

Pre-legislative scrutiny: draft Building Safety Bill

National Housing Federation submission to the Housing, Communities and Local Government Select Committee inquiry

14 September 2020

Summary

1. On behalf of the National Housing Federation (NHF) and our members – housing associations that own, commission, develop and manage homes throughout their lifecycle, including residential buildings in scope of the more stringent building safety regime – this submission addresses the following inquiry questions:
 - How well does the Bill, as drafted, meet the government’s own policy intentions?
 - Does the draft Bill establish an appropriate scope for the new regulatory system?
 - Will the Bill provide a robust – and realistic – system of accountability for those responsible for building safety? Are the sanctions on those who do not meet their responsibilities strong enough?
 - Will the Bill provide strong mechanisms to ensure residents are listened to when they have concerns about their building’s safety?
 - Is the government right to propose a new building safety charge? Does the Bill introduce sufficient protections to ensure that leaseholders do not face excessive charges and to ensure that their funds are properly managed?
 - Does the Bill improve the product testing regime in a way that will command the full confidence of the sector?
 - Is it right that the new Building Safety Regulator be established under the Health and Safety Executive, and how should it be funded?
 - Does the Bill present an opportunity to address other building safety issues, such as requirements for sprinkler systems?

Executive summary

2. The NHF and our housing association members remain exceptionally supportive of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety and this subsequent legislation. Since the tragic fire at Grenfell Tower, housing associations have been at the forefront of change, shaping policy changes and piloting delivery.
3. As we move towards a new system, in support of legislative content, we have identified specific areas where further clarity would support a successful transition to the new regime and achievable delivery of its ambitions. Clarity is needed on:
 - Timescales
 - Specific elements of the Bill, on which further detail is needed.
 - Appropriate powers of access to carry out safety inspections and works.
4. We believe these asks are reasonable, as the legislative progress will take time. With the right support and guidance, our members can take action to plan and prepare for an achievable transition.
5. Our members are already struggling to deal with the consequences of the failed regulatory system, which has proven to be not fit for purpose. The remediation of existing buildings is complex, expensive and currently lacks strategic oversight.
6. As the Bill progresses, we have also been calling on the government for:
 - Funding.
 - Strategic leadership and a process of risk prioritisation.

Introduction

7. We welcome the draft Building Safety Bill and the opportunity to share our views with the Committee in support of its inquiry. This Bill is a strategic milestone in the government's and industry's work to shape trusted, robust and deliverable legislation so that a tragedy like the fire at Grenfell Tower never happens again.
8. Housing associations are eager to adopt the necessary changes and implement the revised regulations as diligently and quickly as possible. However, they will need support and further clarity on a number of critical issues to do so. Ensuring the safety of residents remains their top priority.
9. We are urgently calling for clear direction from the government on:

- Promised guidance on risk prioritisation to clarify the appropriate management of complex buildings under occupation. This should cover approaches to mixed-use buildings, building accommodation type, and occupancy.
- Implementation timeframes and key milestones, accompanied by supporting guidance. For example, clarity on how existing buildings with different risk profiles might be categorised and registered within the new regime, and how this transition will be phased over time. This would enable building owners to effectively plan and transition to meet new responsibilities and achieve legislative compliance.

10. We urge the government to consider delivery constraints due to the limited availability of building safety and fire risk sector professionals, and argue that delivery should be planned according to relative risk. Multiple changes to legislation are due to take effect at once. There is a risk that certain building safety professions will be overwhelmed by demand. This could mean that legislative change is not delivered effectively. We believe the government needs to set out a phased approach to implementation focusing on capacity and relative risk.

11. Similarly, we are calling for the government to share interim guidance and additional detail on key aspects of the new system, which would help to signpost expectations in advance of secondary legislation. This should include the structure and evidence requirements for a building safety case report, and expectations regarding the competence of new roles and their assessment. This enhanced detail would enable housing associations to confidently prepare for and adopt new regulations in advance of more detailed secondary legislation. Such action will ensure current work plans and information gathering exercises remain fit for purpose until legislation is finalised. This approach also provides the opportunity to pilot and test templates and guidance prior to final sign-off.

12. While safety remains our members' utmost priority, we also believe it is important for the costs of implementing new regulatory measures to be proportionate, so that they can be met without compromising on other priorities. This applies both to charitable housing associations that build much-needed affordable homes, and to leaseholders, whose service charges will reflect some aspects of the new system, such as the cost of a Building Safety Manager.

13. Landlords need access powers if they are to fulfil the full extent of their responsibilities for the safety of the whole building, and we

do not believe that the Bill adequately addresses this in its current form. A workable process could be achieved by ensuring landlords can gain access to properties, supported by a strong legal process and on a proportionate basis in the small minority of cases where access is not granted by a resident.

14. The coronavirus pandemic continues to present additional challenges for effectively conducting building safety investigations and gathering information in preparation for new legislative requirements. Despite marked progress in restarting planned works, some delays remain due to the impact of social distancing, self-isolation and shielding, where residents understandably have concerns about granting access to their homes. This impact must be taken into account when considering deliverable transition timeframes, alongside targeted deployment of limited skilled sector resources and balancing other government ambitions, such as increasing housing supply and decarbonisation.

15. We are committed to continuing to work constructively with the government to:

- Implement new measures prior to legislation passing, to ensure the safety of residents.
- Remediate buildings with safety concerns as quickly as possible.
- Share our members' knowledge, insight and experience of partnership working with residents and managing buildings throughout their lifecycle.

Background

16. The NHF is the voice of housing associations in England. We represent almost 800 housing association members that provide homes for around six million people. As the trade body for the housing association sector, we influence, campaign and engage on behalf of our members. We create an environment where housing associations can deliver on their social purpose.

17. Housing associations' top priority is resident safety. In the days and weeks following the tragic fire at Grenfell Tower, they worked quickly and collaboratively with the government to identify buildings with the same cladding materials. Our members have continued to work diligently and proactively to remediate their buildings. This includes those buildings where other combustible materials have been identified – often using a risk-based approach to prioritise action – and, in parallel with supporting, informing and piloting proposals for regulatory change.

18. We are calling for the government to play a strategic coordination role to support housing associations and other building owners to prepare for a deliverable, resident-focused, meaningful and equitable transition to the new building safety regime. This includes meeting the new regulations and responsibilities for all buildings in scope of both the building safety and fire safety legislation – subject to changes to this legislation – and not just those in scope of the new more stringent regime. This encompasses proposals covered by the Fire Safety Bill and the Building Safety Bill.
19. This will ensure that limited resources, such as specialist consultants and contractors, can be directed first to the buildings and projects that need them most. This strategic role should be supported by intelligence already gathered by the government. It should seek to prioritise resident safety based on cumulative risk analysis and prioritisation, as opposed to the ability to fund work or source professional support. In advance of finalised legislation, there is potential for those organisations working to advance the formation of the new Building Safety Regulator within the Health and Safety Executive to support the government in this role.
20. Throughout the transition period, we urge the government to continue to work with housing associations to develop and progress the detailed delivery of safety outcomes, building on the framework established by the draft Building Safety Bill.

How well does the Bill, as drafted, meet the government's own policy intentions?

21. We agree with Dame Judith Hackitt's recommendation for a complete overhaul and review of existing building safety regulation. The previous system was not fit for purpose and changes are needed to ensure regulation and cross-industry culture can drive improvement.
22. We believe that the Bill provides the basis for Dame Judith's main principles, including clear lines of responsibility throughout a building's lifecycle – supported by a golden thread of information – a more stringent regime for higher-risk buildings, and clear resident engagement.
23. However, we note that, although the Bill lays the groundwork for these principles, further development of secondary legislation and detailed guidance is still outstanding. This detail, followed by monitoring of outcomes and subsequent adoption of feedback will be key to both supporting

implementation and, ultimately, will demonstrate whether the objectives have been achieved.

Does the draft Bill establish an appropriate scope for the new regulatory system?

24. It is our understanding that the government will bring other buildings into scope of the more stringent regime over time, based on risk. We have made the case for a risk-based approach to prioritisation of buildings in our previous consultation submissions to the government. As set out previously, we believe that any changes should take account of risk prioritisation, professional capacity and provide clear timeframes for transition.
25. We would welcome greater understanding of how the government will define that risk, as promised following its recent call for evidence into building risk prioritisation ([read our submission here](#)). Greater clarity will help us to understand why other buildings that may present risks for reasons other than height – for example, supported and sheltered housing – may come into the scope of the new regime. It will support housing associations when considering and taking steps to mitigate the additional fire risks that can be associated with housing residents with complex needs and support requirements.
26. Clarification is particularly important where parameters for inclusion in scope of the regime overlap. For example, we are seeking clarity and guidance on whether buildings of 18m and over that provide temporary hostel accommodation to people experiencing homelessness will be part of the more stringent regime. Currently, the published definition suggests they will not, but such buildings exist and there can be additional fire risks associated with housing residents with complex needs.

Will the Bill provide a robust – and realistic – system of accountability for those responsible for building safety? Are the sanctions on those who do not meet their responsibilities strong enough?

27. Currently, the Bill suggests that the safety of a building with a complex ownership structure could be overseen by more than one Accountable Person or dutyholder in occupation. There could also be additional Responsible Persons for mixed-use buildings under the Fire Safety Order (FSO). This approach appears incongruent

with the objective of ensuring a whole building approach to safety. Housing associations have experience of operating and managing homes in such buildings, and would like clarity and guidance regarding the best approach to managing multiple Accountable Persons to ensure a whole building approach. However, consideration must also be given to the impact of a converse scenario, where legislation gives responsibility for the building to a single person, who is neither a dutyholder nor Responsible Person for parts of that building.

28. Clear guidance is needed to support dutyholders and others to understand and meet their responsibilities in the first instance, particularly where complex management structures exist. Our members are open to working with the government to support the development of guidance and good practice, focused on risk mitigation, collaboration and building. The importance of development agreements that recognise changes to management behaviour and liability have been flagged by housing associations for new buildings. However, where existing building agreements exist, more could be done to investigate and share good practice.
29. Importantly, to be truly responsible for whole building safety and accountable to all residents, building owners will need proportionate and reasonable powers of access to properties for the minority of cases where this is not granted by residents. Any such action would have to follow an agreed legal process and procedure, but would mitigate time delays and reduce court burdens. Understanding of the reasonable use of such powers could be factored into the scope of resident engagement and information sharing and reporting to the Building Safety Regulator.
30. In respect of sanctions, clear guidance is needed to support individuals and organisations to meet their responsibilities in the first instance. Consideration should be given to connecting guidance with competence standards, assessment and learning opportunities for dutyholders and wider roles linked to responsibilities and liabilities (for example, clients, Accountable Persons, board members and wider team members). This will help to drive culture change and raise awareness and understanding of the achievement of resident and building safety.
31. Specifically, considering the new role of the Building Safety Manager, the government and industry cannot assess demand versus existing supply for personnel with the requisite skills, knowledge and experience until competence requirements are clarified. Interim guidance, such as the

competence framework developed by the cross-industry working group to consider the role and competence of the Building Safety Manager, could help industry to progress with the recruitment and training in advance of secondary legislation setting out confirmed standards and assessment processes.

32. Similarly, the Bill lacks clarity regarding the expected information requirements to support a building safety case report (although we anticipate that a paucity of existing data on a building will make this work complex and lengthy). Interim guidance could support housing associations to confidently continue with the work they've already commenced, providing evidence to inform the realistic delivery of key transition milestones.

Will the Bill provide strong mechanisms to ensure residents are listened to when they have concerns about their building's safety?

33. As community anchors and responsible landlords, housing associations already have established methods of engaging with residents. However, we know there is always room for improvement. As a sector, we have been developing ways to strengthen our relationship with residents. This includes being clearer about what residents can expect, how they can hold us to account when things go wrong, and how they can work in partnership with their landlord to shape effective solutions.

34. We support an outcomes-based approach to resident engagement, as opposed to a prescriptive one-size-fits-all approach. The information prescribed by the Bill appears to be fit for purpose as a basic minimum. However, an outcome-focused approach would allow residents to inform how they would like to be engaged, and take into account what they want to achieve. Feedback from residents following the coronavirus lockdown has highlighted the importance of ensuring that routes to engagement are accessible and targeted to meet residents' needs and preferences.

35. An accessible, transparent and clear complaints process is essential, and clear guidance must ensure that residents can raise complaints without the fear of being stigmatised.

36. Specifically, the definition in the Bill of a resident – who will have duties and whose landlord will have duties in return – could feasibly exclude a number of

people living in a building who are not classed as ‘lawful’ residents, such as sub-letters. Currently, they would be excluded from the requirement for their building owners to engage with them regarding the safety of their building. While we would expect social landlords to be engaging with everyone in a building, this highlights the importance of the law focusing engagement on ensuring safety, not on prescribing specific information for the majority, but not all, residents. This latter approach risks the potential exclusion of other parties who may have a reasonable view on safety.

37. We recognise the importance of electrical safety. However, we consider some of the duties set out for residents to be onerous, such as the requirement to keep all electrical appliances in good working repair. This creates a financial burden for residents, many of whom in the social sector will be on lower incomes. We believe the government should further explore the best way of improving safety outcomes in this area, with a focus on supporting residents on low incomes. This could include targeted support for residents and awareness raising, working with manufacturers and suppliers to improve appliance safety, and proactive recall and replacement programmes.

38. We support compulsory membership of the New Homes Ombudsman. It should also be open for residents and housing associations to raise concerns about new buildings.

Is the government right to propose a new building safety charge? Does the Bill introduce sufficient protections to ensure that leaseholders do not face excessive charges and to ensure that their funds are properly managed?

39. We agree that the building safety charge should be affordable to the leaseholder, and it is encouraging that measures in the Bill have been drawn up to ensure that this charge will be reasonable.

40. However, as secondary legislation is due to set out further detail, it will need to be informed by the anticipated costs of implementing new measures. This would ensure that leaseholder costs remain reasonable.

41. We disagree with the Bill’s assertion that costs will need to be paid by leaseholders within 28 days. We would expect that any

building safety charges should be treated in the same way as existing service charges, in that they will be planned and budgeted for in advance. They should then be paid in the same manner as the building service charge, and probably in conjunction with it. Where the building is owned by a social landlord, this will normally mean it will be collected in weekly or monthly instalments spread over the course of the year.

Does the Bill improve the product testing regime in a way that will command the full confidence of the sector?

42. We welcome the inclusion of powers to improve the safety and marketing of construction products in the Bill. These changes should improve future assurance for housing associations and their residents, creating greater trust in the products specified in their homes and supporting resident and building safety.

43. However, building on housing associations' experience of testing regimes in relation to the failure of some types of fire doors, we urge the government to ensure the transparency and sharing of test data for products and systems that are inherent to achieving building safety.

44. While we understand commercial interests, making this change across the construction industry will drive culture change based on transparency, trust and the promotion of good practice. Such a stance will make effective use of limited test resources and assist the exploration and development of approaches to achieving safety backed by evidence.

Is it right that the new Building Safety Regulator be established under the Health and Safety Executive, and how should it be funded?

45. The responsibilities allocated to the Building Safety Regulator are extensive and wide-ranging, covering the more stringent building safety regime for in-scope buildings, as well as changes that will have implications for all multi-occupied residential buildings. To ensure it remains an effective and responsive body, the new regulator must have access to sufficient capacity and competence to effectively be able to do its job, and to bring buildings online in a reasonable transition period.

46. Any funding regime must be considered in light of its impact on the work that charitable housing associations do to provide long-term affordable housing. Leaseholder costs must also be considered, as service charges may reflect some aspects of the new system and must remain proportionate and affordable. Careful consideration of how the new regulator should be funded will have the benefit of ensuring that existing higher-risk buildings and development proposals falling in scope of the more stringent regime remain viable to safely build, own, manage, maintain and live in.

Does the Bill present an opportunity to address other building safety issues, such as requirements for sprinkler systems?

47. We believe that sprinkler systems are just one of many fire safety mechanisms that should be considered to ensure residents' safety, and their use will need to follow advice from a fire engineer.

48. Aligned with a risk-based approach, the Bill should not prescribe specific solutions that may not be achievable or necessary in a building where alternative layers of safety protection exist, and where appropriate risk assessment processes and actions have been followed. This is particularly important where such solutions come with a maintenance cost for leaseholders that might be disproportionate to their ability to mitigate or reduce fire safety risk.