

## Royal Institute of British Architects Response to MHCLG Draft Building Safety Bill

*Building Safety Bill as published in Draft on 20 July 2020 (Bill CP 264)*  
**14.09.2020**

### Introduction

The Royal Institute of British Architects (RIBA) is a global professional membership body that serves its members and society in order to deliver better buildings and places, stronger communities and a sustainable environment.

The RIBA welcomes the Draft Building Safety Bill which makes some positive changes, amending the Building Act 1984, giving the Health and Safety Executive much needed power to improve Building Standards and outlining the functions of the new Building Safety Regulator, to oversee a new and more stringent regime for higher-risk buildings, and drive improvements in building safety and performance standards for all buildings, using the roles set out in the Construction (Design and Management) Regulations 2015 (Client, Designers, Principal Designers, Principal Contractors, Contractors).

Although some intentions are set out in the explanatory notes, the Government response to the Building a Safer Future consultation for a reformed building safety regulatory system provided further detail on the application of dutyholders and their associated duties and the proposed Gateways. We have provided comment on the application of appropriate duties for all forms of procurement, including Design and Build, with consideration of the contractual relationships in the appointment of both design and construction services.

### Summary of Key RIBA Recommendations

- The RIBA support the introduction of dutyholders for all projects, with equal emphasis of responsibility to be placed on all dutyholders, not just the Principal Designer and Principal Contractor.
- Dutyholders should only be responsible for the work they undertake and advice they provide. Duties should be developed to avoid conflict of interest in different procurement routes, specifically Design and Build.
- Planning Gateway One should require dutyholders to be appointed and sufficiently detailed fire safety information should be required.
- Permitted Developments that are higher-risk buildings should still be required to submit fire statements at Planning Gateway One.
- The scope of the regulatory process should be widened to other higher-risk buildings during design and construction.

**Royal Institute of  
British Architects**

66 Portland Place,  
London, W1B 1AD, UK

Tel: +44 (0)20 7580 5533  
Fax: +44 (0)20 7255 1541  
info@riba.org  
www.architecture.com

Incorporated by Royal Charter No: RC000484  
Registered Charity Number 210 566  
VAT Registration Number 232 351 891

## Key RIBA Recommendations

**The RIBA support the introduction of dutyholders for all projects, with equal emphasis of responsibility to be placed on all dutyholders, not just the Principal Designer and Principal Contractor**

[Bill Clause 38, Explanatory Notes - paragraph 350 - 358]

The RIBA supports the introduction of a new dutyholder regime to be developed in Building Regulations for all projects, based upon the roles set out in the Construction (Design and Management) Regulations 2015 (Client, Designers, Principal Designers, Principal Contractors, Contractors). We particularly welcome the latest proposals set out in the explanatory notes that these dutyholders and their appropriate duties will apply to all projects.

The application of the regime, as outlined in the explanatory notes, places a large emphasis on the Principal Designer and Principal Contractor. Appropriate duties and competence requirements should be developed for all roles, including Designers and Contractors, so that responsibility and liability for managing health and safety risks rest with those who create them, as we cannot rely solely on Principal Designers and Principal Contractors to ensure building safety. This will provide the greatest opportunity for culture change in the industry as proven by CDM 2015 and would leave no construction project without these necessary duties.

**Dutyholders should only be responsible for the work they undertake and advice they provide. Duties should be developed to avoid conflict of interest in different procurement routes, specifically Design and Build**

[Bill Clause 38, Explanatory Notes - paragraph 350 - 358]

The RIBA recommends that the new statutory duties be drafted to be deliverable regardless of the project's procurement route. Currently, the majority of 'higher risk buildings' are procured using Design and Build or contractor led contracts.

If the intentions in the explanatory notes and the Government response to the 'Building a Safer Future' consultation are adopted, the Principal Designer would be required to co-sign a declaration of compliance with the Principal Contractor at Gateway 3, to confirm that the building has been built in accordance with approved plans of Gateway 2. This requires review, as site inspection duties are thus effectively imposed on a Principal Designer, who may not have contractual or statutory powers to enforce changes to design or constructed works.

Following the CDM 2015 model, only the Client can appoint a Principal Designer and a Principal Contractor and the criminal liability for these duties cannot be passed on in a sub-contract; therefore under Design and Build procurement, the main contractor is both Principal Designer and Principal Contractor, as the Client would only appoint one organisation to carry out design and construction services following the tendering process.

Where the roles of the Principal Designer and Principal Contractor are provided by the same organisation, there will therefore be no independent signoff provided by a third party other than the regulator.

If it were made possible to novate a Principal Designer, then there still would be conflict of interest in carrying out their duties during construction as they would be under contract to the Principal Contractor, rather than being appointed directly by the Client. This conflict would be similar to allowing Clients to choose and pay their own Approved Inspector, which will be removed under current proposals.

If the MHCLG decide to remove the conflict of interest in Design and Build procurement by requiring the Principal Designer and the Principal Contractor to be separate organisation, then it is likely the Principal Designer role will be contracted similarly to the now abandoned CDM Coordinator, who was a separate health and safety adviser not part of the design team and unable to provide truly effective health and safety design coordination.

The Principal Designer provides building safety design coordination and leadership during the preconstruction phase, and the RIBA recommends that the Principal Designer should not be responsible for any other Designer's or Contractor's work.

The RIBA recommends that the Principal Contractor should take responsibility for the construction and be required to demonstrate to the Building Control Authority that the project has been built in accordance with the approved plans, and the Principal Designer should be responsible for coordinating building safety design information.

In our response to the MHCLG consultation on Building a Safer Future: Proposals for reform of the building safety regulatory system in 2019, we attempted to develop a version of the duties (Question 2.1) and would welcome the opportunity to work with the Ministry to develop these duties further to identify duties that could work across all procurement routes and provide effective building safety oversight

RIBA Response to MHCLG Building a Safer Future: Proposals for reform of the building safety regulatory system - Question 2.1: <https://www.architecture.com/-/media/80DD5E66B7E243C091AB2B0B034E7BFB.pdf?la=en>

**Planning Gateway One should require dutyholders to be appointed and sufficiently detailed fire safety information should be required**

[Bill Clause 37, Explanatory Notes - paragraph 41]

The explanatory notes demonstrate that Planning Gateway One occurs before dutyholders are required to be in place. This may allow for projects to be developed by Designers that do not meet the competency requirements, without a Principal Designer.

Once Planning Approval has been obtained, any fire safety issues that were not addressed in the layout of the building, reviewed by the regulator for fire safety, are likely to result in an amendment of the approval. The design at Planning Gateway One should be robust enough to be further developed for Gateway Two without the need to alter or overly engineer the design to meet building regulations. Fire safety should be a fundamental consideration at the early stages of the project.

The RIBA recommends that the fire statement required at Planning Gateway One be sufficiently detailed to enable appropriate fire safety scrutiny by the regulator.

Under CDM 2015, the Client must appoint a Principal Designer when there is more than one contractor working on the building project. CDM 2015 is primarily concerned with protecting the health and safety of construction workers rather than the building's end users.

The RIBA recommends that the Client appoints a Principal Designer when there is more than one designer working on the project, as soon as practicable, and in any case before the construction phase begins. For higher-risk buildings that follow the Gateways, the Client must appoint a Principal Designer before the Planning Gateway One submission if there is more than one Designer working on the project, and in any case, before Gateway Two.

**Permitted Developments that are higher-risk buildings should still be required to submit fire statements at Planning Gateway One**

[Bill Clause 37, Explanatory Notes - paragraph 44]

The proposals outline that projects which do not require a planning application (because it has been permitted by the General Permitted Development Order 2015) are not required to pass through Planning Gateway One. The explanatory notes show that fire safety requirements which impact on planning considerations, should be considered at an early stage and incorporated into the proposals at Planning Gateway One. By circumventing this step for Permitted Developments, the crucial review of proposals by the Building Safety Regulator for fire safety at this stage will be missed.

The RIBA recommends that the General Permitted Development Order 2015 is amended to require any developer of a building that is, or following a development will become, a higher-risk building, to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required in relation to the fire safety of the proposed development, bearing in mind the layout and fabric of the building and the density of the proposed development. Local authorities should consult the regulator on permitted developments that are higher-risk buildings, to identify if the regulator will require a fire statement to be submitted.

**The scope of the regulatory process should be widened to other higher-risk buildings during design and construction**

[Bill Clause 19, Explanatory Notes - paragraph 228]

The RIBA welcomes the proposal for a more stringent regime for higher-risk buildings, and a drive for improvements in building safety and performance standards for all buildings, using the roles set out in the Construction (Design and Management) Regulations 2015.

The explanatory notes outline the scope of the regulatory regime for higher-risk buildings (Paragraph 228) in the initial 2 year period (prior to any further review), to cover all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first).

The MHCLG consultation on the review of the ban on the use of combustible materials in and on the external walls of buildings included consulting on applying the ban to relevant buildings with a storey at least 11 metres above ground level, and extending

the scope to all buildings with a room for residential purposes. Approved Document B (Volume 1) was amended in May 2020, to require sprinklers and other fire safety measures in dwellings with a storey at least 11 metres above ground level. These changes and proposals clearly indicate that dwellings and buildings with a room for residential purposes, with a storey at least 11 metres above ground level, are considered higher risk.

The RIBA recommends that the definition of higher-risk building at the outset, during the design and construction phases, is widened to include the following building types with a storey at least 11 metres above ground level (using the definitions from the Building Regulations 2010):

- buildings with more than one “*flat*”
- buildings with a “*room for residential purposes*”
- “*Institution*”

This amendment would ensure that the proposed Gateway process would apply to residential buildings, hospitals, care homes, hospices, schools, hotels, hostels, guesthouses and prisons.

The RIBA recommends that the full regulatory regime (design, construction and in-use) should be widened as soon as possible, to include all other buildings where a catastrophic event could cause multiple fatalities.

## **Further RIBA technical comments**

### **Public consultation should be required for proposals to change the building regulations**

[Bill Clause 7, Explanatory Notes – paragraph 164]

Clause 7 ensures that there will always be consultation before the making of regulations. The Building Safety Regulator must consult on proposed regulations before recommending them to the Secretary of State, and the Secretary of State must consult before making regulations which have not been proposed by the Building Safety Regulator.

The RIBA recommends that there should always be a public consultation on proposals to make changes to the building regulations.

### **The application of CROSS should be extended to cover all buildings**

[Bill Clause 8, Explanatory Notes, paragraph 168]

Clause 8 requires the Building Safety Regulator to establish and operate a system for the voluntary reporting of information about building safety. This function is to be fulfilled through the expansion of the Confidential Reporting on Structural Safety scheme (CROSS), to include fire safety.

The RIBA supports the extension of the Confidential Reporting on Structural Safety (CROSS) and agrees that it should consider a wider range of building safety issues and apply to all buildings, not just higher-risk buildings.

**There should be public consultation on the regulators strategic plan**

[Bill Clause 23, Explanatory Notes - paragraph 152]

The proposals outline the regulators duty to consult the residents' panel and other such persons as the regulator considers appropriate, to develop their plan on how the regulator proposes to carry out their functions.

The RIBA recommends that the regulator should be required to conduct public consultations on how it intends to carry out its functions.

**The Golden Thread of information should be appropriate to the project**

[Bill Clause 37, Explanatory Notes - paragraph 344 and 346]

The proposals set out that the regulations may in particular provide that information or documents must be given or kept in accordance with prescribed standards.

The RIBA supports the concept of a Golden Thread of information, and urges the MHCLG to not place onerous requirements on the way design and construction teams hold and manage information, so for example, a designer is not burdened with the requirement to provide an expensive common data environment which they may not have insurance to manage.

The RIBA recommends that the format of documents that are not required by the regulator, or required for management and maintenance and firefighting intervention, should not be prescribed so that the most appropriate format to convey information is used for the project.

**Change definition of “occupied” to include any occupation and keep unoccupied higher-risk buildings on the register with associated status**

[Bill Clause 60 and 63, Explanatory Notes - paragraph 493, 494 and 512]

These proposed clauses used to determine when a higher-risk building is occupied, when there are residents of more than one dwelling in the building, are based upon the definition of a 'resident' of a dwelling, who lawfully resides there.

The RIBA recommends that a higher-risk building is “occupied” if there are residents of one or more dwellings.

The RIBA recommends that unoccupied higher-risk buildings should not be removed from the register, but marked as unoccupied, to ensure that there is always a full list of higher-risk buildings on a register with its status anticipating that the building may be occupied again.

**Safe specification of construction products**

[Bill Clause 110 – Schedule 8, Explanatory Notes – paragraph 958 - 983]

The RIBA recommends that the construction products regulations are reviewed to ensure appropriate emphasis is placed on the specification of building systems that are made up of multiple construction products, including how information is provided by manufacturers on the safe specification and application of their products.

**Territorial extent**

[Bill Clause 117 and 118, Annex A, Explanatory Notes – paragraph 828 and 829]

The RIBA recommends that the new regulatory regime should not diverge significantly from processes in the rest of the UK, to ensure competency requirements and experience in the industry do not unduly prohibit cross border working.