

Building a Safer Future – Proposals for reform of the building safety regulatory system

Institution of Occupational Safety and Health (IOSH) response to the Ministry of Housing, Communities & Local Government (MHCLG) consultation



Submission

31.07.19



Introduction

IOSH, the Chartered body for Occupational Safety and Health (OSH) professionals, is pleased to have the opportunity to comment on this important MHCLG consultation *Building a Safer Future – Proposals for reform of the building safety regulatory system*,¹ which we also highlighted to our members for individual responses.

IOSH was also pleased to respond to the *Grenfell Tower Fire Public Inquiry Terms of Reference consultation; Independent Review of Building Regulations and Fire Safety; and Banning the use of combustible materials in the external walls of high-rise residential buildings consultation*.^{2,3 and 4} In addition, we have recently responded to the Home Office *Regulatory Reform (Fire Safety) Order 2005 – call for evidence*.

The response that follows is based on input from our Construction Group, Education Group and Sports Grounds and Events Group committees, together with contributions from individual IOSH members. We provide a summary position, answers to a selection of consultation questions, references and further information about IOSH.

IOSH summary position

We support the following proposals

1. Going beyond the review recommendations so that multi-occupancy residential buildings of 18 metres or more are covered
2. Including major refurbishments in the regime
3. Applying the reforms to the occupation stage of both new builds and existing buildings
4. Introducing fire safety duties proposed for key duty holders and using CDM 2015 as a model for duties under the building regulations
5. Making fire and rescue authorities statutory consultees and consulting them on near vicinity developments
6. Requiring planning applicants to submit a fire statement
7. Using the planning permission stage to prompt early consideration of fire and structural risks, so they can be designed out
8. Requiring a final declaration on compliance from the principal contractor with the principal designer
9. Introducing offences for non-compliance, such as failure to register a building or allowing occupation of an unregistered building
10. Requiring key duty holders to establish reporting systems and to report occurrences to the building safety regulator
11. Introducing the regulatory and oversight functions of the new building safety regulator

We also advocate the following

1. Including higher-risk premises below 18 metres in height in the regime
2. Requiring duty holders to cooperate and coordinate their fire safety-related responsibilities to ensure a cohesive whole
3. Addressing any gaps or fragmentation and ensuring coverage is competently delivered, adequately resourced and effectively enforced
4. Applying the design and construction stage requirements to non-residential buildings with higher fire-rates or increased risk of fires with fatalities or casualties requiring hospital treatment
5. Reducing risks and designing-in fire safety for new builds of prisons, hospitals, supported / sheltered housing and educational buildings

We disagree with proposals as follows

1. Giving planning applicants client status – this should not happen, unless the planning applicants actually are clients, because applicants could be being paid and directed by the client
2. Reporting of occurrences within 72 hours – this should be without undue delay and as soon as practicable
3. Conducting a five-yearly system review – the first review of the new system should be earlier than currently proposed, with an interim review taking place at three years, rather than five

IOSH answers to selected consultation questions

<p><i>Q1.1</i></p>
<p><i>Do you agree/ that the new regime should go beyond Dame Judith’s recommendation and initially apply to multi-occupied residential buildings of 18 metres or more (approximately 6 storeys)? Please support your view.</i></p>
<p>Yes, IOSH agrees that the new regime should go beyond Dame Judith’s recommendation and apply to multi-occupancy residential buildings of 18 metres or more (around 6 storeys). This is supported by research that shows increased rates of fire for buildings between 18-30 metres.¹ We also support the inclusion of major refurbishments in the reforms (see answer Q2.32 below) and their application to the occupation stage of both new builds and existing buildings (see answer to Q3.7 below).</p> <p>However, we believe that consideration should also be given to including higher risk premises below 18 metres in height, as occupant-vulnerability is also a key factor. This is supported by research findings that buildings where people sleep are at greater risk of fires involving fatalities or casualties requiring hospital treatment (pp.28-29).¹ Taking an evidence- and risk-based approach to buildings below 18 metres in height and going beyond minimum recommendations should help send a clear message to duty holders and the general public that building fire safety is a priority.</p>
<p><i>Q1.2</i></p>
<p><i>How can we provide clarity in the regulatory framework to ensure fire safety risks are managed holistically in multi-occupied residential buildings?</i></p>
<p>In order to provide clarity and support a holistic approach, IOSH believes the distinctions between sets of regulations and guidance should be concisely expressed to ensure there is no ambiguity and that accountability and responsibility sit clearly with individuals and organisations. We also advocate requirements for duty holders to cooperate and coordinate their fire safety-related responsibilities to ensure a cohesive whole (see answers to Q1.3 and Q1.8 below).</p> <p>We note the Government’s intention to implement the Dame Judith Hackitt Review recommendation for a ‘whole-building’ approach, with the accountable person obligations extending to all parts of buildings in scope. In order to achieve a holistic outcome, as well as addressing what is termed ‘overlap’, we believe it is also important to address any gaps or fragmentation and ensure that coverage is competently delivered, adequately resourced and effectively enforced.</p>

Q1.3

If both regimes are to continue to apply, how can they be improved to complement each other?

If both regimes (HHSRS and FSO) are to continue to apply, IOSH would support the introduction of a duty to cooperate between fire and rescue services and local authorities, to help ensure that the two regimes work well together.

Q1.4

What are the key factors that should inform whether some or all non-residential buildings which have higher fire rates should be subject to the new regulatory arrangements during the design and construction phase? Please support your view.

IOSH believes the design and construction phase needs to consider fire risk and structural safety in the future-use and maintenance of non-residential buildings with higher fire-rates. This would include whether multiple people sleep in the premises, their behaviours, and also their physical and cognitive abilities for safely evacuating in emergency situations. For example, people with disabilities living in sheltered accommodation may require more exit time and assistance than fitter people. The building design will need to consider both active and passive fire protection measures and also issues such as access for the emergency services and adequacy of water supply.

Q1.5

Linked to your answer above, which of the 'higher-risk workplaces' in paragraph 42 would you consider to be higher-risk during the design and construction phase?

IOSH believes that all those workplaces listed in paragraph 42 could be considered as higher risk for the design and construction phase and include:

- Prisons – prisons, detention centres and other secure premises
- Hospitals – health care institution providing patient treatment where patients are kept in overnight or for an indeterminate time
- Supported/sheltered housing – premises where vulnerable people are supported and provided with a safe and secure home
- Educational buildings – boarding schools and halls of residence

We advocate that the opportunity to reduce risks and design-in fire-safety for new builds in these categories is taken and that requiring a safety case and golden thread of information can help inform risk management in the occupation stage.

Q1.8

Where there are two or more persons responsible for different parts of the building under separate legislation, how should we ensure fire safety of a whole building in mixed use?

IOSH believes there should be a duty for persons responsible for different parts of the building under different legislation to cooperate and coordinate their activities to ensure fire and building safety (see

also answer to Q1.3). In the event of new legislation for multi-occupied residential buildings of 18 metres or more, we suggest the new accountable person roles and responsible person roles need to be closely coordinated. To help clarify responsibilities we suggest, for example, a Memorandum of Understanding could be agreed and signed by both parties that clearly identifies who is responsible for what and ensures there are no gaps in terms of responsibility and accountability.

Q2.1

Do you agree that the duties set out in paragraphs 61 to 65 are the right ones?

Yes, IOSH strongly agrees that the duties set out are the right ones, in addition to those that already fall to duty holders through CDM 2015. We note that the proposals include the further duty to promote building safety and the safety of persons in and around the building and also an additional responsibility on clients regarding promoting building safety requirements (pp.35-36).

Q2.3

Do you consider that a named individual, where the dutyholder is a legal entity, should be identifiable as responsible for building safety? Please support your view.

Yes, IOSH agrees that the duty holder should be identifiable and that this would help them in their role and also remove any grey area or gap in accountability or responsibility.

Q2.4

Do you agree with the approach outlined in paragraph 66, that we should use Construction (Design and Management) Regulations 2015 (CDM) as a model for developing dutyholder responsibilities under building regulations? Please support your view.

Yes, IOSH supports using the CDM 2015 model and indeed we specifically suggested linkage to fire safety during the 2015 review and consultation on CDM.⁵ We believe that CDM 2015 has now had time to embed within the construction industry and, although there are still improvements to be made, industry clients, stakeholders, consultants, and contractors are used to its terminology.

Q2.5

Do you agree that fire and rescue authorities should become statutory consultees for buildings in scope at the planning permission stage? If yes, how can we ensure that their views are adequately considered? If no, what alternative mechanism could be used to ensure that fire service access issues are considered before designs are finalised?

Yes, IOSH agrees that the fire and rescue authorities should become statutory consultees at the planning permission stage. We believe this requirement may also help address the problem of principal designers being appointed late in the process and encourage appointments that are early enough to ensure full and proper consideration of the fire strategy for construction and in use.

Q2.6

Do you agree that planning applicants must submit a Fire Statement as part of their planning application? If yes, are there other issues that it should cover? If no, please support your view including whether there are alternative ways to ensure fire service access is considered.

Yes, IOSH agrees that planning applicants should submit a fire statement as part of their planning applications.

Q2.7

Do you agree that fire and rescue authorities should be consulted on applications for developments within the 'near vicinity' of buildings in scope? If so, should the 'near vicinity' be defined as 50m, 100m, 150m or other. Please support your view.

Yes, IOSH agrees that fire and rescue authorities should be consulted on such developments and that they should help determine the 'near vicinity' definition.

Q2.9

Should the planning applicant be given the status of a Client at gateway one? If yes, should they be responsible for the Fire Statement? Please support your view.

No, IOSH does not agree that the planning applicant be given the status of a client, unless they are a client. It may be that the planning applicant is being paid and directed by the client and so the client needs to take responsibility at gateway one and for the fire statement.

Q2.11

Is planning permission the most appropriate mechanism for ensuring developers consider fire and structural risks before they finalise the design of their building? If not, are there alternative mechanisms to achieve this objective?

IOSH believes using the planning permission stage could be helpful in prompting early consideration of fire and structural risks so that they can be designed out.

Q2.12

Do you agree that the information at paragraph 89 is the right information to require as part of gateway two? Please support your view.

Yes, IOSH agrees that the information at paragraph 89 is the right information to form part of gateway two. It is important that this information is provided before construction work begins to help ensure that fire and structural risks are managed.

Q2.13

Are these the appropriate dutyholders to provide each form of information listed at paragraph 89?

IOSH believes that principal designers, though they may not necessarily produce all the required information at a), b) and c) themselves, can collect this information produced by others, coordinating its assembly and ensuring it is supplied.

Q2.14

Should the Client be required to coordinate this information (on behalf of the Principal Designer and Principal Contractor) and submit it as a package, rather than each dutyholder submit information separately?

IOSH suggests that the principal designer could be the person responsible for coordinating this information on behalf of the client, as they will have assembled the information at a), b) and c) of paragraph 89.

Q2.16

Should the building safety regulator have the discretion to allow a staged approach to submitting key information in certain circumstances to avoid additional burdens? Please support your view.

Yes, IOSH agrees in principle that the building safety regulator should have discretion to allow a staged approach to submission, as there may be complexities or operational limitations that may prohibit the production of the required information. However, regulator-discretion to decide whether a staged approach is appropriate, necessary and safe, will require the building safety regulator to have specific competencies.

Q2.18

Should the building safety regulator be able to prohibit building work from progressing unless non-compliant work is first remedied? Please support your view.

IOSH agrees that this may be necessary in order to ensure safety, but suggest it may be possible for critical work to be carried-out safely elsewhere on a project, while the remedial work on non-compliant areas also goes ahead.

Q2.21

Do you agree that the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans?

Yes, IOSH agrees there should be such consultation on changes to plans to ensure risk is not being increased.

Q2.22

Do you agree that the Principal Contractor should notify the building safety regulator of proposed major changes that could compromise fire and structural safety for approval before carrying out the relevant work?

Yes, IOSH believes it is important that building safety regulator approval is required before carrying out major work that could potentially compromise fire and structural safety.

Q2.26

Do you agree that a final declaration should be produced by the Principal Contractor with the Principal Designer to confirm that the building complies with building regulations? Please support your view

Yes, IOSH agrees there should be a final declaration on compliance from the principal contractor and principal designer and confirmation that the documentation has been handed back to the client. This helps reinforce ownership of these duties and the need for the built-condition to be consistent with the agreed design. Responsibility and accountability need to be maintained throughout a project's lifespan.

Q2.30

Should it be an offence for the accountable person to allow a building to be occupied before they have been granted a registration for that building? Please support your view.

Yes, IOSH agrees that it should be an offence to allow building occupants, fire and rescue services, workers or others to be placed at potentially serious risk. There needs to be deterrence and potential consequences for failing to comply with the requirements in order to support the overall aim of improving fire safety and public confidence in the system.

Q2.32

Do you agree with the proposal for refurbished buildings? Please support your view

Yes, IOSH agrees with the proposal for refurbished buildings and that those undergoing significant change should be subject to the same degree of regulatory oversight as new build, as they can involve as many potential hazards and risk areas.

Q3.1

Do you agree that a safety case should be subject to scrutiny by the building safety regulator before a building safety certificate is issued? Please support your view.

Yes, IOSH agrees safety cases should be scrutinised by the building safety regulator before the issuing of building safety certificates. Independent verification of the adequacy of the safety cases will be a critically important part of the system.

Q3.2

Do you agree with our proposed content for safety cases? If not, what other information should be included in the safety case?

Yes, IOSH broadly agrees with the list of proposed content for safety cases.

Q3.7

Do you agree that the accountable person requirement should be introduced for existing residential buildings as well as for new residential buildings? Please support your view.

Yes, IOSH agrees the accountable person requirement should be introduced for existing residential buildings to help improve standards, ensure consistency with new build and remove any current perceived (or actual) lack of accountability.

Q3.17

Do you agree that this registration scheme involving the issue of a building safety certificate is an effective way to provide this assurance and transparency? If not, please support your view and explain what other approach may be more effective.

Yes, IOSH agrees that the issuing of a building safety certificate as part of the registration scheme and the requirement to have a summary of it displayed in a prominent place is an effective way of providing assurance and transparency.

Q3.18

Do you agree with the principles set out in paragraphs 180 and 181 for the process of applying for and obtaining registration?

Yes, IOSH agrees with the principles for applying for and obtaining registration reinforcing, as they do, the need for applicants to provide the building safety regulator with sufficient information to decide on the suitability of the management arrangements.

Q3.19

Do you agree with the suggested approach in paragraph 183, that the building safety certificate should apply to the whole building? Please support your view.

Yes, IOSH agrees that the building safety certificate should apply to the whole of the building, to help ensure consistent standards and avoid confusion.

Q4.9

Do you agree that the Client, Principal Designer, Principal Contractor, and accountable person during occupation should have a responsibility to establish reporting systems and report occurrences to the building safety regulator? If not, please support your view.

Yes, IOSH agrees that these key duty holders should have responsibility to establish reporting systems and should report occurrences to the building safety regulator.

Q4.11

Do you agree that, where an occurrence has been identified, dutyholders must report this to the building safety regulator within 72 hours? If not, what should the timeframe for reporting to the building safety regulator be?

No, IOSH believes that duty holders should report occurrences as soon as practicable and, in any case, within 72 hours.

Q6.1

Should the periodic review of the regulatory system be carried out every five years/less frequently? If less frequently, please provide an alternative time-frame and support your view

IOSH believes that periodic review of the regulatory system is important and that the first review of the new system should be sooner. Given the extensive nature of the reforms, that the initial system-scope may be extended, and that stakeholder concerns may be raised during its implementation phases, we suggest an interim review, say after three years. Thereafter, and assuming no major problems, five years would seem a suitable review period.

Q6.2

Do you agree that regulatory and oversight functions at paragraph 315 are the right functions for a new building safety regulator to undertake to enable us to achieve our aim of ensuring buildings are safe? If not, please support your view on what changes should be made.

Yes, IOSH agrees with the listed regulatory and oversight functions for the new building safety regulator, which include overseeing: enforcement, competence of the professions, and the building safety and wider regulatory system as a whole; as well as providing guidance to duty holders and advice to Government and industry. This body should also have the authority to set relevant standards.

Q9.2

Do you agree we should introduce criminal offences for:

(i) an accountable person failing to register a building;

*(ii) an accountable person or building safety manager failing to comply with building safety conditions;
and*

*(iii) dutyholders carrying out work without the necessary gateway
permission?*

Yes, IOSH agrees that putting people at risk of serious harm should be a criminal offence and we agree with those listed, which we hope will act as a deterrent to non-compliance. Concerningly, as the Dame Judith Hackitt Review reported,⁶ there are people and organisations who may flout the law and safety guidance, either deliberately or unknowingly, and put people at risk. So, while education and collaboration will improve as a result of these proposed reforms, we believe the 'stick' is still needed alongside the 'carrot', in order to protect public safety and save lives.

References

1. Ministry of Housing, Communities & Local Government. (2019). *Building a Safer Future – Proposals for reform of the building regulatory system*. London: MHCLG.
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3. IOSH. (2017). *IOSH response to Independent Review of Building Regulations and Fire Safety*. Wigston: IOSH. <https://www.iosh.com/media/3356/iosh-response-to-the-independent-review-of-building-regulations-and-fire-safety-oct17.pdf>
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5. IOSH. (2014). *IOSH response to Consultation on replacement of the Construction (Design and Management) Regulations 2007*. Wigston: IOSH.
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“A safe and healthy world of work”

The Institution steers the profession, providing impartial, authoritative, free guidance. Regularly consulted by Government and other bodies, IOSH is the founding member to UK, European and International professional body networks. IOSH has an active research and development fund and programme, helping develop the evidence-base for health and safety policy and practice. Summary and full reports are freely accessible from our website. IOSH publishes an international peer-reviewed journal of academic papers twice a year titled *Policy and practice in health and safety*. We have also developed a unique UK resource providing free access to a health and safety research database, as well other free on-line tools and guides, including resources for business start-ups; an occupational health toolkit; and a risk management tool for small firms.

IOSH has 41 Branches worldwide, including the Caribbean, Hong Kong, Isle of Man, Oman, Qatar, the Republic of Ireland, Singapore and UAE, 18 special interest groups covering aviation and aerospace; broadcasting and telecommunications; construction; consultancy; education; environment and waste management; financial services; fire risk management; food and drink industries; hazardous industries; health and social care; logistics and retail; offshore; public services; railway; rural industries; sports grounds and events; and theatre.

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