

Building Safety Bill: CIAT's Written Evidence

Responding to the Second Reading and Committee Stages

Foreword

CIAT is the global membership qualifying body for Chartered Architectural Technologists and it represents those practising and studying within the discipline and profession of Architectural Technology.

As a design function, Architectural Technology relates to the anatomy and physiology of buildings and their production, performance and processes based upon the knowledge and application of science, engineering and technology, which are compliant with regulatory, statutory and legal requirements.

Architectural Technology achieves efficient and effective construction and robust sustainable design solutions that perform and endure over time.

Our members' competences are innovative, creative and practical. Their fundamental skills include the ability to consider design holistically, considering all aspects of the composition. This includes the vision to run and lead projects from inception to completion, evaluating the client requirements balanced with the performance of the building together with its impact on the environment and the safety of its users.

Summary

CIAT wholeheartedly supports the principles behind the Building Safety Bill and what it is trying to achieve; and as such is a key player in the response to the Hackitt Review and the changes necessary to protect life.

It is critical that the Industry works collaboratively to raise competence across the board and instils integrity and responsibility across teams working together to construct, develop and maintain structures.

Many of the proposals, including the Homes Ombudsman, are excellent and once the secondary legislation is drafted, we will be able to comment in more detail on the implementation in a proportionate and balanced way.

We are particularly pleased to see the opportunity to shift the focus from "high rise" to "high risk". There are, however, areas within the Bill which cause us considerable concern, some of which we consider should not fall within this Bill. Some of these proposals will have significant impact and require other legislation to be scrutinised independently with a view to achieving the objective without compromising other facets. It is also essential that any recommended changes can be realistically achieved; we are not convinced that issuing a Bill that is proposing changes across so many areas and jurisdictions is the right vehicle for implementing workable and effective solutions. We have noted proposals to change no less than eleven pieces of legislation, some of them without consideration to their effectiveness, or wider implications when put into context.

In the amendment papers following the Committee stages we are aware of a raft of proposed additions to the Bill. From our reading, these could be brought in without scrutiny. With such a fundamental piece of legislation which has consequences, some of which may be unintended, it is essential that these proposals are scoped out properly with full scrutiny and consultation before they should be considered as accepted.

For example: we note that the recommendations to change Defective Premises Act and Limitation Act were inserted without consultation, and it seems, without assessing the impact. It is also questionable as to whether this will achieve its objective, and even whether the amendments are achievable.

Some of the proposals are outside of our expertise. However, due to the wide-ranging areas addressed in this Bill, we are reviewing the areas of particular interest below.

Golden Thread

The Bill is far reaching and lays the foundation for the new regime. It addresses the need for accountability, the retention of records, and the life of a building to which the golden thread will be key; this is a positive outcome and one where we know much work is currently being undertaken on its workability.

HSE as Regulator

We support the Health and Safety Executive as the regulator to ensure that there is a clear, joined up approach across all health, safety and welfare issues and that the Bill will sit alongside the CDM Regulations rather than in conflict with them.

Product Testing

We are also pleased to see the Government sponsored review on product testing and certification currently being undertaken by Paul Morrell; the results of which should frame the secondary legislation on this subject.

Construction Products Regulations

We are particularly supportive of Schedule 9 and the cohesive approach to standardise information in relation to construction products. We are in the process of liaising with providers to encourage more transparency and are pleased to be working with the Department for Levelling Up, Housing and Communities on the draft Regulations. We are supportive of the work that the Construction Product Association (CPA) has commenced with the Voluntary Code and the Construction Leadership Council (CLC) in attempting to address various issues in respect of Goods and Materials. We welcome clarity for manufacturers, designers and installers as to the products they are specifying and using to construct buildings.

Having clear requirements as to the information to be provided will assist both manufacturers and specifiers in ensuring that the technical performance of buildings is achieved.

Should product substitution be necessary, it should be easier to discern like for like, not only in terms of compliance with standards, but also the performance and availability of such products, in addition to ensuring sustainability.

Amendments to Defective Premises Act and Limitation Act

CIAT and its members are concerned about suggested changes to the Defective Premises Act (DPA) and Limitation Act, as set out in the current Building Safety Bill. By seeking to extend the period within which legal action can be brought from six to fifteen years on a retrospective basis, it will likely create new exposures on long completed projects overnight. This will include, possibly unintentionally, claims unrelated to fire safety aspects.

Projects that would not previously have fallen within the scope of the DPA, such as home extensions or refurbishment work, will fall within the scope of the DPA with an extended limitation period of fifteen years.

The proposed legislation will allow claims to be brought under the DPA that were previously considered statute barred having regard for the extension to the previous six-year limitation period. Defending such claims is likely to be problematic where records older than six years may have been destroyed in line with GDPR obligations and/or relevant employees long left the businesses. Some businesses will have ceased to trade and may be uninsured for such claims.

Run-off professional indemnity insurance cover may not be in place and even where it is, it typically will not extend beyond six years from cessation of the business and, in the case of fire safety related claims, may already exclude or limit cover for such claims. Further, it is unlikely that once the run-off period has expired, that extensions to this cover will even be available.

Professional indemnity insurers are closely monitoring the Bill and we can expect them to respond to the potential changes it will bring. The professional indemnity insurance market has hardened over recent years, with premium increases and insurers seeking to exclude or at the very least dramatically limit underwriting cover that includes fire safety risks. Due to policy exclusions, many design professionals will already be currently uninsured for the fire safety type of claim which the Bill intends to assist.

The proposed changes to the DPA also broaden the risks which insurers will be asked to cover and may force them to take commercial decisions on their appetite to cover claims under the DPA and Section 38 of the Building Act 1984 claims. This in turn may result in further policy exclusions or cover written on a more restrictive basis and higher premiums. This may also result in those professionals or former professionals faced with claims under the DPA having to pay those claims themselves, possibly without the means or documentation to do so. In some instances, this could result in insolvencies.

It would be sensible to consider what this is trying to achieve and then consult with the markets providing such products as “structural warranties”, “project insurance” and “professional indemnity insurance” (understanding what the differences are), to arrive at a workable solution which enables the market to meet the needs of its clients and avoiding unrealistic transfers of risk and giving comfort to both professionals and public alike.

It is important that any amendments in this regard do not introduce any unfair transfer of liability and that any culpability is accepted by and apportioned to those responsible. For example, there appears to be potential to confuse liability for workmanship, or product substitution.

We are unclear as to the rationale behind the proposal of extending the limit of time from 90 days to 1 year to provide the evidence to make a claim. It appears to be an excessive amount of time to investigate, take advice and prepare a claim for defects related to the DPA Act. There is potential here for extending periods of time thus incurring further and unnecessary costs when the process should be streamlined. Any time limit must be fair and proportionate.

BSB/Architects’ Act

The Bill is described as follows:

[“\[AS INTRODUCED\] A BILL TO Make provision about the safety of people in or about buildings and the standard of buildings, to amend the Architects Act 1997, and to amend provision about complaints made to a housing ombudsman.”](#)

In introducing this Bill, we recognise that there is a need to amend the Architects’ Act, but we consider that to reference it in the preamble, and embed it within the Bill was unnecessary. It focuses attention on one particular profession in favour of others who provide similar design services.

It is unclear why this needed to form such a prominent part of the Bill, and could have been featured in an appendix, particularly when the target audience is broader and all within the built environment must comply.

As such we consider that that amendments to the Architects' Act to meet the proposals should have been dealt with independently in line with all other professions. There is also a more fundamental question as to whether there is a need for an Architects' Act at all with the introduction of the BSB and the new regime.

CDM Regulations

It is important to recognise that the home nations' jurisdictions need to be looked at independently to ensure that they will work. We currently work to Construction (Design and Management) Regulations 2015 which is GB wide with an equivalent in Northern Ireland. However, the safety aspects proposed are only applicable in England and possibly Wales, with Scotland implementing some sensible measures in readiness following its robust conclusions and scrutiny of building failures. Further, whilst the proposals are prescriptive, there is no mention of CDM Regulations, how they are intended to work together, or the thinking behind using the same terms (titles and terminology) for roles that differ. It should also be recognised that with the UK Internal Market Act 2020, there will be professionals and particularly Principal Designers, Principal Contractors and Building Safety Managers working across the home nations' borders.

UK Internal Market Act 2020

It is also important to recognise that the United Kingdom Internal Market Act 2020 provides for equality across all home nations with the UK.

CDM/PD

We feel that the use of the descriptor, Principal Designer in the BSB and new regime will cause considerable confusion for clients and other stakeholders. There is no protection of this title, in that within the CDM Regulations, those who act as a Principal Designer with different criteria and obligations and those in practice who may simply describe themselves as the principal designer. There needs to be absolute clarity and understanding by all parties, particularly clients and stakeholders on who they are appointing and for what purpose. It is more effective and less confusing to describe "functions" rather than the use of titles to avoid uncertainty and enhance clarity.

Competences

We are pleased to see the requirement for defined competences for the Principal Designer (PD), Principal Contractor (PC) and the Building Safety Manager and for their re-accreditation within a set period of time.

We look forward to the secondary legislation in this regard and we are involved with the development of PAS 8671 Principal Designer. We are preparing our members to gain the necessary competences to undertake the role of a PD. However, it is important that the requirements for third party accreditation for regulated professionals such as ours are fair and equal to all as well as reasonable, proportionate and achievable. We support the need for such third-party accreditation which will bring additional surety to the public, but it must be properly focused and established.

CIAT's position, as outlined in its letter to Dame Judith Hackitt is for a joined-up approach and we are collaborating with our sister institutes to ensure standards and competences are fit for purpose.

CIAT would be pleased to provide further clarity or expand on any of the issues raised within its response.

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