



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

**To:** Chief Executives, Main Contacts and APSE Contacts in England.

**For information:** Chief Executives, Main Contacts and APSE Contacts Scotland, Wales and Northern Ireland

### Key Points

In June 2019, the government published, the 'Building a Safer Future' consultation detailing proposals which aim to achieve long-term reform.

Following the consultation, the government has drafted its response and a set of proposals for a reforming the building safety system which also includes the performance of all buildings as well as the management of fire and structural safety risks in new and existing buildings in scope set out in the consultation.

### 1.0 Background

In June 2019, the government published, the 'Building a Safer Future' consultation detailing proposals to achieve long-term reform.

Following the consultation, the government has drafted its response and a set of proposals for reforming the building safety system which also includes the performance of all buildings as well as the management of fire and structural safety risks in new and existing buildings in the scope set out in the consultation.

In response to the consultation, the government state that the reforms will apply to England only, except those relating to construction products and the competence of architects, which will apply across the United Kingdom.

It is stated that the proposals will be brought forward in new primary legislation through the Building Safety Bill and further secondary legislation where necessary. Therefore, the government advise that the proposals outlined in the consultation response could be subject to change based on Parliamentary scrutiny and continued engagement with stakeholders.

This briefing provides an overview of the proposals set out in the 'Building a safer future: proposals for reform of the building safety regulatory system.' The full document can be viewed via the following link: -

[Building a safer future: proposal for reform of the building safety regulatory system](#)

## **2. Principles for a reformed building safety system**

The consultation response refers to the recommendations to the government from the independent review and states that in order to deliver on these objectives it intends to establish a new, national Building Safety Regulator at the heart of a reformed building safety system.

It is proposed that the new regulator will be responsible for implementing and enforcing a more stringent regulatory regime for buildings in scope. However, providing stronger oversight of safety and performance of all buildings and increasing the competence of those working on building safety.

The Independent Review and the proposals in the consultation response focus on fire and structural safety for buildings in scope, but the Building Safety Regulator will also work with industry and other regulators to strengthen the safety and performance of other buildings.

The proposed scope of the more stringent regulatory regime will also apply to all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first) from the outset but will, in due course, extend to include other premises, based on emerging risk evidence. The more stringent regime will apply throughout the lifecycle of new builds. In addition, it will apply at the occupation stage to existing buildings in scope following a suitable transition period. For buildings within scope of the more stringent regime, the Building Safety Regulator – working with existing local regulators - will oversee a new duty-holder regime operating over a building's life span. This duty-holder regime will place greater responsibility on those designing and constructing buildings to explain how they are managing safety risks and demonstrating to the regulator that the building is safe to be occupied.

The skills, expertise, and capacity of local authority building control will provide the main support for the new regulator and be complemented by Approved Inspectors where required. Approved Inspectors may also develop separate consultancy services, capacity and expertise along with other professional specialists to support duty-holders with their new responsibilities. Safeguards will ensure that there are no conflicts of interest with regulatory oversight.

The duty-holder regime will continue into occupation for buildings within scope, by imposing specific obligations on an Accountable Person. The Accountable Person will be responsible for understanding fire and structural risks in their buildings and taking

appropriate steps and actions to mitigate and manage those risks on an ongoing basis so the building can be safely occupied.

A Building Safety Manager, appointed by the Accountable Person and approved under a system established by the Building Safety Regulator, will deliver the day to day functions on behalf of the Accountable Person.

Under the more stringent regulatory regime, it is proposed that residents will have a stronger voice to ensure that their views and concerns are not ignored. The proposals also include details regarding residents being entitled to receive a core set of information about the protections in place to keep their building safe and have new rights to request access to detailed safety information where appropriate.

The Building Safety Manager will be required to proactively engage and communicate with residents through a mandated Resident Engagement Strategy. They will also be required to have a clear complaints procedure in place for residents and where a complaint cannot be resolved satisfactory or where there is a significant risk to life, the complaint can be escalated to the new Building Safety Regulator for action.

Alongside the new Building Safety Regulator, the government states that it will strengthen the oversight and enforcement of the existing construction products regulatory regime by establishing a new national Construction Products regulatory role.

### **3. A more effective regulatory framework: The Building Safety Regulator**

In the consultation response, the government reports that it proposes to establish a new, national Building Safety Regulator, who will be responsible for:

- implementing a more stringent regulatory regime for buildings in scope;
- overseeing the safety and performance of all buildings; and
- promoting the competence and organisational capability of professionals, tradespeople and
- building control professionals working on all buildings.

#### **Delivery of the new regulator**

On 20 January 2020, the government announced that the Building Safety Regulator would be established in the Health and Safety Executive in line with the recommendation of the inquiry and it is proposed that the Building Safety Regulator will report to the Secretary of State for Housing, who will retain overall responsibility for the regulatory system.

The government comment that work has already begun to establish the Building Safety Regulator and key early priorities for the shadow Building Safety Regulator is to appoint a Chief Inspector of Buildings and to prepare the necessary infrastructure within the Health and Safety Executive and that Dame Judith Hackitt will be chairing a new Board to oversee the transition to the new regime.

## **A more stringent regulatory regime for buildings in scope**

The consultation response reports that whilst, the Building Safety Regulator will oversee the safety and performance of all buildings, it will also actively oversee and enforce a more stringent regulatory regime for buildings in scope during their design, construction, occupation, and refurbishment and the majority of respondents to the consultation believed that a wider set of buildings should be in scope from the outset. It is commented that whilst height was considered as a factor, there was no overall consensus over other factors that should determine in scope buildings.

Therefore it is proposed that the new 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 will be extended further, prior to the Bill being introduced in Parliament, to take into account any findings from the government's research and evidence gathering on fire safety risk prioritisation.

The Building Safety Regulator will have a duty to keep the scope of the more stringent regulatory regime under review and to provide advice to the government when the evidence suggests it should be extended. In addition, it is intended that the Building Safety Regulator will be responsible for all major regulatory decisions made at key points during the design, construction, occupation, and refurbishment of buildings in scope, drawing on the expertise and advice of other regulators and relevant experts.

Under the proposals, the Building Safety Regulator will work closely with and take advice from other regulators and relevant experts in making these decisions. It will bring together teams drawn from the Fire & Rescue Services, local authorities (notably building control teams), the Health and Safety Executive (in relation to health and safety at work), as well as wider expertise - such as Approved Inspectors or contracted technical experts.

It is also proposed that the Building Safety Regulator will also carry out functions that can only be sensibly delivered at the national level, notably:

- Establishing a national register of buildings in scope and other national systems that will be required;
- Ensuring that resident complaints about safety issues for buildings in scope that have been escalated to the regulator are investigated and dealt with in a timely and effective manner.
- This includes by working with other regulators and redress schemes;
- Producing advice to help duty-holders in managing the safety risks of buildings in scope to discharge that responsibility;
- Advising on current and emerging safety risks in buildings in scope, drawing on aggregated building safety data, research, resident complaints and mandatory occurrence reports; and
- Hosting centres of excellence to strengthen enforcement, including specialist expertise to assist with prosecuting complex cases, and to develop best practice on resident engagement.

## **Oversight of the safety and performance of all buildings**

The government state that it is committed to delivering safer, better-performing buildings everywhere, and provide this as a basis as to why the Building Safety Regulator will undertake several regulatory functions that will apply to all buildings, which include:

- Working with technical experts and the construction industry to ensure that those who design and construct buildings are able to access cutting-edge advice on best practice in delivering safe, high-performing buildings. This will include advising the government on changes to the building regulations and Approved Documents.
- Overseeing and publishing reports on the performance of Building Control Bodies – both local authority building control teams and Approved Inspectors – and the professionals who work in those teams, with sanctions available where building control services are failing to meet standards set by the Building Safety Regulator; and
- Advising on current and emerging risks to building safety and performance, drawing on data that Building Control Bodies may be required to share with the Building Safety Regulator from time to time.

The consultation response outlines a proposal for a new oversight structure that will replace the current Building Regulations Advisory Committee. It is advised that this new structure will both validate and assure technical guidance such as Approved Documents and provide independent expert advice on building safety and performance.

#### **4. A more rigorous approach to accountability: the system of duty-holders**

The consultation response reports that the overwhelming majority of respondents to the consultation agreed with the proposals for a more stringent regime. Therefore, it is proposed that the regime will be delivered through the creation of a system of duty-holders, who have clear responsibilities at each stage of the building's lifecycle. Some of these responsibilities will run throughout the building's lifecycle, while others will apply at particular stages.

##### **During design and construction**

The consultation response advises that the majority of respondents considered that where the duty-holder is a legal entity, a named individual should be identifiable as responsible for building safety, this may not be possible in practice. Respondents that did not agree that a duty-holder should be a single named individual gave reasons including complex forms of ownership, such as voluntary boards, and concerns around the level of liability, influence, and skills required by an individual.

##### **Duty-holders**

The duty-holders during the design, construction and refurbishment phases of a building will be:

- the Client: any person or organisation for whom a construction project is carried out as part of their business.
- the Principal Designer: appointed by the Client under Construction (Design and Management) Regulations 2015 to plan, manage, monitor and coordinate the preconstruction phase, when most design work is carried out.
- the Principal Contractor: appointed by the Client under Construction (Design and Management) Regulations 2015 to plan, manage, monitor and co-ordinate the construction phase.
- Designer(s): undertakes a trade, business or other activity in connection with which they
- prepare or modify a design or instruct any person under their control to prepare or modify a design.
- Contractor(s): manages or controls construction work (e.g. building, altering, maintaining or demolishing a building or structure). Anyone who manages this work or directly employs or engages construction workers is a contractor.

These duty-holders will have clear duties to support the development of safer buildings, both in the form of general responsibilities and specific requirements to allow them - in particular the Client, Principal Designer and Principal Contractor - to demonstrate compliance with the more stringent regulatory regime. All duty-holders during the design and construction phase will be required to:

- cooperate and share information with the Building Safety Regulator;
- ensure compliance with building regulations;
- comply with the specific regulatory requirements imposed upon them; and
- ensure they and the people they employ are competent to do the work they are undertaking.

Duty-holders during the design and construction phase of buildings in scope will also be responsible for meeting the requirements at two of three new key sign off points – Gateway two (before construction begins) and Gateway three (before the building’s occupation).

### **Gateway one**

The first gateway point (Gateway one) will be before planning permission is granted when fire safety issues which impact on planning should be considered, including emergency fire vehicle access to a building and whether there are adequate water supplies in the event of a fire. To aid the local planning authority in their decision as to whether to grant planning permission, the developer will be required to submit a Fire Statement setting out fire safety considerations specific to the development with their planning application.

### **Gateway two**

The second Gateway point (Gateway two) will be before construction begins at the current ‘deposit of full plans’ stage under the Building Regulations 2010. Under the new regime, the Building Safety Regulator will take on the role of the Building Control Body

and be legally responsible for regulating in-scope buildings in respect of building regulations. The Building Safety Regulator will bring together teams to deliver its regulatory functions, including local regulators.

### **Gateway three**

The third and final gateway point (Gateway three) is before occupation of the building at the final completion certificate/final notice stage under the building regulations. Again, the Building Safety Regulator will provide the building control function working with local regulators. At this stage, the Client will be required to submit to the Building Safety Regulator information on the final, as-built building. This will include:

- updated as-built plans indicating any agreed variations since Gateway two;
- a complete construction control plan;
- an updated fire and emergency file; and
- a complete key dataset.

### **During occupation**

A new building within the scope of the more stringent regime cannot be legally occupied until a Building Registration Certificate has been issued by the Building Safety Regulator. For partial occupation, an interim Building Registration Certificate may be issued by the Building Safety Regulator. The Accountable Person, a new duty-holder for occupation, will be responsible for applying for and meeting the conditions of the Building Registration Certificate following the passage of Gateway three (or for partial occupation prior to completion of the overall building). It is commented in the consultation response that an overwhelming majority of respondents agreed that this would be an effective way to provide assurance and transparency that a building is fit to be occupied. The requirements for an existing building in scope are covered in the next section.

### **Accountable Person**

The government is proposing that the Accountable Person will be legally responsible for ensuring that they understand fire and structural risks in their buildings and to take appropriate steps and actions to mitigate and manage these fire and structural risks on an ongoing basis so the building can be safely occupied. The Accountable Person will be required to appoint a competent Building Safety Manager, approved under a system agreed by the Building Safety Regulator, to support them in carrying out the day to day functions of ensuring that the building is safely managed. However, ultimate accountability will reside with the Accountable Person for assessing and managing fire and structural safety risks.

The government comments that it recognises that building ownership can be complicated and takes many forms, and state that it will produce comprehensive guidance to help identify and support the Accountable Person where there is a complex ownership structure.

## **Building Registration Certificate**

The consultation document proposes that to register a building, the Accountable Person will be required to provide specified information such as the core details identifying the building, the details of the Accountable Person and the details of the Building Safety Manager to the Building Safety Regulator.

On granting a Building Registration Certificate, the Building Safety Regulator may attach specific conditions to it, with the Accountable Person obligated to comply or face penalties including possible criminal sanctions. Without a valid Building Registration Certificate, a building in scope cannot legally be occupied. In the case of non-compliance or poor performance, the Building Safety Regulator will be able to review the Building Registration Certificate with a view to add, amend or vary the conditions. The Building Safety Regulator will have the power to require the Accountable Person to appoint a replacement Building Safety Manager where there is continued non-compliance with conditions in the Building Registration Certificate.

In exceptional circumstances, the Building Safety Regulator will have the ability to remove the Building Safety Manager and apply to the Court for the appointment of a nominated Building Safety Manager.

It is also proposed that it will be mandatory for the Building Registration Certificate to be displayed in a prominent area of the common parts of the building so that it is readily accessible to residents.

## **Building Safety Manager**

The Building Safety Manager appointed by the Accountable Person can either be a legal entity or a natural person. In both scenarios, the Accountable Person will be obligated to make adequate resources available (including time and funding) to allow the Building Safety Manager to comply with a number of functions including:

- Maintaining the building's safety case and ensuring the conditions in the Building Registration Certificate are complied with to the satisfaction of the Accountable Person and the Building Safety Regulator;
- ensuring those employed in the maintenance and management of the building's fire and structural safety have the necessary competence requirements to carry out the role they are undertaking;
- engaging with residents in the safe management of their building through producing and implementing a Resident Engagement Strategy; and
- reporting into a mandatory occurrence reporting regime.

It is stated that the Accountable Person will need to ensure that the Building Safety Manager has the necessary skills, knowledge, and experience to carry out these functions.

The government intends that the administrative costs incurred during the occupation of buildings in scope are proportional, transparent and fall to those who benefit from the

reforms and are currently developing options for how these costs would be met and advise that further details will be issued in due course.

## **Safety Case**

Under the proposals, submitting a safety case report to the Building Safety Regulator will be a mandatory requirement. Mirroring the approach of most other major hazard safety case regimes, the Building Safety Manager will be required to keep the safety case up to date as a way of providing themselves, and their residents, with the assurance that they understand the fire and structural risks in their buildings and are taking appropriate steps and actions to mitigate and manage those risks on an ongoing basis so the building can be safely occupied.

The safety case should refer to the totality of the building safety information and include all supporting evidence identifying how fire and structural risks are being managed – this information should be stored in the golden thread.

In submitting a safety case report for review, the Accountable Person will make a case to the Building Safety Regulator that the fire and structural safety risks in the building have been assessed, and adequate safety measures have been identified and put in place to manage the risks appropriately. Key to the process of putting the safety case together will be the established risk assessment principles of:

- identifying the hazards;

- deciding who might be harmed and how;
- evaluating the risks associated with these hazards;
- deciding on the necessary control and mitigation measures;
- recording those findings and implementing them; and
- evaluating and monitoring on an ongoing basis.

This is consistent with the approach that should be undertaken for fire risk assessments under the Fire Safety Order.

## **Across the lifecycle of the building**

In addition to the specific requirements covered in previous sections, it is proposed that some responsibilities will apply to duty-holders throughout the lifecycle of a building within the scope of the more stringent regime to support the specific reforms being introduced during the design, construction and occupation phases.

## **Golden Thread**

The consultation response states that Duty-holders will be responsible for creating and maintaining the golden thread of building information related to fire and structural safety. The golden thread will be held digitally to ensure that the original design intent and any subsequent changes to the building are captured, preserved and used to support safety improvements. At the handover stage between Gateway three and occupation, key information (the golden thread) will have to be handed over from the Client to the

Accountable Person - both will need to confirm that this has happened. The Accountable Person will continue to be responsible for the golden thread and ensuring the information remains accurate and up to date.

The government advise that it will publish guidance and standards setting out what digital requirements the golden thread of information would have to meet. The Building Safety Regulator will establish a system of mandatory occurrence reporting for duty holders.

### **Mandatory Occurrence Reporting**

It is proposed that a mandatory occurrence will be defined as any structural safety or fire safety related event which is perceived to represent a significant risk to life in multi-occupied residential buildings within the scope of the new regime.

The government advise that guidance will be issued detailing the occurrences and setting out the exact requirements of reporting and propose that the Building Safety Regulator will also be made a prescribed person under the Public Interest Disclosure Act 1998.

### **Duty-holder Competence**

In addition to the specified duty holder responsibilities, it is also proposed that they will need to ensure that those they employ have the necessary competence to discharge their functions effectively and assure that they themselves are suitably competent for the work they've been engaged to do. Alongside reforms to increase the competence of industry and building control professionals, the overarching system for overseeing competence requirements will also apply to duty-holders, in particular the Principal Designer, Principal Contractor, and Building Safety Manager.

### **Existing buildings within scope**

Existing buildings in scope will enter the more stringent regulatory regime at the occupation phase. The Accountable Person will be required to obtain a Building Registration Certificate, in a similar process as for new builds at Gateway three. However, there will be a staged transition period and the Building Safety Regulator will be required to take into account the information available to the Accountable Person.

The consultation response proposes that the transition period will be staged in a planned and phased way, the details of which will be set out later this year. It is also proposed that the Ministry of Housing, Communities and Local Government, the Health and Safety Executive and local regulators will work with stakeholders to ensure the staging for the transitional period prioritises safety, the concerns of residents, and a smooth transition for the sector. Accountable Persons who are signatories to the Building Safety Charter will be encouraged to share best practice with the Building Safety Charter Learning and Excellence Hub to assist with driving cultural change across the industry over transition issues.

### **During a refurbishment**

The consultation reports that the respondents agreed with government that greater scrutiny of building refurbishments would help mitigate safety risks. Before a building in scope undergoes any defined refurbishment, the Building Safety Manager will need to engage with residents on their proposals and update the safety case on any changes that might affect the fire and/or structural safety of the building.

If the refurbishment is subject to the building regulations and being commissioned or undertaken by the Accountable Person or the Building Safety Manager, then the Building Safety Manager or the Accountable Person will be required to submit an application for the building work to the Building Safety Regulator. Work cannot start before Building Safety Regulator approval.

If the refurbishment does not trigger the building regulations but could have an impact on fire and/or structural safety, then the Building Safety Manager will be required to notify the Building Safety Regulator, but work can commence without waiting for a response. However, the Regulator can, if concerned, inspect the change.

Residents proposing a refurbishment to their property will be required to notify the Building Safety Manager. If required, the Building Safety Manager will need to update the safety case and confirm to the resident whether or not the refurbishment can be undertaken (having regard to the safety case). If the changes might affect the fire or structural safety of the building or are subject to building regulations, the resident, or contractor undertaking the refurbishment on behalf of the resident, will be required to notify the Building Safety Regulator prior to, and on completion of the work.

As stated under Building Control Competence, the Ministry of Housing, Communities and Local Government will continue to explore how Competent Person Schemes will work for buildings in scope under the supervision of the Building Safety Regulator. However, we expect that for buildings in scope, the Building Safety Regulator will be notified of any work that is being carried out under a competent person scheme before the work starts and once the work is completed. Throughout all refurbishment work, the safety case must be updated, to demonstrate how risks are being predicted, planned for and managed as appropriate and necessary on an ongoing basis.

## **Remediation**

A review of the safety case may lead to the identification of previously unknown fire and structural safety risks that require remediation to protect the safety of residents. The Accountable Person will be expected to rectify the building to ensure the safety of occupants is prioritised. The Accountable Person will be able to discuss proposed improvements with the Building Safety Regulator in consideration of the risk to safety.

Building owners remain legally responsible for ensuring the safety of their buildings and residents. Consequently, the government expects building owners to act responsibly and pay for the remediation of their buildings now and in the future regime.

The government states that it continues to support building owners and industry in ensuring that unsafe materials are remediated as quickly as possible, including by making available £1.6 billion of grant funding for the removal of unsafe cladding systems from existing high-rise buildings. However, it advises that this funding does not absolve the industry from taking responsibility for any failures that led to unsafe cladding materials being put on these buildings.

The consultation response proposes that in the more stringent regulatory regime, it will be for the Accountable Person to ensure that defects identified in buildings through safety cases are properly addressed. The government states that it is prepared to take further steps to ensure necessary actions arising from the safety case happens at pace, including by giving the Building Safety Regulator greater powers to ensure that any required action is taken and enforced.

## **5. A stronger voice for residents: The Resident Engagement Strategy**

It is reported that the overwhelming majority of consultation respondents agreed that residents should be empowered partners in the more stringent regulatory regime and supported proposals to ensure that residents are better able to challenge where they feel building safety is not being properly managed. Therefore, it is proposed that residents of buildings in scope will:

- have new rights to receive information about the safety of their building;
- be able to request access to appropriate detailed safety information;
- be involved in decisions about the safety of their building; and
- have their complaints about safety dealt with quickly and effectively.

In addition, it is also proposed that they will also have clearer responsibilities in relation to playing their part in mitigating risks in their building.

### **Engagement**

Under the proposal set out in the consultation response, the Building Safety Manager will be required to produce and implement a Resident Engagement Strategy, setting out how they will inform and engage residents and involve them in decision making. This will be reviewed alongside the safety case by the Building Safety Regulator to ensure that it is robust, and the Building Safety Manager will be held to account for poor performance. In the Resident Engagement Strategy, the Building Safety Manager will have to demonstrate:

- how core information about building safety will be shared proactively with residents;
- how appropriate detailed information about building safety will be made available to residents on request;
- their strategic approach to communicating with residents, including the channels and forums through which different information will be shared;
- how residents will be involved in decisions about their building's safety, particularly during any refurbishment;

- how complaints about safety will be handled effectively and efficiently;
- how residents will be informed about their safety responsibilities, and how these will be managed;
- what steps will be taken to ensure the engagement takes account of the diverse needs of their residents;
- and how the implementation of the strategy will be measured.

Raising and Escalating Complaints Residents in buildings in the scope of the more stringent regime will have access to a clear and transparent process to complain to their Building Safety Manager about fire or structural safety issues.

The consultation response comments that an overwhelming majority of consultation respondents supported the proposals for both an internal complaints process via the Building Safety Manager, and the escalation route if issues remain unresolved. A key consideration of these respondents was that this new escalation system should be aligned to existing processes and legislation. Therefore, the government states that it intends to put in place a set of agreements between existing and planned regulators, Ombudsman and redress schemes - such as the New Homes Ombudsman, the Social Housing Regulator or local authorities - to ensure that complaints initially raised with any relevant body can be smoothly redirected for prompt action by the appropriate enforcement body.

### **Residents' Responsibilities**

The government is seeking to introduce a new statutory duty requiring residents to cooperate with the Building Safety Manager in the fulfilment of their functions. This general duty to cooperate will be supported by a set of specific duties, which will mean that residents have legal responsibilities to avoid actions that could pose a risk to the fire and structural safety of the building. These types of resident actions could be active or passive and will include actions such as:

- making structural alterations to their flats, such as removing supporting walls, that undermine the structural integrity or compartmentation of the building, or failing to put right dangerous alterations that they are liable for;
- removing and replacing compliant fire doors or windows;
- damaging or removing fire safety features in the common parts of a building, such as fire extinguishers, sprinklers or alarm systems; or
- hindering or frustrating the Building Safety Manager in the performance of their duty to maintain the fire and structural integrity of the building and keep residents safe.

In the vast majority of cases, the government advise that it is confident that residents will comply with their safety responsibilities. However, for the small minority that do not comply and where targeted engagement by the Building Safety Manager has not resolved the issue on a voluntary basis, the Building Safety Manager will have a route to enforce resident responsibilities that balance individual residents' rights with the need for effective, timely enforcement where there is a risk to the safety of other residents. This could either be through existing contractual leasehold or tenancy agreements or by

working with local regulatory bodies to use their existing enforcement and access powers, supported by clear guidance on cooperation and existing local protocols. Where neither of these routes are appropriate to resolve the issue, the Building Safety Manager will have the ability to enforce the statutory duty through the courts.

## **6. Improving the safety of construction products: a new regulatory framework**

The government states that it recognises that construction products are used throughout the lifecycle of a building and have a critical impact on its safety.

### **Oversight of the construction products regulatory regime**

To strengthen the oversight of the existing construction products regulatory regime, the government is proposing to establish a new national Construction Products regulatory role, which will be responsible for:

- Market surveillance and oversight of local enforcement action, including maintaining a national complaints system and supporting local Trading Standards in dealing with complex cases;
- Enforcement action with manufacturers, where issues are judged to be national and/or significant; and
- Providing advice and support to the industry to improve compliance as well as providing technical advice to the government.

The government reports that it intends to expand the scope of the regulatory regime for construction products to cover more products, ensuring the safety of a wider range of construction products. In addition, the government is also taking forward the development of standards of third-party certification, with the British Standards Institution, United Kingdom Accreditation Service and industry.

### **Construction Products Standards Committee**

The consultation response also outlines a proposal to establish the national Construction Products regulatory role, in addition to implementing a wider programme of reforms across the construction products sector, including the establishment of a new Construction Products Standards Committee.

Under the proposals, the Construction Products Standards Committee will be comprised of technical experts and academics and it 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. In particular, the Construction Products Standards Committee will advise on:

- the assumptions and weaknesses within the current testing regime, including the effectiveness and accuracy of current tests;
- ways to improve the testing regime and new tests to address the weaknesses;
- and innovation in how construction products are tested.

The government reports that it has engaged with key stakeholders to ensure the establishment of the Construction Products Standards Committee addresses some of the key issues on product standards identified by the Independent Review and in the Grenfell Tower Inquiry Phase One Report. It is reported that stakeholders have been supportive of these proposals and the government anticipates that the first meeting of the Construction Products Standards Committee will take place shortly.

## **7. Promoting competence: improving performance across industry and within building control**

The government recognises that for the new building safety system to operate effectively, it will require the competence of those working in the building sector to be of a sufficient standard to give confidence to duty-holders, regulators and residents that they are able to carry out their job in a manner that will ensure quality, safety and compliance with building regulations. To achieve this, it is acknowledged in the consultation response that a more coherent and consistent approach to assessing and assuring the competence of people across all disciplines working on buildings.

### **Industry Competence**

The government report that the industry-led Competence Steering Group, and its constituent working groups, has made significant progress towards this ambition, publishing its interim report in August 2019 for consultation with the built environment sector.

The Competence Steering Group's final report, reflecting the comments received through their consultation, is expected to be published in due course. However, the consultation response states that, in the meantime, the government is working with the British Standards Institution and industry to formalise and implement elements of this work.

The British Standards Institution intends to establish a Strategy Group to advise on the creation of a suite of national standards, with supporting documents that will set out a common language and principles for competence requirements and provide a framework for the three critical roles of Principal Designer, Principal Contractor, and Building Safety Manager.

To oversee the longer-term development of the competence frameworks it is proposed that the Building Safety Regulator will establish a new industry-led committee to continue the momentum of the industry work. This committee will drive improvements in levels of competence through several oversight and assurance functions, including:

- Filling gaps in the competence landscape by taking a collegiate approach to peer-reviewing and assessing sector-specific competence frameworks against the overarching standard;
- Providing a forum for bodies representing the range of disciplines in scope to work collaboratively to monitor, refresh and review individual competence frameworks and to drive competence more widely;
- Providing advice and guidance to assist clients, duty-holders and residents in determining whether those they have employed are competent and the criteria they should use to assess them;
- Signposting Committee recommended competence schemes or registers for those working on buildings in scope, operated by professional/trade or qualifying bodies;
- Providing guidance and signposting to industry to applicable legislation and standards relevant to buildings in scope, advising and promoting the integration of learning into continuous improvement cycles and through competence training; and
- Conducting independent analysis and research into the competence landscape across industry and identify competence and training gaps, making recommendations on how competence standards can be continuously improved across the industry.

### **Building Control Competence**

Under the proposals, the Building Safety Regulator will ensure that the regulatory teams overseeing the buildings in scope of the more stringent regulatory regime are competent to perform their roles. The Building Safety Regulator will be responsible for oversight of the competence and performance of building control professionals and the building control bodies in which they work, taking a wider view of the professionalism and culture that needs to support building safety in all classes of work, not just in-scope buildings. The government states that it intends to create a unified professional structure for building control covering both local authority staff and Approved Inspectors. This will take into account the lifetime view of recruitment and the acquisition and maintenance of competence throughout an individual's career. In line with suggestions by respondents to the consultation, there will be a single body overseeing both public and private sector building control.

It is commented in the consultation response that this body will either be the Building Safety Regulator itself or a body to which the Building Safety Regulator gives the task of performing this function on its behalf, based on a framework set by the Building Safety Regulator. The professional structure would be designed to increase regulatory standards across the sector under a single robust set of standards for competence. It would enable greater collaboration and knowledge-sharing across a profession that is currently separated into private and public sector branches and establish clearer career paths – helping to address entry hurdles and retention issues to increase capacity.

The government states that it intends to provide the legislative framework for this profession through the Bill and expects that practical details about the administration of the profession would be developed by the Building Safety Regulator or a designated body in discussion with building control professionals, bodies and their representatives. The

Department advises that it will continue to explore how Competent Person Schemes will work for buildings in scope under the supervision of the Building Safety Regulator, as recommended in the Independent Review.

## **8. A robust environment of compliance and deterrence: ensuring the reforms are delivered**

It is reported that since the tragedy of the fire at Grenfell Tower, the government has seen many parts of the sector step up and take responsibility for reforming the building safety system. However, it acknowledges to avoid falling into the traps that led to the shortfalls identified in the Independent Review, the new system will require credible and effective enforcement and sanction powers. The Building Safety Regulator will have greater powers and more opportunities to intervene under the new regime.

### **Incentivising the right behaviour**

The government state that the introduction of Gateways during the design and construction phase of buildings in scope will incentivise duty-holders to consider all aspects of the building regulations, and particularly fire and structural safety, at the earliest opportunity.

It is proposed in the consultation response, that during occupation, the ongoing obligation on the Accountable Person to understand and manage fire and structural safety risks under the new safety case regime will require them to ensure the continuous monitoring and management of risks as they arise.

Residents will be incentivised to consider how their actions could impact on the overall fire and structural safety of their building through the provision of information and a duty to comply with the Building Safety Manager in the discharge of their duties.

### **Enforcement and Sanctions**

It is stated by the government that 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. It is proposed that 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.

## **9. Interacting with existing regulatory regimes: a complementary framework**

The consultation response reports that the respondents raised concerns about the interaction between enforcement under the Housing Act 2004, following a Housing Health and Safety Rating System assessment, and the Fire Safety Order in multi-occupied residential buildings. Respondents were keen that the interaction between the requirements relating to fire safety were made clear. There were also concerns about how the new regime would fit alongside the existing regimes and concerns that local authorities could potentially be notified of building issues via three separate regulatory functions.

In response to the concerns raised, the government reports that it intends to address this interaction and make sure that there is clear guidance about the applications of each regime – in multi-between the regulators on how the regimes will be enforced and how intelligence is shared to ensure that residents feel, and are, safe in their homes.

The government states that it expects that the local authority will also alert the Building Safety Regulator at the same time as taking the necessary action. As the Housing Act 2004 allows local authorities to take action in respect of 29 specified hazards, going wider than just fire and structural safety, it is important local authority enforcement continues alongside the new regulatory framework. A Housing Health and Safety Rating System assessment is a snapshot of hazards caused by deficiencies in a home and local authority enforcement can be the quickest and most efficient way of safely remedying these hazards. The government is undertaking a review of the Housing Health and Safety Rating System to bring it up to date, make it more accessible to different audiences and a better tool for local authorities. In addition, it is advised that it will take this opportunity to ensure it aligns with and works effectively alongside the Fire Safety Order and the more stringent regulatory regime.

## **10. Improving the whole system: wider measures on building safety**

Alongside the more stringent regulatory regime, the government reports that it is committed to fundamental reform of the wider building safety system and is intending to deliver this ambition through a number of legislative and non-legislative measures. These are reported as being: -

- **Fire Safety Bill** – The Home Office’s Fire Safety Bill was introduced in Parliament on 19 March 2020. The Bill is intended to clarify the role of building owners and managers; affirm the enforcement powers of Fire and Rescue Authorities supplementing the local authority powers. In addition, it is stated that the Bill will lay a foundation for implementing the recommendations from the Grenfell inquiry.
- **Testing of non-ACM cladding systems** – The government is clear that any unsafe cladding materials must be removed and also advises that it has commissioned

research in the burning behaviour of non- ACM material and other materials. The government advise that an update to Approved Document B will be published outlining increased safety measures including requiring sprinkler systems, and the provision of wayfinding signage. In addition, the required research has been commissioned to support a full technical review of Approved Document B.

- **Wider changes to the Building Act** – The government states that it intends to use the Building Safety Bill to make improvements to other parts of the legislation. The objectives are stated as improving building safety, make legislation clearer and more understandable and strengthen compliance and help enforcement.
- **Procurement** – The government recognises that procurement plays a key role in ensuring the safety of buildings. It is reported that the Ministry of Housing Communities and Local Government will build on work that has been undertaken to develop practical guidance for the implementation of collaborative procurement methods for the procurement of buildings in scope.

## APSE COMMENT

APSE welcomes the proposals set out in the consultation response and supports, the actions being taken to improve building safety and changes to the wider system.

A poll commissioned by APSE and undertaken by Survation highlighted that 59% of the public believe building inspectors should be employed by the council rather than the private sector, with 82% of respondents supporting councils being granted additional powers to hold landlords to account and 83% reporting that they wanted to see local authorities having the ability to intervene strongly when required.

The consultation response sets out the approach for ensuring the regime is more stringent and provides clarity with regards to enforcement powers, recognising the integral role local authorities play in the system.

Since the implementation of the Building Act 1984 (BA1984) which introduced private building control inspectors the system has become fragmented and these issues have been highlighted in the evidence submitted to the Hackitt review. In addition, the Building (Approved Inspectors) Regulations 2010 states that compliance is reached in a circumstance were the Inspector is satisfied within the limits of professional skill and care. Therefore, it is welcomed that the proposals are seeking for the Building Safety Regulator to take responsibility for the oversight of the competence of building control bodies and create a professional structure for building control covering both local authority staff and Approved Inspectors.

Local planning authorities play a pivotal role in the planning system as a whole and should be empowered and adequately resourced to take on the role of 'master-developers'. This requires changes to financing, skills and a stronger offer from central Government to reward local action.

On a final point, the government should take a proactive role to incentivise domestic production of equipment and sustainable raw materials alongside exploring options for

scaling offsite production and modern methods of construction. The government should produce a national labour strategy to support the expansion of the construction industry, recognising the current capacity constraints on delivery due to factors such as the availability of skilled workers. Government taking a lead in this area would allow the culture of safety to be embedded throughout the sector.

**Vickie Hacking**  
**Principal Advisor**