

Building a safer future: UK government proposals for reform of the building safety regulatory system



Alastair Soane summarises the UK government's proposals for reform of the building safety regulatory system, which are open for consultation until 31 July.

Introduction

In June 2019, the UK Ministry of Housing, Communities and Local Government (MHCLG) published a consultation document¹ concerning the changes that it is proposing to improve safety and minimise the risk of fire in high-rise residential buildings. The document provides detailed descriptions of the proposals and invites views via a series of questions.

There are many areas within the document that are important for structural engineers and, when enshrined in legislation, will affect their responsibilities and working practices. The proposals concentrate on high-rise residential buildings, but may be expected in future to be expanded to other buildings where a large number of people sleep, or congregate. This article summarises the sections of the consultation that are of particular relevance to structural engineers.

The Grenfell Tower fire tragedy of June 2017 showed a need to make major changes and improvements to the building safety system. The Independent Review of Building Regulations and Fire Safety², led by Dame Judith Hackitt, found that there are issues in the way some high-rise residential buildings are built, managed and looked after. Her review also found that sometimes residents are not confident that their buildings are safe and that their concerns are not taken seriously.

To deal with these issues, and wider problems, there need

to be changes to the building safety system. Therefore, the consultation sets out plans to overhaul the system for high-rise residential buildings through:

- clearer responsibilities for those building or managing these buildings
- a stronger voice in the system and better information for residents
- greater oversight by regulators
- tougher enforcement when things go wrong.

Overview

The document includes a summary of what the UK government has already done, and is currently doing, to make buildings safer, along with clarification of which buildings these new changes and improvements will affect. There is then a description of the new responsibilities of dutyholders looking after buildings at all stages – from when they are being designed and built, to when people are living in them.

Dutyholders are the people who are legally responsible for ensuring the building is designed and built to be safe for its residents. It is proposed that there will be five dutyholders aligned with the existing roles under the CDM Regulations 2015: Client, Principal Designer, Principal Contractor, Designer and Contractor, who will be responsible for the safety of a building when it is being designed and built, including ensuring that building regulations are complied with. The document sets out responsibilities that they need

to meet to show how they are making a building safe. Structural engineers could become dutyholders under any of the categories.

There is then a proposal for an 'accountable person' who should look after a high-rise building once people have moved in. The accountable person will be legally responsible for the fire and structural safety of the building when people are living in it.

The document goes on to set out how it can be ensured that at all stages of a building's lifecycle – from when it is designed and built, to when people are living in it – someone will be responsible for managing and minimising fire and structural risks. Residents will be given the right safety information about their building so that they can raise any views or concerns about the safety of their building and will not be ignored.

There will be oversight of the regulatory system by a building safety regulator, who will be responsible for making sure everyone follows the new regulations, and that those responsible for buildings have the right skills and knowledge for the job.

Those working on buildings will have to follow the requirements; where that doesn't happen, the proposals include strengthened enforcement and sanctions within the new system.

Types of building included

Dame Judith's Independent Review recommended applying new requirements to buildings over 10

storeys, but it is now proposed to have a wider scope because of the number of fires in these buildings and the risk to people's safety. The new building safety regime will be for multi-occupancy residential buildings of 18m (six storeys) or more.

New dutyholder regime

For the new building safety regime to work, it is proposed to introduce dutyholders who will be responsible for making sure buildings are safe. The dutyholder will have responsibility at different stage of the building's life including:

- Part A – duties when a building is being designed and built
- Part B – duties when people are living in the building
- Part C – duties that run throughout the building's lifecycle.

Part A

Part A proposes making sure that there is a clear set of dutyholders involved in the design and construction of buildings so that there is clear responsibility (see Q21–2.33).

- Dutyholders will be responsible for ensuring that building regulations, the minimum standards a building must meet, are complied with.
- Dutyholders will be required to show that they are managing risks at new 'gateway points' before they can continue with the different stages of the building process.
 - **Gateway 1** – before planning permission can be given, the

dutyholder will need to submit a 'fire statement' and the regulator will consult the Fire and Rescue Authority to make sure fire safety is considered early on.

- **Gateway 2** – before construction can begin, the dutyholder will need to show how the building has been designed to be safe and follows building regulations by providing full plans and supporting documents.
- **Gateway 3** – before anyone can move into the building, the dutyholder will need to hand over building safety information about the completed building. They will need to apply for and receive a provisional registration of the building.

Part B

Part B sets out proposals for a new building safety regime when high-rise residential buildings are lived in (see Q3.1–3.22). This is to make sure that there is a 'safety case' setting out how the building is being kept safe during occupation and it is clear who is responsible for keeping the building safe.

- The proposals create a new role of 'accountable person' who will be the dutyholder responsible for making sure that building's fire and structural safety risks are reduced as far as reasonably practicable when people are living in the building.
- Dutyholders will create a 'safety case' which contains all the important information about a building that shows how the dutyholders are managing any fire or structural risks on an ongoing basis (Box 1).
- The accountable person may also employ a 'building safety

manager' who has the right skills and expertise to look after the building. Their role will be to help the accountable person by doing the day-to-day work involved with keeping a building safe.

Part C

Part C sets out the duties that run through the building's lifecycle and proposes (see Q4.1–4.20) that:

- a 'golden thread', or set of key documents, of building information is held digitally. This could include information on the structure of the building and any changes made through refurbishment
- the dutyholder will be responsible for the golden thread, ensuring it is created, maintained and held digitally throughout the building's lifecycle to support safety improvements
- the existing CROSS (Confidential Reporting on Structural Safety) scheme is expanded and strengthened to cover fire safety issues, and that a new system of mandatory occurrence reporting to the building safety regulator is implemented for key dutyholders to facilitate reporting of fire and structural safety issues (see page 34 of this issue for further details)
- the new system will make sure that all dutyholders employ people who are suitably qualified and competent (Box 2).

Competence is defined as the ability of an individual to apply the necessary skills, knowledge and behaviours to make informed decisions and carry out their job effectively.

BOX 2. KEY QUESTIONS FOR COMPETENCY REQUIREMENTS

Q4.17. Do you agree that the enhanced competence requirements for these key roles should be developed and maintained through a national framework, e.g. as a new British Standard or PAS? Please support your view.

Q4.18. Should one of the building safety regulator's statutory objectives be framed to 'promote building safety and the safety of persons in and around the building'? Please support your view.

Q4.19. Should dutyholders throughout the building lifecycle be under a general duty to promote building safety and the safety of persons in and around the building? Please support your view.

Residents at heart of new system

The views and concerns of residents should never be ignored by those responsible for managing the safety of their buildings. The accountable person in an occupied high-rise building will have specific duties to residents. The accountable person must provide residents with the information they need so that they understand the protections in place to keep their building safe from structural or fire issues.

More effective regulatory and accountability framework

It is proposed (see Q6.1–7.4) to provide strong oversight of the new regime for high-rise residential buildings by creating a new building safety regulator to ensure it is enforced robustly and effectively.

The regulator will also oversee the wider building and regulatory system and work to drive high standards of competence for those working on buildings.

This single building safety regulator will be responsible at a national level for:

- oversight of building safety and wider regulation
- oversight of operation and enforcement of the new regime for high-rise residential buildings, and setting guidance
- advising government on what buildings should be included in the scope of the new regime, by developing and analysing evidence on risk
- oversight of competence of people working on buildings, including keeping a register of those competent to take on

key dutyholder roles in the new system and providing guidance on where to find qualified people to work on buildings in scope.

It is also proposed (see Q8.1–8.15) that there should be stronger regulation of construction products to be achieved by:

- making manufacturers' responsibilities clearer in legislation, focusing on construction products that are critical to safety, and requiring clear labelling and information so that it is clear how the product should be used safely
- strengthening national regulation of construction products, with a national complaints system and a stronger focus on enforcement, so that problems are dealt with effectively
- setting minimum standards for independent assurance schemes and encouraging their use, so people can be confident that construction products meet the standards manufacturers claim.

It is further proposed that the whole regulatory system is independently reviewed to make sure that it is working properly.

Enforcement, compliance and sanctions

Through strong oversight by the new regulator, the government proposes (see Q9.1–9.4) to make sure that those responsible for the safety of buildings comply with their responsibilities and are held to account if they do not.

The Independent Review found that those responsible for the safety of buildings are not

BOX 1. KEY QUESTIONS FOR PROCESS (SAFETY CASES)

Q3.1. Do you agree that a safety case should be subject to scrutiny by the building safety regulator before a building safety certificate is issued? Please support your view.

Q3.2. Do you agree with our proposed content for safety cases? If not, what other information should be included in the safety case?

Q3.3. Do you agree that this is a reasonable approach for assessing the risks on an ongoing basis? If not, please support your view or suggest a better approach.

discouraged enough from failing to comply with their responsibilities, as they are not often held to account by the current regulators. The government wants to change this culture and is proposing to encourage those responsible for the safety of buildings to comply with their responsibilities. It will take a tougher approach to those that do not under the new regime.

This will include:

- creating new criminal offences to make sure that those responsible for the safety of a high-rise residential building comply with their responsibilities both during its design and construction, as well as when residents are living in the building
- giving the new regulator the power to take quick and effective action, through monetary penalties such as fines, when the requirements of the new regime have not been met.

It is also proposed (see Q9.5–9.6) to make it easier to take action for all buildings where building work does not meet required building regulations standards by:

- giving local authorities more time to serve enforcement notices, so that they can take action where problems are uncovered later
- enabling private individuals to make a claim for damages where work on a building has not met building regulations standards, and they have suffered harm as a result.

Conclusions

These proposals mark a fundamental change to the way in which the safety of those in buildings is ensured. For years, there has been evidence of an eroding system in which standards were allowed to slip, concerns from those in the industry, and from residents, were not heeded, and some took

advantage of the situation to cut corners.

This is an opportunity to rebalance and improve the system by backing the proposals wholeheartedly. There will adjustments to be made and the emphasis on different recommendations will change depending upon the number and tenor of the responses. Engineers at every stage of their careers should read the full document and answer as many of

the questions as they can, and as fully as they can.

The more responses there are, and the higher their quality in terms of evidence, the more attention will be paid by government when framing the subsequent legislation.

Alastair Soane BSc, PhD, CEng, FStructE, FICE is Director of Structural-Safety.

REFERENCES

►1) Ministry of Housing, Communities and Local Government (2019) *Building a safer future: proposals for reform of the building safety regulatory system* [Online] Available at: www.gov.uk/government/consultations/building-a-safer-future-proposals-for-reform-of-the-building-safety-regulatory-system (Accessed: June 2019)

►2) Ministry of Housing, Communities and Local Government (2018) *Independent Review of Building Regulations and Fire Safety: final report* [Online] Available at: www.gov.uk/government/publications/independent-review-of-building-regulations-and-fire-safety-final-report (Accessed: June 2019)

The Institution
of Structural
Engineers

muckle^{LLP}

Free legal advice for members

Get 20 minutes free legal advice on engineering and business issues

Exclusive to members*, this new helpline from Muckle LLP offers advice on construction and engineering law - including contracts, insurance and liability.

Quote "IStructE/LA"

Call: 0191 211 7724

Email: constructionteam@muckle-llp.com

Find out more: www.istructe.org/legaladvice

*Excludes Student Members and Affiliates