

“Building a Safer Future” – Dame Judith Hackitt’s Independent Review of Building Regulations and Fire Safety - Final Report May 2018: a summary

Following the fire at Grenfell Tower on 14 June 2017, in which 72 people were killed, the role that building regulations played was called into question. In response, the government announced an independent review of building regulations and fire safety to be led by Dame Judith Hackitt. The purpose of the review was to consider the current regulatory system and make appropriate recommendations to ensure it is fit for purpose, with a particular focus on multi-occupancy high-rise residential buildings.

Interim Report

In December 2017, the Review published an Interim Report which identified a number of areas where significant improvement was required. It found, among other things, that:

- The existing regulations and guidance were complex and unclear
- There was a general lack of clarity over roles and responsibilities, with no one person being responsible for ensuring compliance with the regulations
- There was a lack of assessment and accreditation requirements for those involved in the design, construction, management and maintenance of high-risk buildings
- There was no requirement to review, seek authorisation or document changes made to original designs
- There was no requirement for existing buildings to be brought up to current fire safety standards
- There were questions over the effectiveness of enforcement action for non-compliance with the regulations

The Interim Report concluded that a full overhaul of the existing regulatory system was required.

Final Report

The widely anticipated Final Report was released on 17 May 2018.

In her foreword, Dame Hackitt criticises the “race to the bottom” which has developed within the industry as a result of ignorance (of regulations and guidance, which is not always read by those who need to, or is read but misunderstood or misinterpreted), indifference (with the primary motivation being to do things quickly and cheaply rather than to deliver quality, safe homes) and because the system itself does not facilitate good practice (due to ambiguity over where responsibility lies, fragmentation within the industry, and inadequate regulatory and enforcement).

In an effort to encourage a stronger focus on creating and maintaining safe buildings the Review sets out plans for a new regulatory framework designed to address the weaknesses identified in the Interim Report by creating a regime that is significantly more straightforward, while also being more rigorous and effective. We set out below a summary of the key recommendations from the report.

A single regulatory body

Whereas the present regulatory framework involves several different pieces of legislation and several different regulators (the Health & Safety Executive (HSE), building control bodies, fire and rescue authorities (FRAs), Environmental Health Offices (EHOs)) the proposed new framework is intended to be significantly simpler: not only will the same legislative framework apply across the life cycle of a building, building safety will be overseen by a single regulatory body - a new “Joint Competent Authority” (JCA).

However, this will not involve the creation of an entirely new single regulator that would “draw building safety expertise away” from pre-existing organisations. Instead, the JCA will comprise “the combined expertise and knowledge of Local Authority Building Standards and FRAs, but with the addition of the HSE” (although it is not intended that the organisations in question would merge).

A new regulatory framework

The intention is that the new legislative framework will focus, at first, on multi-occupancy higher risk residential buildings that are ten storeys or more in height (HRRBs), but will in due course be rolled out to a wider set of residential buildings.

The Review envisages that the new regulatory framework should treat the building as a single entity (“a system encompassing sub-systems”), and that a new over-arching Approved Document should be published “describing the system and the holistic analyses that must be completed when undertaking building work”.

Application during design, construction, and refurbishment phases

It is recommended that during the design, construction and refurbishment stages, clearly defined dutyholder roles should be established, where the dutyholder is an identifiable individual or organisation, whose role will support a whole life cycle approach to building safety.

Regulatory oversight should be strengthened through the creation of a set of “Gateway Points” at key stages in the building life cycle, which the Review believes will heighten the focus on high quality design and delivery. At the planning permission stage, the Local Planning Authority should be required to undertake a consultation with the JCA where it identifies that a building is a HRRB (Gateway Point 1).

Thereafter, before building work can commence, dutyholders will be required to satisfy the JCA that their detailed plans are sufficiently robust (Gateway Point 2). They will also need to properly account for the safety of the building, once complete, before occupation can commence (Gateway Point 3).

The Review also recommends a clearer statutory change control process, that places requirements on the relevant dutyholder to notify the regulators of any significant changes made after the detailed plans have been signed off. “Major” changes would require a reconsideration by the JCA before such work is commenced. “Minor” changes would need to be recorded and identifiable upon completion of the work in order for dutyholders to demonstrate that Building Regulations were still satisfied.

With regard to self-certification, the Final Report states that as a principle this is still acceptable for most buildings. “It avoids unnecessary bureaucracy, and the work done by individuals is often high quality”. However, recognising that work carried out on HRRBs has a great potential to impact fire safety, it is proposed that the work of competent persons is subject to proper scrutiny as standard by the JCA to ensure overall integrity is maintained.

The Review also looks at the regulators within the JCA and recommends major changes to create a more coherent regulatory environment. Regulatory oversight is currently provided by Local Authority Building Controls or by private sector Approved Inspectors (AIs) and, at present, the person undertaking the building work can choose who specifically provides their building control regulatory oversight. The Review says that ability to choose must come to an end, and proposes a single regulatory route for oversight of HRRBs through Local Authority Building Control, which should be newly branded as “Local Authority Building Standards”.

With regard to enforcement, the Review considers that there should be a clear enforcement framework. Local Authority Building Standards inspectors should be able to provide written information and advice regarding breaches of Building Regulations following inspections. There should also be a clearer and stronger sanctions framework to include improvement/correction notices and prohibition or “stop” notices, where failure to comply with either would be a criminal offence.

Finally, the dutyholder during the design and construction phase will be responsible for creating and maintaining what is referred to as the “golden thread” of information. The aim of the golden thread is to ensure that key information regarding the building and its design is preserved, through a digital record, and is updated and accessible throughout the building life cycle. A non-exhaustive list of the type of information that should be recorded and maintained is:

- Size and height of building, full material and manufacturer product information
- Identification of all safety critical layers of protection; design intent and construction methodology
- Digital data capture of completed building eg, laser scanning
- Escape and fire compartmentation information
- Record of inspections/reviews/consultations

Application during the occupation phase

Again, the Review recommends that there should be a clear and identifiable dutyholder during the occupation and maintenance stages (either the building owner or the superior landlord), with responsibility for making sure the whole building is safe.

The dutyholder should be allocated clear responsibilities, including:

- Taking such safety precautions as may reasonably be required to ensure building safety risk is reduced as far as reasonably practicable;
- Ensuring that information management systems are in place in order to maintain relevant documentation
- Ensuring there is a resident engagement strategy and that residents receive information on fire safety in an accessible manner
- Ensuring that all relevant information (the golden thread) is handed over to a new dutyholder if and when the building changes hands

The Review proposes that the dutyholder should present to the JCA a “safety case” at regular intervals (generally every five years, or earlier if a significant refurbishment is planned or there has been an incident or concerns

raised), which should identify hazards and risks, and describe how risks are controlled as well as the safety management systems in place, including emergency procedures in the event of an incident. It should also include records of maintenance, inspection and testing undertaken, a resident engagement strategy, a copy of any fire safety inspections, and a copy of the latest fire risk assessment with evidence of actions taken. The JCA will then assess the safety case and may inspect the building, and where necessary impose improvement notices.

The JCA will hold a register of dutyholders, and ensure they meet their responsibilities through effective inspection, assessment and enforcement. The JCA should have the power to ensure that the dutyholder discharges its duties by having access to the whole building where there is reasonable evidence that building and life safety is at risk, being able to serve the dutyholder with building improvement notices (with a timescale for completion of any works), and having a range of incentives and sanctions at its disposal (including criminal sanctions) to hold dutyholders to account.

Giving residents a voice

In order to reassure residents that appropriate and robust layers of protection are in place to keep them safe, the Review recommends that the dutyholder for a HRRB should have a statutory duty to proactively provide residents with a set of information, including a clear evaluation of the safety case, translated into a “safety rating” for the building, to allow residents to benchmark the safety of their building against others, and incentivise the dutyholder to bring about improvements quickly where required.

It should also include details of any steps residents need to take themselves to maintain the integrity of the safety systems installed in their own homes, and notify them of any relevant notices issued by the JCA or other regulators in relation to safety.

Dutyholders should be able to demonstrate to the JCA that they have a strategy for “resident engagement”, with a view to building a co-operative and positive working relationships. Where residents have raised concerns about safety and they have not been adequately addressed, “there needs to be a clear and direct route of escalation and redress to an independent body”, which should have powers, without any risk of threat of punitive action on the resident for raising their concerns.

Competence

The Interim Report identified the lack of assessment and accreditation requirements for those involved in the design, construction, management and maintenance of high-risk buildings.

The Final Report recommends that the professional and accreditation bodies working with the construction sector and fire safety sectors should continue the work they have started in response to the Interim Report and present a coherent proposal to government within one year. As a minimum, this should cover the role and remit of an overarching body to provide oversight of competence requirements of people working on HRRBs.

Guidance and monitoring

The Review found that the statutory guidance as it exists (in the form of Approved Documents) was “often accompanied by a more apparent prescription”, and that the minimum standards in the Approved Documents was treated by some in the construction industry as “a high bar to be negotiated down”, leading some to “game the system by selecting which bits of guidance and alternative solutions are easiest to achieve”.

In response, the Final Report proposes that a single coherent suite of guidance documents should be created - the structure of which should support a genuine outcomes-based approach to building safety - and that the

responsibility for developing the guidance should be moved to the industry, with government support and validation.

In practice, says the Review, the government should write the regulations and set the outcomes to be achieved, and the industry should then respond by shaping detailed guidance to support the delivery of those outcomes. Approved Documents should be restructured to mainstream fire safety and structural safety across all types of building work (the government is working to redraft Approved Document B).

Products

The Review calls for the creation of a more robust and transparent construction products regime through a more effective testing regime, with clearer labelling and product traceability, including a periodic review of test methods.

In relation to cladding materials, there is no call for a ban on combustible materials. The Review states that “there is currently a choice between using products of limited combustibility or undergoing a full system test”. In the new regulatory framework, the greater focus required on key safety aspects from the outset means the use of lower risk materials would be likely to receive approval by the JCA as a robust layer of protection.

Where the full system test option is chosen, not only must the full system be tested, the person undertaking the work will also need to ensure that the potential risks are mitigated by ensuring the system is properly installed and maintained through its life cycle, which creates an ongoing and more onerous responsibility beyond supply and installation.

With regard to desktop studies, the Review notes that the government has launched a consultation on proposed amendments to Approved Document B (the statutory guidance on fire safety). It states that while proposed revisions do not mean that desktop studies would be banned altogether (because “there are some products and systems for which a full-scale physical test is not possible”), they do mean that desktop studies in lieu of tests for any products or systems falling within its scope could only be used in a very limited number of cases, when there is relevant data and when the assessments are carried out by people who are qualified and competent.

The report calls for greater transparency in the testing regime for products critical to the safety of HRRBs, and of test results. It also calls for products critical to the safety of HRRBs to be subject to periodic retesting by manufacturers (at least every three years) in order to provide the necessary assurance under the new regulatory framework to the dutyholder and JCA that product quality and integrity has been maintained over time in the production process.

Response to the Final Report

In general, the focus on bringing about changes to industry culture in the long-term - through the introduction of clear and accountable dutyholders, gateway points, record keeping, and a stronger enforcement/sanction framework - has been welcomed. However, there has been widespread criticism of the Review for failing to recommend any immediate changes to improve the safety of tower blocks including, in particular an outright ban of combustible materials, and mandatory installation of sprinklers. The failure to impose a complete ban on desktop studies has come as a disappointment to many.

Since the report was published, the Prime Minister has already stated that the government is “minded to go further, by banning combustible materials in cladding in high-rise buildings...We are meeting our legal duties to consult on these proposals and we will not delay any necessary action”. Watch this space.

Other concerns, highlighted by the British Safety Council, surround the effectiveness of “self-certification” schemes for building standards, and the recommendation that the responsibility for developing guidance should be the sole responsibility of industry bodies.

There is also scepticism about the practicalities of having a “Joint Competent Authority”, comprising three separate bodies, each with its own existing responsibilities, to oversee building safety, as well the introduction of digital record keeping (the British Safety Council notes the public sector’s poor record for roll out of large scale technology projects).

Some stakeholders, including the National Fire Chiefs Council, and RIBA, have also expressed concern that the definition of the buildings currently within scope (ie, ten storeys +) is too narrow, and overlooks other buildings and vulnerable people, as care homes, student accommodation and hospitals.



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