

Building a Safer Future—how new proposals could shape regulations

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Construction analysis: Following the review of building regulations and fire safety in the wake of the Grenfell Tower fire, Paul Lowe, partner at Weightmans LLP, discusses the government's proposals to reform the building safety regulatory system.

Original news

Government consultation on building safety regime may lead to 'step change', [LNB News 06/06/2019 103](#)

The Ministry of Housing, Communities & Local Government has released a [consultation](#) seeking views on a new building safety regime in the aftermath of the Grenfell Tower fire in June 2017. After the fire, former chair of the Health and Safety Executive Dame Judith Hackitt was tasked with reviewing the building safety system and discerning how it can be improved. The consultation is based on the recommendations of Dame Judith's report.

What is the government's Building a Safer Future consultation?

Following the Grenfell Tower fire, Dame Judith Hackitt led the Independent Review of Building Regulations and Fire Safety, which identified issues in the way some high-rise residential buildings are built, managed and looked after.

In response to these issues, the government has now developed a set of policy proposals aimed at improving the fire and structural safety of high-rise residential buildings. The government's proposals are set out in the [Building a Safer Future consultation](#). The consultation has been described as one of the most significant government interventions in the past 20 years.

What are the key proposals?

The proposals apply to all buildings that are lived in by multiple households and are 18 metres high (six storeys) or more. The key proposals set out in the consultation are as follows:

- Construction (Design and Management) Regulations 2015, [SI 2015/51](#)
 - the introduction of a new dutyholder regime—proposed introduction of five duty holders (the client, the principal designer, the principal contractor, the designer and the contractor) who will be responsible for ensuring the safety of a building when it is being designed and built and ensuring that building regulations are complied with. This is similar to the dutyholders currently seen under the CDM Regulations regime
- the introduction of an 'accountable person'—during occupancy, the accountable person will be legally responsible for ensuring that building fire and safety risks are reduced so far as is reasonably practicable. The accountable person should be the person who has control of the building
- mandatory occurrence reporting—this will place an obligation on the client, principal designer and principal contractor during construction, and the accountable person during occupation, to establish a reporting mechanism internally and report specified fire and safety issues to the building safety regulator
- the expansion of the existing system of Confidential Reporting on Structural Safety (CROSS) to cover fire engineering safety concerns on all buildings
- the introduction of a statutory objective for all those involved to promote building safety and the safety of people in and about buildings—the aim is thereby to facilitate a culture shift and avoid fire regulation becoming merely a box-ticking exercise
- the creation of a single building safety regulator with responsibility for overseeing design and management of buildings, with a focus on ensuring the new regime is enforced effectively and robustly
- enforcement action to be strengthened to include monetary penalties and fines and new criminal offences applicable to designers and contractors as well as the accountable person

What would the proposals mean for the construction industry?

The proposals mark a very significant change for the construction industry as a whole and demonstrate a marked effort by the government to answer some of the criticisms made in the Hackitt report. In particular, the Hackitt report noted the need to bring about a stronger and more effective regulatory and accountability framework for buildings, work with industry to drive culture change, ensure that the construction and fire safety sectors take responsibility for collaborating and taking a holistic approach to building safety rather than focusing solely on their own disciplines.

The proposals mark an important development for all involved in the high-rise residential sector. A new regulator with new enforcement powers, coupled with the possibility of criminal sanctions, means that a failure to comply with the new regime could present a significant risk to accountable persons and dutyholders. Consequently, we anticipate that developers, landlords, contractors and designers will be paying close attention to the proposals.

Would they have implications in other sectors?

The proposals represent such a significant change to the current regulation of high-rise residential properties that they are likely to affect anyone involved in the design, construction and management of such buildings should they become legislation. In particular, the duties of the accountable person mean that any person in control of buildings, including building management companies and building owners, will need to be aware of the new regime.

Further, the proposals will also need to be considered by the insurers of relevant dutyholders. Such insurers need to consider whether their policies are adequate to cover the potential civil and regulatory exposures that may arise. It is likely that the true implications for the insurance industry will not become apparent until some years after the implementation of the new regime, by which time the likely size of any monetary punishment and fines should become apparent.

How have the proposals been received?

The proposals generally have been well received across the construction industry. Key industry bodies, including the Construction Industry Council (CIC), strongly agree with the need for systemic change in the sector. The industry has been supportive of the recommendations made by Dame Judith Hackitt. In particular, the Chartered Institute of Building (CIOB) [commented](#) that the proposals are an attempt to embody the 'golden thread' identified in the Hackitt report, and, given the industry support for the recommendations of the Hackitt report, this is a sensible approach for the government to take.

The Chartered Institution of Building Services Engineers (CIBSE) [notes](#) that the proposals mark a significant change of approach to building safety from the laissez-faire, market-led approach of the past 35 years. CIBSE has particularly commended the proposed 18 metre threshold, which goes some way to responding to industry concerns that the 30-metre limit was too restrictive.

One criticism that has been made so far is that the proposals do not go far enough to address building and fire safety across the construction industry as a whole. Currently the proposal is that they will apply to residential properties that contain multiple households and are over 18 metres in height. The Royal Institute of British Architects (RIBA) [has urged](#) the government to extend the regulations to other high-risk buildings such as schools, hospitals, care homes and prisons. Further, RIBA are of the view that there is still a need to adopt other vital recommendations such as increased requirements for the use of sprinklers.

A clearer understanding of the views across the industry towards the proposals will in all likelihood become apparent after the consultation closes.

What happens next?

The consultation closed on 31 July 2019, and all the relevant industry bodies will have had to provide their feedback on the proposals. The government now needs to consider the responses and confirm whether and how it intends to implement the proposed regime.

Given the support for reform across the industry it appears that reform is on the horizon and should broadly take the form outlined in the proposals.

Prior to the publication of the government's proposals, some industry bodies were critical of the perceived delay in responding to the recommendations of the Hackitt review. However, these criticisms have generally been addressed by the thorough nature of the proposals. CIBSE [commented](#) that 'the consultation is not the work of a few moments, but signals a determination to drive real and lasting change in our sector'. The significant nature of the proposed reforms, and a clear intention to get this right, means that it may be some time before we start seeing a new regime being implemented.

Interviewed by Thomas Jeffery.

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