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Webinar 20th May 2020

## Building Safety – rules and costs

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## Building a Safer Future – the new regime

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## Building Safety – the timeline to legislation

- July 2017 – Grenfell Tower fire
- May 2018 – Hackitt Review published
- June 2019 – “Building a Safer Future” consultation commenced
- 14 October 2019 – Queen’s Speech 2019 announced Building Safety Bill to be brought forward
- 30 October 2019 – Grenfell Inquiry Phase 1 Report findings published
- 12 December 2019 – General Election
- 2 April 2020 – MHCLG response to the June 2019 consultation
- Late 2020 – Building Safety Bill to be laid before Parliament
- Overall clarion call: don’t wait for legislation to start doing something...



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## What is the new regime?

- Will cover “in-scope” buildings (18m or more or more than 6 storeys – “whichever is reached first”)
- New-build and major refurbishments requiring planning permission
- Gradual roll-out for existing buildings in occupation
- Potential extension of regime to other non-residential buildings where people sleep (eg hospitals, prisons)
- Introduces established concepts from outside the sector:
  - “duty holder”
  - “safety case”
  - “golden-thread of data”
- Also introduces Regulator and sanctions



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## Duty-holders and Accountable Persons

- One person to be legally responsible for the building throughout its design, construction and in-occupation phases for fire and structural safety risks
- In-occupation duty holder is called the “Accountable Person”
- Criminal liability will attach to non-compliance
- Who is the Accountable Person?
  - “Board” level (how does this work for LAs/ALMOs?)
  - Guidance promised for more complex structures
  - “right to receive rents or service charges” but response also refers to “will also be identifiable by their legal responsibility for the upkeep and maintenance of the structure and outside of the building/plant room etc”
  - Could be more than one AP for each building
  - Can we contractually allocate this role?



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## Building Safety Manager

- New role
- Appointed by the AP for every in-scope building
- No guidance as to how many buildings can have the same Building Safety Manager
- Responsible for carrying out the day-to-day functions of ensuring the building is safe
- Is this a “doing” role or a “co-ordinating” role?
- Raising the Bar Report – Appendix B: scope of services for a BSM
- Responsible for compiling and maintaining the safety case and the building registration certificates



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## Safety case and building registration certificate

- Aims to create a holistic approach to fire and safety risk management
- Every in-scope building will need a building registration certificate
- Safety case review cycle: to be reviewed constantly by BSM and AP and by the BSR every 5 years during occupation
- If case is not made: cancellation of valid building registration certificate
- Safety case should:
  - Include information re hazards affecting the building
  - Go beyond a risk assessment and demonstrate that fire and structural risks are being managed so far as practicable
  - Be evidenced
  - Use plain language
  - Include a comprehensive Resident Engagement Strategy



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## Resident engagement

- At the heart of the new regulatory regime
- Information will be key (Phase 1 inquiry findings support this)
  - How it is presented
  - Where it is displayed
  - Pro-actively provided
- Resident Engagement Strategy must empower residents and contain:
  - A management strategy setting out how the AP will engage with residents
  - Engagement plan outlining how the strategy will work in practice
  - Internal complaints/concerns process with escalation route if not dealt with effectively
  - Rights of residents v. Obligations ...
  - New statutory duty requiring residents to cooperate with the BSM in the fulfilment of their functions – AND legal responsibility to avoid actions that would undermine fire or structural safety of the building



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## A few other important points ...

- Shadow Regulator is the HSE
- Sanctions and penalties to be adopted for the regime:
  - Criminal offence
  - Extension of claims under the Building Act 1984
  - Private civil claims
- Safety regime will impact:
  - Management agreement
  - Procurement decisions
  - Supply-chain contract management
  - IT requirements and data support
- All needs early and urgent consideration



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## Building a Safer Future – the costs challenge

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## Fire safety – the compliance dilemma

- Current practical problems – existing buildings
- Assessing the costs – the ‘counter-parties’
- Incurring the costs – when, what and how?
- Recovering the costs – from leaseholders, tenants and ...?
- Guidance?



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## Current problems

- Post-Grenfell caution
- Regulators and professionals
- Existing buildings
- A legal baseline



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## Assessing the costs

- Tenants – statutory and ‘contractual’ obligations
- RTB leaseholders – express and implied covenants
- Regulator of Social Housing – enforcing the Home Standard
- Fire authorities – the Fire Safety Order and its likely ‘expansion’



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## Incurring the costs

- When? Prioritising – obvious but who agrees and to what?
- What? Regulatory compliance v. best practice (NB changes to Decent Homes Standard)
- How? The procurement challenge – esp. section 20 compliance



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## Recovering the costs

- Leaseholders – enforce their covenants rather than the service charge provisions?
- Tenants – practical risk (and cost) minimisation steps
- Contractors – recourse for defective work or at least preserve rights to claim
- Consultants – same or similar issues?
- Insurers – will the policy ‘respond’?



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## And now?

- A cross-sector approach is needed
- Guidance - or at least a check-list?
- Assess costs by reference to accepted legal requirements
- Specify works and procure them to ensure clear responsibility
- Create a ‘platform’ for recovering costs



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## Finally – a word about borrowing

- The scale of funding
- Still PWLB?
- The HRA as borrower
- Bond options
- Private placements
- Commercial loans
- Making a choice



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## Questions

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