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Housing

What you need to know about the draft building safety bill



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Introduction

Following [the Hackitt review](#) and consultation with industry and the public, the government has [published draft legislation](#) to make people safer in the buildings they live in. This short briefing draws out some of the key things to think about.

Alongside the bill, the government has also launched a [consultation on fire safety](#). This consultation contains proposals to:

- Strengthen the Regulatory Reform (Fire Safety) Order 2005 and improve compliance
- Implement the Grenfell Tower Inquiry Phase 1 report recommendations that require a change in law to place new requirements on building owners or managers of multi-occupied residential buildings - mostly high rise buildings
- Strengthen the regulatory framework for how building control bodies consult with Fire and Rescue Authorities and the handover of fire safety information

The fire safety consultation is a key part of government's package of reform to improve building and fire safety in all regulated premises where people live, stay or work and to deliver key Grenfell Tower Inquiry recommendations.

The Building Safety Bill

The Bill is in five parts and contains provisions to secure the safety of people in or around buildings and improve safety standards. Part one introduces the Bill, part two contains provisions regarding the new building safety regulator and its functions in England only. Part three makes several amendments to the Building Act 1984 as it applies, in England only. Part four addresses higher-risk buildings and imposes duties on accountable persons and building safety managers, part five contains supplementary and general provisions.

Definitions

Although they come later in the Bill, these definitions are given here as they are useful in reading this document.

Building safety risk

Building safety risk means any risk to the safety of persons in or about a building resulting from:

- Fire
- Structural failure
- Any other prescribed matter (to be prescribed by the regulator)

Higher risk buildings

The Bill does not give a definition of this, the relevant secretary of state is empowered to give a definition in the regulations. It's worth noting that in its response to '[Building a Safer Future](#)' the government announced it would extend the ban on use of flammable cladding to all buildings of 18 metres or six stories in height, whichever is reached first. This draft Bill allows the secretary of state to include a wider range of buildings in the definition of 'higher risk buildings'. The secretary of state must consult the regulator and others as they consider appropriate in making the definition.

What the Bill says

Many of the provisions in the Bill enable the building safety regulator, once it is set up, to carry out its various functions. There are specific provisions in the Bill, the main ones are summarised here.

Part one

Part one contains a brief introduction to the Bill and no substantive information.

Part two - the regulator and its functions

Part two establishes the building safety regulator and its objectives and duties. These are summarised below.

The Bill:

- Establishes the Health and Safety Executive (HSE) as the building safety regulator, the regulator 's objectives are to:
 - o Secure the safety of people in or about buildings
 - o Improve the standard of buildings
- Places duties upon the regulator to:
 - o Facilitate building safety in 'higher risk buildings' by providing advice and assistance to 'relevant persons' ('relevant persons' means both residents and duty-holders, accountable persons and building safety managers
 - o Keep safety and the standard of buildings under review and exercise its functions under this Act, the Building Act 1984 and Health and Safety at Work Act 1974 in doing so
 - o Facilitate improvement in competence of industry and registered building inspectors
 - o Establish a system for giving building safety information and make arrangements for a person to operate the system

The Bill also places a duty upon the regulator (HSE) to establish several committees to facilitate its work. These are:

Building advisory committee

The function of the committee is to give the regulator advice and information about its building functions; except in respect of 'persons in the built environment industry' and 'registered building inspectors'.

Committee on monitoring industry competence

The function of the committee is to monitor industry competence and advise the regulator, the built environment industry and others on establishing and monitoring competence. The

committee must also carry out research and analysis regarding these functions.

Residents' panel

The regulator must use its powers to convene and maintain a committee of residents. The function of the panel is to advise the regulator about matters relating to its building function and 'higher risk buildings'. The committee is to consist of:

- Such residents of 'higher risk buildings' that the regulator considers appropriate
- Such relevant persons that the regulator considers appropriate

There is also a duty for the regulator to consult this panel before issuing or revising guidance to residents of higher risk buildings about their rights and obligations.

Local authorities and fire and rescue authorities

The Bill contains a provision that permits these authorities to act in any way the regulator requests to support the regulator in the course of carrying out relevant functions.

Plans and reports

The Bill has a provision that will require the regulator to prepare and publish several plans and reports on the carrying out of its functions. These are:

Strategic plan

The regulator must prepare a strategic plan and submit it to the secretary of state for approval. In formulating this plan the regulator must consult with the 'residents' panel' and others that it considers appropriate. Once approved, the regulator must publish the plan. The regulator may also revise the strategic plan at any time that it considers appropriate or at the direction of the secretary of state.

Annual report

The regulator must publish, as soon as reasonably practicable after the end of the financial year, an annual report on the information provided to it that year under the

mandatory reporting requirements; these will be specified by the regulator. Not providing information under the mandatory reporting requirements is an offence and liable for a fine after summary conviction.

Statement of the regulator's engagement with tenants

From time to time the regulator must publish a statement about its engagement with:

- The residents' panel
- Residents of higher risk buildings
- Bodies that represent, support or promote the interests of such residents

Part three - Building Act 1984

Part three amends the Building Act 1984 as it applies in England only, these are mainly technical changes or insert the building safety regulator into the provisions of that Act. This being the case, they are not detailed here.

Part four - Higher risk buildings

Part four deals with higher risk buildings and the definitions and roles involved in managing them. Key definitions are as follows:

Occupied and resident

A 'higher risk building' is occupied if there are residents of more than one dwelling in the building.

A resident of a 'higher risk building' is any person who lawfully resides there.

Accountable person

This is any person who holds legal estate in possession of the common part of a building or a person who is under a relevant repairing obligation in respect of the common parts of a building.

A person is NOT the accountable person if they do hold legal estate over the common parts of a building but, are a lessor and have a 'long lease' (generally over 21 years or a lease with a covenant for perpetual renewal) and the lease places the lessee under a relevant repairing obligation.

Common parts

The common parts of a building are defined as:

- The structure and exterior of a building
- Any part of the building provided for the use, benefit and enjoyment of more than one resident

Registration and certificates

The Bill makes requirements of the accountable person, the regulator and others in respect of the register of 'higher risk buildings'. The main provisions are:

- The accountable person **MUST** make an application to register a 'higher risk building':
 - Before the building becomes occupied, and
 - In other circumstances to be prescribed by the secretary of state
- The accountable person **MUST** make an application for a 'building assurance certificate' for an occupied 'higher risk building' which the regulator must give if it is satisfied that all the relevant requirements have been complied with, or notify the accountable person why an assurance certificate has not been granted
- The accountable person must, before a building becomes occupied, appoint a person to be the 'building safety manager' - if at any time there is not a building safety manager, one must be appointed as soon as reasonably practical (the regulator has power to veto or remove any such appointment in prescribed circumstances)
- Where a person other than an individual has been appointed as 'building safety manager' for a 'higher risk building' they must, as soon as reasonably practicable, appoint a 'nominated individual' - this 'nominated individual' will manage the building safety manager's functions
- The accountable person must make an assessment of building safety risks at regular intervals or on receipt of a notice to do so from the regulator

- The accountable person must also take all reasonable steps to:
 - Prevent a major incident occurring as a result of a building safety risk materialising
 - Reduce the severity of any such incident
- The accountable person must prepare a safety case report and notify the regulator that they have done so. The building safety case report must contain:
 - The accountable person's assessment of the building safety risks, and
 - Any steps taken to reduce the severity of an incident
- The building safety manager must manage the building in accordance with the safety case report for the building
- The accountable person for a higher risk building must keep prescribed information and provide such information to the regulator, residents or other persons under regulations to be prescribed by the secretary of state
- The accountable person must also make building safety information to a new building safety manager where there is a change in this role.

Engagement with residents

- The accountable person must prepare (and regularly review) a residents' engagement strategy to set out how they can participate in the making of building safety provisions.
- A building safety provision is one which is about the management of the building and concerns the duty of the accountable person or building safety manager
- After preparing the residents' engagement strategy, the accountable person must provide each resident, over the age of 16, a copy of it
- The accountable person must provide a resident or owner with any prescribed (by the secretary of state) information they request within a reasonable time.

Complaints procedure

- An 'accountable person' must establish a system for investigating relevant complaints – the building safety manager must operate the complaints system
- The regulator must establish and operate a system for investigating relevant complaints to the regulator or complaints referred to the regulator by a building safety manager. The regulator must consult the residents' panel:
 - Before the procedure is established, or
 - Before making any significant change to the system.

Duties on residents

A resident of an occupied 'higher risk building' must:

- Keep in repair and proper working order any relevant resident's item – defined as any electrical or gas installation or appliance in a dwelling or premises controlled by the resident that is not the responsibility of another person
- Take reasonable care to avoid damaging any relevant safety item – defined as anything that forms part of the common parts of the building or is intended to improve the safety of persons in or about a building
- Comply with any requests made by the accountable person under this section.

Where a resident appears to be in contravention of their duties, the accountable person can give a notice specifying the breach and those steps required to remedy it. Where the resident does not take such steps, the accountable person may seek an order from the County Court for enforcement.

Recovery of safety related costs

This section applies to a long lease of a dwelling in a higher risk building.

- A relevant landlord may, in writing, require a relevant tenant to pay a building safety charge to the landlord (this means a charge in relation to building safety costs of carrying out 'prescribed building safety measures' [to be prescribed by the secretary of state in the regulations].)
- In requiring a resident to pay a safety related charge the landlord must:
 - o Provide details of the accounting period used to calculate the charges
 - o Provide a budget for the accounting period including an estimate of the total building safety costs and the proportion of the those costs payable by the tenant.
- Where the costs are to be apportioned between a number of tenants the landlord must use any method contained in the lease for doing so
- Where no method is included in the lease, the landlord must use:
 - o Any method for apportioning relevant costs between all dwellings in the building e.g. service charges, or
 - o Any method agreed in writing with the tenant for apportioning these costs to the dwelling.
- Building safety costs may be taken into account in setting the building safety charge only where the costs are reasonably incurred and where the services or works are of a reasonable standard.

Part five - supplementary and general provisions

The provisions of part five are largely supplementary to other parts of the Bill and are therefore not covered in detail here. Part five does, importantly, set up a new homes ombudsman scheme as follows.

- The secretary of state must make arrangements for a scheme where:
 - o Membership is open to all developers
 - o The scheme enables the relevant owners of new build homes to have complaints against members of the scheme investigated and determined by an independent individual.
- The secretary of state may (by regulations):
 - o Require developers, or specified types of developers, to join the scheme
 - o Require such developers to be members of the scheme for a minimum term
 - o Make provision for sanctions to be imposed where there are breaches of the scheme's requirements
 - o Make provision for investigation of suspected breaches of such requirements
- The secretary of state may also:
 - o approve a code of practice about the standards of conduct and quality of work expected of members of the scheme
 - o Revise or replace the code from time to time
 - o The secretary of state must ensure that the code and any revision of it, is published.

The Housing Ombudsman and democratic filter

The Bill contains a provision to remove the 'democratic filter' from the process for social housing residents to raise complaints with the Housing Ombudsman. The filter is a requirement that the resident either make their complaint via a 'designated person' e.g. an MP, councillor or recognised tenant panel, or wait eight weeks after the end of their landlord's complaints process.

Wales

On June 19 2020, the Welsh Minister for Housing and Local Government on 19 June released [this statement](#) recommitting the Welsh government to bringing forward a White Paper and legislation before the end of this Welsh Parliament term. Paragraphs nine to twelve give details of the process which is going to take place.

The rest of the document gives the outline proposals. The two key paragraphs for a shorthand understanding are:

14. We intend to take the opportunity to establish two new regulatory regimes for Wales. The proposed Fire Safety Regime will build on the existing fire safety legislation and will cover all residential buildings containing more than one dwelling. This goes significantly further than the Home Office proposals for England. It intends to establish a new regime focused solely on fire safety in domestic dwellings, unlike the current fire legislation that blurs the focus of work places and residential buildings.

15. We also intend to establish a Building Safety Regime for purpose built high rise block of flats. This will incorporate the Fire Safety Regime but will look across the whole lifecycle of buildings putting in place additional requirements on those designing and constructing high rise residential buildings, all the way through to the way they are managed and maintained during occupation.

Scotland

A [Ministerial Working Group](#) (MWG) on building and fire safety was established in June 2017 following the Grenfell Tower fire in London. The group initially focused on high rise domestic buildings and immediate actions needed to ensure residents safety, including a [communications campaign](#) with the Scottish Fire and Rescue Service and other key stakeholders including CIH Scotland.

The MWG has since overseen a number of significant developments including:

- Requirements for smoke and heat alarms to be fitted in all homes from 2021
- Changes to fire safety standards including new requirements for cladding on buildings over 11 meters, escape provisions in buildings over 18 meters and requirements for sprinklers to be fitted in a wider range of buildings
- Strengthening of procedural guidance relating to fire safety
- Developing an inventory of high rise buildings across Scotland

Building standards and fire safety issues continue to be reviewed by the [Building Standards Futures Board](#) and the [fire safety regime review advisory group](#).

What CIH thinks

- It is positive to finally see a draft bill. Thousands of people are living in higher risk buildings and it is important that their safety is maintained
- It is good to see provisions made for a residents' panel to advise the regulator. It is important that the panel is representative of the wide range of people who are living in high risk buildings and that the engagement is meaningful, and outcome focused
- Removing the democratic filter is a positive step and will enable people to access more speedy redress
- We are concerned about who will bear the costs of remedial works. Of particular concern is the potential for leaseholders living in high risk buildings to be faced with large bills for remedial works that they are unable to pay.