

## ENGLAND AND WALES

# Grenfell Inquiry Phase 2 Report: how it could affect the construction industry

The Grenfell Tower Inquiry's final report was published on 4 September 2024. Amongst its findings regarding the causes of the fire, which make sobering reading, the report made clear that it feels more can and should be done to bring a change of attitude to the construction industry.

The report contains various recommendations for change. The scale of the overall impact is not currently clear, as it remains to be seen whether and how they will be implemented, however one of the recommendations does encourage their implementation by suggesting that reasons for not executing any particular recommendation should be explained clearly in writing, and made publicly available. The government's response to the recommendations should bring some clarity on this, and will be awaited eagerly. In the meantime, we summarise some of the report's key recommendations below (the full list of recommendations is to be found in Chapter 13 of the Report):



## FIRE SAFETY RESPONSIBILITY WITHIN GOVERNMENT

The Inquiry was critical of the fragmented approach to fire safety issues within both government and the construction industry. It recommends that the following appointments be made, with a view to consolidating the various responsibilities, driving change and enabling effective information sharing between those responsible for different aspects of the industry.

- A single **Secretary of State** with responsibility for fire safety functions.

- A **Chief Construction Adviser**, with good working knowledge and practical experience of the construction industry, to provide advice on all matters affecting the construction industry.
- A new **Construction Regulator** overseeing a single independent body, reporting to the Secretary of State. They should be responsible for the regulation, testing and certification of construction products, the regulation of building control, licencing contractors to work on HRBs, and other associated tasks.

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### A REVIEW OF THE DEFINITION OF “HIGHER-RISK BUILDING”

Of particular note is the Inquiry’s recommendation that the government urgently reviews what is considered to be a higher-risk building.

The concept of a “higher-risk building” (“HRB”) was introduced by the Building Safety Act 2022 (“Act”). At the moment, a HRB is a building that is at least 18 metres in height (or has at least seven storeys) and contains a minimum of two residential units. Care homes and hospitals are considered to be HRBs during the design and construction phase, but not during the occupation phase and buildings that are used exclusively as hotels are not HRBs unless they are part of a mixed use building, in which case they might be considered an HRB.

Those buildings which meet the definition are subject to the onerous regulations contained in the Act, which govern the design, construction and occupation of those buildings. It is of paramount importance for a developer, and those working for them, to know whether or not any building will be a higher-risk building.



In the Inquiry’s opinion, determining whether a building is an HRB by reference to its height is an arbitrary measure, and it preferred instead consideration of the nature and use of the building, and in particular the presence of any vulnerable occupants. The Inquiry recommended that what qualifies as an HRB under the BSA is reviewed urgently.

It is not clear how the government would go about formulating a new definition of HRB. The need for certainty will be key, but that will be difficult given that even the process of measuring the height of a building has given rise to disputes!

A review of the definition could have a significant impact on which buildings are subject to the enhanced regulatory regime under the Act, and significant consequences for the viability of developments which were previously understood to be outside of that regime. Also, it may mean that the number of buildings considered to HRBs is likely to increase, putting strain on a regulatory regime that is already struggling.

### REGULATION OF PROFESSIONALS WITHIN THE CONSTRUCTION INDUSTRY

The Inquiry makes the following recommendations as to how professionals working within the construction industry should be regulated:

- A licensing scheme operated by the construction regulator should be introduced for

**principal contractors** wishing to undertake the construction or refurbishment of higher-risk buildings. A nominated director of such companies should provide a personal undertaking to take all reasonable care to ensure that, on completion and handover, the building is as safe as is required by the Building Regulations.

- The Architects Registration Board and the Royal Institute of British Architects should review the steps they have taken since the Grenfell Tower fire to improve the education and training of **architects**, to check that they are in line with the Inquiry’s findings.
- The profession of **fire engineers** should be recognised and protected by law and an independent body be established to regulate the profession. A group of practitioners and academics should be convened to define the knowledge and skills to be expected of a competent fire engineer. An understanding of the principles of fire engineering should be encouraged in construction professionals and members of the fire and rescue services.
- The government should establish a system of mandatory accreditation to certify the competence of **fire risk assessors** by setting standards for qualification and continuing professional development and such other measures as may be considered necessary or desirable.

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### A REVIEW OF BUILDING REGULATION GUIDANCE

The statutory guidance to the building regulations, particularly the guidance contained in Approved Document B (“ADB”), was found to be unsatisfactory. This has been the source of many problems, as it has been the tendency of many in the industry to treat ADB as a definitive statement of what the regulations require rather than as simply guidance, which is its intended purpose.

The Inquiry recommended that ADB is reviewed, and a revised version published as soon as possible. The revised version will make clear that it is guidance only, and that complying with it may not necessarily result in compliance with the regulations.

Whilst the Inquiry did not think it appropriate to recommend specific changes to ADB, it did make some comments which may have an impact on building owners’ current fire strategies. The Inquiry notes that ADB assumes “that effective compartmentation renders a stay put strategy an appropriate response to a fire in a flat in a high-rise residential building” but calls into question whether effective compartmentation can be assumed in the context of an existing building that has undergone some “overcladding”. This means that building owners of buildings that have been overclad may need to revisit their fire strategies, particularly if it is a stay put strategy.

### CHANGES TO THE “GATEWAYS” BUILDING CONTROL REGIME

The Inquiry makes a number of recommendations which would have an impact on the “gateways” building control regime for higher-risk buildings introduced by the Act.

It is recommended that the following additional documents are submitted with the building control application (Gateway 2):

- A fire safety strategy for the building produced by a registered fire engineer, which takes account of vulnerable people.
- A statement from a senior manager of the principal designer that all reasonable steps have been taken to ensure that, on completion, the building as designed will be as safe as is required by the building regulations.
- A personal undertaking from a director or senior manager of the principal contractor to take all reasonable care to ensure that on completion and handover the building is as safe as is required by the building regulations.

It is also recommended that the fire safety strategy submitted at Gateway 2 should be reviewed and re-submitted at the stage of completion (Gateway 3).



### CHANGES TO THOSE EXERCISING BUILDING CONTROL FUNCTIONS

The Inquiry found that, at the time of the fire, many of those involved in major construction projects regarded building control primarily as a source of advice and assistance. It also found that approved inspectors had a commercial interest in acquiring and retaining customers that conflicted with the performance of their role as guardians of the public interest.

In light of these findings, the Inquiry recommended that the government appoints an independent panel to consider whether it is in the public interest for building control functions to be performed by those who have a commercial interest in the process, or whether building control functions should be performed by a national authority.

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