

NOTE TO: JOINT SERVICES COMMITTEE

DATE: 06/08/2020

TOPIC: IMPACT OF BUILDING SAFETY BILL

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1 INTRODUCTION

- 1.1 The purpose of this report is to outline the proposed changes to legislation brought forward by the Building Safety Bill published on 20 July 2020 and the measures to be taken by NMD Building Control in response.

2 CONTENT OF THE BILL

2.1 What is the Building Safety Bill

- 2.1.1 The Building Safety Bill is the framework and enabling legislation for putting in place new and enhanced regulatory regimes for building safety and construction products, and ensure residents have a stronger voice. It implements the recommendations of the Building Safety programme which was set up to advise the government on the measures needed to ensure building safety following the Grenfell Tower Fire on 14 June 2017 and in particular the recommendations of the Hackitt Review which was followed by a consultation - Building a safer future: proposals for reform of the building safety regulatory system.
- 2.1.2 This is in conjunction with the Fire Safety Bill that requires building owners and managers of multi occupied residential premises of any height to fully consider and mitigate the risks of any external wall systems and fire doors.

2.2 The Building Safety Regulator

- 2.1.3 Establishment of a new Building Safety Regulator (BSR). The Health and Safety Executive has already been appointed as the BSR with a Chief Inspector of Buildings
- 2.1.4 The BSR will oversee the safety and performance of all buildings, and actively enforce a more stringent regulatory regime for buildings in scope during their design, construction and occupation.
- 2.1.5 The more stringent regime will apply to all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first), and may be extended further in the future.
- 2.1.6 The regulator will be responsible for major regulatory decisions, including whether to allow the project to proceed past defined gateways. These include allowing construction to commence and agreeing that the Building Safety Manager has provided an appropriate safety case demonstrating safe occupation.
- 2.1.7 The Regulator will work with other experts and regulators and will have additional duties such as maintaining a register of buildings, dealing with resident complaints, providing advice on risks for buildings and establishing housing centres of excellence.

2.1.8 The Regulator will oversee a new competence regime for people working on buildings. They have powers covering all buildings, which will include advising on changes to the Building Regulations and Approved Documents (and put in a structure to replace the current Building Regulations Advisory Body), and oversee and report on the performance of Building Control Bodies.

2.3 System duty holders and gateways

2.3.1 A system of duty holders will be established.

2.3.2 During design and construction specific duty holders (such as the client, designer and contractors) will be responsible for showing compliance with the regulatory regime through three gateways:

Gateway 1 – The duty holders must be defined before Planning Permission can be granted

Gateway 2 – The BSR takes on the role of Building Control body and work cannot commence until they are satisfied

Gateway 3 – Occupation will not be able to take place until the BSR has issued a Building Registration Certificate and the Accountable person and Building Safety Manager have been identified.

2.3.3 Submitting a safety case to the Regulator will be a mandatory requirement and the Building Safety Manager will be required to keep it up to date. The safety case will be based on the risk assessment principle applied as part of the current Fire Safety Order responsibilities. The case will be reviewed periodically by the Regulator, and it will have the power to require changes to mitigations in place.

2.3.4 Across the life cycle of the building there will be requirements on duty holders, such as to maintain the golden thread of building information and mandatory occurrence reporting (of structural safety or fire safety related events).

2.3.5 Refurbishment works that are subject to building regulations will come under a similar process involving sign off from the Building Safety Regulator.

2.3.6 Existing buildings in scope will be required to obtain a Building Registration Certificate and have the same system of Accountable Person and Building Safety Manager.

2.4 Resident Engagement Strategy

2.4.1 The Building Safety Manager is required to produce and implement a Resident Engagement Strategy.

2.4.2 A complaints process will be required in the Engagement Strategy and complaints can be escalated to the Building Safety Regulator.

2.4.3 There will be a statutory duty for residents to cooperate with the Building Safety Manager in their work, and options for enforcement if needed.

2.5 Competence

2.5.1 The BSR is responsible for forming a Committee concerned with the competency of persons working in the built environment on industry competence.

2.5.2 The BSR will establish a register of approved Building Inspectors and the register may stipulate different classes of inspector approved for different types of work.

2.5.3 The Building Safety Regulator will be responsible for oversight of the competence and performance of building control but the regulator or a designated body will develop the details.

2.5.4 Where a registered Building Inspector is considered to be guilty of professional misconduct, the regulator may cancel the registration and/or impose a financial penalty.

2.6 Enforcement

2.6.1 The Building Act 1984 is amended to make the Building Safety Regulator responsible for enforcement for residential buildings over 6 storeys. Where the regulations are breached the BSR will issue a compliance notice. Non-compliance is a criminal offence and can result in a stop notice and/or prosecution.

2.6.2 If the notices also fail to achieve compliance, the Building Safety Regulator will have the power to take enforcement action against the duty-holders.

2.6.3 The Building Safety Regulator will have a range of tools available, including reviewing the Building Registration Certificate, which could ultimately lead to revocation and, where appropriate, the ability to prosecute duty-holders and/or the Accountable Person as appropriate, potentially leading to an unlimited fine the level of which would depend on the extent that structural and fire safety has been compromised.

2.6.4 Higher penalties are intended to ensure that duty-holder compliance with the legal requirements is far more straightforward and cost effective than non-compliance.

2.7 New Homes Ombudsman Scheme

2.7.1 Makes provision for a new homes ombudsman for the receipt and investigation of complaints from owners of new build homes.

3 IMPACT ON PARTNERSHIP

3.1 Buildings in scope

3.1.1 The original recommendations from the Hackitt review recommended that buildings over 30m should be considered but this is now reduced to 18 m or more than 6 storeys. There is therefore the possibility of buildings being directly impacted by the control mechanisms implemented by the Bill and the jurisdiction of the BSR.

3.2 Competence and Registration

3.2.1 The BSR is responsible for forming a Committee concerned with the competency of persons working in the built environment on industry competence.

3.2.2 In anticipation of the changes that are now being introduced by legislation LABC introduced a competency framework for Local Authority. NMD Building Control have validated five of our staff at Level 6 for fire safety enabling us to deal with all building types. A further officer is validated to Level 5 enabling them to work independently on commercial developments and one is currently undertaking a degree and apprenticeship. However, one senior officer and two surveyors who will need to obtain validation of their competencies in the near future as well as our Technical Support Officers who will need to be validated to Level 3.

3.2.3 An on-going training commitment will be required to achieve the registration of all staff and maintenance of skills.

3.2.4 The requirement for registration will increase competition within the jobs market for registered building inspectors making loss of staff a significant possibility and creating a barrier to entry to the profession making recruitment even more difficult.

3.2.5 Registration and competency validation is time limited requiring re-evaluation every three years imposing risk of failure and the need for continued refreshing of learning to maintain effectiveness. There is already a shortage of qualified and experienced

personnel and this will make recruitment even more difficult and increase the risk of Surveyors leaving as they either find that they are an increasingly valuable asset or that they are unprepared to undertake assessments to gain and maintain registration.

- 3.2.6 Increased legal risk to the Local Authorities and the individuals working within Building Control. There are penalties that can be levied against an individual for professional misconduct significantly changing the level of responsibility imposed on officers and particularly those in positions of managerial responsibility.

3.3 Oversight by Building Safety Regulator

- 3.3.1 Building Control providers will be required to follow set procedures and meet defined standards. Compliance will be monitored by the BSR who is charged with oversight of Building Control. Hence, failure to maintain standards and fulfil competency criteria will have real consequences with the potential for sanctions against the Local Authority and individuals.

3.4 Potential impact on costs

- 3.4.1 It is too early to say the full extent to which these changes will impact the cost of service delivery or the potential impact on income.
- 3.4.2 However, it is there will be a shift in the balance between trading activity and enforcement by Local Authorities. This is both due to an increased expectancy with regard to prosecution combined with the oversight of the BSR and an increase in the number of Initial Notices reverted to the Local Authority by Approved Inspectors which is a trend that we are already seeing.

4 PROPOSED ACTIONS

4.1 Enforcement

- 4.1.1 Within the LABC framework enforcement is a defined competency at Level 6. Hence there is a need to ensure that at least one Surveyor is validated in this regard.
- 4.1.2 Prosecutions via the Courts are historically low in Building Control and this is reflected in the partnership. NDC have taken prosecutions within the last 5 years but MDDC have not. Hence, experience in enforcement is lacking and therefore Surveyors lack confidence in this area.
- 4.1.3 It is proposed to designate a lead officer for enforcement to coordinate all enforcement activity and develop a source of expertise. This will include the provision of training to ensure Level 6 validation and responsibility for disseminating learning and best practice to the rest of the team.
- 4.1.4 The Enforcement Lead will also be responsible for developing communication with compliance officers in Planning and Environmental Health to help promote effective enforcement and coordination between services.
- 4.1.5 This reorganisation of activities will provide a degree of separation between enforcement and our consultative service helping to maintain effective relationships with service users and helping to clearly define the role of officers.
- 4.1.6 It has been common practice for Local Authorities to only prosecute offences if considered serious and detrimental to Health and Safety. Minor offences have often been dealt with by refusing the issue of a completion certificate. It is considered likely that this practice will no longer be considered acceptable. Extensive chasing of reluctant service users and potential prosecution in the courts will have a significant impact on resources if this is required.

4.2 Resource requirements

- 4.2.1 Due to the current dip in economic activity it is anticipated that this can be resourced within the current establishment in the short term. This will enable us to assess the benefits of a revised way of working and assess the resource implications as we move forward.
- 4.2.2 This will be a significant change with regard to the emphasis of the duties assigned to the Enforcement Lead but we consider all aspects of the role to be adequately covered by the existing Senior Building Control Surveyor job description.
- 4.2.3 It is envisaged that the Enforcement Lead will not be assigned a default area for Building Control Duties but will act as a floating officer covering for absence and supplementing resource where workloads are heaviest. This will enable concentration of time on enforcement when required without immediate impact on customer service within Building Control.
- 4.2.4 A close watch will be maintained to evaluate the implications of the monitoring role of the BSR and the impact on required resources to ensure a satisfactory level of service and compliance.

4.3 Review of job descriptions

- 4.3.1 When full details of the Building Inspector Registration are available consultation with Human Resources is required with regard to the impact of changes on Job Descriptions required competencies and evaluation of posts.
- 4.3.2 Job descriptions need to be revised to take into account classification of registration of officers and consideration given to the consequences of failure to maintain classes of registration.