

The Hackitt Report: An overview

Introduction

Yesterday saw the release of Dame Judith Hackitt's long-awaited Report of Building Regulations and Fire Safety.

Following on from her interim finding that the current regulatory framework was "not fit for purpose," Dame Hackitt recommends a complete overhaul of the regulatory framework in relation to the construction and management of high-rise residential multi-occupancy buildings (referred to in the Report as HRRBs).

Equally, the Report concludes that the recommendations will benefit building standards generally and says that the recommendations should apply to other buildings considered to place residents at greater risk of harm from fire including other multi-occupancy residential buildings below 10 storeys and buildings providing accommodation where people sleep, such as hospitals, care homes, prisons and halls of residence.

Drawing on the recent evolution of health and safety law, particularly the assignment of specific (and legally enforceable) duties on designated dutyholders, Dame Hackitt recommends that there should be greater accountability throughout the development and management processes and specific duties for those who have responsibility for the procurement, design, construction and management of buildings.

In this article we summarise the recommendations of the Report that, if accepted and implemented, will affect our clients the most.

The Joint Competent Authority

The Report recommends that regulatory oversight should be strengthened. It recommends that a new authority is commissioned which has responsibility to ensure regulatory compliance. This has been named the Joint Competent Authority ("JCA") and it is envisaged that it will be comprised of Local Authority Building Control services (re-named as Local Authority Building Standards to recognise the recommended enhanced role that they will carry out), Fire and Rescue Authorities and the Health and Safety Executive.

Key responsibilities of the JCA would be to:

- Retain a database of HRRBs and the key dutyholders for those buildings.
- Undertaking interventions to ensure dutyholders' competence and compliance and controls are in place.
- Require safety case reviews of dutyholders to demonstrate building safety compliance and resident engagement.
- Require dutyholders to make building improvements to reduce risks.
- Advise dutyholders on safety concerns.
- Request testing of construction products.
- Request annual reports from testing bodies (in relation to construction materials).

The Report recognises that HRRBs are complex buildings that are comprised of many inter-connected systems (some physical – such as fire compartmentation and some system based – such as responsible persons) to ensure the fire safety of the building. Dame Hackitt recommends that each of these layers of protection are assessed as one system and when making changes to one of the component systems dutyholders must assess how this change will impact on the other inter-dependent systems and the building as a whole.

The Report advocates for a move away from the more prescriptive series of Approved Documents to ensure that people consider the overarching requirements of Building Regulations. It recommends that a new overarching Approved Document is produced describing the building as a system and the holistic analyses (considering the building's inter-dependent systems) that must be undertaken when undertaking construction work.

Dutyholders

Dame Hackitt does not hold back on her opinion of current construction standards and practices which she says has created a culture which can be described as a "race to the bottom". The Report focuses on the importance of identifying dutyholders



Mark London

Partner

020 7880 4271

mark.london@devonshires.co.uk



Matthew Cocklin

Partner

020 7065 1813

matthew.cocklin@devonshires.co.uk

and prescribing key responsibilities to these roles. It recommends that the roles should reflect those in the current Construction (Design and Management) Regulations 2015.

The Report considers that the assignment of duties on specific, competently qualified dutyholders is the surest way to compliance and improvements to standards of construction. Key roles and duties should be clearly defined, however, the Report suggests that other responsibilities should be broad in nature. The Report also advocates a robust enforcement regime with penalties in place to incentivise compliance in those appointed to carry out the roles.

The Role of Residents

Dame Hackitt has placed an emphasis on giving residents a greater voice to provide reassurance about the safety of their homes.

This is primarily reliant on transparency through the provision of and accessibility to information about their homes and clear routes for recourse if residents have concerns. It promotes greater resident engagement in decision making processes regarding their homes through the use of tenant panels and resident associations.

The information that the Report advises should be provided includes the most recent fire risk assessment (FRA) and a step-by-step process to raise concerns about building safety. Furthermore, Dame Hackitt recommends that historic information, including all FRAs should be made available to residents on request.

Whilst more guidance in tenant management and a clearly defined set of documentation to be provided to residents will be welcomed by many in the social housing sector there will be a simultaneous need to have a greater focus on data protection regulations.

Dame Hackitt also suggests that an independent body/ ombudsman is commissioned for residents to escalate concerns which are not dealt with appropriately by the particular dutyholder.

Procurement

The interim report commented on the need for a cultural shift in the procurement process, recommending moving away from a focus on a financially commercial selection and instead prioritising the safety of buildings and high standards of construction.

The Report develops this conclusion and recommends that tenders should set out how the proposed solution will provide safe building outcomes and recommends that contracts should explicitly state that safety will not be compromised for savings on cost.

Conclusion

The recommended new regulatory framework is comprehensive and if it is implemented by the Government it will undoubtedly have a significant impact on the construction and management of high-rise buildings.

Whilst the assignment of duties is welcome, in practice, this may lead to confusion and difficulties for organisations, particularly

those with a high turnover of staff. Furthermore, broadly defined responsibilities for dutyholders, whilst key to ensuring that issues of safety are not neglected, may lead to penalties for minor infringements.

The Report has been inevitably criticised for not going far enough in failing to recommend the complete prohibition of combustible products. However, Dame Hackitt accurately concludes that *"prescriptive controls alone are not adequate"*. Instead, the Report acknowledges that *"there is no single solution " and that "outcomes based frameworks must be supported by sufficiently competent people and robust systems of accreditation and enforcement to ensure adequate accountability..."*.

Dame Hackitt's conclusions in this regard recognise that the construction industry is one where new materials and construction methods are constantly introduced as technology develops.

The Report concludes that the recommendations are interdependent and if implemented in isolation they will fail to achieve the necessary systemic change.

If the Government develops legislation to implement Dame Hackitt's recommendations, those involved in the process of constructing and managing high-rise residential buildings will be subject to new and greater duties and serious consequences for failing to carry out their responsibilities.

Our initial view is that we anticipate that the Government will take on board Dame Hackitt's recommendations and that there will now be a period of consultation with those involved in the construction industry with a view to producing an overarching piece of legislation which will build on the duties and dutyholders seen in the current Construction (Design and Management) Regulations 2015.

If you would like further information about the the issues addressed in this article please contact: construction@devonshires.co.uk