workforce to take up the building safety manager role, and to monitor and hold to account those in the duty holder roles.

The ultimate question to ask is, if these proposals are all in place, will this prevent another tragedy?

Action to be taken now

The consultation is open until 31 July 2019 ([Building a Safer Future: Proposals for Reform of the Building Safety Regulatory System](#)) It is important to respond to make sure that the final proposals are deliverable. Further issues to consider in making your response:

- Taken as a whole, what challenges do the proposals raise (including practical application, resource, capacity and funding)?

- Are you clear on the potential legal and regulatory liabilities proposed in the new regime?
- How do you think the transition to the new system might work (including timeframes)?
- Do you think the new regulatory and legal powers proposed are sufficient to support the delivery of the new regime (e.g. building access and legal powers for entry)?
- Are there any specific issues you are concerned about which are not covered in the consultation?

Please respond directly to the consultation on the Ministry website. Following the consultation, the Government will introduce legislation at the earliest opportunity, although even in normal Parliamentary times this would take at the least a year to proceed and a period of transition for compliance would be expected.

If you have any further questions about this briefing, please get in touch.

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