

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF STATE  
FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT AND THE HEALTH  
AND SAFETY EXECUTIVE IN RELATION TO THE BUILDING SAFETY  
PROGRAMME, INCLUDING ESTABLISHING THE BUILDING SAFETY  
REGULATOR IN HSE IN SHADOW FORM IN READINESS FOR ROYAL ASSENT  
OF THE BUILDING SAFETY BILL**

**1 Parties**

- 1.1 The Secretary of State for Housing, Communities and Local Government (MHCLG) and the Health and Safety Executive (HSE).

**2 Introduction and context**

- 2.1 Following the Grenfell tragedy in June 2017, the Government commissioned the Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt.
- 2.2 The Review found that the current regulatory system for building regulations and fire safety for high-rise buildings was not fit for purpose. The Government accepted all 53 of Dame Judith's recommendations.
- 2.3 The Government's response to its *Building a Safer Future* consultation (published April 2020) set out a package of intended reforms to the building safety regulatory system, including establishing a national Building Safety Regulator (BSR) within HSE, in shadow and then fully-fledged form.
- 2.4 As per the Government response, and in line with Dame Judith's recommendations, the Building Safety Regulator's role will be to make buildings safer through the implementation and enforcement of a stringent new regulatory regime for buildings in scope, stronger oversight of the safety and performance of all buildings and increasing the competence of those working across the built environment.

**3 Purpose**

- 3.1 This MoU sets out the services that HSE will provide in its role as the 'shadow' building safety regulator (before Building Safety Bill powers come into effect), how MHCLG will fund HSE to provide those services, and how HSE will assure MHCLG on money spent, services provided and outcomes achieved.
- 3.2 MHCLG and HSE have agreed a related Agency Agreement that will come into effect on the date of its signature, through which the Secretary of State for Housing, Communities and Local Government has delegated certain functions and powers to HSE, so that HSE can act as the shadow regulator and provide related services ahead of the Building Safety Regulator's new legal powers coming into effect. The Agency Agreement is at Annex A.

**4 Duration**

- 4.1 This MoU takes effect on the date of its signature and replaces the MoU signed by both parties in October 2019. This MoU will continue until both parties agree that it is no longer required, unless otherwise revised, terminated or suspended by either party.

**5 Principal Contact Points**

- 5.1 MHCLG's senior representative at official level for this MoU is the Director of Reform in the Building Safety Programme, and HSE's representative at official level is the Programme Director, Building Safety Regulator (BSR), also known as the BSR Programme Director.

## **6 Governance**

- 6.1 MHCLG's Deputy Director for the Building Safety Regulator Division and HSE's BSR Programme Director will meet monthly to monitor money spent and/ or services provided and/or outcomes delivered against the expectations set out under this MoU. There will also be a quarterly review meeting carried out by MHCLG's Director of Reform for the Building Safety Programme, MHCLG's Director of Building Safety policy, MHCLG's Deputy Director for the Building Safety Regulator Division, HSE's BSR Programme Director and HSE's Accounting Officer. Progress established in the quarterly review meeting will be reported to the Minister of State for Building Safety, Fire and Communities (working across MHCLG and Home Office) and - if deemed necessary by either party to the MoU - to MHCLG's Chief Accounting Officer, and/ or to the BSR Transition Board. A copy of the quarterly review report will be provided to the DWP Secretary of State and DWP Minister of State for information purposes only.
- 6.2 To support this the HSE will provide MHCLG with monthly updates (or less frequent updates if specified by MHCLG) on:
- progress in implementing a BSR Transition Plan that has been agreed by MHCLG Ministers;
  - actual and projected spend by HSE on implementing the BSR Transition Plan broken down by the key activities to a level of detail agreed between both parties, including timely advice on expected over-spend or under-spend against the agreed budget; and
  - any other supporting material/information necessary to inform financial planning and funding bids.
- 6.3 This information will also be shared with the Arms' Length Bodies Sponsorship Team in the Department for Work and Pensions (DWP). More information on the funding arrangements can be found in section 8 of this MoU.
- 6.4 Should there be any disagreements, they will be resolved through the route set out in section 12 of this MoU.
- 6.5 Day to day governance of the BSR Programme will be via the existing programme governance arrangements i.e. BSR Programme Board, BSR Transition Board and BSP Portfolio Board, or any replacement or amendment to these boards as agreed between the parties from time to time.

## **7 Services Provided**

- 7.1 HSE will lead the work to establish the new Building Safety Regulator, first in shadow form, and then in fully fledged form following commencement of the required legislation. This will be undertaken in accordance with a BSR Transition Plan agreed by MHCLG Ministers.
- 7.2 The BSR Transition Plan is a living document, which will be agreed with Ministers in Summer 2020 and later updated by officials. The Transition Plan will be reviewed, agreed and governed by the governance boards outlined in paragraph 6.5. The Transition Plan will set out activities or products to be performed by HSE and the timescales by which specified products or activities will be delivered or commenced. The Transition Plan will include but not be limited to the following activities or products:
- Support MHCLG to publish and enact the Building Safety Bill and associated secondary legislation;

- Advice to MHCLG and DWP Ministers during Summer 2020, to be co-produced with MHCLG, on the BSR Transition Plan. The BSR Transition Plan will state when HSE expects each of the BSR's three regulatory functions to go live, and when HSE expects each function to operate at scale;
- Advice to MHCLG and DWP Ministers during Summer 2020, to be co-produced with MHCLG, on the way in which the regulator's oversight function will be delivered in practice;
- Estimates of the likely cost of establishing and running the Building Safety Regulator during 2020/21, 2021/22 and in future years, to inform the Impact Assessment for the Building Safety Bill, business cases for the BSR and bids for BSR funding including for Spending Review 2020;
- Development and dissemination prior to Royal Assent of early advice to industry, regulators and residents on what they should do to prepare for the new regulatory regime;
- A communications and engagement plan specifying in detail which narratives, events, publications, activities and announcements will be used to establish the shadow regulator as the visible and vocal leader of the reformed regime, in the eyes of industry, other regulators, residents, leaseholders and other key partners;
- An assessment of the key gaps in the capacity and capability of key regulators and industry players to fulfil their duties under the new regulatory regime, and recommendations for action that can be taken in good time before Royal Assent to begin to fill those gaps;
- Advice to MHCLG and DWP Ministers on the timetable and process for the appointment of the Chief Inspector of Buildings; and, once agreed by ministers, running a competitive process to secure high-calibre candidates and appointment of a strong Chief Inspector of Buildings;
- New training, guidance and standards for industry to be specified in the plan;
- Policy trials and pilots of novel aspects of the new regulatory regime, notably gateways and safety cases;
- Models for safety case reviews and materials;
- Operational policy, procedure and guidance for sanctions, intervention and enforcement;
- The Building Safety Regulator's own staffing, operational, IT and other organisational capabilities;
- Advice to MHCLG Ministers and officials on building safety and performance pursuant to the functions delegated to HSE through the Agency Agreement (annexed) and HSE's existing function and powers where they relate to building safety and performance. This will include providing senior representation on official and ministerial Boards overseeing related work.

## **8 Financial Arrangements**

- 8.1 MHCLG will transfer to HSE, through the DWP (HSE's Sponsor Department), an annual budget covering the full cost associated with HSE's contribution to the Building Safety Programme, including its work to establish the shadow Building Safety Regulator (BSR). The full cost of HSE activities is calculated in accordance with Annex 6.1 of Managing Public Money.

- 8.2 Once HSE has received its annual budget, HSE will provide MHCLG with monthly updates (or less frequent updates if agreed by both parties) on (1) actual expenditure and forecast expenditure, including early warning of any expected over-spends or under-spends; and (2) actual delivery and forecast delivery of agreed products, services and outcomes.
- 8.3 MHCLG and HSE have agreed a budget of up to £16.4million to cover the financial year 2020/2021. This funding has been ringfenced and will be transferred to DWP at Winter Supplementary Estimates 2020, with the amount to be transferred adjusted to match HSE's updated spend forecast.
- 8.4 HSE will use its best endeavours to implement the three functions of the building safety regulator to the timetable set out by Ministers, using the funding provided by MHCLG for 2020/21 and within the future funding envelope secured by MHCLG following relevant Spending Reviews. Funding provided to HSE by MHCLG for its BSR function will not be used to cross-subsidise other HSE functions, nor will HSE use its funding provided by DWP for its wider functions to subsidise its BSR functions. HSE will seek to realise, where possible and appropriate, efficiencies and synergies in delivering these functions. MHCLG and HSE will monitor progress against the agreed delivery timetable through open and regular financial reporting as per paragraphs 8.2 and 8.6. Any current or future year forecast funding pressure which could result in failure to deliver against the agreed scope and timetable will be formally raised with MHCLG officials through these meetings. MHCLG is responsible for securing any additional funding that may be required to deliver the BSR functions.
- 8.5 MHCLG funds will be delegated to HSE's Accounting Officer who is responsible for ensuring that they are used in accordance with the Accounting Officer responsibilities as per Chapter 3 of Managing Public Money and the delegated authority from DWP's Principal Accounting Officer. This includes ensuring value for money and that any spend which requires HM Treasury approval (e.g. novel or contentious) and/or is part of the current Cabinet Office spending controls receives the necessary approval in advance of making any financial commitments.
- 8.6 HSE will use its best endeavours to spend within any agreed budget under 8.1 and the agreed budget for financial year 2020/2021. If HSE's assessment of expenditure for the relevant period is materially different from the agreed budget (either because a larger budget is needed to deliver the agreed Services or less funding is required), HSE will alert MHCLG as soon as reasonably practicable. If an alteration in the annual budget cannot be agreed, the issue promptly escalated for resolution under paragraph 12 (Resolution of Disputes).

## **9 Amendments to the MoU**

- 9.1 The Annexes to this MoU can be added to or amended by a supplemental MoU. This must be agreed by the SRO of MHCLG's Building Safety Programme and by the Chief Executive of HSE. Any changes to the BSR Transition Plan may be highlighted and agreed by the principal contacts set out in section 7, subject to the agreement of MHCLG Ministers.

## **10 Confidentiality and Information Sharing**

- 10.1 Each Party to this MoU will:
- Provide to the other Party any information in its possession that may be reasonably requested by the other, subject to necessary confidentiality constraints, safeguards and statutory rules on disclosure.

- Ensure that data is managed and controlled in accordance with the requirements of the GDPR Regulations and the DPA 2018.
- Consult the other Party before making to any third party any disclosures of information under the Freedom of Information Act 2000.
- Seek the approval of the other Party before externally publishing any information resulting from the use of information received from the other Party, and such approval will not be unreasonably withheld.

## **11 Confidential Information**

- 11.1 Each Party shall treat all confidential information belonging to the other Party as confidential and safeguard it accordingly and shall not disclose any confidential information belonging to the other Party to any other persons without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the MoU or where disclosure is otherwise expressly permitted by the provisions of the MoU.

## **12 Resolution of Disputes**

- 12.1 Should a dispute of any kind whatsoever arise between the Parties in connection with or arising out of the MoU the parties shall continue to perform the services and obligations outlined in the MoU with all due diligence unless otherwise agreed in writing.
- 12.2 All disputes between the parties arising out of or relating to this MoU shall be initially dealt with at official level with any dispute referred to any of the parties in the first instance.
- 12.3 If a dispute cannot be resolved within 14 days, it shall be escalated to the Director General of the MHCLG BSP and the Chief Executive of HSE to resolve.

## **13 Conflict of Interest**

- 13.1 All parties are responsible for ensuring that no conflict of interest arises in connection with the Services to be carried out under this MoU. All parties should be consulted if there is any uncertainty about whether any such conflict of interest may exist or arise, and each Party shall act on any reasonable advice, recommendation or requirement on such matters.

## **14 Review**

- 14.1 There are arrangements for quarterly delivery reviews of HSE's performance against the agreed deliverables within the annex(s) by the responsible officials. This will require HSE to regularly update the information specified in section 6 of this MoU.
- 14.2 From the date of agreement, this MoU will be reviewed annually by the responsible officials in advance of each financial year to ensure the purpose of the MoU is being achieved.

## 15 Signatures

The Parties have signed this MoU

Signed:



Name:

Chandru Dissanayeke

Position:

Director, Building Safety Reform

Date:

19 April 2021

for and on behalf of the Secretary of State  
for Housing, Communities and Local  
Government

Signed:



Name:

Sarah Albon

Position:

CEO, Health & Safety Executive

Date:

5<sup>th</sup> May 2021

for and on behalf of the Health and Safety  
Executive