

## **Building Safety – Position Statement**

1. It is just over three years since the tragic Grenfell fire on 14 June 2017. It has become clear that the 72 people who died were put in unnecessary and unacceptable danger. It has prompted extensive inquiries, research and debate about the steps that might be needed to minimise the risk of such a tragedy happening again. Much of that has concentrated on the fabric and construction of high rise residential buildings, as the materials and techniques used in constructing and renovating Grenfell Tower have been implicated in allowing the fire to spread so rapidly. That in turn will mean changes to the system of building control, which regulates how and with what materials buildings must be constructed. However, the ways in which blocks of flats are managed and maintained once they are occupied has also rightly come under close scrutiny.
2. The Welsh Government has made a clear commitment to delivering reforms to protect people living in high rise buildings in Wales. The reforms are necessarily substantial and complex. There are no quick fixes. There are process changes required, but also cultural change. There will be new legal requirements and duties on those developing and managing high rise residential buildings, but also new expectations on those living in these buildings. This will require comprehensive changes to the law in relation to Housing, Building Regulation and Fire Safety.
3. It is our intention to bring forward a White Paper for consultation by the end of this Assembly Term, the analysis of this consultation will be available to inform any new Government bringing forward primary legislation in this important area. This Position Paper outlines the reforms we intend to consult upon and flags to the sector our expectations in this regard. These reforms build on the work set out by Welsh Government's Building Safety Expert Group in their report '[Road Map to Safer Buildings in Wales](#)'. The remit of the Group was to identify the parameters of a Welsh response to the issues raised by Dame Judith Hackitt's '[Independent Review of Building Regulations and Fire Safety](#)' (the 'Hackitt Review').

### **Reforming and Supporting Change ahead of Comprehensive Legislative Reforms**

4. In the immediate aftermath of Grenfell, the primary focus was on aluminium composite material (ACM) cladding systems which had been implicated in the propagation of the fire. In Wales we have made good progress in relation to remediation of buildings with ACM cladding. There were 15 buildings with non-compliant cladding all of which have been remediated or have plans in place. In Wales, we have been able to develop and maintain relationships with building owners and/or managing agents to ensure an open and honest dialogue about progress. No leaseholders will have to pay for remediation works in relation to ACM cladding.
5. In addition, we have amended the Building Regulations 2010 to ban the use of all combustible cladding on residential buildings over 18m in height. The ban applies to combustible cladding on all new residential buildings (and where renovation works

take place) including flats, student accommodation, care homes and hospitals over 18m. The ban ensures ACM and other potentially dangerous cladding cannot be used on tall buildings in the future.

6. Before the end of the summer we will consult on the detail for making Fire and Rescue Authorities statutory consultees on certain planning applications by amending the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (SI 2019/1499 (w. 275)). We will write to Chief Planning Officers, to highlight key issues local planning authorities need to consider for new developments relating to fire safety and operational response requirements for Fire and Rescue Authorities.
7. We have worked closely with the Home Office on its current Fire Safety Bill. This Bill significantly expands the Fire Safety Order's coverage of blocks of flats, in particular to include the external walls and internal doors which were so clearly implicated in the spread of the Grenfell Tower fire.
8. We have also been working with the Social Landlord Sector through Community Housing Cymru to develop and trial work in relation to resident engagement and sharing of building safety information. 'Safety First in Housing' intends to support those managing buildings to put in place helpful measures ahead of legislation that will allow genuine engagement with residents. Welsh Government has also issued a number of circulars linked to building safety which provide clarity with regards to cladding and fire doors.

### **Further Work ahead of Legislation put before the Welsh Parliament**

9. The Hackitt Review set out the fundamental flaws in the existing system. The view of our own expert groups is that these flaws are equally valid in Wales as they are in England. However, the context and therefore the solutions will be different. The scale of the high rise<sup>1</sup> landscape in Wales is not comparable to England where there are estimated to be over 11,000 high rise buildings. In Wales we have been working with those that own and manage high rise residential buildings to ensure we have a comprehensive picture of the high rise landscape in Wales. There are 147 high rise residential buildings in Wales with around 4 or 5 additional high rise buildings being built each year.
10. To make the scale and scope of changes needed for Wales the only appropriate response is to take forward comprehensive and complicated legislative reforms in a joined up way. If we rush we risk creating a disjointed system that allows building safety to continue to be compromised. Legislative reforms must include building regulations to ensure appropriate change during the design and construction phase, to the fire safety regime and housing legislation during the occupation of buildings. But critically we will need to legislate for change that flows across each building's lifecycle.

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<sup>1</sup> High rise buildings refers to buildings 18m or more or more than six storeys in height.

Without this link between design, construction and occupation then we create gaps in the system.

11. Where it makes sense to proceed jointly with the UK Government we will seek to do so in order to take advantage of economies of scale and ensure appropriate alignment across England and Wales. We continue to work closely with MHCLG and the Home Office on their reforms and where it is right for Wales we will look for changes to apply in both England and Wales.
12. The White Paper planned for later this year will set out the full scope of our programme of reform across all aspects of the building lifecycle. It will make clear where we are joining with the UK Government and where we intend to set out a different programme of reform for Wales. Bringing forward such a comprehensive programme of legislative reform will require time to develop, refine through consultation and set out in front of the Senedd.

### **Outline of Proposed Reforms in Wales**

13. We will bring forward reforms that will apply to all buildings (residential and non-domestic) when building works are undertaken and require compliance with building regulations (this includes new buildings being constructed, but also existing buildings undergoing renovation). The purpose of these reforms will be to ensure absolute clarity for building safety. These reforms will mostly be in relation to the Building Act 1984 and will be consistent with those in England to ensure clarity.
14. We intend to take the opportunity to establish two new regulatory regimes for Wales. The proposed **Fire Safety Regime** will build on the existing fire safety legislation and will cover all residential buildings containing more than one dwelling. This goes significantly further than the Home Office proposals for England. It intends to establish a new regime focused solely on fire safety in domestic dwellings, unlike the current fire legislation that blurs the focus of work places and residential buildings.
15. We also intend to establish a **Building Safety Regime** for purpose built high rise block of flats. This will incorporate the Fire Safety Regime but will look across the whole lifecycle of buildings putting in place additional requirement on those designing and constructing high rise residential buildings, all the way through to the way they are managed and maintained during occupation.

### **Reforms that apply to all Buildings - Clear Responsibilities for Building Safety**

16. We want there to be absolute clarity about who has responsibility for the safety of a building at each different point in the process. The Construction (Design and Management) Regulations 2015 (the 'CDM' regulations) already set out who the key people are during a construction or refurbishment project. The Client, Principle Designer, Principle Contractor, designers and contractors are all identified as 'dutyholders'. Additional duties will be placed on them in relation to building safety, these include:

- Cooperating and sharing information with relevant regulatory bodies;
- Ensuring compliance with building regulations;
- Complying with regulatory requirements imposed on them; and
- Ensuring they, and the people they employ, are competent to do the work they are undertaking.

17. These reforms will apply to every building project that must comply with building regulations, whether it is building an extension, a block of flats or a shopping centre. The duty holder will be responsible for making sure that building regulations are complied with. This means that they will be legally responsible for ensuring that the building meets minimum requirements. They will also be tasked with promoting building safety.
18. The CDM Regulations set requirements for even the smallest project. Dutyholders are identified, and for larger projects they must be logged. We intend for this same principle to apply for dutyholders in relation to Building Safety so there is a clear record of those responsible. If things do go wrong, this will allow for appropriate action to be taken where redress or sanctions are necessary.

### **A new Fire Safety Regime for Wales**

19. The new Fire Safety Regime for residential buildings will enhance the Regulatory Reform (Fire Safety) Order 2005 ('the FSO') as amended by the current Fire Safety Bill<sup>2</sup>. The FSO currently applies to virtually all non-domestic premises. It does not apply to people's private homes, including individual flats in a block or house. The FSO applies to the common parts of blocks of flats but not the structure of them, including the external walls. Overall, the FSO was designed for workplaces, not blocks of flats, and its application to the latter is incomplete and inadequate.
20. The current Fire Safety Bill extends the FSO to cover the external and internal structure of blocks of flats, including the front doors of individual flats. That addresses some of the most important weaknesses identified by the Public Inquiry into the Grenfell Tower fire. However, we believe there is scope to go further.
21. The new residential Fire Safety Regime will apply to all cover all residential buildings containing more than one dwelling (even where there is no shared common part). This will capture, for example, a house that has been converted into two separate dwellings, as well as purpose built (high) rise residential buildings. The reforms proposed under this regime will require a duty holder to be identified and registered; they will have clear responsibilities for the fire safety of each building.
22. For all buildings under the Fire Safety Regime the duty holder will be required to:
  - Undertake and document regular Fire Risk Assessments.

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<sup>2</sup> [https://publications.parliament.uk/pa/bills/cbill/58-01/0121/cbill\\_2019-20210121\\_en\\_1.htm](https://publications.parliament.uk/pa/bills/cbill/58-01/0121/cbill_2019-20210121_en_1.htm)

- Ensure the risk of fire within a building is reduced so far as is reasonably practicable by implementing the findings of fire risk assessments.
- Ensure that there is appropriate compartmentation in the building's structure and external walls and any common parts (including between residential dwellings). This compartmentation should be maintained at all times. Residents would equally be under a duty to avoid knowingly breaching compartmentation (for instance by replacing fire doors with ordinary doors).
- Provide and maintain relevant fire safety equipment and ensuring the testing, maintenance and up keep of fire safety/ firefighting equipment within the building.
- Secure appropriate expertise to enable these duties to be properly discharged.
- Work with others – this would include cooperating with enforcement bodies as well as working with other dutyholders, for example Responsible Persons under the FSO where the building is mixed use.
- Engage with residents to promote fire safety within the building.

23. The FSO would still apply to non-domestic premises as it does now.

#### ***Regulation under the Fire Safety Regime***

24. The proposals for the new Fire Safety Regime will be overseen by the Fire and Rescue Authority. As is the case now, the Fire and Rescue Authority will need to work with their Local Authority partners to ensure that risks identified outside of the scope of the Fire Safety Regime are flagged, and where necessary enforcement action taken forward in a collegiate way.

#### **A new Building Safety Regime for Wales**

25. We intend to establish a Building Safety Regime for high rise residential buildings. These reforms will bring about changes across the whole lifecycle of the building from design and construction through to occupation. Initially these additional requirements will apply to a small subset of high rise residential buildings. We intend that the legislation brought forward will allow for the scope to change over time should evidence suggest that this scope should be widened.

#### ***Keeping information – the Golden Thread***

26. Dame Judith Hackitt was clear that information, from inception to occupation, is key to overseeing the ongoing safety of buildings. It allows buildings to be constructed safely and managed appropriately when occupied. Industry has been working with Government to flesh out an information requirement to support the Building Safety Regime. Her proposals for a 'golden thread' of building information are the basis of the information and data required during the Gateway process (see below) as buildings are designed and constructed, but it also flows through to the occupation stage.

27. For buildings that fall within the scope of the Building Safety Regime, dutyholders will be required to record and maintain information (in a digital format<sup>3</sup>) in order that the building can be safely managed and maintained. The golden thread will be comprehensive and include full as built plans, construction control plan, fire and emergency file, and culminate in the safety case which articulates how structural and fire risks will be managed and mitigated against.
28. The safety case identifies the potential hazards in the building and considers how these might be reduced and mitigated against, the findings of these considerations should be recorded and acted upon. Evaluating and reviewing the success of mitigating actions should be monitored, and the processes of reviewing and assessing hazards undertaken on an ongoing basis. The golden thread is a live document, the user's manual in effect for the building. It will be owned and kept by dutyholders.
29. A small subsection of this information, the key dataset<sup>4</sup>, will be held centrally. The key dataset of information, in addition to floor plans of the buildings and details of facilities such as firefighting lifts should be available on site in case of emergency. We are already working with high rise residential building owners to build this key dataset.
30. The golden thread will be the responsibility of dutyholders. It contains all the information that dutyholders across the lifecycle of the building will need to demonstrate that building safety is at the heart of what they do. It should be able to evidence that they have actively considered the management and upkeep of building safety. It will be the 'user's manual' for high rise residential building, containing comprehensive and up to date information on the building. To ensure an understanding of data and information requirements across the industry we will set out consistent requirements with MHCLG in relation to the golden thread.

### ***Building Safer Buildings – the Design and Construction Phase***

31. Buildings must be designed and constructed in a way that ensures they are as safe as they can be. This is more than the health and safety on a building site, and more than ensuring that there is fire-fighting equipment in an emergency. It is not only about ensuring that the design complies with building regulations safety requirements, but that the intention is delivered in the finished product. This means making sure that safety features are properly installed, in the right places and using the right materials and standards by persons who are competent.
32. To ensure this happens, we will make reforms to the process high rise residential buildings must go through during construction and significant renovations work. In their 'Road Map', our Expert Group on Building Safety told us there must be clear 'stop points' in the process to prevent works continuing until appropriate and thorough

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<sup>3</sup> Building Information Modelling (BIM) standards as well as a British Information Standard are being developed for use.

<sup>4</sup> Location, Size (height, no of dwellings, etc), Year built, Basic information in relation to safety information (alarms, sprinklers, fire doors, etc), Façade and structural information, Information on dutyholders.

checks from the Building Control body have been undertaken. These checks are in relation to the on-site work undertaken, but also in relation to the documentation that those designing and constructing the buildings have put in place to evidence that their work is in compliance with Building Regulations.

33. We have considered whether it is appropriate to maintain the current choice of building control body: Local Authority or private sector 'Approved Inspector' for high rise residential buildings. We recognise Dame Judith's view that the employment of the regulator by a building client has potential to create a conflict of interest. We therefore intend to consult on removing choice of building control for high rise residential buildings in our White Paper.
34. In the future, we will require that buildings within the scope of Building Safety Regime must pass through stop points or 'Gateway points' before they can pass to the next stage of works. When passing through a Gateway point those designing and constructing the building will have to evidence that the design and construction meets, and continues to meet, regulatory requirements and ensures that adequate safety measures and building information are in place in order that they can be appropriately managed, maintained and improved over time. They will also have to think about how building safety will be managed when the building is occupied by residents. These considerations should be at the heart of the design.
35. These Gateway points are:
  - Gateway 1 – Before Planning Permission is granted. Fire safety issues which impact on planning proposals will be considered before the Local Authority, in agreement with the relevant Fire and Rescue Authority, will approve planning permission. These will include issues such as access for emergency vehicles and adequacy of water supplies in the event of an emergency.
  - Gateway 2 – Before Construction Begins. The Client will be required to submit a full suite of documents (full plans, construction control plan, fire and emergency file, and other supporting documentation). The Building Control Body in consultation with the relevant Fire and Rescue Authority, will then assess the documentation and agree a site inspection plan. This will be supplemented by spot check inspections during the programme of works.

A staged approach would be permissible for particularly complex builds, but this would need to be agreed at the outset.
  - Gateway 3 – Before the Building is Occupied. At this point the complete golden thread of information (including full as built plans, construction control plan, fire and emergency file, and key dataset information) will need to be made available to be handed over to the Accountable Person who will manage the building during occupation. The Client, Principle Designer and Principle Contractor will be required to sign a declaration confirming that the building complies with Building Regulations.

The Building Control Body, in conjunction with the relevant Fire and Rescue Authority will have the opportunity to review the information before the building will be allowed to be occupied.

36. Linked to para 34 and for purposes of consistency where a Local Authority is the Client they will have to use another Building Control Body to ensure there is no conflict of interest.

### ***Industry Competence***

37. Dame Judith's review identified competence issues throughout the system .It found there was no clear set of competence standards or expectations for many of the professionals involved in the design and construction of fire-safe buildings or the maintenance of fire safety in occupied buildings. Her recommendations apply as much to Wales as they do to England. We welcome industry action to develop more robust approaches and will continue to work with both MHCLG and industry bodies to make the improvements necessary to ensure competence is clearly embedded within the professions that make up the construction industry.

### ***Managing Buildings under the Building Safety Regime***

38. Without active management of buildings potential risks could become a devastating reality. This is the case for all buildings, regardless of whether they are high rise, residential or otherwise. There are already a number of regimes that promote the safety of buildings. These are, in the main, set out in the Health and Safety Rating Review System (HHSRS) under the Housing Act (2004) and the Regulatory Reform (Fire Safety) Order 2005 (the FSO).
39. When buildings within the scope of the Building Safety Regime are occupied there will be additional requirements. A dutyholder must be identified for this part of the building's lifecycle, they will be responsible for the safety of the building, ensuring that risks in relation to structural and fire safety are reduced as far as is reasonably practical.
40. The new requirements under the Fire Safety Regime are stand alone and would apply to a much broader scope of buildings. However, where a building does fall within the scope of the Building Safety Regime the new Fire Safety Regime should be consider a subset. Regardless of regime there will be a requirement for the dutyholder to be registered (with a representative in the UK discharging those duties on their behalf) and to identify where legal responsibility for delivering these requirements lies.
41. For buildings that fall under the scope of the Building Safety Regime the dutyholder during occupation will be also be required to:
- Create (where necessary), maintain and update the golden thread, key dataset and safety case for the building.
  - Ensure the risks of failure in structural integrity are reduced so far as is reasonably practicable by planning, monitoring and managing maintenance and improvements in response to the safety case. This includes ensuring regular reviews of the safety



case are undertaken by a suitably qualified person, including the structural integrity of the fabric of the building.

- The dutyholder should be suitably qualified to discharge these roles and responsibilities. Where they are not qualified they should procure the relevant services to undertake aspects of the role.
- Ensure that competent people are employed to undertake works on the building (this should include assessments, investigations and reports such as fire risk assessments and or safety case work where these are not undertaken 'in house'). Subsequently the dutyholder should assure themselves that the works conducted are to an adequate standard to ensure the building's ongoing safety.
- Promote building safety within the building.
- Working with residents – the dutyholder would be required to have a formal complaints process for residents to raise concerns about the building. They would also be required to develop, deliver and review a resident engagement strategy which would include providing mandatory information on typical hazards (fire, asbestos, legionella, etc), evacuation procedures, complaints procedures, how to contribute to relevant decision making processes.
- Actively manage complaints and concerns – for example analysing complaints to identify any themes or recurring issues which would feed into the safety case.

42. Our expectation would be that for both the Fire and Building Safety Regime, as part of the registration process, the dutyholder would be able to demonstrate probity and responsible working. For example by setting out how they intend to ensure effective communication (meeting statutory obligations) in terms of planned maintenance and upgrades (as a result of the fire risk assessment or safety case) and the impact of these works on service charges (where these are in place), providing sufficient notice where expenses are likely to be high. Ensuring robust and transparent record keeping and by undertaking due diligence and having proper financial practices in place.

### ***Residents' Responsibilities under the Building Safety Regime***

43. Whilst the dutyholder during occupation will be responsible for the safety of the building, those who live in the property will also have their part to play. Under both Regimes we intend to set out the roles and responsibilities residents will have to ensure they and their neighbours remain safe.
44. Residents usually have existing requirements placed on them through their leases or tenancy agreements which include seeking permission for internal alterations or access to residences for maintenance or repair. We intend to supplement these requirements with duties in relation to maintaining the compartmentation of their property and removing, replacing or damaging fire safety features (for example, fire doors, windows, alarms, sprinklers). As well as responsibilities to allow the occupation dutyholder to undertake their roles and responsibilities.

## ***Regulation of the Building Safety Regime***

45. These proposals will require an enhanced regulatory regime to support more stringent measures being put in place to manage the risks of fire and structural failure. There are heightened expectations from the public that where dutyholders fail in their responsibilities that they should be held to account and done so in a way that is swift, proportionate and transparent.
46. Two different options of regulation under the Building Safety Regime are being considered:
- A single regulator with responsibility for all regulation and enforcement in relation to fire and building safety issues for residential buildings within scope.  
This could be a new regulatory body, like the Building Safety Regulator proposed in England, or an existing regulator who already works in this ‘space’, the Local Authority or the Fire and Rescue Authority, potentially working on a regional or national basis.
  - Concurrent regulatory regimes, both of which would have responsibility for regulation and enforcement of residential buildings within scope. In this case the Local Authority and Fire and Rescue Authority would continue to be regulators, albeit with an enhanced role.
47. We have not yet identified a preferred way forward and we intend to consult further on the most appropriate enforcement model. Additional resources will need to be dedicated to the enforcement body or bodies to take forward this work. We will continue to work with Local Authorities, the Fire and Rescue Authorities and the WLGA as we develop our thinking in this space.

### **How to join the discussion**

48. We intend to publish a White Paper setting out in more detail how we intend to take forward these reforms. Ahead of that, this document invites specific input on the following two questions:
- Is high rise residential buildings of 18m or more (or more than six storeys) in height the right scope for the Building Safety Regime? Should we consider including a wider range of buildings within the scope of the Building Safety Regime, for example 11m or more (or more than four storeys) in height? If so what buildings would you suggest being included? What is your evidence in proposing this?
  - What do you consider to be the most appropriate way of regulating the new Building Safety Regime - A single regulator, or multiple regulators? What is your rationale for this?
49. If you would like to join in the conversation about these issues please email ([buildingsafety@gov.wales](mailto:buildingsafety@gov.wales)) or write (Building Safety Team, Welsh Government, Cathays Park, Cardiff, CF10 3AQ) to us with your thoughts.