On 6 June 2019, the Government launched a consultation on reforms to the Building Regulations.

This follows on from the recommendations made by Dame Judith Hackitt in her Independent Review of Building Regulations and Fire Safety (‘Hackitt Review’). The consultation takes on board all 53 recommendations made in the final report published in May 2018. As well as considering reforms to the Building Regulations, the Government has issued a call for evidence on the Regulatory Reform (Fire Safety) Order 2005.

The consultation spans five broad areas: the scope of the new regime, the introduction of a system of dutyholders, mechanisms for keeping residents informed, a more effective regulator and accountability framework and strengthened enforcement and sanctions.

The scope of the proposed regime

The consultation recommends that the initial scope of the new regime should apply to all multi-occupied residential buildings 18 metres in height and above. It is proposed that these reforms will apply at the design and construction stage to all new builds and major refurbishments meeting these criteria. This goes beyond recommendations made in the Hackitt Review, where it was suggested that the regime should apply to multi-occupied residential buildings of 30 metres in height and above.

The Government is also considering whether the regime should be extended to apply to other higher-risk workplaces such as prisons, hospitals, sheltered housing and educational buildings. Another consideration is whether the new regime should apply to mixed-use buildings of 18 metres in height and above (eg where some of the building is used for commercial purposes, and some for residential). The consultation calls for specific feedback on these proposals.

A new system of dutyholders

In the current Building Regulations, duties are vested in the company undertaking the building work. In practice, however, it can be difficult to pinpoint who fulfils these duties and as result, difficult to assess accountability if issues later arise.

The Hackitt Review recommended the creation of a system of dutyholders. This would comprise a clear set of responsibilities applicable to those who are key in the design, construction and management of a residential building 18 metres in height or above.

The consultation states that five dutyholder roles would be set out at the design and construction phase for the roles of client, principal designer, principal contractor, designer and contractor. Aligning with the roles set out in the Construction (Design and Management) Regulations 2015 (‘CDM’), a dutyholder will be required to show that risks are being managed at new ‘gateway points’ before building works can continue.
Dutyholders will also be responsible for keeping fire and safety information relating to the construction of the building up to date. This information will be stored electronically for the entire lifecycle of the building and will need to comply with Building Information Modelling (‘BIM’) standards. Practically, this may prove problematic, especially for clients that do not have the storage, skills or necessary software to manage this data.

In particular, it is expected that the role of principal designer will have a much wider scope than that currently under the CDM. For example, the new regime specifies that a principal designer will co-sign at the end of a construction project to confirm that it complies with the Building Regulations. This could prove problematic if the designer has a limited inspection role, or only has knowledge of the architectural design and not the engineering aspects. This could have potential implications to a designer’s professional indemnity insurance as responsibility, and therefore risk, is increased. If so, the principal designer’s fees will rise to reflect this.

The new regime would also increase accountability once works are completed and the building is occupied. An ‘accountable person’ will be appointed to be responsible for fire and structural safety. The accountable person will be responsible for monitoring that the building continues to comply with the Building Regulations throughout the period of occupation.

Mechanisms for keeping residents informed

The consultation emphasises the importance of residents receiving regular safety information and updates in a clear and accessible format. A Resident Engagement Strategy will be a mandatory condition of the building safety certificate. This approach aims to ensure that residents are easily able to voice any concerns and there will be a quick escalation route when these concerns are identified as a serious risk to safety.

Another proposal states that the accountable person must provide relevant information if requested by residents. Relevant information will include the fire strategy of the building, outcomes of previous fire risk assessments and building safety inspection checks and any planned maintenance or repair schedules.

A more effective regulatory and accountability framework

To ensure compliance with the regime, the consultation recommends that a new role of building safety regulator be created to have responsibility of overseeing the design and management of buildings. The regulator would be responsible for monitoring compliance with the regulations and ensuring that accountable persons are competent. This would include setting compliance standards and maintaining a register of all dutyholders and buildings impacted by the legislation.

It is also proposed that the building safety regulator’s role should be extended to monitoring product performance. This would encourage manufacturers to be more transparent about product specifications and testing. There are also plans to collate feedback on any customer concerns through a national complaints system.

Strengthened enforcement and sanctions

The Hackitt Review called for the existing sanctions and enforcement regime to be reinforced to effectively deter non-compliance. The consultation proposes that the building safety regulator be responsible for this increased regulatory oversight.

The consultation has proposed a three-step process of how the building safety regulator is to achieve this goal. First, the regulator will work informally with accountable persons and dutyholders to collaboratively achieve compliance with the regulations. If this approach fails, the regulator will be able to issue staged interventions such as stop notices and improvement notices. Finally, if necessary, the regulator will issue formal orders, penalties and review the building safety certificate, which could eventually lead to revocation. In serious cases, the regulator will also be able to prosecute the relevant dutyholder or accountable person.
Comment

Although the consultation does not set out detailed guidance for the new regulatory reforms, it provides a useful insight into what standards those involved in the construction of buildings 18 metres and over will need to adhere.

It has been reported that the reforms will increase construction costs by an estimated 0.5-1.2%. Perhaps this is unsurprising, given the requirements for dutyholders to demonstrate that building works are compliant with the regulations at set ‘gateway points’ during construction, which will inevitably slow down the construction timetable. It is likely that in order to reach set ‘gateway points’ dutyholders will work more closely with contractors, who may also be employed at an earlier stage in the construction process.

The Government has asked for feedback on the proposals put forward in the consultation, and interested parties are able to provide their opinion prior to 31 July 2019 by following the link here.

For further information please contact:

Jo Lewis
Partner
+44 (0) 20 7469 0444
j.lewis@beale-law.com

Michael O’Brien
Solicitor (New Zealand)
+44 (0) 20 7469 0461
m.obrien@beale-law.com

Priya Thakrar
Trainee Solicitor
+44 (0) 20 7469 0432
p.thakrar@beale-law.com