

<b>Title:</b> Building Safety Directors  <b>Lead department or agency:</b> Department for Levelling Up, Housing and Communities	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 18/11/2022
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary Legislation

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
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**Cost of Preferred (or more likely) Option** (in 2019 prices)

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
N/A	N/A	N/A	

**What is the problem under consideration? Why is government action or intervention necessary?**  
 Under provisions in Part 4 of the Building Safety Act 2022, the 'accountable person' for a higher-risk building can be resident-led organisations with relevant repairing obligations such as Right to Manage Companies (RTM) and Resident Management Companies (RMC). When considering our approach to resident-led organisations that are accountable persons, we considered future harms such as:

- RMCs dissolving if lay directors fail to come forward or resign due to concerns around taking on responsibility for the duties and liabilities under the new regime (and therefore a risk that the building escheats to the Crown); and
- The potentially limited competence of some resident directors in charge of RTMs/RMCs to effectively manage and discharge their building safety duties resulting in poorly managed buildings.

The policy relates to the appointment of a person to directly support resident-led organisations in complying with their duties under Part 4 of the Building Safety Act 2022 to the board of directors of:

- Resident Management Companies through the proposed Resident Management Companies (Building Safety Directors) Regulations; and
- RTM Companies through proposed amendments to the (Model Articles) (England) Regulations 2009

We intend to make regulations for the following areas:

- The eligibility requirements for becoming a building safety director;
- what leaseholder engagement should take place prior to any such appointment taking place;
- the method of appointing and removing building safety directors; and
- the method of agreeing the remuneration of a building safety director.

It is necessary for Government to intervene as, without doing so, primary legislation laid to resolve the potential issues (above) will not have effect and many RMCs would be unable to appoint someone to support them in complying with the new building safety regime.

**What are the policy objectives of the action or intervention and the intended effects?**

The policy objective is to ensure clear lines of accountability for the management of building safety risks in higher risk buildings and by also ensuring that resident-led organisations continue to be empowered to manage their buildings by mitigating against the new duties in the regime acting as a deterrent to such organisations managing their buildings.

The desired effect is to provide the necessary framework, through amendments to the companies' articles, for these to enable such organisations to appoint a building safety director.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

We have considered the alternatives, namely that articles of association are amended individually by affected companies through special resolution in accordance with the Companies Act 2006 and that leases (for costs recovery) are varied by tribunals upon application under section 35 of the Landlord and Tenant Act 1987.

However, we do not believe this is viable due to the practical reality that resident-led organisations often encounter difficulties securing engagement from residents in relation to necessary decisions, and resident-led organisations may therefore find it slow / onerous to change their articles by special resolution (which requires 75% agreement).

**Will the policy be reviewed? It will be reviewed. If applicable, set review date:**

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	N/A	N/A

#### Description and scale of key monetised costs by 'main affected groups'

The regulation itself will not impose additional regulatory costs as it does not mandate that these companies must appoint a building safety director; costs will only arise if the organisation chooses to appoint a building safety director. If they do, costs will arise and be passed on to leaseholders through service charges as a result of the appointment of a building safety director. These could include: the cost of appointing the building safety director and the cost of the notification process with leaseholders prior to the appointment of a building safety director.

#### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	N/A	N/A

#### Description and scale of key monetised benefits by 'main affected groups'

We have not been able to monetise benefits for this policy area, but the key benefit is that resident-led organisations will continue to be empowered to manage their buildings to the new building safety regime. As such, the benefits of this policy align with the benefits of the new building safety regime<sup>1</sup>, which include reducing the risk of fires spreading and so reducing risks to life, health, and property.

#### Other key non-monetised benefits by 'main affected groups'

N/A

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	N/A
<p>The assumptions underpinning the analysis in this impact assessment are the best estimates available at the time of publication. The analysis assumes that the salary of a building safety director is similar to that of a property, housing, and estates manager, uplifted to account for the nuance of building safety issues and the bespoke quality of this role. The time estimates in this analysis are based on the time needed to complete similar activities as part of the greater building safety regime.</p>		

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>	
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<sup>1</sup> See full benefits in the published Building Safety Bill: Impact Assessment [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/901877/Draft\\_Building\\_Safety\\_Bill\\_Impact\\_Assessment\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901877/Draft_Building_Safety_Bill_Impact_Assessment_web.pdf)

<b>Costs:</b> N/A	<b>Benefits:</b> N/A	<b>Net:</b> N/A	<b>Score for Business Impact Target (qualifying</b>
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# Evidence Base

## Problem under consideration and rationale for intervention

1. Section 72 of the Building Safety Act 2022 provides that the accountable person for a higher-risk building (a building which is at least 18 metres in height or has at least 7 storeys) is the person with repairing obligations in respect of its common parts under a lease or by virtue of an enactment. This includes resident-led organisations such as Resident Management Companies (RMCs) and Right to Manage Companies (RTM companies).
2. When considering our approach to resident-led organisations that are accountable persons, we took account of the views of stakeholders which, in summary, set out that there may be issues with:
  - RMCs dissolving if lay directors fail to come forward or resign due to concerns around taking on responsibility for the duties and liabilities under the new regime; and
  - the potentially limited competence of some resident directors in charge of RTMs/RMCs to effectively manage and discharge their building safety duties.
3. To ensure that resident-led organisations continue to be empowered to manage their buildings and to mitigate against the new regime acting as a deterrent to such organisations, we have included an option for such organisations to appoint a building safety director to their company to support them with their Part 4 building safety duties<sup>1</sup>.
4. We intend to make regulations under section 111 of the Building Safety Act 2022 that imply terms into the articles of association for RMCs, and amendments to the RTM Companies (Model Articles) (England) Regulations 2009, to align the process of appointment for both types of organisations.
5. Section 112 of the Act amends the Landlord Tenant Act 1985 by implying terms in leases so that the costs of the appointment of a building safety director can be recoverable as a service charge under the lease. This enables RMCs and RTM companies to recover monies to cover the cost of the appointment of a director appointed for a building safety purpose whatever the terms of the lease.
6. Section 162 of the Building Safety Act 2022 provides that where an RMC or RTM company appoints a paid building safety director, all unpaid officers of the company will be relieved of their personal criminal liability for any offences committed under Part 4.

## Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

7. There is currently no accurate data on the number of in-scope buildings which are managed by resident-led organisations. Further to this, not all buildings managed by a resident-led organisation will require the appointment of a building safety director, as some will have the requisite skills and knowledge to meet their new responsibilities or will employ managing agents to support them to fulfil these responsibilities.

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<sup>1</sup> Where the resident-led organisation is the accountable person.

8. Due to this lack of available data, we are unable to estimate the total number of buildings that these costs may apply to. The approach taken in this impact assessment is to estimate costs associated with appointing a building safety director for a single representative resident-led building. It should be noted that the costs identified in this assessment are recoverable through service charges.

## **Description of options considered**

9. The consequences of not making regulations are that:
  - a) Resident-led organisations may not have appropriate expertise to fulfil the important Part 4 statutory duties;
  - b) Resident-directors of existing resident-led organisations could therefore resign (and new resident-directors be difficult to identify). Where numbers of directors fall below required minimums this risks the company dissolving, with the result that control of the building reverts back to:
    - i. third-party landlords, or
    - ii. where the resident-led organisation owns the freehold, the Crown. The Crown might choose to disclaim the freehold where there is no prospective buyer and this could leave the building uninsured, not maintained and with no accountable person.
10. We have considered the alternatives, namely that we 'do nothing' or that articles of association are amended individually by affected companies through special resolution in accordance with the Companies Act 2006 and that leases (for costs recovery) are varied by tribunals upon application under section 35 of the Landlord and Tenant Act 1987.
11. However, we do not believe either is viable. Intervention is needed to ensure resident led companies have the appropriate expertise to fulfil the important Part 4 statutory duties. Due to the practical reality that resident-led organisations often encounter difficulties securing engagement from residents in relation to necessary and may therefore find it slow / onerous to change their articles by special resolution (which requires 75% agreement from members of the company) we judge that Government needs to act in this instance.

## **Policy objective**

12. The policy objectives are to ensure clear lines of accountability for the management of building safety risks in higher risk buildings and also ensure that resident-led organisations continue to be empowered to manage their buildings through mitigating against the new duties in the regime acting as a deterrent to such organisations managing their buildings.
13. The desired effect is to provide the necessary framework through amendments to the companies' articles for these to enable such organisations to appoint a building safety director.
14. Regulations (through powers available in primary legislation) will amend the articles of association for RMCs and RTMs, to enable the appointment/removal of a building safety director to a resident-led AP organisation, in order to support them with complying with their Part 4 duties.
15. The responsibility for meeting Part 4 duties is to remain unaffected and there is to be no requirement for a building safety director to be appointed.
16. Regulations will set out the process with regard to:

- the eligibility requirements for becoming a building safety director;
- the type of leaseholder engagement that should take place prior to any such appointment taking place;
- the method of appointing and removing building safety directors; and
- the method of agreeing the remuneration of a building safety director.

## **Summary and preferred option with description of implementation plan**

17. The preferred option will be given effect through secondary legislation. Regulations are to be made under section 111 of the Building Safety Act 2022, with the purpose of these regulations implying terms into the articles of association for RMCs to enable the appointment of a building safety director.
18. We are also intending to make amendments to existing RTM Companies (Model Articles) (England) Regulations 2009 to align RTMs with our approach to building safety director appointments for RMCs. Amendments to the articles of association can be made under section 74 of the Commonhold and Leasehold Reform Act 2002. Regulations are to be laid in February 2023 and are intended to come into force in April 2023.
19. As is the case for articles of association more generally, affected organisations will be responsible for overseeing and complying with the new arrangements in line with their amended articles.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

20. The regulation does not impose extra costs as it does not mandate that buildings must employ a building safety director but creates the option to employ a building safety director if desired. As such, the costs set out below are possible costs arising from the appointment of a building safety director if a resident-led organisation chooses to do so:
- The cost of remuneration of a building safety director.
  - The cost of appointing the building safety director
  - The cost of completing a conflict-of-interest check when considering the eligibility for the appointment of a building safety director
  - The cost of the notification process with leaseholders prior to the appointment of a building safety director
21. These are costs that could be passed onto leaseholders through service charges.
22. The costs as set out are estimates for a single, representative building for a building where the resident-led organisation chooses to appoint a building safety director and in practice costs may deviate from those estimated here.

### Remuneration of the building safety director:

23. We do not expect there to be any additional costs associated with remunerating the building safety director. If the resident-led organisation does not choose to appoint a building safety director, they will still face the costs of complying with Part 4 of the Building Safety Act.

### Appointing the building safety director:

24. These resident-led organisations will be responsible for remunerating the building safety director if they choose to appoint one. The costs are recoverable under section 112 of the Act. The analysis assumes the salary of such a role to be similar to that of a property, housing, and estates manager, uplifted by 10% to account for the nuance of building safety issues and the bespoke quality of this role. The annual salary for the building safety director role is assumed to be £66,000. It is important to note that this is not the cost of building safety director for one building, simply a yearly average wage. A building safety director may have multiple buildings they manage in their portfolio, and/or may only spend a proportion of their time on a building in question.
25. The cost of appointing a building safety director is dependent on the style of recruitment the resident-led organisation uses.
- If an agency is used, the cost of recruitment is estimated to be 20% of the salary of the role, this is inclusive of searching, marketing, and sifting. This would be £13,200. To note, this is not a direct cost of the regulations, as hiring a building safety director is optional.
  - Additional to this, the organisation must also interview for the role, this is expected to take around 1 hour per applicant. We are unable to estimate the number of applicants. We have not modelled the equivalent monetised cost of the time taken to complete interviews as members of an RMC or RTM do not usually receive a wage. Instead, the resource requirement associated with this activity can be considered in hours.

#### Conflict-of-interest checks:

26. An individual must have declared all conflicts of interest to be deemed eligible to be a building safety director for a building run by a resident-led organisation. Regulations will set out a minimum set of considerations for an RMC/ RTM to take when identifying any potential conflicts of interest.
- We expect that in most cases the individual will populate and sign a conflict-of-interest self-declaration. We do not expect this activity to incur any additional time for the RMC/ RTM as this will form part of usual due diligence activities when directors are appointed.
  - This document will then be reviewed by the RMC/ RTM and, if necessary, may be shared with relevant legal entities to also review.

27. We do not expect the above activities to use any time or costs outside of the RMC/ RTM's usual activity and so have not estimated any costs for completing this check.

#### Notification process with leaseholders:

28. We expect that there are minimal costs for an RMC/ RTM associated with the notification process with leaseholders prior to the appointment of a building safety director.
- The time to disseminate material relating to the prospective building safety director to all leaseholders in a building is estimated to be 4.75 hours.
  - No additional time has been included in gathering the information to be shared with leaseholders as we assume this information to already have been acquired as part of the recruitment process. We assume negligible time to compile this information into one document.



29. We have not modelled the equivalent monetised cost of the time taken to complete these activities as members of an RMC or RTM do not receive a wage. Instead, the resource requirement associated with this activity can be considered in hours.

## **Risks and assumptions**

30. The assumptions underpinning the analysis in this impact assessment are the best estimates available at the time of publication.

31. The analysis assumes that the salary of a building safety director (£66,000) is similar to that of a property, housing, and estates manager, uplifted to account for the nuance of building safety issues and the bespoke quality of this role. The time estimates in this analysis are based on the time needed to complete similar activities within the new Building Safety regime. A central estimate and a range of costs of salary remunerations have been included to reflect a degree of uncertainty.

## **Impact on small and micro businesses**

32. Small businesses are defined in the better regulation framework guidance as those with between 10 and 49 full-time equivalent (FTE) employees. Micro businesses are those with between one and nine employees.

33. We expect that these resident-led organisations, which this policy aims to assist, are likely to be small or micro businesses.

34. The department considers that it would not be appropriate to exempt small and/ or micro businesses from this policy. Any exemption would involve an unacceptable compromise of safety and would be at odds with the policy aim of ensuring buildings are made safe.

## **A summary of the potential trade implications of measure**

35. As the only costs, if a building safety director is required, in this analysis are borne by some resident-led organisations, we do not expect there to be any potential trade implications of this policy.

## **Monitoring and Evaluation**

36. The effectiveness of this policy will be assessed by monitoring the number of resident-led organisations that can effectively appoint a building safety director and continue to manage their higher-risk buildings.

37. Indicators to measure whether the policy meets the intent could also be assessed by comparing the number of contravention notices issued by the regulator to resident-led organisations that appoint a building safety director with those that do not.

38. If it transpires that, for example, competency requirements for building safety directors need to be prescribed in regulations, we will make the necessary amendments to address the issue.

39. In addition, as part of the new, more stringent building safety regime, this policy will be subject to five-yearly review by an independent person to assess its effectiveness.