International review of regulatory models for building safety

Introduction

The Welsh Government asked the Wales Centre for Public Policy (WCPP) to summarise the international evidence on regulatory models for building safety, ahead of the drafting of legislation to reform building safety regulation.

This briefing contains a summary of relevant literature and the content of a roundtable discussion that was held on 16th December 2022 with academic experts and Welsh Government officials.

Context

Building regulation powers were devolved in 2011, granting Welsh Government ministers the power to make changes to the regulatory building safety system in Wales. The Welsh Government is reforming the current system, according to a Programme for Government commitment to ensure 'people feel safe and secure in their homes' (Welsh Government, 2021a:12).

In 2021, the Welsh Government issued a White Paper on reforming the legislation and culture around building safety (Welsh Government, 2021b). This drew on findings from the Hackitt Review, the UK Government-commissioned independent inquiry into building regulations and fire safety following the Grenfell disaster (Hackitt, 2018), and the Welsh Government's Building Safety Expert Group report 'Road Map to Safer Buildings in Wales' (Building Safety Expert Group, 2019).

Currently in Wales, building safety is regulated by local authorities and the fire and rescue services.

Single versus multiple regulatory models

The Welsh Government's White Paper identified two options for reforming the current regulatory system:

1. Move to a single, integrated model involving either establishing a new national building regulator or appointing a lead regulator from existing regulators; or
2. A multiple regulator model, either maintaining and strengthening the current regulatory regime or establishing a joint committee to coordinate and oversee the multiple regulators involved (Welsh Government, 2021b).

The experts participating in the roundtable acknowledged a need for:

- Obtaining comprehensive baseline data, including the total number of buildings, the number of buildings that may be affected by regulatory change, the number of people

involved in enforcement and related activities, as well as statistics on inspections, violations observed, and enforcement actions undertaken;

- Clearly defining the regulatory objectives; and
- Determining how to measure regulatory effectiveness against the objectives.

Benefits and risks of single and multiple regulatory models

Neither approach is necessarily better, and the choice between them is dependent on contextual features and priorities. However, it was suggested that the establishment of an overarching committee would improve visibility and engagement with the Accountable Person (AP).
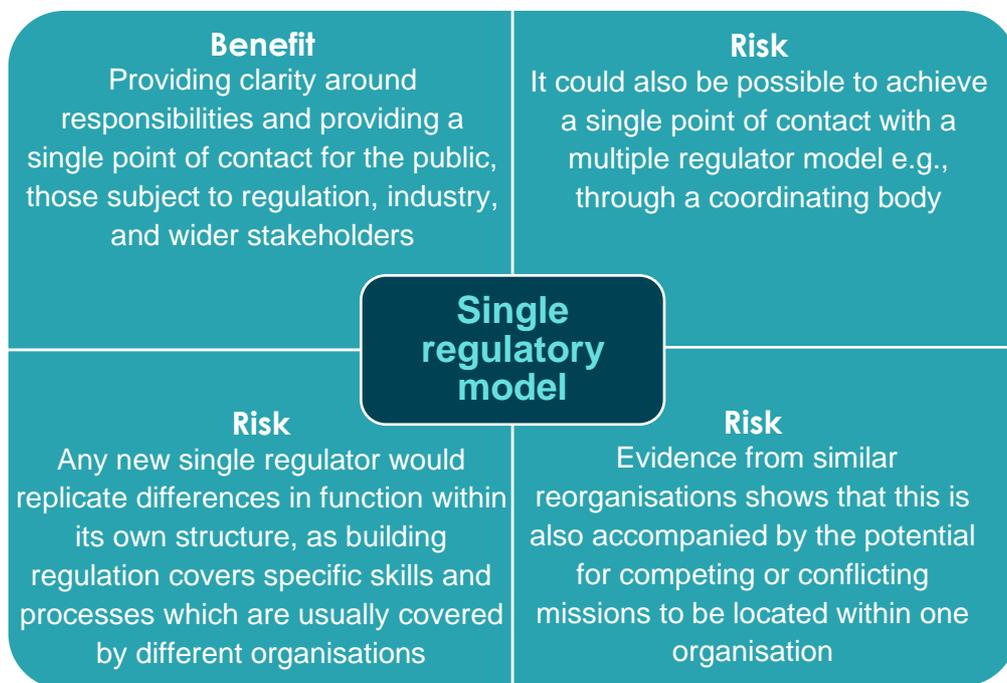
The associated benefits and risks of **single and multiple regulatory models** are shown in Figures 1 and 2, respectively.

Achieving the aims and mitigating the risks of reorganisation

The following functions were identified by experts as being important to centralise to achieve the aims of the reform and improve the functioning of the current system:

- Providing a single point of contact: a 'one-stop-shop' for owners and occupiers, industry partners, building owners and developers, and the wider public;
- Responsibility for collection and collation of data on buildings and conducting data analysis to identify potential issues;
- Developing a register for qualified assessors, and identifying whether sufficient capacity and competency to assess building safety exist in the system. The register would

provide oversight of the standards and process for validating assessor qualification;

- Maintaining a register which lists buildings, responsible people and organisations; and
- Establishing and maintaining clear lines of accountability and oversight.

A 'centralised coordinating committee' is an alternative to either single regulation, or the

Benefit	Risk
Providing clarity around responsibilities and providing a single point of contact for the public, those subject to regulation, industry, and wider stakeholders	It could also be possible to achieve a single point of contact with a multiple regulator model e.g., through a coordinating body
Single regulatory model	
Risk	Risk
Any new single regulator would replicate differences in function within its own structure, as building regulation covers specific skills and processes which are usually covered by different organisations	Evidence from similar reorganisations shows that this is also accompanied by the potential for competing or conflicting missions to be located within one organisation

Figure 1: Benefits and risks associated with a single regulatory model

multiple regulator system, which could be left as it is. Such a committee could offer coordination to ensure greater overall regulatory efficiency (including controlling the costs of regulation) and make regulatory gaps and blind spots less likely to occur through coordinated regulatory practice.

> **The precise organisational form that a regulator takes may be less critical than ensuring that the regulator has adequate resources.**

Ensuring sufficient capacity

The precise organisational form that a regulator takes may be less critical than ensuring that the regulator has adequate resources. Sufficient capacity and resources are critical, so an investment in capacity is likely to be needed.

Coglianese (2018) argues for both sufficient capacity and skills within the regulatory workforce.

Benefit	Risk
A multiple regulator model would avoid the need for restructuring. Transition costs can be expensive and organisational restructuring difficult to manage	The potential for ongoing gaps or overlap in responsibilities and a consequent lack of clarity. Clear roles and accountability would be needed

Multiple regulatory model

Risk	Risk
Multiple regulators can cause a duplication in inspection regimes. Excessive inspection can also disincentivise construction and the purchase of buildings	The possibility that the interests of the regulators will conflict

Figure 2: Benefits and risks associated with a multiple regulatory model

Although regulated entities will have a better understanding of their own operations and would be able to find cost-effective solutions, their incentives are not always fully aligned with a commitment to achieving the safest result. Therefore, it is important to ensure that the inspector has sufficient skills when reviewing risk management planning and inspecting regulated entities.

Enforcement and sanctions

Key theme 1: Using enforcement and sanctions to foster behavioural change

Being clear about liability

There is a need for clear structures of accountability. The design and construction, and occupation phases typically involve different actors and are often controlled under different legislation. Complexities can arise when the ultimate building owner is not involved in decisions about design or construction. Clear information trails are critical in such instances.

Educating rather than sanctioning residents

Placing greater financial responsibility on residents could place an undue additional burden on tenants who may come from disadvantaged backgrounds. There was a clear steer from the experts to focus any enforcement and sanction action on the AP, who should then work with the residents to educate them on building and fire safety.

Perceptions of sanctions

The fear of being sanctioned may motivate people to comply with regulatory requirements. Governments can, therefore, set a precedent and publicise cases of severe sanctioning (naming and shaming).

Technology for targeting

Regulators have to be strategic to maximise their effectiveness, so identifying 'known risks' is important. Using new technologies and statistical modelling techniques can identify where these common risks are likely to occur. Barriers to using new technologies could include the need for accurate and up-to-date information.
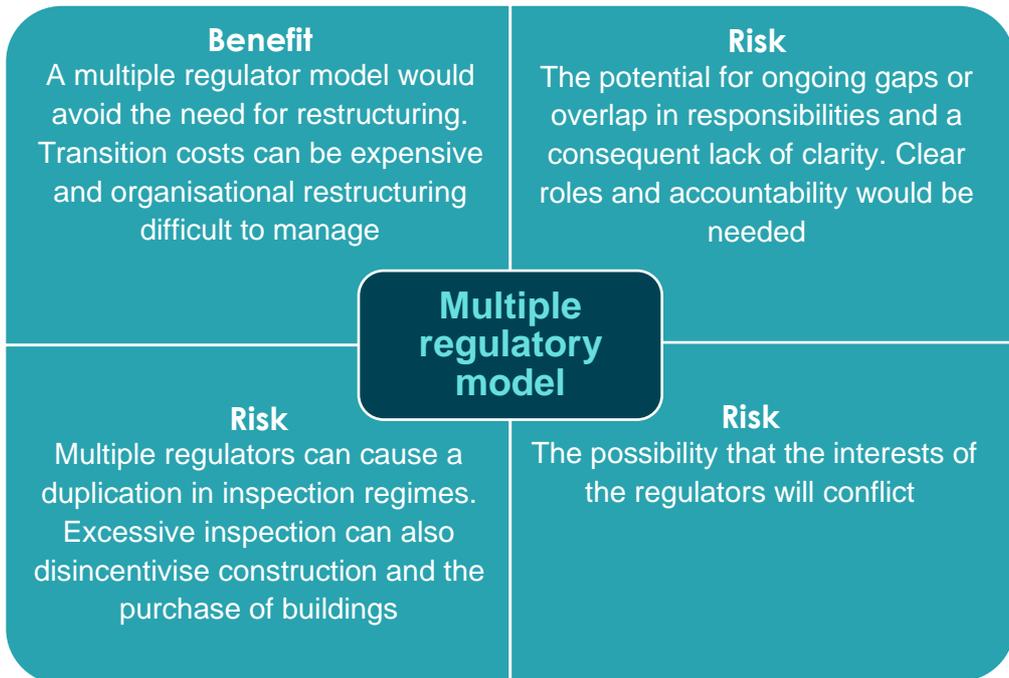
Key theme 2: Funding of enforcement and sanctions

The experts provided examples of how regulators can be structured to fund their operations at least partially through fees. At a national level, New Zealand collects a building levy on all consented work over a threshold value (New Zealand Government, 2022). This levy supports investment in:

- Policy, technical rules and guidance, operational policy advice and service design;
- Information and education;
- Service delivery (compliance and enforcement); and
- Monitoring and reporting.

Increasing fines for regulatory failure or noncompliance was also discussed. Many countries employ a series of steps, with increasing levels of fines, advancing through the legal system and culminating with the potential for legal action against the property owner.

> **If the regulated entity acts in good faith, so does the regulator. If the regulated entity does not cooperate, deterrence strategies can be used.**

Key theme 3: Most and least effective methods of enforcement and sanctions

Enforcement style is also an area for consideration. Responsive regulation, for example, is an approach to enforcement that responds to the actions of the regulated entity. If the regulated entity acts in good faith, so does the regulator. However, if the regulated entity does not cooperate, deterrence strategies can be used to encourage compliance. These are graduated and escalate based on the behaviour of the regulated entity.

Carrigan and Harrington (2015) summarise different enforcement approaches, providing an overview of responsive regulation and the relationship between decisions made by regulators and their effects on regulated entities (2015):

- **Targeting** can be used by regulators with limited enforcement resources. This focuses enforcement efforts on firms with poor compliance by issuing larger fines and engaging more frequently in inspections;
- **Deterrence measures** can be used to dissuade regulatory violations through the threat of sanction. The type of deterrence chosen will have implications for its enforcement approach;
- Similarly, **legalistic enforcement** is a deterrence-based approach that relies on strict, rules-based application of notices, fines, and other mechanisms to sanction infractions and deter any future violations;
- **Accommodative enforcement** involves regulators advising and cooperating with regulated entities through education, negotiation, sympathy and persuasion; and
- **Responsive enforcement** uses a 'tit for tat' strategy, in which inspectors cooperate when firms do so but impose escalating sanctions when they do not.

Most regulatory systems involve at least one of these approaches. Getting the correct mix depends on the main priorities that regulation wishes to focus on and the context in which the regulator functions.

Conclusion

Although neither a single nor multiple regulatory model is necessarily better, experts suggested that the establishment of an overarching committee acting as a single point of contact would improve visibility and ease of engagement with the AP.

More critical than the organisational form that the regulator takes is ensuring that it has adequate resources for data collection and analysis, monitoring, problem solving and sanctioning. The functions of the new regulator will require skills and capacity beyond those already present in the current system.

The use of a national registration system may help to determine which buildings are currently managed and also target APs with enforcement and sanctions. However, there is a need for data on the number and type of buildings across Wales, and therefore the scale of regulation needed.

Enforcement and sanctions are only one part of the toolkit needed to address noncompliance with building safety regulations in Wales. Discussions on how to change behaviour focused on educating residents rather than sanctioning them. Perceptions about sanctions are also important: the fear of being sanctioned may motivate people to comply with regulatory requirements. Finally, general deterrence models, such as 'naming and shaming', could be an appropriate enforcement approach when resources are limited. In summary, there is no one set of enforcement and sanctions that should be used; rather, the choice and subsequent effectiveness will depend on the environment within which they are to be applied.

References

Carrigan, C. and Harrington, E. (2015). **Choices in Regulatory Program Design and Enforcement. Penn Program on Regulation**. Retrieved from https://www.law.upenn.edu/live/files/4706-carriganharrington-ppr-researchpaper062015pdf

Coglianese, C. (2018). **Listening, Learning, Leading: A Framework for Regulatory Excellence**. Penn Program on Regulation. Retrieved from https://kleinmanenergy.upenn.edu/wp-content/uploads/2020/08/Listening-Learning-Leading_Coglianese-1.pdf

Coglianese, C. (2022). **Building Better Compliance**. Texas Law Review Online. 100: 192-214.

Gunningham, N. (2017). **Compliance, Enforcement and Regulatory Excellence**. Penn Program on Regulation. Retrieved from https://www.law.upenn.edu/live/files/4717-gunningham-ppr-bicregulatordiscussionpaper-06

New Zealand Government. (2022). **Building Levy**. Retrieved from https://www.building.govt.nz/building-officials/building-levy/

Welsh Government. (2021a). **Programme for Government: Update**. Retrieved from https://gov.wales/programme-for-government-update

Welsh Government. (2021b). **Safer Buildings in Wales: A Summary Version of the White Paper**. Retrieved from https://gov.wales/sites/default/files/consultations/2021-01/consultation-quick-read-version.pdf

Find out more

For the full report see Morgan, C., Tilley, H., Haines-Doran, T., Bristow, D. (2023). *International review of regulatory models for building safety.* Cardiff: WCPP

About the Wales Centre for Public Policy

Here at the Centre, we collaborate with leading policy experts to provide ministers, the civil service and Welsh public services with high quality evidence and independent advice that helps them to improve policy decisions and outcomes.

Funded by the Economic and Social Research Council and Welsh Government, the Centre is based at Cardiff University and a member of the UK's What Works Network.

For further information contact:

Charlotte Morgan

+44 (0)29 2087 5345

info@wcpp.org.uk