

# HACKITT REVIEW

## MHCLG Consultation

On 6th June, MHCLG issued its long-awaited consultation document on its proposals to implement the recommendations in the Hackitt Report "Building a Safer future".

In its response document issued on 18 December, MHCLG stated its intention to implement the recommendations in full. In the main it has with a few differences arguably going further than

the Hackitt recommendations in certain areas, but concerns have been expressed at some of the other recommendations.

### Hackitt Review recap

- The Review looked at HRRBs of 10 storeys or more but suggested that MHCLG looks at widening certain proposals to "other multi-occupancy residential buildings and to institutionalised residential buildings".

- The new framework should feature a "Joint Competent Authority", involving fire and rescue authorities, LABC and HSE, to oversee better management of HRRBs across the building's life cycle.

- Creation of "dutyholders" responsible for key aspects of safety at each stage of the building lifecycle in line with the CDM approach of Client, Principal



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Contractor, contractors and designers.

- Regulatory statutory gateways at key points during the design and construction lifecycle where the dutyholder will need to report to the Joint Competent Authority.

- A "golden thread" of building information through all phases of design, construction and occupation to be held digitally.

- Approved inspectors should not have a regulatory oversight role and consultancy work in relation to works on the same HRRB as too much negotiation on the level of oversight and supervision. In its place, the Review recommended a single streamlined regulatory route.

### Overview of the Consultation

So what changes has the consultation proposed:

- New regime to apply to building of 18 metres high (6 storeys) not the 10 storeys suggested by Hackitt. This will mean more in scope buildings. In addition, MHCLG is considering widening in scope buildings to hospitals, prisons, sheltered housing and potentially mixed-use buildings.

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- 5 duty holders to be created with duties that align to the CDM Regulations: Client; Principal Designer; Principal Contractor; contractor and designer.
- Instead of a "Joint Competent Authority", MHCLG proposes a "Building Safety Regulator".
- In the occupation phase, an "Accountable Person" will be legally responsible for "ensuring that building safety risks to occupants are reduced so far as is reasonably practicable". The Accountable Person will also appoint a "Building Safety Manager" to carry out day to day functions and be responsible for ensuring such manager meets the competencies required by the Building Safety Regulator.
- The Accountable Person to register their building with the Building Safety Regulator and obtain a "Building Safety Certificate". For new buildings, occupation will not be allowed until building registered and certificate received.
- A golden thread of information to operate from design through to occupation.
- Empowerment of residents through the new regime via a Residents engagement strategy to be developed and operated by the Accountable Person so that the Accountable Person proactively, rather than reactively, provides building safety information.
- Enforcement. New criminal and civil sanctions for not having approval to proceed through gateway points by the Building Safety Regulator; not making a valid application for registration will be a criminal offence as will breaching Building Safety Certificate conditions.
- Gateway points to be (1) before planning permission granted; (2) before construction commences and (3) before occupation begins. Gateway 2 to be a "hard stop" where specific consent required from the Building Safety Regulator.
- Whilst the consultation recognises that there are potential conflicts in developers choosing their own inspectors, and having regulatory oversight of the control system, no proposals are included albeit MHCLG state that policy work is underway on trying to remove duty holder choice whilst keeping capacity in the system.

### Reaction

All participants in the construction sector have been encouraged to take part in the consultation. Views expressed so far are supportive of the approach to align with CDM Regulations and to back this up with criminal and civil sanctions for breaches.

What will be clear is that MHCLG will need to ensure

the Building Safety Regulator is provided with enough powers equivalent to the HSE, and that it is adequately resourced to allow it to fulfil its functions properly. The CIOB highlighted that the success of the new regime depended on how the Building Safety Regulator is constituted and operated but that there were few details. The LABC went further and expressed some concern that, whilst the Hackitt Review proposed that the Joint Competent Authority should involve fire and rescue authorities, LABC and HSE in having the regulatory oversight, the consultation does not confirm this.

The LABC is also sceptical that the Hackitt Review's proposal that Approved Inspectors should not have regulatory oversight will ultimately be followed. Clearly the position of Approved Inspectors needs to be resolved and quickly considering the demise of Aedis Regulatory Services, one of the biggest private sector provider of building control services, due to it being unable to obtain insurance to cover building control.

As to when legislation will be proposed is difficult to judge in this present climate particularly as we now have a new set of ministers in MHCLG and, at the time of writing, no construction minister.

Of more concern was that the consultation sought the views of those in the construction sector on 119(!) separate questions and requested responses by 31 July – only an 8-week period. This may indicate that MHCLG has not settled for itself how the framework should be incorporated and it is perhaps a pity that the consultation could not have been released sooner thus granting more time for consultation as the proposed changes are set to fundamentally affect the construction sector.

### About Chris Pedder

Chris has worked in the social housing sector for nearly 20 years. Chris advises public sector housing providers on construction projects. He has advised on a substantial number of repairs and maintenance programmes, including capital investment programmes for ALMOs or following stock transfer, day to day responsive maintenance and mechanical and electrical programmes.

He has also advised a number of registered providers on procurement of alternative delivery models such as joint ventures; wholly owned subsidiary companies; and cost sharing groups, each of which provide tax efficiencies and militate against contractor insolvency.

