



BRIEFING PAPER

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Building Safety Bill 2019-2021

By Ed Potton

1. What is the Building Safety Bill?

In the Queen's Speech in December 2019 the Government announced that it intended to introduce a Building Safety Bill that would "Put in place new and enhanced regulatory regimes for building safety and construction products, and ensure residents have a stronger voice in the system." The [Government's background briefing notes](#) set out the expected parts of the Bill:¹

- An enhanced safety framework for high-rise residential buildings, taking forward the recommendations from Dame Judith Hackitt's independent review of building safety, and in some areas going further by:
 - Providing clearer accountability and stronger duties for those responsible for the safety of high-rise buildings throughout the building's design, construction and occupation, with clear competence requirements to maintain high standards.
 - Giving residents a stronger voice in the system, ensuring their concerns are never ignored and they fully understand how they can contribute to maintaining safety in their buildings.
 - Strengthening enforcement and sanctions to deter non-compliance with the new regime, hold the right people to account when mistakes are made and ensure they are not repeated.
 - Developing a new stronger and clearer framework to provide national oversight of construction products, to ensure all products meet high performance standards.
 - Developing a new system to oversee the whole built environment, with local enforcement agencies and national regulators working together to ensure that the safety of all buildings is improved.
- We will also legislate to require that developers of new build homes must belong to a New Homes Ombudsman.

A Fire Safety Bill was also announced that would "Implement the relevant legislative recommendations of the Grenfell Tower Public Inquiry Phase 1 Report" and "Put beyond doubt that the Fire Safety Order will require building owners and managers of multi-occupied residential premises of any height to fully consider and mitigate the risks of any external wall systems and fire doors." The Fire Safety Bill is currently awaiting report and

¹ [Queen's Speech December 2019: background briefing notes](#), Prime Minister's Office, 19 December 2019, p51

third reading in the Commons. A [Library Briefing Paper on the Fire Safety Bill](#) provides further background.

In [January 2020](#) the Government announced that a new Building Safety Regulator was being established, in shadow form, within the Health and Safety Executive (HSE).

A general update on Grenfell in a written statement from the Secretary of State on 2 June 2020 noted:²

At the heart of the Government's radical reforms to building safety is the new Building Safety Regulator, which we are establishing within the Health and Safety Executive. The Government set out plans in our response to the 'Building a Safer Future' consultation for the biggest change in building safety for a generation.

The new regulator will be responsible for implementing and enforcing a more stringent regulatory regime for higher risk buildings, as well as providing wider and stronger oversight of safety and performance across all buildings and increasing the competence of those working on building safety. This work complements the establishment of a new construction products regulatory role to strengthen national oversight and effectively enforce the new regulatory regime.

The Government will soon be publishing the draft Building Safety Bill for scrutiny before it is introduced in Parliament. This Bill will put in place this new and enhanced regulatory regimes for building safety and construction products, and ensure residents have a stronger voice.

2. Why is the Building Safety Bill needed?

2.1 Grenfell fire

On 14 June 2017 a fire broke out at Grenfell Tower, a 24-storey residential housing block in North Kensington, London. 72 people died as a result of the fire.

The tower, which provided social housing, contained 129 flats. The block was owned by the Royal Borough of Kensington and Chelsea, but management of the block was the responsibility of the Kensington and Chelsea Tenant Management Organisation.

The fire appeared to spread rapidly up the building; the current [Public Inquiry](#) reported that "there was compelling evidence that the external walls of the building failed to comply with Requirement B4(1) of Schedule 1 to the Building Regulations 2010, in that they did not adequately resist the spread of fire having regard to the height, use and position of the building".³

Further background to the fire is provided in the Library briefing: [Grenfell Tower Fire: Background](#).

2.2 Building Safety Programme

Following the Grenfell Tower fire, the Government set up a [Building Safety Programme](#) under the then Department for Communities and Local Government.

The Government appointed an expert panel, chaired by Sir Ken Knight, to advise the Government on immediate measures needed to ensure building safety and to help identify buildings of concern. On the issue of cladding, the independent panel advised the Government to undertake identification screening of residential buildings over 18 metres

² [HCWS257 2 June 2020](#)

³ [Grenfell Tower Inquiry: Phase 1 Report Overview](#), 30 October 2019, para 2.16

tall to identify the type of aluminium composite material (ACM) used in external wall cladding. Testing was undertaken by the [Buildings Research Establishment](#) (BRE).

The Government has recently published [consolidated advice for building owners](#) (20 January 2020) using and updating the advice notes published by the expert panel since 2017.⁴ The new set of guidance covers issues such the general approach building owners should be taking with regard to fire risk (including those under 18m), as well as specific advice on ACM cladding, High Pressure Laminate (HPL) panels, balconies and fire doors.

As a result of the guidance and previous advice notes, remediation work is required on hundreds of high-rise residential buildings with ACM cladding. The progress and funding of these have been high profile issues and are covered in the Library briefing: [Leasehold high-rise flats: who pays for fire safety work?](#).

2.3 Hackitt Review

Following the Grenfell Tower fire, the Government asked Dame Judith Hackitt, a former Chair of the UK Health and Safety Executive, to lead a review of building regulations and fire safety which would make recommendations to ensure a robust regulatory regime in the future and make residents feel safe in the buildings they live in. The Library briefing paper [Building Regulations and Safety: Review and Reforms](#) provides an overview of proposals and changes to the end of 2019 including the interim and final Hackitt report, the Government's implementation plan, the related Committee report as well as changes to Approved Document B and the Cladding Ban.

The interim Hackitt report, published in December 2017, highlighted concerns around the complexity of relevant regulations, roles and responsibilities, and enforcement.⁵ A [shorter summary of the report is available](#).

The final report of the review, published in May 2018, did not seek to repeat the issues identified in the interim report, but set out a new regulatory framework initially focused on multi-occupancy higher risk residential buildings (HRRBs) that are 10 storeys or more in height (although the review makes clear where the recommendations should have wider application).⁶ The Government welcomed the proposals and committed to bringing forward future legislation on a new regulatory system.⁷

2.4 Implementing Hackitt

On 6 June 2019 the Government launched a consultation on proposals for reform of the building safety system: [Building a safer future: proposals for reform of the building safety regulatory system](#). This consultation ran until 31 July 2019.

On 5 September 2019 the Secretary of State, Robert Jenrick, [made a statement to the House](#) updating it on the new Government's approach to building safety. In the statement he noted that he was consulting on changes [to fire safety regulations for new-build blocks of flats](#), that he intended to respond to the building a safer future consultation by the end of the year and legislate "at the earliest opportunity", and he announced the establishment of "a new protection board" to increase fire protection inspections ahead of the new safety regime coming into force.⁸

⁴ [Building safety advice for building owners, including fire doors](#) [accessed 27 April 2020]

⁵ For more information see [Independent Review of Building Regulations and Fire Safety: interim report](#), 18 December 2017

⁶ [Independent Review of Building Regulations and Fire Safety: final report](#), 17 May 2018, p12

⁷ [HC Deb 17 May 2018 c457-8](#)

⁸ [HC Deb 5 September 2019, c372-381](#)

On [28 October 2019 it was announced](#) that Dame Judith Hackitt would provide independent advice to the government on how best to establish the new Building Safety Regulator.

On 20 January 2020 the Secretary of State for Housing, Communities and Local Government, Robert Jenrick, made an [oral statement to the House](#)⁹ on building safety highlighting:

- the establishment of a new building safety regulator,
- likely proposals to change sprinkler requirements,
- a consultation on lowering the level for banning combustible material on external walls,
- publishing updated and consolidated advice for building owners,
- clarified advice on ACM panels and fire doors,
- comments on the speed of remediation in high rise buildings with ACM and wider funding for cladding issues.

On 2 April 2020 the Government published a [response to the Building a Safety future consultation](#), as well as providing a wider update on building safety issues ([Government update on building safety](#), 2 April 2020) The consultation response outlined the intended changes, which in turn are now expected to be implemented through primary or secondary legislation.

3. What is expected in the Bill?

The Secretary of State set out the intended changes in a letter to MPs in April 2020 following the publication of the [Government response to the Building a safer future consultation](#).¹⁰

...Today we are publishing the Government's response to the consultation, Building a Safer Future. The consultation sought views on our proposals for a radically new building and fire safety system, based on the recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety.

This response, and the accompanying economic analysis and summary of responses, sets out our plans for bringing about the biggest change in building safety for a generation. Residents' safety is at the heart of these reforms.

As I announced to the House in January, we are creating a new, national Building Safety Regulator which is being established in shadow form by the Health and Safety Executive.

The new regulator will be responsible for implementing and enforcing a more stringent regulatory regime for higher risk buildings, as well as providing wider and stronger oversight of safety and performance across all buildings, and increasing the competence of those working on building safety.

The more stringent regulatory regime will, at the outset, apply to all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first). The Building Safety Bill will provide for the ability to amend scope in the future based on further evidence on risk.

⁹ [HC Deb 20 January 2020, c23-36](#)

¹⁰ [Letter from Housing Secretary Robert Jenrick MP regarding the publication of the government's plan to reform the building safety system, including the impact of COVID-19 on remediation of unsafe cladding.](#), 2 April 2020

The new regulator will be responsible for all major regulatory decisions made at key points during the design, construction, occupation and refurbishment stages of buildings in scope. These decisions will include whether to allow a building to be constructed, and whether appropriate actions to mitigate and manage fire and structural risks are being taken on an ongoing basis so that the building can be safely occupied.

We will introduce a comprehensive duty holder regime, so that at each stage in the life cycle of a building in scope – through design, construction and occupation, including those buildings already occupied – there will be clearly identified people who are directly accountable for the safety of residents.

Under the new regulatory regime, residents will have new rights to receive information about the safety of their building and be able to request access to appropriate detailed safety information. They will be involved in decisions about the safety of their building and will have their complaints about safety dealt with quickly and effectively, with an escalation route to the Building Safety Regulator if this does not happen. They will also have clearer responsibilities in relation to mitigating risks to their homes, their neighbours' homes and their building.

Construction products have a critical impact on building safety and the Government will establish a national construction products regulatory role to strengthen the oversight of the existing regulatory regime. We also plan to implement a wider programme of reforms across the construction products sector, including establishing a new Construction Products Standards Committee, and introducing voluntary requirements for third-party certification schemes.

These reforms are designed to incentivise compliance from industry, regulators and residents; and to better enable the use of enforcement powers and sanctions, including prosecution as a last resort where the rules are not followed. But I also expect them to drive a longer term and more fundamental culture change, through which the safety of our homes and of all residents can be given the priority it rightly deserves.

The Government will legislate for these reforms through the Building Safety Bill. We are committed to bringing forward legislation that delivers meaningful and lasting change at the earliest possible opportunity. Resident safety is paramount, and we owe it to them to get this right

Further detail is given in the [Government response to the consultation](#).¹¹ This notes the following key parts are expected to form part of the legislation, or are the expected outcome:

The Building Safety Regulator

- Is expected to be established by the Building Safety Bill;
- Will oversee the safety and performance of all buildings, and actively oversee and enforce a more stringent regulatory regime for buildings in scope during their design, construction, occupation and construction.
- The more stringent regime will apply to all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first), and may be extended further based on research and evidence collected. This is lower than the height recommended by Hackitt (10 storeys/30 metres).
- There will be powers in the Bill to extend the scope further in the future;
- The regulator will be responsible for major regulatory decisions, including whether to allow a building to be constructed (design phase) and later occupied, and also

¹¹ [A reformed building safety regulatory system: government response to the Building a Safer Future consultation](#), 2 April 2020

whether the accountable person, via the Building Safety Manager has provided an appropriate safety case demonstrating safe occupation.

- The Regulator will work with other experts and regulators and have other national duties such as a register of buildings, dealing with resident complaints, providing advice on risks for buildings in scope and housing centres of excellence.
- The Regulator will oversee the new competence regime for people working on buildings.
- Will have powers covering all buildings, which will include advising on changes to the Building Regulations and Approved Documents (and put in a structure to replace the current Building Regulations Advisory Body), and oversee and report on the performance of Building Control Bodies.

The system of duty holders

- A system of duty holders will be established.
- During design and construction specific duty holders (such as the client, designer and contractors) will be responsible for showing compliance with the regulatory regime through three gateways: before planning permission is granted, before construction begins and before occupation. Under gateway 2 the Building Safety Regulator will take on the role of the Building Control Body. At gateway 3 it will issue a Building Registration Certificate.
- During occupation two roles will be established: the Accountable Person and the Building Safety Manager.
- A Building Registration Certificate will be required for occupation and must detail the Accountable Person and Building Safety Manager. The regulator may apply conditions to the certificate.
- Submitting a safety case to the Regulator will be a mandatory requirement and the Building Safety Manager will be required to keep it up to date. The safety case will be based on the risk assessment principle applied as part of the current Fire Safety Order responsibilities. The case will be reviewed periodically by the Regulator, and it will have the power to require changes to mitigations in place.
- Across the life cycle of the building there will be requirements on duty holders, such as to maintain the golden thread of building information and mandatory occurrence reporting (of structural safety or fire safety related events).
- Refurbishment works that are subject to building regulations will come under a similar process involving sign off from the Building Safety Regulator.
- Existing buildings in scope will be required, after a transition period, to obtain a Building Registration Certificate and have the same system of Accountable Person and Building Safety Manager.

Resident Engagement Strategy

- The Building Safety Manager will be required to produce and implement a Resident Engagement Strategy.
- A complaints process will be required in the Engagement Strategy and complaints can be escalated to the Building Safety Regulator.
- There will be a statutory duty for residents to cooperate with the Building Safety Manager in their work, and options for enforcement if needed.

Construction Products

- A new national Construction Products Regulatory role will be established, and the range of products covered will grow over time;
- A new Construction Products Standards Committee, which is already being set up. The Committee will advise the Secretary of State for Housing on whether voluntary industry standards for construction products should also become UK regulatory standards, a role currently undertaken by the European Commission. The Construction Products Standards Committee will also provide advice and recommendations on the conformity assessment process and product test standards.

Competence

- In the short term the Competence Steering Group will make recommendations on sector specific and overall frameworks, while in the longer term the Building Safety Regulator will establish a new industry-led committee.
- The Building Safety Regulator will be responsible for oversight of the competence and performance of building control. The Bill is expected to provide the framework for this profession but the regulator or a designated body will develop the details.

Enforcement

The consultation sets out the enforcement measures available under the new regime:¹²

Where a collaborative approach fails to achieve the desired outcome, or where the Building Safety Regulator determines that a breach warrants more serious or timely action, it will intervene to secure compliance. As described in the consultation, in the first instance, this will normally be through the issuing of informal advice; if this fails to lead to an acceptable level of safety, the Building Safety Regulator will be able to issue 'stop', 'compliance' or 'improvement' notices. These notices will require action to be taken to correct problems; failure to respond to an improvement notice may lead to the regulator issuing a stop notice, requiring some or all work on site to cease; in addition, breach of any of these notices will be a criminal offence.

If the notices also fail to achieve compliance, the Building Safety Regulator will have the power to take other enforcement action against the duty-holders. The Building Safety Regulator will have a range of tools available, including reviewing the Building Registration Certificate, which could ultimately lead to revocation and, where appropriate, the ability to prosecute duty-holders and/or the Accountable Person as appropriate, potentially leading to an unlimited fine.

The sanctions should reflect the degree to which fire or structural safety has been compromised. They will also reflect the need to deter non compliance effectively – as the Independent Review set out, penalties must "...ensure that duty-holder compliance with the legal requirements is far more straightforward and cost effective than non-compliance." For example, a stop notice, preventing further work on a site until safety issues are addressed, will be likely to cost developers many thousands of pounds per day on a large development – making short cuts to save a relatively small amount of money essentially futile.

The Bill will also contain changes to the [*Building Act 1984*](#)

The Government intend to use the Building Safety Bill to: "make improvements to other parts of the legislation where this will further our objectives of improving building safety; make the legislation clearer and more understandable; and so, strengthen compliance and help enforcement." ¹³

¹² Ibid., p36-7

¹³ Ibid., p41

Costs and benefits

The Government response notes that the benefits that can be 'monetised' are £190-£380 million per year (central estimate of £280 million), but also highlights there are 'additional significant benefits that cannot currently be monetised'. The total cost of the measures is estimated between £266 and £530 million per annum (central estimate of £391 million). Alongside the Government response an [economic assessment was also published](#).¹⁴

3.1 How has the Shadow Building Safety Regulator been set up?

On [20 January 2020 the Secretary of State announced](#) the Building Safety Regulator would be established in shadow form. The Government response to the Building a Safer Future consultation in April 2020 set out further detail on that work:¹⁵

In October 2019, the Government asked Dame Judith Hackitt to advise on how the Building Safety Regulator should be delivered. Dame Judith recommended that the Building Safety Regulator should be established in the Health and Safety Executive because:

- The Health and Safety Executive is an established regulator with many years' experience regulating safety issues, including in the construction industry;
- This would be the fastest and most efficient route to getting the Building Safety Regulator up and running so it would be able to provide reassurance to residents that their homes are safe;
- The Health and Safety Executive's expertise and knowledge would drive a regime where duty-holders would be properly held to account by a robust regulator; and
- While the Building Safety Regulator needs to signal a clean break from the existing regime, it should draw on the knowledge and expertise of existing regulators including local authorities (notably building control teams), Fire & Rescue Services and elsewhere.

Dame Judith also advised that it should urgently be set up in shadow form ahead of legislation coming into force. The Government agreed with Dame Judith's recommendations, and on 20 January 2020 announced that the Building Safety Regulator will be established in the Health and Safety Executive. This will enable it to play a critical role in driving through the proposed reforms to building safety, including working closely with the Government on the development of the forthcoming Building Safety Bill and preparations for the more stringent regime for buildings in scope. The Building Safety Regulator will report to the Secretary of State for Housing, who will retain overall responsibility for the regulatory system.

Work has already begun to establish the Building Safety Regulator and key early priorities for the shadow Building Safety Regulator are to appoint a Chief Inspector of Buildings and to prepare the necessary infrastructure within the Health and Safety Executive so that the fully-fledged regulator can operate at scale as soon as possible after its powers come into effect. Dame Judith is chairing a new Board to oversee the transition to the new regime.

3.2 What about the New Homes Ombudsman?

The December 2019 Queen's Speech suggested the Building Safety Bill would include provisions on the New Homes Ombudsman.

¹⁴ [Economic assessment of the benefits and costs to the government response to the 'Building a Safer Future' consultation](#), 2 April 2020

¹⁵ [A reformed building safety regulatory system: government response to the Building a Safer Future consultation](#), 2 April 2020, pp13-4

The Government [has committed](#) to the establishment of a New Homes Ombudsman to help “Homebuyers who are faced with shoddy building work in their new homes”. The planned legislation will require developers to belong to the New Homes Ombudsman; there will be an underpinning code of practice for developers and enforcement of requirements. Further detail is set out in the February 2020 Government response to a 2019 consultation on the New Homes Ombudsman: [Redress for purchasers of new build homes and the New Homes Ombudsman: summary of responses to the consultation and the government’s response.](#)

Natalie Elphicke has been selected to head an interim New Homes Quality Board which is overseeing the creation of a permanent governance set-up, developing the new code of practice for the housebuilding industry, and agreeing an appointments process for the independent ombudsman. There is an expectation that a permanent chair and board will be in place by autumn 2020 “with a target to have the ombudsman service open for builders to sign up by the start of 2021.”¹⁶

4. When will the Bill be published?

In the debate for second reading of the Fire Safety Bill, the Minister for Housing, Christopher Pincher, confirmed that the Bill would be published in draft before the summer recess, while the Chair of the Housing, Communities and Local Government Committee said the Committee would be giving the Bill pre-legislative scrutiny:¹⁷

[Clive Betts MP] ...This is the first of two Bills to improve building safety, particularly in relation to fire. This Bill will be followed by the building safety Bill, which we understand will come in draft form. If that is the case, the Housing, Communities and Local Government Committee, which I chair, will look forward to undertaking pre-legislative scrutiny on it. We will certainly treat it with the urgency it deserves.

[...]

[Christopher Pincher MP] ...The hon. Member for Sheffield South East (Mr Betts), the Chairman of the Housing, Communities and Local Government Committee, made it clear that his Committee will treat the pre-legislative scrutiny of the building safety Bill very seriously. A number of Members have mentioned that Bill. Let me confirm that we will bring it forward in draft form before the summer recess, which will give Members an opportunity to begin to consider it.

¹⁶ *Inside Housing*, “[Natalie Elphicke to chair New Homes Ombudsman set-up](#)”, 26 May 2020 [subscription required]

¹⁷ [HC Deb 29 April 2020 c354 and c397](#)

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