

# Response to the Government's Consultation, 'Building a Safer Future: Proposals for reform of the building safety regulatory system'

## The Proposed Scope

Q.1.1: We do not support the proposal for the new regulatory system to only apply to multi-occupied residential buildings of 18 metres or more for several reasons.

- height is not the only factor that could undermine a building's safety in the event of a fire e.g. its location, refurbishment history, or type of occupiers are all as relevant
- the recent Barking fire (9 June 2019) on a 6-storey block was *under 18 metres in height* and would have been excluded from the proposed system, yet it featured many of the issues present at Grenfell including residents' safety concerns being ignored
- loopholes in existing building regulations will mean many existing blocks under 18 metres have fire safety measures that only conform to the inferior codes present at the time they were built
- government data proves many fires are spreading beyond two floors in blocks of four storeys or higher, which means a serious compartmentation failure has occurred

**Proposal: If height is to be used as a cut-off for inclusion in the new system then this would make 11 metres (about three storeys) the only logical safe height as most fire brigades only carry 13.5 metre ladders which reach up four storeys, and guidelines state that 11 metres is the highest safe working height on these ladders in a fire scenario.**

For the same reasons above, we are also opposed to the government's proposal that new fire safety requirements for high-rise blocks at the Planning Application stage of a new building or planned refurbishment will only cover buildings at a 30-metre height threshold.

**Proposal: We believe that in the long-term the new regulatory system should cover all buildings, old and new. In the short-term, the scope of the new system should initially embrace all buildings where there are greater risks to life from fire because of either the unsafe nature of the building, the constrained ability of the local fire service to fight a fire and protect residents' lives, or the occupiers' inability to independently escape from a fire. This would include:**

- all residential buildings of 11 metres or higher as a rule
- other types of multi-occupied residential buildings and higher-risk workplaces as set out by the government (Q.1.4.-1.5) including prisons, detention centres and other secure premises, hospitals or health care institutions where patients stay overnight, supported/sheltered housing, educational buildings, boarding schools and halls of residence, care homes, hostels, HMOs, and hotels

## The Duty Holder Regime

We support the creation of a duty holder regime that sets legal safety responsibilities on different people and organisations during a building's life-cycle (Qs2.1-2.2). We also support the creation of Gateway Points (at planning, full building design, and before occupation) where the Regulator would be able to halt unsafe developments.

**Proposal: the duty holder regime would be strengthened by adding a named Fire Engineer at the concept stage of a development who would remain with the project until occupation, guaranteeing fire engineering expertise is continuously present through design and construction.**

We also agree that:

- where the duty holder is a legal entity like company, a named individual should be responsible for building safety (Q2.3)
- fire and rescue authorities should become statutory consultees at the planning permission stage (Q2.5) on all proposed high-risk developments and those within the 'near vicinity' (Q2.7)
- planning applicants should submit a Fire Statement as part of their planning application (Q2.6)  
**Proposal: this should go beyond vehicular and water access issues to include wider fire safety considerations relating to Part B of the building regulations to allow the public and the fire service to properly scrutinise these issues before full building design takes place and allows the public to object to proposals that, for example, use toxic materials (Q. 2.11)**
- the Regulator should be able to (i) impose a 'hard stop' (Q. 2.15) prior to construction beginning to ensure proper safety management, (ii) require work carried out without approval to be pulled down or removed during inspections to check building regulations compliance (Q. 2.17), (iii) prohibit building work from progressing unless non-compliant work is first remedied (Q. 2.18) – these powers would act as an important deterrent and penalty for non-compliance, and the only way of ensuring the reasons for non-compliance can be established and an improvement plan put in place to stop it happening again
- the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans (Q. 2.21) – this should also include a Fire Engineer – and to notify the Regulator of proposed major changes that could compromise fire and structural safety for approval before carrying out the relevant work (Q. 2.22, Q.2.23)

We support the creation of an accountable person in law for fire and structural safety of every individual building and also agree that:

- the accountable person must apply to register and meet additional requirements (if necessary) before occupation of the building can commence (Q. 2.29) – this is the point at which their financial stake in the development is arguably most at risk and thus should act as a powerful incentive to ensure safe occupation
- it should be a criminal offence for the accountable person to allow a building to be occupied before they have been granted a registration for that building (Q. 2.30)

#### *Existing buildings and refurbishment*

We agree that the same new regulatory system should equally apply to refurbished buildings (Q. 2.32) but am concerned that this would only be for 'significant major refurbishment' as:

- no definition is offered as to what 'significant' or 'major' refurbishment means
- any kind of refurbishment can render a high-rise building unsafe
- thousands of social housing blocks will have had varying degrees of refurbishment work under the Decent Homes programme (2000-2010) and successor investment projects

**Proposal: We believe the new system should apply to any kind of refurbishment i.e. any work to existing buildings included in the new system.**

We are glad the new system will eventually apply to existing buildings, but it is very unclear how retrospective the new system will be as there is no definition or suggested timeframe for the 'transitional period' and there is no reference to how historic / existing building regulations will apply to this system.

**Proposal: We want the new system to bring all existing buildings up to the highest regulatory standards and believe that new safety regulations should as a rule always be retrospective.**

## *The Safety Case*

We agree that:

- a safety case should be scrutinised by the Regulator before a building safety certificate is issued (and before occupation is permitted) (Q.3.1), and
- it should cover ALL areas of the building as this will overcome the clear weaknesses of the existing regulatory system (building control, Fire Safety Order, Housing Health and Safety Ratings System) that prevent dwellings' passive fire safety features being checked (Q.3.2.)
- the building certificate and safety case be reviewed every 5 years (Q.3.3)

**However, we propose:**

- **this must not simply be a desk-based sign-off of paperwork but must involve physical inspection including successful hot smoke tests (see: <https://youtu.be/Lt mxMR69-c>) with the results placed in the public domain for scrutiny by residents**
- **the safety case should also be ultimately signed off by the building insurer who will have a vested interest in properly checking for compliance with laws and regulations**
- **an annual fire risk assessment should be conducted by the properly qualified chartered fire engineers working for the fire service or an equivalent body as happened prior to the Fire Safety Order 2005, and this should include inspecting features only accessible from inside dwellings such as compartment barrier walls and service risers**

We are also very concerned about the suggested lighter-touch safety case regime for existing buildings “in order to avoid placing unreasonable requirements on existing building owners where information has not been handed over” after construction phase or from a previous owner” (para 132, page 54) because existing buildings that have undergone refurbishment will arguably pose more risk than new buildings erected under the proposed system.

**Proposal: We believe the accountable person should have to demonstrate an acceptable (and full) safety case to the Regulator as soon as practicably possible, conducting intrusive inspections in vacant dwellings to build that information.**

### *Costs of remediation*

Tenants and leaseholders should NOT have to pay for the costs of crucial safety works to rectify problems discovered by the safety case review (Q. 3.4).

**Proposal:**

- **the costs of these failings should be borne by either the government or legal duty holder (and their contractors) in the new regime**
- **if a building owner / landlord is found responsible for costs, this should not result in increased rents and service charges for residents**
- **there should be a decanting and like-for-like rehousing strategy (same tenure, rents and property size) prepared as part of the safety case in the event that remediation works require the building to be evacuated with a duty of care and responsibility for residents being decanted and no resident liability for the costs**
- **the government could learn a lot from what went well and badly during the Chalcots Estate evacuation in Camden following post-Grenfell safety checks**

## *Identifying the accountable person*

We are concerned about the proposed approach for identifying the accountable person (Q. 3.5) and how this will work in practice (Q3.6) as there are potentially many layers of ownership and management of a multi-occupied residential building (landowner, building owner, leaseholders, shared ownership, right to manage companies, and other kinds of management companies like TMOs, ALMOs, private contractors) and it is not clear which entity will be deemed to be the accountable one in law.

**Proposal: in principle, the designated accountable person should be the building owner (or landlord if a different entity). The naming of an accountable person for a building should not end the accountability of any contractors acting on their behalf.**

We agree that:

- the accountable person requirement should be introduced for existing as well as new residential buildings (Q.3.7) as soon as possible – **we propose that the existing buildings should all be subject to a safety testing regime now and the accountable person regime should begin as soon as possible alongside an existing building fire safety improvement plan**
- only the building safety Regulator should be able to transfer the building safety certificate from one person/entity to another (Q.3.8) – this is the only way of ensuring that both the legal accountability for fire safety defects passed on is properly identified and enforced
- the building safety manager should be directly accountable to residents (3.9)
- the building safety manager should be properly trained and resourced and not be stretched across dozens of blocks – **we propose that the Regulator must set strict guidelines on how many buildings, flats and residents one person can safely manage**
- in certain circumstances, the Regulator could appoint an independent building safety manager (Q.3.12) but **propose that this can only happen if the Regulator remains an independent body for residents to make representations to when complaining about building safety**
- the registration scheme involving the issue of a building safety certificate is an effective way to provide assurance and transparency (Q. 3.17) but we **propose the certificate contains a quantitative rating of how fire safe the building is according to the Regulator and what measures would need to be taken for it to have a maximum rating to enable residents to identify the improvements needed and who to lobby for them**
- the building safety certificate should apply to the whole building (Q. 3.19) to remedy the weaknesses of the Fire Safety Order which only applies to common parts
- building safety certificates should be reviewed every 5 years (Q. 3.21) or when residents raise concerns about safety in their building (Q. 3.22)

## **Information sharing and the Golden Thread**

We fully support the proposal for a golden thread of accurate and up-to-date information about the design, construction and ongoing maintenance of residential buildings to operate throughout a building's lifecycle. I also agree that:

- the key dataset for all buildings should be made open and publicly available (Q. 4.4) and that relevant parts of the golden thread be made available on request (Q. 4.5) - it is vital for accountability and transparency, and for driving up fire safety management standards, that current and future residents can easily find and scrutinise key safety information about their building and who the owners and safety managers are through a free to access online searchable register. Withholding such information is blighting the lives of thousands of residents today who do not know if the building is safe to sleep in

- a 'just culture' is necessary for an effective system of mandatory occurrence reporting (Q. 4.10) - whistle-blowers must be protected and the most effective way of making this happen is by rewarding those who expose safety failings and penalise those who seek to shut them down
- where an occurrence has been identified, duty holders must report this to the building safety Regulator within 48 hours (Q. 4.11)
- the Regulator should be made a prescribed person under Public Interest Disclosure Act 1998 (PIDA) (Q.4.16) **but we propose that this needs to ensure that residents are also protected from bullying, harassment, revenge eviction and threats of legal action prosecution when they report contractors and the accountable person to the Regulator**
- duty holder roles and the responsibility for compliance with building regulations should be applied to all building work, not just on high-rise buildings (Q. 4.20) as the present standards of design and construction in the building industry are very poor – we do not want to a two-tier system as this could incentivise companies to place their unskilled workers in the less regulated part of the industry with potentially disastrous consequences

### **Resident engagement strategy**

We agree that the following information should be proactively provided to residents (Q. 5.1):

a) the measures in place to mitigate potential fire and building safety risks to residents; b) how to reduce the risk of fire in individual dwellings; c) the process for reporting a fire risk and/or raising any other safety concerns; d) procedures to follow where a fire occurs in the building, including for evacuation; e) different roles and responsibilities of the accountable person, building safety manager and residents; f) contact details of the accountable person and building safety manager.

**Proposal: Every household should be provided with a fire safety pack that contains all of the above information written in the appropriate language(s) for the household, and include an A4 or A3 checklist of the essential fire safety information for their inside front door or fridge. Ideally there would be a fire safety app for their smartphone to enable residents to do their own safety checks and safety drills, and have direct and fast communication with the building safety manager.**

I agree in principle with the proposed culture of openness for sharing building safety information with residents (Q. 5.2). However, I am concerned that the proposed exemptions to information sharing will be abused by the accountable person when seeking to hide information from residents and others that could embarrass or incriminate them.

**Proposal: there must be a presumption that all information in the golden thread should be accessible on request throughout the life-cycle of the building and only the Regulator should be able to redact information on request by the relevant duty holder. The golden thread should also be written in an accessible way from the outset and any highly technical information and intellectual property that might end up being redacted should still be summarised with a clear explanation of why they have been redacted.**

We also agree:

- that a nominated person who is a non-resident should be able to request information on behalf of a vulnerable person who lives there. They could be any of the below and indeed all of them simultaneously: a) Relative, b) Carer, c) Person with Lasting Power of Attorney, d) Court-appointed Deputy, e) Other: MP, Councillor, solicitor (Q. 5.3)
- with the proposed set of requirements for the management summary (Q. 5.4) and the engagement summary (Q5.5.) but **propose that there is a clearly defined and resourced role for democratically-elected resident-led organisations in this system who play a vital role in representing tenants and leaseholders**

We are very concerned about the proposal for a new legal requirement on residents to co-operate with the accountable person (and the building safety manager) to allow them to fulfil their duties specific to fire and structural safety in the new regime (Q. 5.6.):

- those legal requirements already exist with respect to tenancy and lease agreements and are backed up by a number of legal routes for the landlord to take action against the tenant
- any new legal requirement to cooperate with the landlord on safety issues could simply give the landlord more powers and grounds to bully, intimidate, harass or evict tenants, or the freeholder more power to cancel a lease on forfeiture grounds

**Proposal: if such a new requirement for residents to co-operate was introduced, a safeguarding measure to protect residents (Q.5.8.) would be for the Regulator to oversee the process and allow residents to ultimately seek a Judicial Review with automatic qualification for legal aid.**

We agree with the proposed requirement for the accountable person to set up an internal process for raising safety concerns (Q. 5.9), and for the proposed right of residents to escalate their safety concerns to the Regulator (Q. 5.10). It is vital that residents can go direct to a Regulator whose statutory role is to protect life and intervene to enforce safety. If this had been in place prior to June 2017, the Grenfell disaster would probably not have happened.

**Proposal: to work effectively residents should: be able to ring an emergency number for an urgent fire or structural safety concern with an imminent threat to life or serious injury; be formally empowered under the Resident Engagement Strategy to film, photograph and audio-record where they are documenting safety concerns or suspected breaches, and any attempt to intimidate or prevent that evidence-gathering should be subject to enforcement by the Regulator; be told in clear and unequivocal terms that the law is on their side when reporting and evidencing their safety concerns; and be automatically granted legal aid to seek a Judicial Review where their complaints to the Regulator have not been upheld to ensure legal oversight.**

What is missing from the proposals is a compensation system for residents who may have had their lives taken over by these issues with loss of earnings and job, stress and health deterioration, and devastation to family life. The current legal system makes it very difficult for residents to get any compensation for these injustices.

**Proposal: the new regulatory regime must be able to impose fines on duty holders and award compensation to residents. This will not only incentivise duty holders to comply, it will also incentivise residents to report issues to the Regulator that could save lives.**

### **The Regulator**

We fully support the creation of a new building safety Regulator with teeth but it is very important that the Regulator is independent of political and commercial interference.

**Proposal: We would urge (Q.6.3.) that some of the Regulator's proposed functions be delivered ahead of legislation by the Health and Safety Executive and other regulatory bodies. There should also be no delay in the registration of existing buildings or those at the occupation stage through a voluntary scheme with incentives to cooperate before legislation is passed.**

We agree there should be an overarching competence framework with formalised national standards (Q. 7.1). However, we are concerned at the proposal for an 'industry-led committee' to drive competence.

**Proposal: To work properly, the Regulator should not be advised solely by industry and so-called technical experts. Competence standards and certification should be a Regulator-led process and there must also be a strong residents voice at the heart of the new regulatory system to advise the Regulator and represent residents' views and interests. I am in favour of a democratically elected or mandated panel of residents' representatives to perform this. There also needs to be political accountability in this new system. Ministers should also face sanction if the system fails.**

### **Enforcement, compliance and sanctions**

We agree with the proposed three-step process (informal support and guidance followed by formal intervention and monitoring and finally enforcement action) for addressing non-compliance within the new system (Q. 9.1) and:

- that criminal offences should be introduced for (i) an accountable person failing to register a building; (ii) an accountable person or building safety manager failing to comply with building safety conditions or their own license/accreditation conditions; and (iii) duty holders carrying out work without the necessary gateway permission (Q. 9.2)
- an enhanced civil penalty regime should be available under the new building safety regulatory framework to address non-compliance with building safety requirements as a potential alternative to criminal prosecution (Q. 9.4)

### **Proposal:**

- **where serious non-compliance is detected, the informal stage should be skipped to prevent duty holders from being allowed to cover up their non-compliance and criminal behaviour**
- **a civil penalty regime should not enable the larger and already powerful companies in the building industry and real estate sector to absorb fines whilst smaller companies are forced out of the sector. The HSE prosecution model should be adopted that links the size of the fine to the profitability and turnover of organisations and the potential economic advantage gained from the breach, so that large organisations are fined much more than genuine small organisations**

We agree that formal enforcement powers to correct non-compliant work should start from the time the work was completed and for latent defects from the time they are discovered (Q. 9.5). However, I do not see the justification for time limits to bring prosecutions or make enforcement orders.

### *Financing and resourcing the system*

We are concerned that apart from the proposal that accountable persons will have to pay to register their buildings, there is no detail on how the estimated £425million annual cost (assumed 18m+ buildings) of setting up, running and complying with the new regulatory regime will be met.

- 90% of these annual are expected to fall onto social owners, private owners/leaseholders and developers/industry
- the remaining 10% falling to the building safety Regulator
- existing buildings will cost around £3,000-£4,000 per building to comply

Unless the current lack of government subsidy for social housing and the crisis of local authority finance is reversed, it is impossible to see how councils and other social landlords will be able to comply with the new system without either raising rents and service charges, and / or demolishing stock and /or and selling off stock and land. We are already seeing demolition planned for some tower blocks following post-Grenfell inspections.

**Proposal:** The best way of financing the new system is through a combination of government funding (tax and borrowing) and the compulsory licensing of all developers, contractors, and owners. A windfall tax on the excess profits of the building industry and landowners should also be considered alongside a new land value tax system to fund the new regulatory regime. Social housing providers must be given adequate funding to comply with the new system and there must be a properly resourced safety training scheme for residents and how to engage with the new system.

### **Reforming the existing building regulations on fire safety**

While we welcome a stronger system to enforce fire and structural safety regulations on residential buildings, that system will only be as good as the regulations it is policing. Sadly, as Grenfell revealed, those regulations and their accompanying guidance are also not fit for purpose and must be reformed to make our homes safe.

**Proposal: a list of the urgent reforms we need:**

- **to ban all combustible and limited combustible cladding and other toxic materials on all buildings over 11 metres high and make this retrospective**
- **require sprinklers in all new and existing residential buildings over 11 metres**
- **end stay put as the default evacuation policy in blocks of flats and instead require every building to have its own suitable evacuation strategy should stay put fail that takes into account how to support residents who cannot self-evacuate**
- **require every building owner to carry out Type 4 fire risk assessment (FRA) periodically – it is the only means of checking if a building is suited for anything but simultaneous evacuation when there is a fire by inspecting compartmentation and full height risers**
- **require fire detection and audible alarm systems in both our flats and communal areas – multi-sensory technology can now reduce accidental and malicious false alarms**
- **require landlords to run annual fire drills and train residents as fire wardens like in Singapore where landlords are required to have 10% participation in an annual evacuation practice**
- **require that all new buildings over 11 metres in height have a second staircase as a means of escape, and retrofit them where possible**
- **require the release of all past and current fire risk assessments and action plans, and require they are carried out by properly qualified fire engineers and written in a 'plain English' approach to improve high rise fire safety literacy for those managing and living in a building**
- **reverse cuts to the fire service and reinstate their role in performing annual checks of multi-occupancy buildings**