

Safer buildings in Wales

CIH Cymru consultation response

This is a response to the consultation 'Safer buildings in Wales' by the Welsh Government.

Introduction

The impact of Grenfell should rightly be timeless and provide cause for further action to make buildings across Wales and the UK as safe as possible and provide the public with the reassurance needed to thrive in their homes. We recognise that large-scale change of the kind outlined by the white paper at this stage has taken some time to develop and we hope that in implementing the eventual provisions introduced by the legislation that there will be a clear and realistic timetable to provide organisations with a shared understanding of how progress will be made.

In our response we have provided answers to questions that directly relate to the work of our members in Wales.

Q 1. Do you agree that the Building Safety Regime in Wales should apply to all multioccupied residential buildings with two or more dwellings? Please support your view.

We agree with the proposed scope of the legislation. As noted, the profile of buildings in Wales is (and will continue to be) quite different to that of England and other parts of the UK. It seems sensible that the legislation therefore recognises this difference and seeks to have an impact on a meaningful amount of buildings.

Q 2. Do you agree that there should be two 'Risk Categories' for the Building Safety Regime? Please support your views.

We agree that there should be two risk categories within the Building Safety Regime. We believe that this will support an approach that is fair and proportionate in line with the risk posed by different building types.

Q 3. Do you agree with the proposed scope of Category 1 buildings? Please support your view.

We agree in principle, however some of our members raised concerns over the focus on the height of buildings as being the primary measure considered for buildings to fall into Category 1 - where the most intensive measures introduced by the white paper come into effect.

Whilst there was some recognition that the height of buildings does play a part in the fire risk for a property, there was also a view that the number of flats should be used to underpin the understanding of risk. Given that some blocks may be shorter than the definition of a Category 1 building, but hold a high volume of flats, housing a greater amount of people which in itself could be an indicator of a heightened risk of fire and produce more frequent building safety issues to be dealt with. We would encourage further consideration over how this could be better reflected by the definition.

Q 4. Do you agree with the proposed scope of Category 2 buildings? Please support your view.

Yes, we agree with the proposed scope. There are however some important considerations to reflect on. Providers of social and affordable housing build a wide range of properties. Significantly, in this context, there is often pressure in terms of meeting housing need locally to build smaller 1 bed homes. Some organisations have been able to meet this need by developing flats, where there is a ground floor and first floor property with walk-up access. Whilst homes built in this way, on paper, represent a home with two or more dwellings, in practice they are considered as two separate homes. Further consideration should be given to how the categories deal with this kind of property configuration.

Q 5. Do you agree that licensed HMOs should be included within the scope of the Building Safety Regime?

Yes we agree that HMOs should be included within the scope of the legislation.

Q 9. Do you agree that a consistent approach with England to the information set out in the Golden Thread and Key dataset is appropriate? If no, please support your views

The consultation notes that there is still further discussion to be had around the make-up of the Key Datasets – and although the categories outlined seem sensible we would expect the views of stakeholders in Wales to be utilised to consider any ways in which the dataset should be tailored to reflect the differences in the homes captured by the legislation between England and Wales.

Q 10. Do you agree that it is appropriate for all buildings within scope of the Building Safety Regime to provide information in relation to the key dataset? Please support your views.

We agree as outlined in the consultation that for some buildings gaining the data required may be difficult, but we nonetheless agree with the approach outlined. As the legislation progresses it will need to provide greater clarity on the expectations for the dataset, in particular for buildings already occupied.

Q 11. Do you agree that the broad duties set out are appropriate?

The broad duties set out on the duty holder seem proportionate and fair and we would expect much of the activity outlined to already be common practice for organisations working across social and affordable housing.

Q 13. Do you agree that there should be a named individual identified where the dutyholder is a legal entity? Please support your views.

The legislation attempts to make steps in increasing the accountability of organisations in relation to building safety. Providing a named individual provides reassurance to the public, promotes transparency and where further scrutiny or action is needed provides a clear point of contact to ensure that sufficient action is taken – we see no reason not to provide a names individual as currently required by the legislation.

Q 14. How effective are the existing arrangements for Local Authorities and Fire and Rescue Authorities to consider issues of availability of water during the preparation of Local Development Plans?

The issues of the consistent and reliable supply of water, and water pressure needed for fire suppression systems to be effective can be a major issue for

organisations working within social and affordable housing. Some members reported that in attempting to retrofit fire suppression systems, one of the main barriers has been overcoming the practical challenges of ensuring a sufficient supply of water, where the water pressure needed can be relied upon 24/7.

Q 18. Do you agree that Gateway Two should be a 'hard' stop point where construction cannot begin without permission to proceed? Please support your views.

We agree in principle with the use of a 'hard' stop point unless all aspects and requirements of Gateway Two are complied with. The consultation document rightly sets out an expectation that conversations to minimise any potential delay should begin well-before the Gateway is reached. We do have some concerns that delays could occur despite these conversations have taken place for a number of reasons out of the control of housing developers - including the sheer volume of work under scrutiny and requiring decisions by the local authority at this point and the need to consult with specific experts before finalising a decision causing internal delays. We would encourage greater thinking around staff resources available to facilitate an effective flow of information, and access to a sufficient amount and range of experts needed to ensure the requirements at Gateway Two can be provided.

Over time consideration should also be given by the regulatory body to identify the reasons behind the stop point being triggered and the average length of time delays occur, to better understand where any inefficiency in the system exists and how training, resources or expertise could be better utilised to minimise the impact.

Q 19. Should the Local Authority Building Control Body have discretion to allow a staged approval approach? Please support your views.

We agree in principle that this approach is sensible but would seek further clarity on what would (and would not) be considered a 'complex build' in the context of the legislation.

Q 22. Do you agree that the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans?

Yes we agree with this requirement

Q 23. Do you agree the Principal Contractor should be required to notify the Local Authority Building Control of any proposed major changes before carrying out works?

Yes we agree with this requirement.

Q 24. Do you agree that the where major changes are made to the approved plans there should be a "hard" stop and work should not proceed until the revised plans have been approved by the local authority

Yes we agree with this requirement, and in order to ensure that delays are kept to a minimal there's a function (and capacity) to fast-track reviews of this kind.

Q 26. Do you agree that for new Category 1 buildings an Accountable Person must be registered before occupation of the building can begin?

Yes we agree with this requirement.

Q 27. Do you agree that a final declaration should be produced by the Principal Contractor with the Principal Designer to confirm that the building complies with building regulations? Please support your view.

Ensuring clear lines of accountability over how a building is designed and constructed feels wholly appropriate. A declaration of this nature would place a greater emphasis on the role of the Principal Designer and Principal Contractor in providing certainty that the materials, methods and approach to construction management reflect what is required by the legislation in practice.

Q 30. Do you agree that the Client during Gateway Two (if not continuing in the role as Accountable Person) must hand over building safety information about the final, as built building to the Accountable Person before occupation is permitted?

Yes we agree with this requirement.

Q 31. Do you agree it is appropriate to allow staged occupation (where previously agreed during Gateway Two) e.g. a mixed use development?? Please support your views

We agree in principle with allowing a staged occupation in this context but expect further discussions will be needed around how tenants are engaged in the safety of buildings in the scenario, kept informed and are able to effectively feedback



their concerns and views as works in on other aspects of a development progresses.

Q 32. Do you agree that Category 1 buildings undergoing major refurbishment should also be subject to the Gateway approach? Please support your views.

Yes we agree with this requirement.

Q 34. We will be undertaking further consultation in this area when we set out regulations. Would you be interested in being added to our stakeholder list in relation to the Design and construction phase? Please provide your details

Yes, please add matthew.kennedy@cih.org and matthew.dicks@cih.org to the distribution list.

Q 35. Do you agree that there should be a single and clearly identified Accountable Person for all premises covered by the Building Safety Regime?

As reflected in the narrative of the consultation document, we agree that this will increase transparency and accountability and recognise it as a central role to the Building Safety Regime as drafted.

Q 36. Do you agree with the proposed approach in identifying the Accountable Person? Please support your view.

The consultation rightly highlights that a range of management arrangements of buildings that fall within the scope of the legislation in Wales could mean that in practice a number of individuals could carry out the role. We agree with the proposed flexibility for identifying the Accountable Person.

Q 37. Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an Accountable Person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.

It seems unclear at present how the concept of an Accountable Person would apply to cooperative housing models, where residents in many instances will have control over and be responsible for many aspects of building management in partnership with a landlord.

Q 38. Do you agree that the default position should be that the Accountable Person is the freeholder?

Yes we agree with this requirement.

Q 39. For mixed-use buildings there will be a 'Responsible Person' under the FSO for the business premises, and an 'Accountable Person' under the Building Safety Regime for residential parts. Are there any requirements we should consider about how these responsible parties should work together to support and ensure fire safety of the whole building?

Yes we would be supportive of measures to ensure there is clear collaboration between both persons in circumstances involving mixed-use buildings. The requirements should not be limited to a prescribed list, but there should be a common set of overarching principles guiding the collaborations in these circumstances. This should include the technical information needed by both parties to ensure the safety of overall building, how the business function could impact the safety of residents and the wider building, and how tenants are made aware of this collaboration in practice.

Q 40. Do you agree with the proposed duties of the building safety manager for Category 1 buildings? Please support your view.

It should be noted that the main responsibilities for the role are quite varied and include ensuring third party organisations engaged in the ongoing upkeep of building safety measures have the right level of skills and maintaining proper engagement with tenants and residents. It will be important that further guidance seeks to address what the expectations are in practice; for example how it is evidenced that the BSM has gained proof of sufficient qualifications and experience from third-party organisations undertaking work.

Q 41. Do you agree with the proposed division of roles and responsibilities between the Accountable Person and Building Safety Manager?

We agree with the proposed division of roles. Whilst the white paper provides some flexibility over whether a BSM should be engaged by the Accountable person to be a joint dutyholder this seems like it could cause confusion and variation in practice. With the BSM role being specific to Category 1 buildings there would need to be a clearer view set out describing the circumstances where

not engaging a BSM would be acceptable. We would envisage this would include providing detail on the type/level of qualification a BSM would be expected to hold.

Q 42. Is the relationship between the Accountable Person and Building Safety Manager sufficiently clear? Please explain your answer.

The relationship seems clear, although the position may not reflect the variation in the skills/ expertise of an Accountable Person and how that could impact how in practice the relationship operates with the BSM. Some performing the Accountable Person role may require a BSM able to cover a range of specialisms, whilst others may be needing very specific expertise - further clarity should be provided over how the recording of responsibility is set out to reflect the different arrangements that could arise.

Q 43. Do you agree that the proposed duties and functions set out in Figure 8 for Accountable Persons for Category 1 buildings are appropriate? Please support your view.

The duties and function in relation to Category 1 buildings are wide-ranging in their nature. In relation to the development and effective implementation of a tenant engagement strategy doing this well and effectively will require sufficient experience, skills and expertise. Given the majority of the duties seem focussed on operational management and technical aspects of building safety, additional consideration should be given to the tenant engagement aspect of the role, and the expectations on Accountable Persons to engage expertise if and when required.

Q 44. Do you agree that the proposed duties and functions set out in Figure 8 for Accountable Persons for Category 2 buildings are appropriate? Please support your view.

The tenant engagement aspect of the role in relation to Category 2 buildings could be made more significant, to more closely mirror the responsibility in Category 1 buildings. Given the overall impact that meaningfully engaging tenants could have on effectively implementing the building safety regime - with added benefits to the overall management of the property - this is an area that should be bolstered and cut-across all aspects of building safety in both Category 1 and 2 buildings.

Q 45. Do you think that the different roles and responsibilities for Category 1 and Category 2 Accountable Persons are sufficiently clear and proportionate?

We have highlighted specific areas of concern above.

Q 47. Do you agree with our proposed fire safety outcomes? Please support your views.

We agree with the listed outcomes as set out.

Q 48. Do you agree with our proposed overall purpose of a fire risk assessment? Please support your views.

We agree with the view that fire risks assessments should be completed to a specified standard and be of the required quality to ensure safety measures are appropriate and effective.

Q 49. Do you agree with our proposed risk areas? Please support your views

We agree with the proposed risk areas.

Q 50. Do you agree that a fire risk assessments must be reviewed annually, and whenever premises are subject to major works or alterations for all buildings within scope?

Yes we agree with this requirement.

Q 51. Do you agree that only a suitable qualified and experienced fire risk assessors should undertake fire risk assessments for buildings within scope? Please support your views.

As the home of professional standards within the housing sector we fully support any measures aimed at ensuring the correct type and level of expertise is employed to undertake tasks that require specialist knowledge - assessing the risk of fire and the safety measures within building falls within this view. Further guidance should be provided regarding the type(s) of qualification and the nature of the experience (and how this is sufficiently evidenced) in relation to the types of properties being considered.



Q 52. Do you agree that fire risk assessments must be permanently recorded?

Yes, we agree with this requirement.

Q 53. Do you have any views about whether Accountable Persons or their employees should be precluded from conducting fire risk assessments themselves?

If the Accountable Person or their employee is able to satisfy the expectations around experience and qualifications for undertaking a fire risk assessment, we do not see an issue with this being done. However, to ensure the process contains rigour we believe when this is the case there should be a process of peer review where the assessment is confirmed as being appropriately undertaken, with its content demonstrating proportionate responses to the risks identified by an appropriately qualified independent assessor.

Q 54. Do you have any views on enforcement or sanctions for non-compliance with regards to the Accountable Person?

For the regime to be successful it will rest on the perception of how well/effectively enforcement will be undertaken and that the associated sanctions impose meaningful penalties in relation to the offending organisation.

Q 55. Do you have any views on enforcement or sanctions for a person undertaking a fire risk assessment without suitable qualifications or experience?

We would echo the view provided in response to Q. 54 and add that consideration should be given to revoking the licence of an Accountable Person and excluding an individual/organisation from undertaking the role for a prescribed period of time.

Q 56. Do you agree with our proposal to create duties with regards to compartmentation on Accountable Persons? Please provide information to support your views.

Yes we agree with this measure.

Q 57. Do you agree with our proposal to create duties with regards to compartmentation on residents? Please provide information to support your views.

Whilst we understand the logic in ensuring tenants are seen as a key part of maintaining the compartmentation of a building, we are not convinced that creating a duty on tenants will overcome the issues at present. We do not directly represent the views of tenants, but would encourage the Welsh Government as this legislation is scrutinised further to sense check this measure directly with tenants who would be subject to it.

A lack of access to a property to check that compartmentation hasn't been compromised is an issue many of our members report. Whilst there are clear concerns around building safety our members recognise that being refused access to a property can often be a sign of an underlying issue or concern such as rent arrears, anxiety around engaging with a landlord and situations involving hoarding.

In that sense, the question is whether or not a duty would overcome those challenges - which seems unlikely. In addition, imposing a duty in this way prompts questions around how guidance would ensure that the duty has been sufficiently explained, evidence provided to demonstrate that it has been understood, all through a suitable approach and format.

Some of our members report that issues with compartmentation are sometime caused by companies installing internet, or television services. It seems sensible to place greater responsibility on companies of this kind, who through their own installation process could compromise compartmentation.

Q 58. Do you agree the concept of a Safety Case for Category 1 buildings is an appropriate way to assess and manage the risk of building safety issues?

We support the use of and outlined contents of the Safety Case as a means to manage risk in Category 1 buildings.

Q 60. Do you agree there should be a mandatory reporting duty on dutyholders in the occupation phase?

Yes we agree with this measure.

Q 62. Should there be a requirement for the Accountable Person to register under the building safety regime during the occupation phase?

Yes we agree with this measure.

Q 64. Should there be a requirement for dutyholders (both the Accountable Person and the Building Safety Manager) to obtain a building safety licence in the occupation phase? Please explain your answer.

We agree with this requirement.

Q 65. Are there any other requirements that should form part of the licensing process for Accountable Persons in addition to completion of basic training about the building safety regime and the fit and proper persons test (Category 1 buildings only)?

Whilst we agree with the proposed approach around training and the completion of a fit and proper persons test, there is a case for repeating this training to both ensure skills remain up to date and that new methods and approaches can be included to ensure practice remains as effective as possible. Consideration therefore should be given to a condition whereby the training needed to gain a licence is repeated as part of the licencing conditions.

Q 66. Should there be a competence requirement and/or minimum qualifications for those managing Category 2 buildings? If so what criteria should those engaging in such services meet?

We agree that there should be a minimum requirement around qualifications for those managing Category 2 buildings.

Q67. Do you agree that there should there be regulation of all residential property management? Please support your views.

We agree with this measure.

Q 70. Do you agree that all Accountable Persons should be required to promote building safety (as set out at para 8.2.4)? Please support your views.

We agree that the promotion of building safety is an important preventative measure in the broader building safety system. This promotion could have a significant impact on the understanding held by tenants over how their independent actions could compromise building safety, but also increase awareness in the role they can play in supporting the building safety regime.

The white paper suggests that only supplying information to tenants amounts to 'lip service'. Whilst we recognise the need for the strategy to capture a broader range of activities, this framing waters down the value and role of high-quality information provided in a timely and accessible way. We would encourage a view where this kind of information forms the basis of the engagement strategy which itself would set out how it will be used to support tenant understanding. This in itself could form a substantial part of the welcome/induction process for new tenants where the Building Safety Manager of Accountable Person could provide a briefing to ensure information from the outset is well understood and any issues raised proactively.

Q 71. Do you agree that this information should be provided in a way that is accessible and understandable, and should where relevant reflect the specific needs of residents? Please support your views.

Within the scope of the legislation it has already been recognised that a range of buildings and management types will be captured. Some individuals/ organisations will already have strong infrastructure in place to provide accessible information, in a range of formats using both digital and non-digital methods; others will have very limited experience in this area. Consideration should be given around the initial expectations and the guidance available to support the growth of meaningful information promotion practices.

Q 74. Do you agree that for Category 1 buildings the Accountable Person must provide the information as set out at para 8.2.10? Please support your views.

We agree with this measure.

Q 76. In what ways could an Accountable Person demonstrate that they have established effective two-way communication?

The white paper sets out a number of ways of demonstrating this, but additional measures could include:

- A clear narrative produced by an AP or BSM highlighting the impact tenant insight/expertise has had on the building safety case and the overall approach to managing risks
- Detail the opportunities provided to tenants to provide feedback and insight on their understanding of, and their perception of how effective the building safety aspect of managing a building is in practice.

Further consideration could also be given to the role a AP could have in providing training/ specialist facilitation to support tenants to increase their expertise in relation to the building safety regime.

Q 77. Do you agree that there should be a new requirement on all residents of buildings within scope to co-operate with the Accountable Person (and their appointed representative) to allow them to fulfil their duties under the Building Safety Regime? Please support your views.

This area links heavily to the issues some of our members can experience around compartmentation. Whilst we agree with the requirement, there will be considerable reliance on the quality of tenant/resident engagement and the promotion of information to support how it operates in practice. Further detail is needed over what strength such a requirement would hold in reality, given that there is no detail at present around the implications for not meeting this requirement.

Q 79. What safeguards should be put in place to protect residents' rights in relation to this requirement? Please support your views.

As noted previously a lack of cooperation or engagement can be a sign of other challenges/issues being present within a household. Consideration needs to be given to the role that support service can and should play in addressing the concerns of tenant who may be more vulnerable.

Q 80. Do you agree that there should be a new requirement on all residents of buildings within scope not to knowingly breach compartmentation? Please support your views.

Whilst we agree with the requirement further information is needed over how it would act in practice, given that it may be difficult to gain a definitive view of whether compartmentation has been knowingly breached.

Q 81. Do you agree that there should be a single process for escalating concerns to the regulator in relation to the Building Safety Regime, regardless of the Category of building or where it is in the building lifecycle? Please support your views.

We agree with this approach. And in relation to the process for tenant to escalate those concerns there is a need for more clarity to ensure that no process developed by an AP is overly onerous, and considerations around advocacy is made where this is needed to effectively raise a concern.

Q 83. What roles and responsibilities are appropriate for Accountable Persons with regards to people who cannot safely self-evacuate? Please support your views.

We agree with the proposed roles and responsibilities as currently outlined in the white paper.

Q 84. Should Accountable Persons be required to collate details of all those who would require assistance?

We agree with the rationale in the white paper that tenants should have the right to provide this information to an accountable person.

Q 85. Should Accountable Persons be required to provide this information immediately to the FRS in the event that an evacuation was necessary?

We agree with this measure.

Q 86. Should this be the case for all Categories of buildings? Please support your views

We agree with this measure.

Q 87. Do you agree that Welsh Government should pursue a means to protect workers from raising concerns with regards to building safety? Please support your views.

We agree with this measure.

Q 89. Do you agree with the list of key functions for the regulator as proposed?

We agree with the key functions listed.

Q 92. In your view, do any of the regulatory model options outlined provide a preferred approach to regulating the regime in occupation

In our view a new national body (despite the cost and set-up implications) or a single regulator appear to be the options that fall more closely in line with what regulation would be seeking to achieve.

Q 94. Do you think a local, regional or national approach to regulation would be appropriate? Please explain your answer, highlighting any positives and negatives you identify.

We recognise the challenges set out in the white paper for and against approaches aimed at a local, regional or national level. It seems sensible to find a balance between ensuring the regime does not mean authorities required to support it are tasked with engaging a large amount of different parts of the regulatory system with responsibilities for smaller areas, where the prominence of buildings under scope, especially those in Category 1 is likely to be low in most areas.

In our view, this is an area that requires further consideration given that there are merits and drawbacks to both a national, or/and a regional approach. Whilst the national approach could strengthen the regulatory regime and be more visible as the single body overseeing that the legislation is being abided by in practice there is, as highlighted by the White Paper the risk that resources may be disproportionately focussed on specific regions. And whilst a local approach would overcome this there would be a risk that variation could occur between areas despite conditions or situations appearing to be very similar.

Whatever form the approach takes it will be important for the regulatory regime to establish processes for sharing information internally, promoting good practice to inform the wider approach applied across each region.

Q 95. Do you agree that there should be a framework for escalating enforcement and sanctions? Please support your views.

Yes we agree with this measure.

Q 96. Do the levels set out at Figure 13 sufficiently reflect these levels? Please support your views.

We agree with the levels set out at Figure 13.

Q 98. Do you agree that access rights should also be provided to the Fire and Rescue Authorities, along similar lines to those available to Environment Health Officers in relation to their powers under the HHSRS? Please support your views.

We agree with this measure.

Q 99. What safeguards should be put in place to protect residents' rights in relation providing access to their properties? Please support your views.

It will be important that this access right is well communicated to both authorities and tenants alike, making it clear that prior arrangements are made to ensure appointments are convenient and their purpose well-understood. In addition it should be explained how the information should be used and that tenants should be able to request the information gathered during a visit in an appropriate format to support transparency.

Q 100. Do you agree with the proposal to establish a Joint Inspection Team as outlined?

We agree with this proposal.

Q 101. Do you agree that the Joint Inspection Team's scope should be limited to Category 1 buildings initially with potential to expand? Please support your views.

We recognise the rationale in this approach and agree that the JITs scope should be limited initially. We support the proposal to expand its remit, which we feel could help ensure that there is a greater readiness once this legislation is fully adopted. However given the volume of work this is likely to create it will be important to consider how in partnership with FRAs in each region work remains targeted based on local intelligence and data and how JITs are effectively resourced and staffed in undertaking their functions.

Q 102. Do you agree with the proposed composition of the Joint Inspection Team?

We agree with the proposed composition of the JIT.

Q 103. Are there other functions the Joint Inspection Team could perform in addition to those outlined (i.e. enforcement advice and evidence gathering)?

Whilst we recognise that the functions outlined represent those need to understand the risk profile of buildings in the interim period between now and the new legislation being realised and implemented we are concerned that there is no focus on tenant engagement. Given that this could for many, be a challenging aspect of the legislation to get right, it seems important to begin progress pre-empting the impact of the legislation.

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