

CLIENT ALERT

Sweeping Reforms to Building and Fire Safety: What Can the Industry Expect?

September 22, 2020

Some three years after the devastating fire at Grenfell Tower, the housing industry is finally seeing some substantive indications of the shape of the long-awaited building sector reforms.

The Draft Building Safety Bill (the "**Bill**") was published on 20 July 2020 in response to Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety (the "**Hackitt Review**"). It is wide ranging in scope however its overriding objective is to strengthen the regulatory system for building safety following the Hackitt Review's recommendations.

Wider government reforms are underway in addition to the Bill, in particular in relation to fire safety. The industry will be keen to an eye on how these reforms develop in parallel to the Bill's implementation. In this note we provide a very brief run-down of these expansive reforms, in particular in relation to housing management, as well as some recommendations for key stakeholders in the industry.

The Building Safety Bill

The Bill is split into 5 parts:

- **Part 1** gives an overview.
- **Part 2** establishes a new Building Safety Regulator (to form part of the Health and Safety Executive) and sets out the scope of its responsibilities.
- **Part 3** sets out a new regulatory regime for the design and construction phase of higher-risk buildings.
- **Part 4** deals with occupied higher-risk buildings, and establishes an "accountable person" and Building Safety Managers.
- **Part 5** details supplementary information, including the requirement for a new homes ombudsman scheme, and to make provision relating to construction products.

Key Issues

The Bill is undoubtedly wide-reaching but the following areas are of particular note in relation to housing management, and are worth monitoring as the Bill progresses:

- **Definition of "higher risk building"** – the current proposed definition is a building that is 18m above ground level, or over six storeys high, and has two or more dwellings, two or more residential rooms, or is student accommodation (roughly 13,000 buildings across the country). That said, there is speculation that the height limit may change to 11m in alignment with new fire safety requirements (and emergency services access limits). A crucial area to watch.
- **Who is the "accountable person"?** – this new concept will impose key responsibilities on the designated duty holder including: assessing safety risks; taking steps to prevent major incident; strategizing residents' engagement; appointing a

Building Safety Manager and information gathering, record-keeping and reporting. The accountable person will usually be the building owner, or the entity under a "relevant repairing obligation" in relation to its common parts. That said the Bill is currently lacking full clarity, in particular in circumstances where there is a complex ownership/management structure. The area is notoriously thorny in the context of the Responsible Person (**RP**) under the Fire Safety Order, so we hope that the matter will be properly developed and supplemented with appropriate guidance in due course.

- **Who is the Building Safety Manager (or BSM)?** – the BSM is appointed by the accountable person and will have various supporting duties including: managing the building in accordance with its safety report; liaising with occupiers, owners and managers of the building; and ensuring any recommended works or measures are implemented.

Wider changes in the Bill include:

- **Residents' duties** – limited requirements to take care of safety items in common parts, enforceable by the accountable person;
- **Construction** – there are extensive provisions dealing with the impact on construction of buildings which are beyond the scope of this note. One point to highlight however is the well publicised "golden-thread of information" to be retained and maintained throughout build and handed to the accountable person on completion;
- **Enforcement** – we can expect significant powers of enforcement (including fines and criminal sanctions) from the Building Safety Regulator;
- **Complaints** - the Bill includes provisions that enable social housing complainants to refer to the Housing Ombudsman directly (after they have completed their landlord's complaints process) thereby increasing the speed of redress.

Much of the detail on these issues will only become clear through secondary legislation, but the impact on construction and housing management will be significant and stakeholders may have to get up to speed quickly, and should expect a landscape of heightened scrutiny.

What else can we expect?

Wider reforms are underway in parallel with the Bill, in particular on fire safety. These broadly fall into three categories:

- Changes to **Building Regulations** 2010 implemented in May 2020 (which introduced amendments to fire safety requirements including the mandatory fitting of sprinkler systems for buildings more than 11m high);
- The **consultation paper on Fire Safety** (also published on 20 July 2020); and
- the **Fire Safety Bill** published on 19 March 2020. Whilst less significant than the reforms outlined in the consultation paper, the Fire Safety Bill will make some important amendments to the Fire Safety Order 2005 (**FSO**).

Other recommendations from the Hackitt review currently being consulted on include the following:

- **Definition of Height for High-Rise Buildings:** setting a clear height threshold for the category of buildings referred to as "high-rise", aligned to the proposed definition of "higher risk buildings" in the Bill of 18m/six storeys.
- **External Walls:** requiring RPs to provide local Fire and Rescue Services (**FRS**) with information about the design of and materials used in the building's external walls.

- **Plans:** requiring RPs to provide their local FRS with up-to-date floor plans, identifying the location of key firefighting systems.
- **Premises Information Boxes:** requiring that RPs have a Premises Information Box (containing key documents, a copy of the FRA and contact details of the RP) in all high-rise, multi-occupied residential premises.
- **Fire Doors:** requiring RPs to undertake checks of the self-closing devices in multi-occupied residential buildings over 11m and above. For buildings of 18m and above, it is proposed that all fire doors in common areas should be checked at not less than three-monthly intervals and all flat entrance fire doors at not less than six-monthly.

Further measures consulted on include improved checking and reporting on lifts, evacuation plans, improved signage, and better resident information, all of which will be worth monitoring through the consultation process.

Conclusion

These reforms are certainly the most widespread that the industry has seen in decades, and whilst the key themes are clear, the real, practical impact may only be understood once the detail is prescribed. What is clear is that the recommendations arising from the review by Dame Judith Hackitt are by and large being adopted wholesale and, as such, will have a dramatic impact on the construction, development and management of housing. A key area to watch is no doubt where the definition of "higher-rise buildings" settles. If it moves to 11m then the impact across the country will be significant.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Robin Baillie

Partner – London

Phone: +44.20.7413.0011

Email: rbaillie@crowell.com