

Government consultation on reforms of regulation to high-rise residential dwellings

Friday 19th July 2019

12.30-5pm

Ampthill Square TRA

Hall, Barnby Street,

London NW1

Saturday 20th July 2019

12.45-3pm

Unite the Union

33-37 Moreland Street,

London EC1V

A London Tenants Federation event for
Tenants and Residents Associations, Tenant
Management Organisations and Co-ops

Supported by Homes for All and Radical
Housing Network

in partnership with

Stuart Hodgkinson (University of Leeds), s.n.hodkinson@leeds.ac.uk

Phil Murphy, phil@manchestersustainablecommunities.com

Zarino Zappia (MySociety) and Liz Lowe (Tower Blocks UK)

Government action to date since Grenfell

- **Independent Public Inquiry** into the Grenfell Tower fire
- **Building Safety Programme** to identify and remediate buildings with unsafe Aluminium Composite Material (ACM) cladding
- **Independent Review of Building Regulations and Fire Safety**, led by Dame Judith Hackitt
- New **expert panels** to advise on implementing Hackitt's recommendations
- Taken steps to remove **unsafe fire doors** from the market
- Amended **Approved Document B** to ban (some) combustible material in external walls of certain high-rise buildings (18m+)
- Issued **Social Housing Green Paper**
- Seeking evidence about how well the **Fire Safety Order** is working
- Proposing to amend **Social Housing Regulator's powers to consider safety**
- Proposing to **end Section 21 no-fault evictions in the Private Rental Sector**

Hackitt Review: the existing regulatory system failed

Design and construction

- The Planning System
- Building Regulations

Occupation

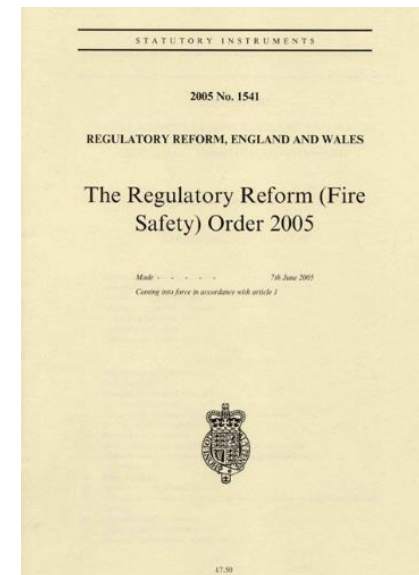
- Fire Safety Order 2005
- Housing Health and Safety Ratings System 2005

- Unclear roles and responsibilities of those involved in building and maintaining high-rise buildings
- Ambiguous and inconsistent regulations and guidance
- Weak and complex safety compliance systems
- Box-ticking culture
- Race-to-the-bottom due to part-privatisation
- Opt-outs and loopholes for refurbishment work
- Self-certification of too much building work
- Competence across the system is patchy
- Product safety regime is opaque and insufficient
- Residents safety concerns often ignored
- No laws on competency for building inspector
- Limited enforcement powers

Limitations of Fire Safety Order 2005 and Guidance

Beyond height, the means of escape and firefighting depend on what regulations and GUIDANCE say are required INSIDE the building. Managers/landlords:

- Limit fire alarms
- Dictate evacuation strategy
- Limit fire extinguishers
- Ban door mats
- Encourage zero tolerance over dialogue
- Contradict and limit FSO reach
- Common areas only
- **Zero regard to residents views**



Local
Government
Association

Fire safety in purpose-built
blocks of flats

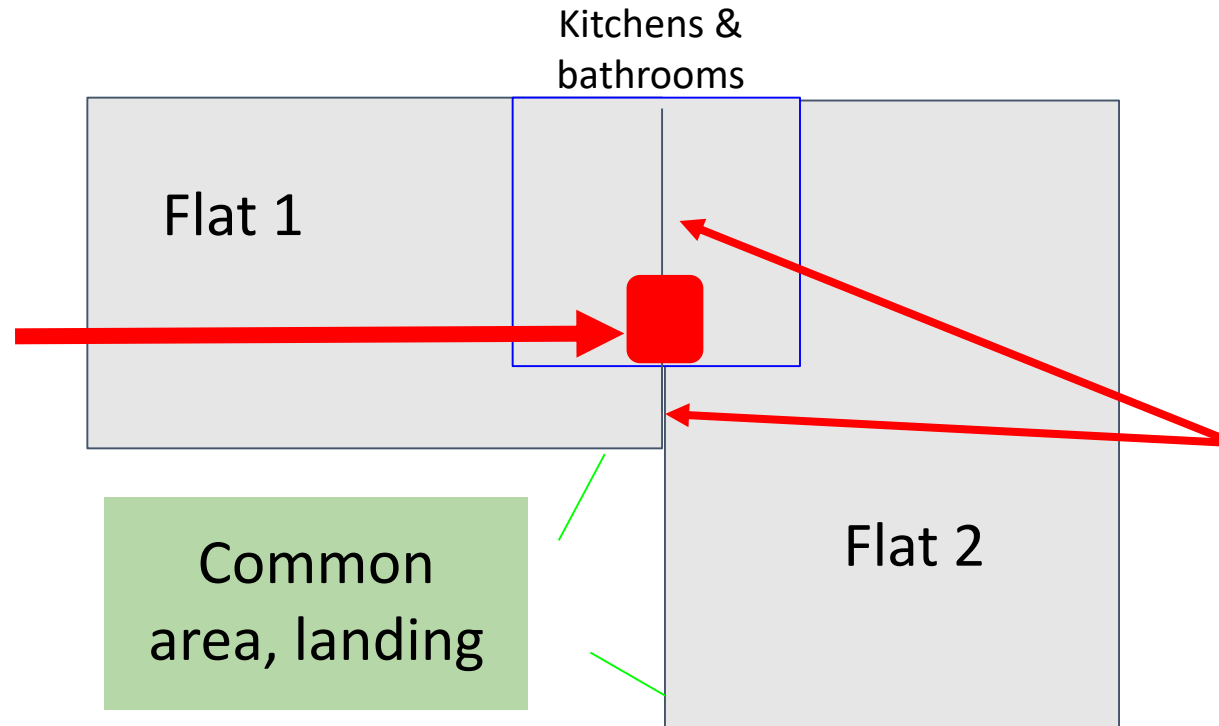


“Common Areas” ... limitations, risks, problems

Inaccessible full height service riser taking bathroom & kitchen waste pipes. Not accessible from common area, not considered by under-skilled building managers.

Not checked for 50 years, potential for rapid fire spread to every floor.

Rapid, extended flame, fire spread in full height cavity.



These compartment barriers, the walls between flats, are an integral part of passive fire protection. They should not remain ignored, unchecked and unmonitored for years at a time.

Toxicity

Two lethal toxic gases at Grenfell Tower were carbon monoxide (CO) and Hydrogen Cyanide (HCN).

Both are odourless and colourless gases and both can kill in relatively small concentrations.

“Stay Safe” policy?



Toxicity

FINANCIA	HOUR_BAND	VICTIM_GENDER	FATALITY_CIRCUMS	FATALITY_CAUSE
2010/11	0300-0400	Male	Unable to resuscitate	Other
2010/11	0300-0400	Male	Unable to resuscitate	Overcome by gas or smoke
2010/11	0300-0400	Male	Unable to resuscitate	Overcome by gas or smoke
2012/13	0300-0400	Male	Unable to resuscitate	Overcome by gas or smoke
2012/13	0300-0400	Male	Unable to resuscitate	Overcome by gas or smoke
2012/13	0300-0400	Female	Unable to resuscitate	Overcome by gas or smoke
2012/13	0300-0400	Male	Unable to resuscitate	Overcome by gas or smoke
2012/13	0300-0400	Male	Unable to resuscitate	Overcome by gas or smoke
2012/13	0300-0400	Male	Unable to resuscitate	Overcome by gas or smoke
2013/14	0300-0400	Female	Unable to resuscitate	Combination of burns and overcome
2016/17	0300-0400	Female	Unable to resuscitate	Not known
2016/17	0300-0400	Male	Unable to resuscitate	Not known
2017/18	0300-0400	Male	Unable to resuscitate	Combination of burns and overcome

Detection and Alarms

- Current requirement is for Grade D detection in each flat, unconnected to other flats.

Grade D Domestic

- Mains powered & interconnected
- Kitchen - heat detector
- Hall - smoke detector
- Lounge - smoke detector

A fire that killed six children in Derby in 2012 saw Derbyshire FRS carry out a series of 204 tests involving 34 children (20 girls 14 boys), monitoring their reactions when asleep to smoke alarms activating.

In all tests only seven children woke up, they were all girls.

Tests in Ohio involving 176 children aged between 5 and 12, found voice alarm systems were three times more likely to wake sleeping children.

Detection and Alarms

2017:

Almost 40 percent of battery powered smoke alarms failed to activate in residential fires in England in the past year, latest figures show, prompting a warning from councils and fire authorities in the run-up to winter when serious fires typically increase.

Latest figures show 21 percent of mains-powered smoke alarms failed to operate in a residential fire in 2016/17 - but this “failure rate” is almost double (39 per cent) for battery-operated alarms.



Ministry of Housing,
Communities &
Local Government

Building a Safer Future

Proposals for reform of the building safety regulatory system

A consultation

- 192 pages
- High-rise residential buildings in England
- Consultation will last for 8 weeks from 6 June 2019 until 31 July 2019
- “We are keen to hear what people who live in high rise buildings think about the proposals.”
- A draft Bill could appear before Christmas 2019 (Brexit!)

The proposed new regulatory system: outline

- residential buildings of **18 metres (6 storeys) or more** in height
- a new **Building Safety Regulator**
- named **legal dutyholders** at each stage of building's life-cycle
- new **building safety registration** system
- residents to have **direct access to Safety Regulator**
- tougher **penalties** for non-compliance

1. The Proposed Scope – 18 metres+

- **existing** and **new multi-occupied residential** buildings
- **all parts** of a building, not just common areas
- **18m+ threshold**: but proposed fire safety checks at the Planning Permission stage of a new development would only apply to **30 metre+ buildings**
- Government asking whether ‘higher risk workplaces’ with residential accommodation should also be included:
 - Prisons, detention centres and other secure premises,
 - Hospitals or health care institutions where patients stay overnight
 - Supported/sheltered housing
 - Educational buildings, boarding schools and halls of residence
 - Care homes
- but **not currently** including **hotels** or **hostels** in its proposed scope

Bristol Premier Inn: Fire at hotel near Cribbs Causeway

🕒 18 July 2019



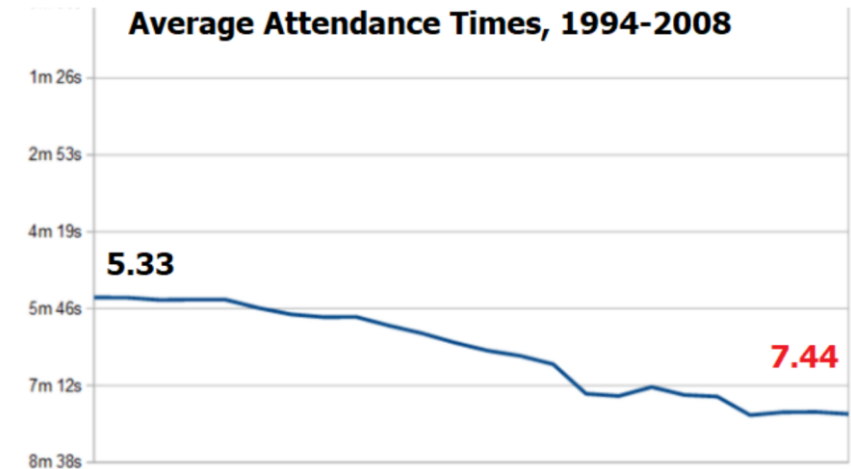
This happened on
18 July 2019

We think hotels
should be included
in a new building
safety system

▶ The Premier Inn near Bristol caught fire overnight severely damaging it

Scope: Considerations and Building Redundancy

- Stay put “Usually works” but over 2010-18 there were:
 - 48 fires affecting more than 2 floors in buildings 10 floors+ (30 metres+)
 - 139 fires affecting more than 2 floors in **buildings 4 floors+ (13.5 metres+)** (1 every 3 weeks)
- So 187 fires: compartmentalisation seriously failed
- Fire growth acceleration
- Attendance times
- Reduced Resources
- Increases in firefighting req’s & preparation time
- Fire Extinguishers
- Fire Suppression systems (namely sprinklers)
- An alarm provides a means to signal a message, tone or voice command
- Fire Detection provides early warning to emergency services and/or residents
- Simultaneous Evacuation is not the only evacuation strategy



Scope: where does 18 metres come from?

BRITISH STANDARD CODE OF PRACTICE CP 3

CHAPTER IV. PRECAUTIONS AGAINST FIRE

Part 1. Fire precautions in flats and maisonnettes over 80 ft in height

INTRODUCTION

The following recommendations apply to blocks of flats or maisonnettes (i.e. dwellings on more than one floor) having any floor more than 80 ft above the ground. This height has been selected as a basis for the recommendations because dwellings above that height are beyond the reach of rescue or fire fighting from a mobile ladder outside the building. The selection of this height, however, does not imply that the possibility of rescue below 80 ft will necessarily be adopted as a factor in the recommendations yet to be made for the planning and construction of lower buildings.

"...the reach of rescue of firefighting from a mobile ladder outside the building... will necessarily be adopted as a factor in the recommendations yet to be made for the planning and construction of lower buildings"

Why 11m in Scotland?

Scope: Fire Safety Management

Manchester: 367 tower blocks failed to meet fire standards after Grenfell

Of 489 Greater Manchester tower blocks, 75% were deemed not to have met safety standards

Revealed: Nearly Half of All Tower Blocks Have Failed Fire Safety Tests

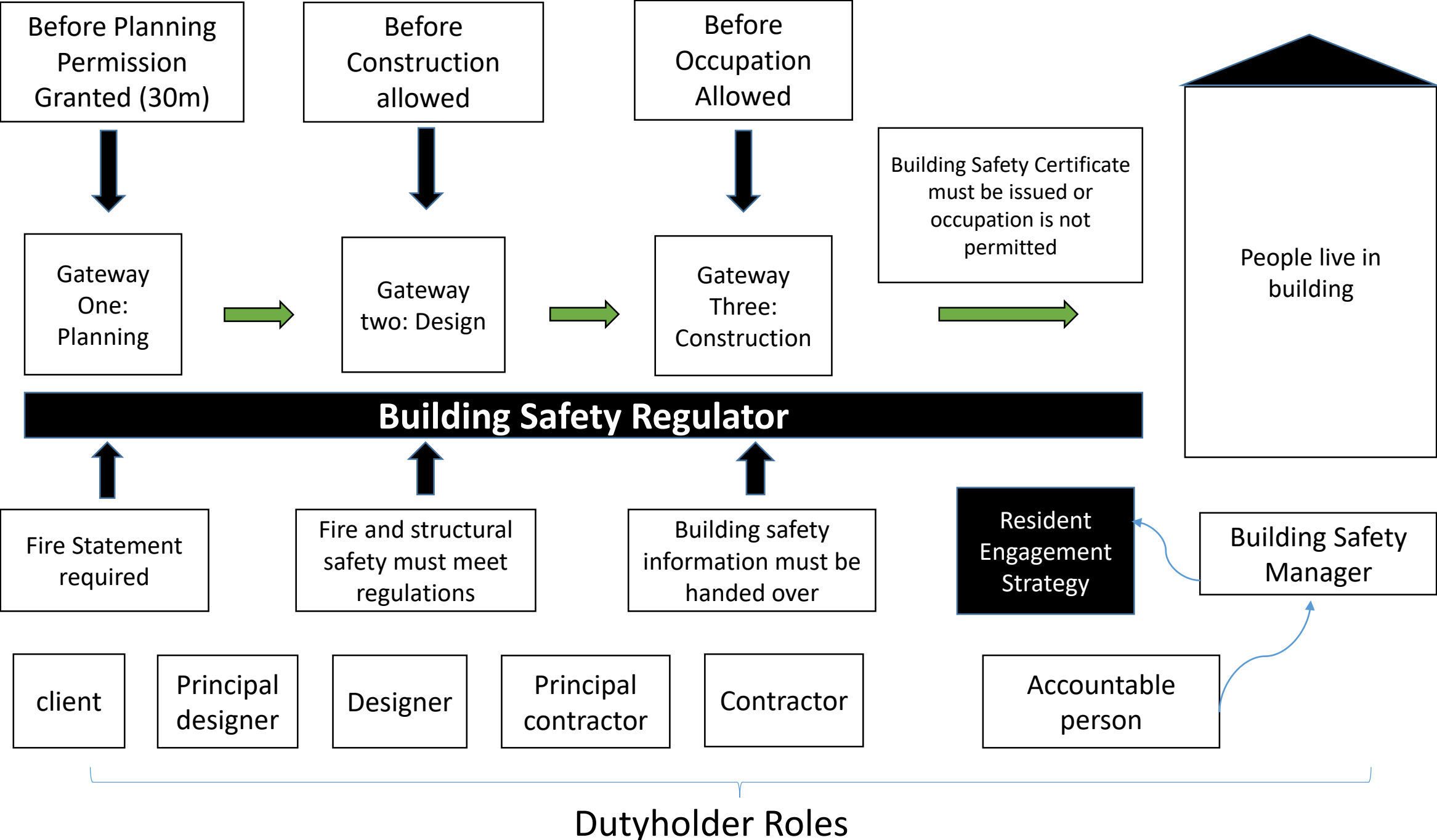
Scope: a different approach

- Working external reach with portable ladders (11m)
- Rescue from windows (esp non-self-evacuating residents)
- Manual intervention (e.g. physically removing rainscreen)
- A logical approach to the chosen height
- No buildings excluded



2. The New Regulator and Enforcement System

- a new **Building Safety Regulator** will oversee and enforce the proposed safety regime for high-rise buildings with new civil and criminal enforcement powers
- named **dutyholders** – people involved in design, construction and management of high-rise buildings – will have legal responsibilities at **Gateway Points** of **design** and **construction**, and then in **Occupation**
- every building to have an **Accountable Person** (owner, landlord, managing agent) and a **Building Safety Manager**
- there will be a **building registration system**, occupation can only commence once a **building safety certificate** has been issued
- Certificates can only be issued once stringent safety conditions have been met
- **Existing buildings** will have a period of transition before being required to comply with the new system – rumoured to be two years



The Building Safety Certificate

The Accountable Person must obtain a Building Safety Certificate or face criminal prosecution. Obtaining a Certificate would rest on fulfilling four conditions with the Regulator:

- a satisfactory **Safety Case** for the building that demonstrates how fire and structural risks are being managed, emergency preparedness and compliance with legislation
- **Resident Engagement Strategy** (see later)
- **mandatory reporting system** for all safety failures that protects whistleblowers
- **Golden (digital) thread** of accurate and live information about design, construction, maintenance

For **new buildings**, the Regulator would not permit occupation until a certificate has been issued

For **existing buildings**, a transitional implementation period is proposed (possibly 2 years).

For all buildings, the safety case and resident engagement strategy would be reviewed at least every five years, in line with renewal of the building safety certificate

The Regulator's Enforcement powers

- Regulator will have statutory powers to proactively intervene where non-compliant behaviour is alleged or proven at design, construction and occupation of high-rise buildings
 - to require work carried out without approval to be pulled down or removed
 - to prohibit building work from progressing unless non-compliant work is first remedied
- A three-step process is envisaged:
 - Informal dialogue
 - Stop notices or improvement notices
 - Formal orders, financial penalties, revoking building safety certificate, prosecution
- Time limits to bring prosecutions or require non-compliant work to be remediated under S35-36 Building Act 1984 would increase from 1 and 2 years, to 6 and 10 years respectively
- Latent defects uncovered years after, new time limits would only begin upon discovery
- Proposals to activate S38 Building Act 1984 to provide a private right of action where a breach of building regulations causes damage (including the death of, or injury to, any person)

Comments about the new proposed system

We support the Regulator, Dutyholder and Gateway model in principle, and especially

- named legal dutyholders with responsibility for protecting residents in the whole building
- building registration and certification system: will help establish ownership, liability
- a Regulator being able to stop the development or occupation of an unsafe building at multiple points

We would go further and propose:

- a Gateway Zero Stage – Building Concept / Pre-planning – where a named Fire Engineer becomes a Dutyholder and is involved all the way through design, construction, certification to plaque on lobby wall
- more fire and structural safety issues of the proposed development / refurbishment be considered at the Planning Application stage where statutory consultees and the public can better scrutinise

Concerns about the new proposed system

- No proposals for reform of the existing Building Regulations and Enforcement system more broadly – it is not fit for purpose
- Implied role of the Regulator as both the standard-setting body and the investigating and enforcement body: unresolved questions of how existing regulators and regulations work here – could this create new conflicts of interest for the Regulator i.e. policing their own system – who will regulate the Regulator?
- why have time-limits for taking enforcement action against unsafe work?
- very vague on how existing buildings will be transitioned into new system with proposed weaker information requirements
- very vague on how ‘refurbishment’ will be dealt with: government talking about ‘significant refurbishment’ and that means where ‘decanting’ of residents takes place... this is far too weak
- We think a building registration system should be happening now that would be gathering key information from fire and structural safety inspections of existing buildings

3. The Proposed Role and Rights for Residents

“The safety of residents is of paramount importance and the Government is determined to ensure that the views and interests of residents are at the heart of the new building safety regulatory framework. We know that some residents feel that they are not listened to when it comes to the safety of their home or the building they live in. It is crucial that Government ensures that the views and concerns of residents can never be ignored by those responsible for managing the safety of their buildings.”

p.79, MHCLG (2019), *Building a Safer Future*

Legal Duties to Residents

The high-rise building owner / landlord (Accountable Person) will be required to:

- proactively give residents all **necessary information about the building safety protections in place** in a clear and accessible format
- provide further and more detailed information upon request;
- develop with residents a **Resident Engagement Strategy** so they are empowered to play an effective role in keeping their building safe; and
- **address and resolve residents' safety concerns** through an internal complaints system
- signpost to residents **a clear route of escalation to the Regulator** if safety concerns are not being dealt with effectively

Residents Rights to Information

Mandatory information that MUST be provided to residents includes:

- the measures in place to mitigate potential fire and building safety risks to residents
- how residents can reduce the risk of fire in individual dwellings
- the process for reporting a fire risk and raising other safety concerns
- what to do in the event of a fire
- the different roles and responsibilities of the accountable person, building safety manager and residents
- contact information for the Building Safety Manager
- proportionate special provision would be required for residents who are vulnerable, disabled or do not speak English

The Culture of Openness

“We know that some residents may wish to access more detailed information so that they can better understand the safety features of their building. Doing so may help them to use the safety features appropriately and also hold the accountable person and building safety manager to account. Therefore, the Government will also introduce a new requirement on accountable persons/building safety managers to provide a range of more detailed information to residents on request.”

“The accountable person and building safety manager will be expected to adopt a culture of openness. Under this approach, there will be a presumption that all relevant information about a building should be available to residents, but there will be exemptions...”

Further and more detailed safety information upon request would include:

- full, current and historical fire risk assessments
- planned maintenance and repairs schedules
- outcome of building safety inspection checks
- how assets in the building are managed, e.g. lift maintenance
- details of preventive measures, e.g. smoke alarms
- fire protection measures in place, e.g. sprinklers, fire extinguishers
- information on the maintenance of fire safety systems
- the fire strategy for the building; structural assessments
- planned and historical changes to the building

Proposed Exemptions to Information sharing

- Exemptions would prevent information being released that would:
 - compromise building and resident safety
 - compromise privacy of residents
 - compromise any intellectual property rights
- Residents would have the right to appeal to the Regulator if they thought exemptions were being used incorrectly

The Resident Engagement Strategy

- a **Management Summary** would set out how the accountable person will deliver genuine resident involvement in their buildings; and an **Engagement Plan** would set out how the strategy will work in practice, including:
 - how residents can be **more involved** if they want to
 - how the building **safety information will be proactively provided** to residents
 - how residents **can access the information** they are entitled to **on request**
 - details of the **internal complaints process** and how issues can be **escalated to the Regulator**
 - how the building safety manager will **report the results of safety case reviews** and other safety checks to residents
 - how the building safety manager will **measure the effectiveness of their resident engagement.**
- For new buildings, this must be produced prior to occupation
- For existing buildings, this must be produced as part of the building registration process under a transitional period

The Route to the Regulator

- where the internal process has failed, residents will be able to escalate their safety concerns to the Regulator
- there should be a 'no wrong door': if residents raise concerns via existing redress schemes or their local authority, a **legal duty to cooperate** will mean those bodies must escalate the concern to the Regulator on the resident's behalf
- failure to comply with the Regulator would in most cases lead to a **formal review of the building safety certificate**
- residents will also be able to:
 - request a review of the building safety certificate by the Regulator where there is evidence of non-compliance
 - go direct to Regulator where failure to act to address the urgent safety concern could lead to injury or loss of life.
 - challenge the Regulator's decisions through a clear and transparent appeals process

Residents responsibilities in the new system

Residents will be required to:

- cooperate with the accountable person and/or building safety manager to ensure the safety of the building
- provide reasonable information on works carried out to their property
- provide reasonable access to inspect and carry out necessary works following the provision of reasonable notice

Comments about the role for residents

- encouraging proposals to require the building owner / landlord to provide mandatory fire safety information to residents and have a Resident Engagement Strategy in order to get a certificate for occupation
- fantastic that residents will finally have a safety regulator they can go direct with their concerns: could be a game-changer

Concerns about the role for residents

- Alarming how little detail or thought has gone into how an internal safety complaints system or how residents will communicate in reality with the Regulator
- Concerns about how 'exemptions to information' will be used and abused by owners/landlords – current Freedom of Information laws are not fit for purpose...
- Nothing on:
 - role democratic residents bodies will play in the building's 'resident engagement strategy' on safety? System assumes 'individuals'
 - who will be adjudicating over residents' appeals against the Regulator's decisions
 - how residents engagement with this new system will be resourced
 - who should pay when safety faults are found: why should leaseholders pay?
 - how residents will be compensated for the time / work / stress / health consequences of living with unsafe buildings and trying to get redress?

Responding to the consultation

CONSULTATION DEADLINE: 31st July 2019

Either -

(a) Complete the Government's online survey with its 166 questions

<https://www.surveymonkey.co.uk/r/BuildingSafetyConsultation> or email your survey responses to:
buildingsafetyconsultation@communities.gov.uk

Or -

(b) Make a written response (which we would suggest, particularly as we are encouraging people to use our 'model' response with any additional comments that you choose).

Email your response to buildingsafetyconsultation@communities.gov.uk or post to Building Safety Bill Team,
Ministry of Housing Communities and Local Government, 4th Floor, Fry Building, 2 Marsham Street, London SW1P
4DF

NB if emailing put *Response to Building Safety consultation* in the subject heading.

When you respond confirm whether you are responding as an individual or on behalf of an organisation. If the latter, as well as your name, address and email, add your position and organisation name to your response.