

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT HIGHER-RISK BUILDINGS (KEY
BUILDING INFORMATION ETC.) (ENGLAND)
REGULATIONS 2023

Wednesday 22 February 2023

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The Committee consisted of the following Members:

Chair: MR LAURENCE ROBERTSON

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| † Anderson, Lee (<i>Ashfield</i>) (Con) | Hardy, Emma (<i>Kingston upon Hull West and Hessle</i>) (Lab) |
| † Benn, Hilary (<i>Leeds Central</i>) (Lab) | † Johnston, David (<i>Wantage</i>) (Con) |
| David, Wayne (<i>Caerphilly</i>) (Lab) | † Osborne, Kate (<i>Jarrow</i>) (Lab) |
| † Davison, Dehenna (<i>Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities</i>) | † Pennycook, Matthew (<i>Greenwich and Woolwich</i>) (Lab) |
| † Eastwood, Mark (<i>Dewsbury</i>) (Con) | † Throup, Maggie (<i>Erewash</i>) (Con) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | Wallis, Dr Jamie (<i>Bridgend</i>) (Con) |
| † Fuller, Richard (<i>North East Bedfordshire</i>) (Con) | † Wheeler, Mrs Heather (<i>South Derbyshire</i>) (Con) |
| † Gardiner, Barry (<i>Brent North</i>) (Lab) | † Young, Jacob (<i>Redcar</i>) (Con) |
| † Grant, Mrs Helen (<i>Maidstone and The Weald</i>) (Con) | Jack Edwards, <i>Committee Clerk</i> |
| | † attended the Committee |

Sixth Delegated Legislation Committee

Wednesday 22 February 2023

[MR LAURENCE ROBERTSON *in the Chair*]

Draft Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023

9.25 am

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Dehenna Davison): I beg to move,

That the Committee has considered the draft Higher-Risk Buildings (Key Building Information etc.) (England) Regulations 2023.

The regulations set out the high-level information to be provided to the Building Safety Regulator and clarify for which parts of a building individual accountable persons are responsible. The regulations are part of the new building safety regime created by the Building Safety Act 2022. They are a fundamental part of our ongoing reforms to ensure that all residents' homes are places where they are safe and can feel safe.

I will provide some context and background to these important regulations. After the Grenfell Tower tragedy, the Government appointed Dame Judith Hackitt to conduct an expert review of the building safety regime. Her review showed that there are significant issues in the industry. She identified that cultural and regulatory change was needed in order for the industry to be fit for purpose.

Dame Judith recommended a new approach to managing fire and structural safety risks in higher-risk buildings. She advised that a new, strengthened regulatory regime should be brought forward to improve accountability, risk management and assurance for higher-risk buildings. She also identified the lack of information about higher-risk buildings as an issue. In her report, she set out that access to up-to-date information is crucial for higher-risk buildings. Her report sets out that the new regulatory regime needs to provide closer, more robust and more expert scrutiny of higher-risk buildings. To do that, the regulator will need accurate and up-to-date information about such buildings.

The Government accepted Dame Judith's recommendations and brought forward the Building Safety Act, which received Royal Assent in April 2022. The Act establishes the new regime, which creates stronger oversight of higher-risk buildings and puts stronger legal duties on those responsible for the safety of higher-risk buildings throughout their lifecycle. It also brings forward stronger enforcement and sanctions to deter and rectify non-compliance.

The regulations set out requirements for occupied higher-risk buildings. In particular, they set out the high-level building information—that is, the key building information—that will need to be provided to the Building Safety Regulator. This key building information will help the regulator to fulfil its duties under the 2022 Act.

The Building Safety Act sets out that all occupied higher-risk buildings will have at least one clearly identifiable accountable person. The accountable person will be responsible for assessing, managing and mitigating building safety risks. If an occupied higher-risk building has only one accountable person, they will automatically become the principal accountable person. Where the building has two or more accountable persons, the one responsible for the repair of the structure and exterior of the building will be the principal accountable person. The regulations clarify which accountable person is responsible for different parts of a building in cases when there is more than one accountable person.

The regulations are split into two parts. First, they establish the key building information that must be provided to the Building Safety Regulator by the principal accountable person.

Barry Gardiner (Brent North) (Lab): Before the Minister moves on from the business of accountable persons, does she share the concern of many of my constituents that, by appointing the accountable person, the Government are doing one important thing and setting out that someone is actually responsible? The problem has been that the buck has been passed all around. But in doing that, the Government are passing to the residents—the commonhold association itself—the responsibility that should properly lie with the developer of the building, whose responsibility it was to ensure that the building was constructed properly in the first place. In many cases, it was not.

Dehenna Davison: The hon. Gentleman is absolutely right that one of the key issues is the clear line of accountability. That is something that the regulations and the Building Safety Act seek to rectify. I am happy to write to him with further clarity on the role of developers, if that would be helpful, but the key point is to ensure that a person in the building now is responsible for the building now and has that clear line of accountability. However, I will follow up in writing to provide more clarity.

Hilary Benn (Leeds Central) (Lab): Paragraph 6.3 of the explanatory memorandum talks about the principal accountable person providing the information alongside “their application for registration”. Is that the same as an application for a building assessment certificate, which is mentioned in paragraph 7.3? I ask that because the explanatory memorandum goes on to say that the regulator will require early applications for buildings deemed to be at higher risk. How will the accountable person know that their building is in the higher-risk category when deciding whether they should provide information early, as opposed to later?

Secondly—

The Chair: Order. Interventions need to be brief, as the right hon. Gentleman knows. The Minister will get the opportunity to wind up at the end. Can we just take that one point?

Hilary Benn: The one point is: how will the accountable person know whether there might be missing firebreaks in the building they are responsible for if it has never been peeled apart and examined?

Dehenna Davison: I will come back to that towards the end, if that is all right. I will follow up in writing later if my answer does not satisfy the right hon. Member.

Let me return to the key building information that will be provided. The data we are seeking, along with other sources of intelligence, will support the regulator's initial triage of the potential risk factors in existing higher-risk buildings. That will allow the regulator to determine which buildings should be required to apply for a building assessment certificate as a priority, allowing a review of wider risk management and safety arrangements.

The information will also be used by the Building Safety Regulator to analyse trends and risks in higher-risk buildings. If an issue emerges in a number of higher-risk buildings, the regulator will be able to use the information it has acquired through the key building information to identify similar buildings or systems and contact the relevant persons.

The regulations set out what information must be included as part of the key building information. The principal accountable person must inform the Building Safety Regulator of the current uses of the higher-risk building and whether the principal use of the building has ever changed. They must inform the regulator about the structural design of the building, the number of storeys it has, the number of staircases, the pitch of the roof, the energy supply and energy storage, and whether the building has a structural connection to any other building.

Mark Eastwood (Dewsbury) (Con): My hon. Friend mentioned the number of storeys. I am fortunate, given the legislation that applies at the moment, that there are no high-rise blocks in my constituency. Paragraph 7.3 of the explanatory memorandum states that there are 13,000 higher-risk residential buildings. Will it be possible—not now, but in the future—for the Minister to say how many are in my constituency?

Dehenna Davison: I am grateful to my hon. Friend. I will of course ask the Department to identify said information and pass it on to him, if that is something he wants specifically for his constituency. May I say what a great way that was to garner information?

I have outlined a few of the things that the regulator must be informed of. It must also be provided with information about the materials used in the building—that is, the materials used in the external walls, the external wall insulation, the roof, and any fixtures attached to the external walls and roof. Information will also have to be provided about the type of evacuation strategy for the building, such as “stay put” or simultaneous evacuation, and the fire and smoke control equipment in the building. All that information will be pivotal in helping the Building Safety Regulator to go about its day-to-day functions and duties, understand typical features and trends in the existing stock of buildings, and identify safety concerns in the future. Guidance will make clear exactly what information is required to meet the legal obligation.

Barry Gardiner: Clearly, the building regulator will accrue a huge amount of information. Will the Minister set out how many building regulators there will be? Will there be only one? If so, what facilities and resources will be made available to the regulator to enable it to cope with the influx of information and sift it so that the safety end is achieved?

Dehenna Davison: Of course we want to make sure that the regulator is properly resourced in order to fulfil its vital functions and, again, I will follow up with further information in writing.

It is important that key building information is provided to the Building Safety Regulator at an early stage so that prioritisation can happen quickly. Under the new system, principal accountable persons responsible for existing buildings will be required to register with the Building Safety Regulator, to identify themselves, before applying for a building assessment certificate at a later point. The regulations require that the principal accountable person must provide key building information to the regulator within 28 days of applying to register their higher-risk building or buildings. The Government will shortly lay regulations setting out the registration requirements in more detail.

The principal accountable person must also notify the Building Safety Regulator of any changes to the key building information. If there is more than one accountable person for the building, then each accountable person will be responsible for providing information for their part of the building to the principal accountable person. The principal accountable person can then submit an accurate return to the regulator for the whole building. That information, when submitted, must be in electronic form, and the Building Safety Regulator will issue a direction setting out the precise format in which the information must be submitted.

The regulations also assign responsibility for building safety duties in part 4 of the Building Safety Act to specific accountable persons for the parts of a higher-risk building for which they are responsible. That will help accountable persons work together to achieve a whole-building approach to managing fire and structural safety.

Dame Judith Hackitt recommended that a clear model of risk ownership for the whole building would be required to achieve the effective management of building safety. However, building ownership and land law is complex, and some tall buildings will have multiple entities involved in their ownership, with varying degrees of responsibility for the building's safety. That is why section 72 of Building Safety Act makes it clear who is responsible for the fire and structural safety in a higher-risk building: the accountable person.

To mirror how building ownership operates in practice, there can be multiple accountable persons, and where there is more than one, section 73 of the Act provides that the person who is responsible for the exterior and structure of the building is the principal accountable person. Where only one accountable person is involved in the building ownership, the regulations state that that person is responsible for their building safety duties in relation to the exterior and structure, common parts, any balconies attached to the exterior and structure, and the residential or commonhold units.

While the regulations set out that the accountable person is responsible for the residential unit or commonhold unit, if the accountable person has no control over that unit—for example, if it is a leasehold flat—they will be responsible only for mitigating or preventing the building safety risks within the flat in so far as they impact on the common parts and other flats in the building.

[Dehenna Davison]

The regulations also set out a framework for determining responsibility when there are multiple accountable persons in a higher-risk building. The regulations assign responsibility to the parts of a building, with reference to the accountable person's repairing obligation for that part under a lease. Where the entity responsible is not an accountable person—for example, if there is an intermediate landlord for a flat who does not meet the definition of accountable person—the regulations assign responsibility to the accountable person with responsibility for the common parts adjoining the front door of that flat. That will ensure that an accountable person is always responsible for all residential parts of a higher-risk building. The accountable person can look to the Regulatory Reform (Fire Safety) Order 2005 to aid their interpretation of whether their part 4 responsibilities extend to a specific part of a building.

To summarise, the regulations are key to setting up the new regime for building safety and bringing about the systematic, lasting change we know is needed to help people be and feel safe in their homes. I hope that members of the Committee will join me in supporting the regulations.

9.39 am

Matthew Pennycook (Greenwich and Woolwich) (Lab): It is a pleasure to serve with you in the Chair, Mr Robertson. I thank the Minister for that explanation of the statutory instrument and the policy context.

We welcome the regulations, which, as the Minister made clear, serve to specify key information about higher-risk buildings that must be provided to the new regulator as required by the Building Safety Act and to set out the framework for accountable persons in relation to their part 4 statutory obligations. The instrument is largely uncontroversial, and we will not oppose it, but I have three questions that I trust the Minister may be able to answer to provide greater clarity about the Government's thinking.

The first relates to which information it will be mandatory to provide the regulator with. As the Minister will know, when the Government consulted about proposed changes to building regulations under part 4 of the Act in the summer of last year, it was suggested that provision of information relating to the type and date of any significant building work carried out and to fire safety design standards would be mandatory. The Government subsequently decided that the provision of information in relation to both should instead be optional. The reason given is that feedback from the sector suggested that making the provision of that information mandatory was not possible within the proposed timeframes without significant cost.

The Minister will appreciate, I hope, that there is some concern that the Government have rowed back on perfectly reasonable and sensible proposals under industry pressure. I will be grateful if she could expand on the Government's reasoning as to the change. Specifically, what evidence was shared by the sector that convinced Ministers that a mandatory requirement in those two areas was too onerous? We would also welcome an explanation of how the Government will encourage duty holders who do have the relevant information

about significant building work and fire safety design standards to voluntarily submit that information, given that there will now be no obligation for them to do so.

My second question relates to the issue of reporting to the regulator on internal fire safety measures. The regulations require duty holders to report on external wall composition, structure and firefighting equipment present in a higher-risk building, but they seemingly contain no requirement for duty holders to report on internal fire safety measures such as fire doors. Will the Minister confirm that that is indeed the case, or is it rather the case that fire doors and other internal fire safety measures are covered by the definition of "fire and smoke control equipment"

in the instrument? If the former is the case and internal fire safety measures are not covered by that definition, what is the Government's reasoning for not obligating duty holders to report to the regulator on such internal fire safety measures?

My third and final question concerns timescales for the submission of mandatory information. The regulations make it clear that the information that duty holders will be required to provide to the new regulator must be submitted within 28 days of an application to register. The Government have made it clear that registration of existing buildings is expected to begin in April. Will the Minister confirm that, and will she tell us what the Government will do in the event that some higher-risk buildings do not register or provide the necessary information by the deadline? In short, what are the penalties for non-compliance?

9.42 am

Barry Gardiner (Brent North) (Lab): It is a pleasure to serve under your rigorous chairmanship, Mr Robertson.

I share the concerns of my hon. Friend the Member for Greenwich and Woolwich. Here we have huge responsibilities being placed on individuals or commonhold associations without the necessary power to do what is being obligated. Those who have engaged with leaseholders over many years know that communications between residents in a large tower block often take huge lengths of time. They are not instantaneous. The idea that within 28 days the appropriate person will be able to ensure that they have all the information from other residents is fanciful. Communications just do not work like that in tower blocks.

That will discourage leaseholders from taking over the management of their building. Many of them are labouring under problems with their existing managing agents, such as huge increases in their service charges or often completely inappropriate items billed to them erroneously. They therefore want to be enfranchised and to take on the responsibility as managing agents themselves. With that, however, will come the new responsibilities, which are incredibly onerous.

My hon. Friend was absolutely right to ask about penalties. Those who exercise those responsibilities, or try to, have to know what will happen to them if they fail to do so—not wilfully or through negligence, but because it is simply not possible to secure all the appropriate information in the timeframe. There is then the question of what happens if they cannot access the information. As my hon. Friend said, this is about not just fire doors, which are at least there physically and can be seen, but

internal fire stopping, which may not have been put in during construction. That is one of the things that makes a building most susceptible to fire, yet it is not mentioned in regulation 8. That is essential if people are to fulfil the duties that the Government are placing them.

Ultimately, this issue goes back to where responsibility lies. It is great that we are trying to nail that down, and I appreciate what the Government are trying to do, but there are real, practical constraints. We need to know what the penalties are and how the regulations will be enforced.

9.46 am

Dehenna Davison: I am grateful to all Members for their contributions, and to the hon. Member for Greenwich and Woolwich for indicating that we have cross-party consensus and support for these important regulations. I will do my utmost to cover all the questions and points raised; if I miss anything, I will follow up in writing.

On the points raised by the right hon. Member for Leeds Central, registration is separate from applying for a building assessment certificate. Registration is required first, and then the regulator will ask for a building assessment certificate to follow. Other duties in part 4 of the Building Safety Act will ensure the production of a safety case and that building safety risks are properly managed by the appropriate person, and we will be bringing forward regulations later in the year on those points.

On the very relevant questions about what will happen when people do not register in time or do not register at all, from April this year it will be a requirement on the principal accountable person to register, and from October 2023 it will be a criminal offence, with either a fine or imprisonment as a sanction, not to register or come forward to register. We will lay regulations on that shortly, and the House will have full scrutiny of them.

Matthew Pennycook: The Minister is more than welcome to follow up in writing, but she has just clarified, in response to the question from my right hon. Friend the Member for Leeds Central, that there is a difference between registration and certification. Will she address the specific point—in writing if need be—about what happens if a duty holder comes forward to register but does not provide the necessary mandatory information in time?

Dehenna Davison: I will follow up on that point in writing after the Committee rises, because I have a few other points to cover.

The hon. Member for Greenwich and Woolwich asked whether fire doors, for example, are included in the fire and smoke equipment referred to in regulation 18. They are included. I hope that provides him with some reassurance.

We have set out a 28-day period for providing the key building information. It is important that that information is provided quickly so that the regulator can prioritise the call-in of building assessment certificates. For many existing buildings, accountable persons may not know whether there has been significant building work, so the Government are enabling accountable persons to say that they do not know on that point. For the fire standard, it was decided that the build date would provide enough information.

Hilary Benn: I am grateful to the Minister for clarifying the difference between registration and the assessment certificate application. The regulations require the regulator to decide whether a building among the higher-risk buildings is particularly higher risk. Do we take it from that that the regulator will write to the accountable person to say, “I have assessed, based on the information, that you are a priority for an application, and therefore I would like to see your information sooner rather than later”?

Dehenna Davison: I will follow up on that point in writing after the Committee rises, if that is acceptable.

Barry Gardiner: I am grateful to the Minister for giving way again; she is being generous in engaging in debate. In answering the question that my hon. Friend the Member for Greenwich and Woolwich asked about fire doors, she referred to regulation 18, which talks about

“fire and smoke control equipment”

and specifically excludes that which is

“provided by a resident for their own use.”

“Equipment” does not sound as if it includes fire stopping. Will the Minister please clarify where responsibility lies for fire stopping in a building?

Dehenna Davison: As I have highlighted, guidance will be provided, and we hope that it will provide the clarity that is needed. Again, though, if we have more information, I will follow up in writing to provide the hon. Gentleman with further assurances.

I am grateful to hon. Members for their engagement, and I am particularly grateful to the shadow Minister, the hon. Member for Greenwich and Woolwich, for his constructive approach. Right across the House, we recognise how crucial this issue is, and I am grateful that we are moving forward to tackle it together. I commend the regulations to the Committee.

Question put and agreed to.

9.51 am

Committee rose.

