

# **LGA Response to MHCLG consultation on Building a Safer Future: Proposals for reform of the building safety regulatory system**

July 2019



## **About the Local Government Association**

1. The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government. We are a politically-led, cross-party organisation, which works on behalf of councils to ensure local government has a strong, credible voice with national government.
2. We aim to influence and set the political agenda on issues that matter most to councils so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

## **The LGA's proposal**

3. The LGA welcomes the Ministry of Housing, Communities and Local Government's (MHCLG) consultation. The fire at Grenfell Tower in June of last year exposed systemic failures in the building regulation system, which Dame Judith Hackitt's review of building regulations and fire safety subsequently made ambitious recommendations to address. It is right that we seek to correct these failures, to prevent a fire like the one at Grenfell tower from ever occurring again.
4. We have submitted responses to the questions in the consultation document, which are detailed in the next section. However, given that the document is not very detailed on particular key issues, we have also set our own, over-arching proposal for building safety reforms below.

## **Outcomes**

5. Reform needs to be outcomes-focused. Government must put forward a clear proposal for which outcomes the new regulatory framework hopes to achieve and how it will determine whether they have been met.
6. In developing these reforms consideration needs to be given to whether the approach is the best way of delivering the outcomes. There may be a need, as costs and practical details become clearer, to consider whether it is possible to deliver the desired outcomes by strengthening the existing regulatory system. Government therefore must commit to a regulatory impact assessment before finalising any proposals.
7. The "outcomes" to which we refer are distinct from the success criteria which have been defined for the work of the Joint Regulators Group, which are concerned with how the Government might implement their proposal to "Build a Safer Future".
8. We are calling for an additional outcomes framework, to enable us to assess whether a safer future has been achieved. This might include – but is not limited to – the following:

# Submission

- Fatalities have decreased in all buildings
  - The likelihood of major fires has decreased
  - Dutyholder understanding of the risks in their buildings improves
  - There have been any ripple effects on buildings out of scope
  - Regulators can spend sufficient time on enforcement activities
  - Regulators can apply sanctions more effectively
  - Complaints are escalated more effectively
  - The quality of construction works carried out improves
9. The LGA would be glad to work with the Government on this important task.

## **Principles**

10. In order to achieve positive outcomes for residents and buildings, any reform needs to follow the following principles:

- Ensure that residents' concerns are heard and acted upon
- Ensure that buildings can be considered as a whole, irrespective of the use to which individual parts of them may be put, particularly where a residential block sits above commercial workplaces
- Place responsibility for safety on the building owner
- Is proportionate to the risk posed by a building to residents, taking into account such factors as the vulnerability of residents - height alone is too crude a determinant
- Avoids placing excessively bureaucratic demands on buildings which are not considered high risk, whilst still capturing accurate and useful information on these buildings
- Close the existing gaps in fire safety legislation
- Avoid disrupting existing effective enforcement in buildings which are out of scope. It is important to ensure that the existing enforcement of safety in Houses of Multiple Occupation (HMOs) by local environmental health officers is not undermined by any new arrangements
- Ensure that the Fire and Rescue Service (FRS) continues to be the enforcement body for fire safety, to ensure against creating a position where the body responsible for enforcing requirements for other equipment used by firefighters (e.g. dry risers) is a different body to the one which has to use that equipment in the event of a fire
- Cover structural safety as well as fire
- Maintain local accountability – buildings are not products; they exist in a place and help to form the fabric of our communities. Local government plays a vital role in place-shaping and ensuring the safety and wellbeing of their communities, and they are accountable to residents for this
- Create a flexible system which can expand over time, to account for the lack of capacity and expertise (particularly fire engineering expertise) in the system currently. The scope will also need to be flexible enough to adapt if any new problems or technical innovations emerge in the future. Therefore, the scope should not be fixed in detail in primary legislation
- Avoid creating a two-tier system which leaves buildings under 18 metres under-protected and undermines other building control and fire service activities.

## **How this could be done**

### a) Addressing the shortcomings of the existing system

11. We agree that the difficulties that have been experienced in addressing the safety issues with cladding (and others) since the Grenfell tower fire have been caused by confusion over the interface between the Housing Act and the Fire Safety order (FSO).

12. Historically the Fire Safety Order has been interpreted as only applying to communal areas inside buildings, thereby omitting not only cladding but implications for building-wide safety from activities inside flats that compromise compartmentation, be they barbecues on balconies, physical breaches of compartmentation (drilled holes etc.) or storage/hoarding of flammable materials).
13. Meanwhile historically the Housing Act has tended to be applied as if it did not cover blocks of flats in which there are many separate dwellings.
14. Although enforcement efforts since the fire at Grenfell tower suggest that both pieces of legislation can be utilised to address issues around flammable cladding, the manner in which each has been used in practice has left flammable cladding on the side of tower blocks and other fire and structural issues effectively out of the scope of legislation. This is obvious from the fact that it has been necessary to revise the Housing Health and Safety Rating System (HHSRS) to ensure these hazards can be addressed and to establish the Joint Inspection Team to overcome the lack of experience in enforcing around this issue.
15. Any new legislation needs to be clear on which requirements apply to which parts of which buildings, and on the roles and responsibilities of different regulators.

b) Scope of the new system:

16. The question of the scope of the new legislation is a key one. As set out in our principles above, any new legislation must avoid creating a two-tier system, where focus on buildings above a certain height creates unintended consequences for regulation of the rest of the built environment. Moreover, the system must be designed so that enforcement is holistic and proportionate to a building's risk (of which height is not an adequate measure).
17. We therefore propose that a new Building Safety Act should:
  - Deal with fire and structural safety in **all** residential premises, with the exception of Houses in Multiple Occupation (HMOs). However, there would be greater scrutiny for certain prescribed buildings, e.g. the highest risk new and existing buildings would be subject to safety case requirements
  - Allow for any building to be reported to the regulator, with sanctions applying for non-compliance
  - Remove the ability for dutyholders to choose their own regulator, in respect of any buildings
18. This would have the following implications for the Fire Safety Order:
  - The Fire Safety order will no longer apply to any residential buildings, including buildings where residential occupation is only one of several uses
  - For these buildings, the key principles of the FSO will be absorbed by the new Building Safety Act. This will ensure the FSO's approach to risk management still applies, and will allow fire and rescue services to continue to play an active role in the regulation of residential buildings during their occupation stage
  - It will continue for workplaces only as a stand-alone piece of legislation, as it still provides an adequate framework for these buildings
19. It would have the following implications for the Housing Act:
  - For all non-HMO buildings, fire would be removed from the Housing Act as one of the 29 hazards covered by the HHSRS
  - The HHSRS would still be used to identify and enforce against other key hazards, including e.g. electrical and gas safety.

- For HMOs, the HHSRS would continue to apply in its entirety. (We are aware of concerns in the FRS over the treatment of fire in the HHSRS. We suggest this is best addressed through the review of the HHSRS).

20. This approach has the following benefits:

- The Act would allow for differentiation between new and existing buildings and at different Gateways, to take account of the risks associated with different types of buildings, and the issues associated with implementing the proposed requirements in existing buildings.
- The Act would allow for comprehensive coverage of residential buildings, including new-build domestic premises, where clear evidence is emerging of fire stopping problems across whole estates
- This would avoid imposing unnecessarily onerous requirements (e.g. safety case requirements) on buildings which are not typically considered high-risk, e.g. existing individual domestic dwellings
- This flexible approach to scope allows duty holders to be spared any burden that is not commensurate to the risk to residents of their buildings while ensuring that those burdens that are imposed reflect experience.

21. However, there should be flexibility as to which buildings may be subjected to which requirements:

- The initial scope should be determined by **risk**, for which height is a crude measure. For example, the Government's own FSEC toolkit provides a robust and validated approach to risk assessment, which could be used as a starting point for determining which buildings are subject to the most onerous requirements
- The scope of various requirements should be set out in a schedule to the Bill (which could include a timetable for extending the scope) and be capable of being extended either by order or by the regulator, following consultation with the Government and duty holders.
- The regulator should also have the ability to call individual projects into scope if local building control or FRS have cause for serious concern about them

22. This will have the following benefits:

- It delivers the required flexibility to take a gradual approach and to refine it in the light of experience and as new issues emerge.
- It avoids creating a two-tier system that would exist if some residential buildings were definitively out of scope. Instead, dutyholders in all buildings will be subject to the right incentives – from the outset – to ensure compliance and a focus on safety

### C) Housing Act 2004

23. We think that too great a change to the Housing Act risks undermining the 15 years of successful safety enforcement in HMOs under this legislation. We therefore propose that the Housing Act remains in operation in respect of HMOs, and that the enforcement activity that has been conducted under it by local housing authorities since it was passed should continue as before.

24. For non-HMO buildings, changes need to be made to the assessment of risk associated with fire. The HHSRS risk assessment process is seriously flawed, in that - unlike the Fire Safety Order - it does not allow regulators to assume there will be a fire and then look at how its spread can be contained and escape provided. Instead, it requires the assessor to make its recommendations based on whether there have been fires in the past.

25. This creates a slow, onerous, and ultimately weak enforcement process, particularly in respect of large, multi-dwelling residential buildings. It also leads to contradictory conclusions being reached by environmental health officer using the Housing Act and FRS enforcement under the FSO. This issue must be considered in the review of the HHSRS.
26. Pending these changes, however, we have recommended that enforcement of fire safety in non-HMO buildings is brought into the new legislation, which should incorporate the principles of the Fire Safety order. The Housing Act will also continue to apply to these buildings in respect of the other 28 hazards contained in the HHSRS, and there should be a Duty to Cooperate placed on the enforcement agencies working within a given building. This will ensure that e.g. electrical safety issues with implications for fire safety can be reported by officers enforcing the Housing Act, to officers enforcing fire safety under the new legislation (i.e. the fire and rescue service).

### **The new regulator**

27. A lack of detail within the proposals has made it difficult to respond to some consultation questions – particularly on the form of the proposed national regulator. We have therefore set out our own proposal on the form and functions of the regulator below.
28. Given the wording of para 319,<sup>1</sup> of the consultation document, we assume that when it refers to the Building Safety Regulator it refers to a new national level body that will not carry out inspections and enforcement itself.
29. This is in line with our proposal as outlined below. However, much of the consultation document refers to powers held by or actions undertaken by the BSR. **It is therefore important to clarify that we do not envisage the BSR taking enforcement action or carrying out inspections but we DO envisage the BSR holding powers which can be delegated to or utilised by local authorities acting in various regulatory roles (Planning, environmental health, and building control) the HSE or FRSs.**
30. Where specific questions in the consultation ask about the role of the building safety regulator, our answers refer to the BSR as set out above. Any references to the BSR in our answers refer to the local regulators delivering inspection and enforcement on the ground.
31. None of our answers should be taken as endorsing the idea of a standalone regulator or national agency delivering regulatory services that have been stripped out of, or which replace, the existing functions of local authorities and/or fire and rescue services.

### Regulator functions

32. The national regulator (NR)'s core function should be ensuring the effective working of the regulatory system, including ensuring that existing regulators (councils, fire authorities and HSE) work effectively together and in their individual roles. However, delivery of enforcement functions will continue to be delivered by these existing local regulators.
33. To this end it would:
- Produce guidance:
    - on joint working and on individual working for local front-line regulators. This should include acting as a conduit for local regulators to share best practice
    - for duty-holders, on meeting requirements.

- for those responsible for professional competence in relation to buildings in scope.
- Monitor the system by:
  - Holding a central register of buildings in scope, to which local authorities would submit information.
  - Building, hosting and monitoring a new system to channel local authority notifications, plans, consultations, certificates etc. into a new digital record (applications and registrations to be submitted locally and then fed into the system at local level).
  - Enabling this system to notify parties of actions to be taken throughout the process, e.g. comment or consultation from fire authorities and the Health and Safety Executive.
  - Monitoring uptake and quality of the system and digital record; also reporting throughputs to MHCLG and the Minister as a means of quality assurance.
  - Monitor the use and effectiveness of sanctions, ensuring consistency.
  - Monitor that competence of those working on buildings, including ensuring that those working on buildings had met the requirements set by their professional bodies
  - Monitoring consistency at local level.
  - Provide a whistle-blowing service across the sector (industry and regulatory bodies).
  - Publishing annual reports and providing the Ministry with regular updates as required.

34. The NR should have also the power to call in projects at any of the Gateway stages to, if necessary, commission work from local regulators in another authority, or from independent assessors. We envisage this as having two purposes:

- Where an authority (for example in an area where complex buildings are rare and experience is limited) asks the NR to facilitate the delegation of its role to another authority.
- As a backstop where there is evidence that a local regulator is performing unsatisfactorily.

#### Regulator form

35. The individual regulators would continue to carry out the full range of roles they currently have, but with the effective powers and sanctions needed to improve fire safety in buildings in scope, and with better collaboration and improved competencies to support that work. These powers could be vested in the NR but delegated to local regulators. This would provide a flexibility allowing enforcement action to be taken by FRS, council building control, environmental health or planning functions as appropriate.

36. The advantage of this model is that it allows the existing regulators to be held more effectively to account and requires them to work together, without disrupting their existing structures to the counterproductive extent a new stand-alone regulator would do.

37. The NR would be well placed to identify weak points in the system and empowered to intervene and to commission high quality work where there were concerns about performance.

#### Regulator staffing

38. Under this model we see the need for the NR to have a small core of staff supporting its coordination, oversight and guidance functions. These would be a mixture of the

administrative staff needed to collate the information from local areas and policy, technical and legal staff producing guidance and advice and interpreting performance data and providing a board secretariat.

39. The NR board would oversee the work carried out by the NR's staff. Our preference would be for the Board to have an independent chair and deputy - possibly appointed by the Secretary of State - and a membership including politicians representing councils and fire authorities and senior officials of the HSE, NFCC and LABC.

40. Including politicians is necessary for the following reasons:

- To avoid a board consisting of local government officers directing elected local authorities and fire authorities, which would reverse the democratic principles to which we operate.
- Heightening awareness of building safety issues amongst those with political responsibility in local government, and reinforcing the link to local authorities' constitutions and local authority scrutiny.
- This in turn will maintain the principles of local accountability - buildings help to form the fabric of our communities, and local government plays a vital role in ensuring the safety and wellbeing of these communities. They are democratically accountable to residents for this, and must continue to be so.

41. The Board, however, must be independent of constituent regulators. This can be achieved by making its members appointees, rather than delegates or representatives. Their duties should be set in statute, in the same way that a combined fire authority member, whilst appointed by a council, must act in the interests of the fire authority when acting as a fire authority member. Finally, there should be a roughly equal balance between politicians and officers (not including the chair and deputy).

#### Regulator competition

42. It is essential that the element of competition, which has proved so damaging to the functioning of building control services, is removed from the system. Approved Inspectors (AIs) should have no role in regulation.

43. We have been assured by the Ministry that building owners will not be able to choose their regulator. Whilst we have no reason to doubt that assurance, any suggestion that AIs will be able to compete for business in regulating high risk premises will undermine the quality of the service, by driving down either the rigour of inspections or their cost, which will then impact on rigour. No other local regulatory service operates in competition with private companies for the very good reason that to do so will undermine the safety of the public.

#### **Managing change**

44. There has been little discussion in the consultation document of how the transition to the new regime will be managed effectively.

45. Resident safety must come first, and this is the rationale for our proposal to radically broaden the scope of the new legislation.

46. However, we must recognise that the new regime proposed in the consultation document represents several significant and interrelated changes to the existing system and will require detailed work on change management if it is to be implemented effectively.

47. For example, there is currently a skills deficit in various professions which are vital to implementing the new duties – particularly fire engineers. We need a detailed

plan for how Government will ensure this deficit is closed, e.g. through the implementation of a national training programme for fire engineers, and/or the scaling up of local government's own training initiatives.

48. We recommend a pragmatic approach whereby (as set out above) certain requirements only apply to certain buildings, and where a transition period – for example, of five years – applies to implementation. Without this, proposals will be simply undeliverable with available resources and skills levels.
49. **Finally**, we note that the consultation does not deal with the procurement proposals in Dame Judith's report. This is a serious omission, and we have suggested (non-exhaustively) how procurement issues could be accounted for in our detailed response below.

## **Detailed responses to questions**

### **Question 1.1**

**Do you agree that the new regime should go beyond Dame Judith's recommendation and initially apply to multi-occupied residential buildings of 18 metres or more (approximately 6 storeys)? Please support your view**

We agree that the new regime needs to go beyond Dame Judith's recommendation.

The LGA does not believe that the height of a building gives an accurate indication of its safety risk – a view which is supported by our members with experience in tackling safety issues, and by the recent fire in Barking, which occurred in a building below 18 metres.

It is the LGA's view that the vulnerability of residents and the complexity of buildings are the key factors in determining that risk. We have previously called for all buildings where vulnerable people sleep to be included and reiterate this call here.

We are concerned that the consultation proposals risk creating a two-tier system in which buildings out of scope are not regulated in a way which is commensurate with their risk.

However, we are also aware that there are severe capacity constraints in the system which need to be addressed, and which would prevent the type of enforcement envisaged in the proposals from being carried out effectively if they were applied to all buildings

In addition, a blanket application of the new regime to all buildings would impose significant costs on duty holders in some buildings that are not considered high risk.

We therefore support a pragmatic solution, where the regime initially applies to the most high-risk buildings, and is gradually expanded to cover other buildings in order of risk. This will enable effective, proportionate enforcement.

Secondary legislation could be laid which specifies a timescale for the expansion of the regime's scope. This will allow regulators and building owners certainty about which measures will apply when.

However, flexibility needs to be built into the system to allow adjustment in the light

of experience, both in relation to the pace of roll-out and new information on risk. The system needs to be able to rapidly adapt to the emergence of a new, previously unforeseen problem. The inability to do so in relation to ACM cladding is one of the major flaws in the existing system. The system also needs to be able to respond to technological advances e.g. such as the increased use of energy storage systems in high rise residential buildings as part of measures to reduce CO2 emissions and to protect against extremes of weather.

If height is to be used as an indicator of risk, 18m (extending perhaps to 11m over time) makes sense as the height that has for many years been the trigger point for tougher fire safety regulations but 6 storeys might be a better definition than 18m, as whatever height is chosen, developers will seek to build just below it.

We can see no logic in the decision to set a higher limit at Gateway 1 (30 meters) than at Gateways 2 and 3 – this misses vital opportunities to address fire safety issues at an early stage

Finally, none of these reforms will work if the issues with Approved Document B are not addressed

## **Question 1.2**

### **How can we provide clarity in the regulatory framework to ensure fire safety risks are managed holistically in multi-occupied residential buildings?**

One way to ensure that buildings of all heights are consistently regulated would be by making the new regime apply to all buildings through a new piece of legislation, as set out in our proposal above.

We propose that fire and rescue services (FRS) have primary responsibility for fire safety in all parts of all multi-occupancy buildings under this new legislation.

This would include any parts of the building used for non-residential purposes (shops, car parks etc.).

This approach will allow buildings – including mixed-use – to be regulated holistically. It would also ensure the FRS was well placed to advise on extending the more stringent requirements of the proposed new regime.

The FSO's approach to identifying a "responsible person" has, in practice, been difficult to enforce. We recommend that the definition of "accountable person" in the new legislation learns from these failings, and instead specifies that there is to be one accountable person for all parts of a building

The Housing Act should continue to apply in these buildings except in relation to fire hazards.

The exception to the above approach should be for HMOs, which are generally small enough that enforcement for all parts and all hazards, including fire safety, could be taken under the HHSRS, which is well-adapted for these types of buildings.

This should be supported by a legal duty to cooperate on local housing authorities and fire and rescue services, to ensure that relevant hazards such as electrical safety are dealt with holistically.

We would suggest learning from the better examples of joint working protocols between housing enforcement and fire and rescue enforcement (or indeed, police

and fire and rescue), to understand how this duty to cooperate could be implemented

**Q. 1.3 If both regimes are to continue to apply, how can they be improved to complement each other?**

Please see our answer to question 1.2

**Q 1.4 What are the key factors that should inform whether some or all non-residential buildings which have higher fire rates should be subject to the new regulatory arrangements during the design and construction phase? Please support your view.**

This answer also covers Q1.5-1.7

As set out in our over-arching proposal, the scope of the new regime should be based on risk, judgments of which will need to be made by fire safety and building regulation specialists, who will want to consider the design of a building, the specific vulnerabilities of residents, and the ratio of staff to residents

In our responses to previous relevant consultations, we have called for proposals to apply to all buildings where vulnerable people sleep, including supported and sheltered housing, hotels, hospitals, boarding schools and student accommodation. We reiterate this here – any building which is considered higher-risk, including workplaces, places of assembly, and places of entertainment – should be considered at the design and construction phase in order to see how best to mitigate the risks through the design (e.g. the layout of a nightclub, the number of exits, and the materials used).

Moreover, the use of a building may change in ways that are not anticipated during the design and construction phase. This is currently the case with hundreds of office blocks that are being converted to residential buildings. There is evidence to show that these buildings – which were not purpose-built for residential occupation – are subject to particular kinds of risks,<sup>1</sup> and may need particular scrutiny by the new regulator.

Legislation will also need to allow for flexibility should issues come to light which are currently unforeseen, and the proposed BSR should be tasked with making these judgements

The exception would be where a building that is not inherently risky is used as a workplace where a particular high risk activity takes place. This should be dealt with under the FSO, as is currently the case.

**Q 1.8 Where there are two or more persons responsible for different parts of the building under separate legislation, how should we ensure fire safety of a whole building in mixed use?**

See our answer to question 1.2 – a single accountable person should be responsible for fire safety in all parts of a mixed-use, multi-occupancy building. This should be the freeholder. Where there is more than one freeholder, it should apply to them all equally with a duty to cooperate placed on each and every freeholder.

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<sup>1</sup> The LGA's 2018 survey on permitted development rights found that 92% of responding local authorities were moderately or very concerned about the quality or design of housing resulting from permitted development orders  
[https://www.local.gov.uk/sites/default/files/documents/Permitted%20development%20survey%202018%20-%20report%20FINAL\\_1.pdf](https://www.local.gov.uk/sites/default/files/documents/Permitted%20development%20survey%202018%20-%20report%20FINAL_1.pdf)

Where a building is mixed use and one use is residential it should be dealt with under the new legislation as far as structural issues and compartmentation are concerned. This is because fire does not distinguish between use - the safety of residents in a mixed use building is dependent on the risk of fire in commercial parts of the building and on the successful operation of compartmentation.

However, this does not mean that individual duty holders in businesses should be relieved of their responsibility for fire safety issues in the workplace. To give an example, the duty holder running a restaurant should be responsible under the FSO for fire safety in the same way that they would if this was a single-use premises, but the freeholder should be responsible for ensuring that any fire in the restaurant does not spread beyond the compartment or obstruct residents means of escape.

Currently, the remit of the Housing Act in these buildings is over residential parts, and FSO has jurisdiction over commercial parts and any common areas between the two. In the absence of common parts, the FSO will also have jurisdiction over more parts of the building if compartmentation between the residential and commercial parts is breached

However, this arrangement does not work well in practice – firstly, it is not always possible to tell whether compartmentation is breached. Secondly, the RRO does not always allow fire safety breaches in the commercial parts of a building to be addressed, if there are not enough people occupying those commercial parts – this leaves occupiers of all parts of the building vulnerable to fire safety issues

Fundamentally, the current arrangement does not allow for a building to be looked at holistically

Our proposal would address these issues

### **Chapter 3: A new dutyholder regime for residential buildings of 18 metres or more**

#### **Q. 2.1.**

#### **Do you agree that the duties set out above are the right ones?**

Para 62b risks watering down the building regulations. As the paragraph states, it is already a requirement to comply with the building regulations, but the wording here does not convey that impression

“b. Ensure compliance with building regulations. While this duty already exists within legislation we would make clear that duty holders are accountable as follows:  
for Clients, making arrangements that are suitable for ensuring that the construction work can be carried out, so far as is reasonably practicable, in accordance with current building regulations;  
for Principal Designers, to ensure that, when preparing or modifying a design the designer must take into account the current building regulations;  
for Principal Contractors, so far as is reasonably practicable, construction work is carried out in accordance with current building regulations; “

We suggest a rewrite as follows:

for Clients, making arrangements that are suitable for ensuring that the construction work can be carried out, ~~so far as is reasonably practicable~~, in accordance with current building regulations;  
for Principal Designers, to ensure that, when preparing or modifying a design *the proposed changes and the finished building comply with* ~~designer must take into account~~ the current building regulations;

for Principal Contractors, ~~so far as is reasonably practicable~~, construction work is carried out in accordance with – *and the finished building complies with* – current building regulations

**Q. 2.2.**

**Are there any additional duties which we should place on duty holders? Please list.**

During construction phase of any contract there should be a specific duty holder responsibility on contractors to construct a safe building or, during a refurbishment project, to leave the building in a safe condition.

This will address well-documented issues whereby the responsibility for remediation – including cost implications – falls to the client, despite being caused by poor management by the constructor.

**Q. 2.3.**

**Do you consider that a named individual, where the dutyholder is a legal entity, should be identifiable as responsible for building safety? Please support your view.**

Yes. It is essential that an individual is ultimately responsible for ensuring the safety of the building and that this individual is a UK resident. The experience of identifying and enforcing the remediation of ACM cladding has thrown up a number of relevant difficulties:

Identifying the owner of a building, requiring the owner to produce relevant documentation and requiring the owner to remediate the ACM cladding. Where owners are shell companies registered abroad it is difficult to achieve any of these functions and this has contributed to the length of time it has taken to make buildings safe.

The increase in duties envisaged in this consultation will only encourage more building owners to register their property with such shell companies in future unless someone who is prosecutable can be held to account for breaches of regulation.

**Q. 2.4.**

**Do you agree with the approach outlined above, that we should use Construction (Design and Management) Regulations 2015 (CDM) as a model for developing dutyholder responsibilities under building regulations? Please support your view.**

We would add a requirement on dutyholders to ensure that procurement practices and procured solutions will promote safety requirements over cost considerations. This is in line with the recommendations in the final report of the Independent Review of Building Safety.

As part of these proposals, Government will need to consider contract law, and how existing contractor/client relationships will be made consistent with the new regime, e.g. a focus on safety outcomes, appropriate levels of responsibility on the client and contractor.

MHCLG should evaluate the need for a provision in the legislation that overrides provisions in existing contracts, to ensure where contracts last into the new regulatory framework, they are made consistent with the new regime, and particularly the requirements on dutyholders. This also applies to the tenancy or lease contracts between dutyholders and their residents and dutyholders.

Otherwise, existing contracts will provide a significant barrier to change. This is particularly important for design and build contracts, where the contractor has

significantly more control over project outcomes than the client.

**Q. 2.5.**

**Do you agree that fire and rescue authorities should become statutory consultees for buildings in scope at the planning permission stage? If yes, how can we ensure that their views are adequately considered? If no, what alternative mechanism could be used to ensure that fire service access issues are considered before designs are finalised?**

This may make sense as an interim measure. However, we are aware that the NFCC does not want FRSs to be statutory consultees going forward. At Gateway 1 the incentive on developers to produce an adequate fire statement is to avoid having to revisit this at Gateway 2 where we understand the NFCC feels it will have an opportunity to pick up any issues.

This issue needs further careful thought as there are things that are decided at the planning stage that are difficult to unpick later and aren't part of the building control process such as road layouts and the overall design of the project.

In any case, we can see no logic in the 30m height qualification being used here. If a building is considered high risk then it should be covered by this requirement. If the Ministry disagrees then we urge it to produce evidence of buildings which might be considered high risk but in relation to which there is no need to consider the views of the fire service at this stage.

**Q. 2.6.**

**Do you agree that planning applicants must submit a Fire Statement as part of their planning application? If yes, are there other issues that it should cover? If no, please support your view including whether there are alternative ways to ensure fire service access is considered.**

Yes, we agree

**Q 2.7**

**Do you agree that fire and rescue authorities should be consulted on applications for developments within the 'near vicinity' of buildings in scope? If so, should the 'near vicinity' be defined as 50m, 100m, and 150m or other. Please support your view.**

We agree that this should happen. The definition of "near vicinity" should be a matter for the National Fire Chiefs Council and should be reflected in Approved Document B.

**Q. 2.8.**

**What kind of developments should be considered?**

- **All developments within the defined radius,**
- **All developments within the defined radius, with the exception of single dwellings,**
- **Only developments which the local planning authority considers could compromise access to the building(s) in scope,**
- **Other.**

The purpose of this rule is to consider whether a building could pose a risk to the safety of a building in scope. The fire and rescue authority, exercising powers devolved by the BSR, should be able to set out the type and position of buildings that need to be referred by the local planning authority, on the basis of risk. Alternatively, the BSR could set out these rules in statutory guidance.

This approach will allow the rule to be adapted should the nature of risk change over time, e.g. because of developments in fire-fighting equipment.

**Q. 2.9.**

**Should the planning applicant be given the status of a Client at gateway one? If yes, should they be responsible for the Fire Statement? Please support your view.**

Yes. We agree that the fire statement needs to be passed over along with other relevant information

**Q. 2.10.**

**Would early engagement on fire safety and structural issues with the building safety regulator prior to gateway two be useful? Please support your view**

Yes but only on a cost-recovery basis as a service.

**Q. 2.11.**

**Is planning permission the most appropriate mechanism for ensuring developers consider fire and structural risks before they finalise the design of their building? If not, are there alternative mechanisms to achieve this objective?**

An alternative approach would be that the applicant has to seek BSR approval on a range of matters at G1 and this approval is then submitted to the planning committee. It may be preferable to keep G1 simple and deal with the more complex issues at G2. If the proposal is so complex that the applicant fears failure at G2 will mean a return to the planning stage, they have the option of seeking BSR advice prior to G1.

**Q. 2.12.**

**Do you agree that the information at paragraph 89 is the right information to require as part of gateway two? Please support your view.**

In line with chapter 9 of the Independent Review report, the safety case should include products used in the building and details of procurement practices, alongside a case for how they contribute to the safety of the building.

Generally, however, legislation should allow for flexibility. With any new system there is a risk of omitting some requirement that turns out to be essential in practice. Equally there is a risk of imposing statutory requirements that turn out to be unnecessary in practice. We would prefer to see statute refer to 'such information as the BSR might reasonably require'.

In terms of dutyholder impact, these proposals will have an impact on the fee costs of construction and existing contract forms will have to be reviewed so that they don't prove a barrier for implementation.

Dutyholders will also need clarification around which standard will be defined for the 3D digital model of the building, whether it will be required to be updated as the building is modified by repair or reinvestment, and whether it is intended that regulators retain copies of plans and 3D models.

**Q. 2.13.**

**Are these the appropriate duty holders to provide each form of information listed at paragraph 89?**

Consideration must be given to how contractors can be incentivised by their role as a dutyholder to construct a safe building, or – during a refurbishment project – to leave the building in a safe condition. Clients must have redress where this is not the case. This is particularly important for design and build contracts, where the

contractor has significantly more control over project outcomes than the client.

As part of these proposals, Government will need to consider contract law, and how existing contractor/client relationships will be made consistent with the new regime, e.g. a focus on safety outcomes, appropriate levels of responsibility on the client and contractor. Otherwise, existing contracts will provide a significant barrier to change.

MHCLG should evaluate the need for a provision in the legislation that overrides provisions in existing contracts, to ensure where contracts last into the new regulatory framework, they are made consistent with the new regime, and particularly the requirements on dutyholders. .

**Q. 2.14.**

**Should the Client be required to coordinate this information (on behalf of the Principal Designer and Principal Contractor) and submit it as a package, rather than each dutyholder submit information separately?**

Any solution needs to ensure that information provided by all dutyholders is streamlined and consistent. Many of the issues faced by local authority building owners have been caused by lapses in communication from the contractor. This has led to issues where local authorities do not have all of the required information in relation to their own building. It is therefore vital that the client has sight of all information submitted by the principal designer and contractor.

**Q. 2.15.**

**Do you agree that there should be a 'hard stop' where construction cannot begin without permission to proceed? Please support your view**

Yes. We think it prove very difficult to undo work that has started without being properly approved and in the absence of a hard stop, confusion over permission may creep into the system. However, we support a staged approach.

**Q. 2.16.**

**Should the building safety regulator have the discretion to allow a staged approach to submitting key information in certain circumstances to avoid additional burdens? Please support your view.**

Please see our answer to question 2.15 - staged inspections during the construction stage will prevent undue delays to the building being certified at the occupation stage

However, this should be subject to regulator discretion, which is particularly likely to be needed for existing buildings already in occupation

**Q. 2.17.**

**Do you agree that it should be possible to require work carried out without approval to be pulled down or removed during inspections to check building regulations compliance? Please support your view.**

Yes - this will remove incentives to carry out work without permission, and without keeping adequate records demonstrating compliance. Moreover, if work has been carried out without approval, invasive or destructive inspections will be needed to check whether it's safe.

Without this power and that in the next question the BSR will be powerless and will fail. However, the cost implications of this should lie with the dutyholder at construction stage, which we have proposed should be the building contractor.

**Q. 2.18.**

**Should the building safety regulator be able to prohibit building work from progressing unless non-compliant work is first remedied? Please support your view**

Yes for the same reasons as the previous question

**Q. 2.19.**

**Should the building safety regulator be required to respond to gateway two submissions within a particular timescale? If so, what is an appropriate timescale?**

No, this should not be subject to a timetable. The time it takes to respond will be affected by a wide range of factors, including: complexity of the buildings; how competent the regulators decide the applicant is and how robust their fire safety measures are; funding.

Lessons can also be taken from the current planning process, which allows for delays to responses subject to several factors, e.g. whether a valid application has been made, whether supporting evidence has been submitted in the correct format etc.

It would therefore be better to have a requirement for the response to be in a reasonable timescale rather than a specific time, proportionate to the risk and to how complex, innovative or out of the ordinary a project is. It would be unfair to expect regulators to turn around a project like the Shard in the same time that they do more standardised designs. The regulator could be obliged to indicate in its enforcement policy what timescales could typically be expected

**Q. 2.20.**

**Are there any circumstances where we might need to prescribe the building safety regulator's ability to extend these timescales? If so, please provide examples**

This question does not arise if the 'reasonable and proportionate' wording is used rather than a specific time period.

**Q. 2.21.**

**Do you agree that the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans?**

In principle this should ensure that the client and designer would have guilty knowledge of any breaches by the contractor – but is it practical; and is it reasonable to assume that they would have sufficient expertise to understand what constituted a breach at this level of detail.

To address this issue, there should be a duty placed on principal contractors to construct a safe building or, during a refurbishment project, to leave the building in a safe condition. This will give contractors the incentive to carry out high-quality work, and prevent the cost implications of any shoddy work by contractors falling on dutyholders

**Q. 2.22.**

**Do you agree that the Principal Contractor should notify the building safety regulator of proposed major changes that could compromise fire and structural safety for approval before carrying out the relevant work?**

Yes, we agree that this proposal is essential. The duty which we propose in our

answer to question 2.21 will create the incentives to deliver it.

**Q. 2.23.**

**What definitions could we use for major or minor changes?**

- Any design change that would impact on the fire strategy or structural design of the building;
  - Changes in use, for all or part of the building;
  - Changes in the number of storeys, number of units, or number of staircase cores (including provision of fire-fighting lifts);
  - Changes to the lines of fire compartmentation (or to the construction used to achieve fire compartmentation);
  - Variations from the design standards being used;
  - Changes to the active/passive fire systems in the building;
- Other – please specify**

All of the above, including when there are changes to our understanding of a material factor relating to fire safety. Design changes should also include major changes in the products used to construct a building, and Approved Document B could provide a starting point for which products are considered relevant.

**Q. 2.24.**

**Should the building safety regulator be required to respond to notifications of major changes proposed by the dutyholder during the construction phase within a particular timescale? If yes, what is an appropriate timescale?**

See our answer to 2.19

**Q. 2.25.**

**What are the circumstances where the Government might need to prescribe the building safety regulator's ability to extend these timescales?**

See our answer to 2.20

**Q. 2.26.**

**Do you agree that a final declaration should be produced by the Principal Contractor with the Principal Designer to confirm that the building complies with building regulations? Please support your view.**

If this requirement is introduced the wording should correspond with that of the requirements placed separately upon the designer and contractor, rather than a general one of complying with building regulations.

As set out in our answer to question 2.21, this should include a requirement on designers and contractors to construct a safe building.

**Q. 2.27.**

**Should the building safety regulator be required to respond to gateway three submissions within a particular timescale? If so, what is an appropriate timescale?**

See our answer to 2.19

**Q. 2.28.**

**Are there any circumstances where we might need to prescribe the building safety regulator's ability to extend these timescales? If so, please support your view with examples**

See our answer to 2.20

**Q. 2.29.**

**Do you agree that the accountable person must apply to register and meet additional requirements (if necessary) before occupation of the building can commence? Please support your view**

Yes, see our answer to the following question

**Q. 2.30. Should it be an offence for the accountable person to allow a building to be occupied before they have been granted a registration for that building? Please support your view.**

Yes – this is the whole point of the reform we are engaged upon. Allowing a building to be occupied before the registration has been granted raises the probability that at some point a building will be occupied that does not comply with safety regulations. Not only does this place residents at risk while they are in the building, but decanting a building once its unsafe nature becomes clear is likely to see residents forced into temporary accommodation, which often comes with its own set of risks, disrupting children's school attendance and parents work. Investigating the safety of a building is likely to be more complicated if it is occupied, and if it is occupied by leaseholders then the financial position – should remedial work prove necessary – is likely to be unsatisfactory, as has been the case to date.

**Q. 2.31. Do you agree that under certain circumstances partial occupation should be allowed? If yes, please support your view with examples of where you think partial occupation should be permitted**

We do not agree with this.

In theory, this could be acceptable if it were possible for one part to be occupied safely even though another part was not ready for occupation, for example, where a retail premises on the ground floor could be safely occupied but a flat above could not, and where the necessary work to make the flat safe could be carried out without compromising the safety of the occupiers of the retail premises.

However, we see an essential part of this reform as treating buildings as a whole. A failure of compartmentation in a block of flats could have implications for those using retail premises below even if the flats were unoccupied. Any watering down of the requirement to obtain registration before occupation begins, is likely to see commercial pressures leading to this becoming standard practice and inevitably the occupiers in such circumstances, probably having taken up residence with no knowledge of other flaws in the building will see their business disrupted by subsequent remediation works to other parts of the building or their investment as leaseholders threatened by incomplete and or ongoing works elsewhere in the building.

**Q. 2.32. Do you agree with the proposal for refurbished buildings? Please support your view**

We support this but with the caveat that more thought needs to be given to how gateway three will operate in the case of refurbishment that despite being major, does not require a decant of the building. It would make no sense to require occupants to be decanted prior to Gateway three approval in these cases.

Where the work requires decanting in any case, re-occupation should not be permitted until Gateway three is passed.

**Q. 2.33. Do you agree with the approach to transitional arrangements for gateways? If not, please support your view or suggest a better approach?**

We support the suggested approach. We also propose that all buildings already occupied will have to produce a safety case to satisfy the regulator and that this should include the elements covered at gateways 1 and 2.

**Q. 3.1. Do you agree that a safety case should be subject to scrutiny by the building safety regulator before a building safety certificate is issued?**

Please support your view.

We question the concept of safety certificates. We agree that there needs to be some record of whether the BSA has seen the safety case and has objection to it or requires action. However, the term “safety certificate” implies that the regulator has ‘approved’ the building as safe. This risks transferring responsibility from the duty holder to the regulator. The responsibility for the safety of a building should rest with the duty holder. The role of the regulator is to consider whether there are grounds to take enforcement action in the safety case or in the dutyholder's failure to deliver the commitments in the safety case. This is not the same as approving the building as safe.

Thought needs to be given to how this works with buildings already in occupation. If the safety case is unsatisfactory or the duty holder is not complying with its own safety case the regulator must be able to take a range of action designed to ensure compliance. Evacuation should only be used as a last resort where there is immediate danger to life.

The proposals are also unclear as to which risk levels are acceptable in a building before the building safety certificate is issued.

Currently, if regulators such as HSE and FRS deem a building unsafe for occupation, they issue prohibition notices. However, these are generally used when the building is deemed to pose an imminent risk to safety – this is clearly too low a bar to be used with the building safety certificate.

This matter should be determined by the BSR and set out clearly in enforcement policy documents.

**Q. 3.2. Do you agree with our proposed content for safety cases? If not, what other information should be included in the safety case?**

We do not believe that mere reference to a resident engagement strategy is enough. The regulator must be assured that if residents raise a safety concern there is a guarantee that it receives proper attention and that residents know who to contact if they are not satisfied on this point

The safety case must contain evidence of the materials used in and method of construction, details of subsequent strengthening/refurbishment, and evidence of procurement exercises, alongside a case for how product and procurement decisions contributed to the overall safety of the building.

This is particularly important in the case of buildings that are or are suspected of being constructed using large panel systems and similar methods.

**Q. 3.3. Do you agree that this is a reasonable approach for assessing the risks on an ongoing basis? If not, please support your view or suggest a better approach**

Yes with two caveats:

Major refurbishment should trigger a review and the five year cycle should then begin afresh from the conclusion of that review. It is unclear whether this is what the consultation envisages

Thought will need to be given to the timescale for imposing these requirements on existing buildings. In particular, it is likely to take considerable time to establish whether buildings are large panel system buildings and if they are, whether they have been strengthened and the condition of the concrete. We anticipate a peak in demand for the relevant expertise once the regulations come into force and the need to establish the safety of these buildings needs to be balanced against the practical limits of capacity and the dangers that arise from decanting residents.

**Q. 3.4. Which options should we explore, and why, to mitigate the costs to residents of crucial safety works?**

We agree that the government should work with the insurance industry to seek solutions to this issue for problems arising once the new regime has been implemented.

However, we do not anticipate that this work will deliver solutions to the cost of remediating existing problems:

Leaseholders and residents should not be burdened with the costs of fire safety works to remedy problems for which they bear no responsibility. Developers and contractors must not be allowed to escape the costs of errors for which they are responsible. At the same time it is clear that there has been a systemic failure of the regulatory system which is the responsibility of the Government.

Where significant works are required that would impose unreasonable costs on leaseholders – for example costs that make property unsellable and which leaseholders cannot meet, the government will have to step in, even if this is on a temporary basis and the government follows up by pursuing legal action against those responsible or seeks to recoup some or all of the cost through a levy on developer profits and/or a charge on the property.

It is our view that so many issues have now emerged which require remediation that a holistic view of buildings and their safety requirements is needed. The current approach to addressing emerging fire issues is not cost effective, requiring building owners to re-procure construction works and re-purchase scaffolding each time a new issue is identified. Moreover, it does not address what are in some cases more fundamental risks to safety – e.g. compartmentation issues.

Instead, it may be more appropriate – and more cost-effective - to invest in making buildings safe, working holistically and with the judgement of a qualified fire safety expert. For example, this might involve installing automatic fire suppression systems, rather than replacing notional fire doors which have been demonstrated to last almost as long as required.

**Q. 3.5. Do you agree with the proposed approach in identifying the accountable person? Please support your view.**

Yes – there should be a single accountable person, who will in most cases be the freeholder. This accountable person should be a named individual, and should be based in the UK.

Serious consideration will almost need to be given to the options available to regulators where a building is simply not registered by the accountable person, and where this accountable person cannot be identified – see our answer below.

**Q. 3.6. Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an accountable person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.**

Yes – where existing buildings are registered to a non-UK based shell company. The experience of identifying and enforcing the remediation of ACM cladding has proven it is difficult to take action in these cases.

**3.7. Do you agree that the accountable person requirement should be introduced for existing residential buildings as well as for new residential buildings? Please support your view.**

Yes we agree

**Q. 3.8. Do you agree that only the building safety regulator should be able to transfer the building safety certificate from one person/entity to another? Please support your view.**

Yes

In relation to the questions below we feel the details of the role are best advised upon by the early adopter duty-holders. We do have some concerns about this role:

- there is a risk that it becomes a way for duty holders to abdicate responsibility
- It could prove so onerous as to deter applicants
- Very few people will have the skills required at present
- The cost of employing a BSM could be a significant burden for leaseholders

While these concerns are by no means insurmountable, care will be required during the implementation of the new regime to ensure a smooth transition on these points. We would also advise flexibility: local authority building owners are clear that, whilst the competencies required of the building safety manager do all exist within their organisation, they generally exist across several people. It would therefore be infeasible to train up single individuals to be competent in every single one of the functions envisioned. It could be more sensible to allow the building safety manager role to be an oversight or managerial role, with responsibility for ensuring a range of individuals carry out specified roles or duties.

**We have not provided detailed answers for questions 3.9-3.22**

**Q. 4.1. Should the Government mandate Building Information Modelling (BIM) standards for any of the following types and stages of buildings in scope of the new system? a) New buildings in the design and construction stage, please support your view.**

**b) New buildings in the occupation stage, please support your view.**

**c) Existing buildings in the occupation stage, please support your view.**

Adoption of BIM is complex and can be done to a variety of standards – local authorities' views on this proposal will depend on which standard the government is proposing to mandate.

In all cases, this proposal will need a significant amount of implementation time and cost to allow dutyholders to become "BIM-ready". The repercussions would be organisation-wide, as adopting BIM would require organisations to fully transform

their IT systems to ensure compatibility.

**Q. 4.2. Are there any standards or protocols other than Building Information Modelling (BIM) that Government should consider for the golden thread? Please support your view**

We have no views on this question.

**Q. 4.3. Are there other areas of information that should be included in the key dataset in order to ensure its purpose is met? Please support your view.**

The purpose of the key dataset is to allow the regulator to “understand characteristics of all buildings in scope to analyse and understand trends and risks across the building stock”.

Experience from recent large-scale remediation programmes shows that there are other key details which the regulator will need to understand important trends and risks: detail of any cladding system, enough detail of the method of construction to identify large panel system buildings (bearing in mind that there is not necessarily a common understanding among owners of the definition of LPS), the result of any assessment of the strength of the building and any subsequent strengthening work. There is a case for including whether the building has a gas supply, whether its safety case relies on simultaneous evacuation and any work that may have been undertaken which could compromise compartmentation.

However, this will require parts of the key dataset to be kept confidential.

**Q. 4.4. Do you agree that the key dataset for all buildings in scope should be made open and publicly available? If not, please support your view.**

Taking into account our answer to question 4.3, we do not believe that all of this information should be publicly available. Making it available would run counter to the security aims in the consultation. We therefore suggest that while all the information in the Key Dataset should be made public where this can be done without compromising security, where this cannot be done, information should only be available to residents.

A further question then arises of the extent to which such information should be made available to potential purchasers of leasehold properties. We suggest that it should be, but only through disclosure to those conducting a survey on behalf of a potential purchaser, rather than for example to estate agents.

**Q. 4.5. Do you agree with the proposals relating to the availability and accessibility of the golden thread? If not, please support your view**

Yes, there are elements of the golden thread which cannot be made publicly available. Some of these confidential elements will also be needed to consider national trends and risks, and therefore might also need to form part of the key dataset (with implications for whether all of the key dataset can be shared).

**Q. 4.6. Is there any additional information, besides that required at the gateway points, that should be included in the golden thread in the design and construction stage? If yes, please provide detail on the additional information you think should be included**

No view

**Q. 4.7. Are there any specific aspects of handover of digital building**

**information that are currently unclear and that could be facilitated by clearer guidance? If yes, please provide details on the additional information you think should be clearer.**

No view

**Q. 4.8. Is there any additional information that should make up the golden thread in occupation? If yes, please provide detail on the additional information you think should be included**

We have no suggestions beyond our answer at 4.3 above. we agree with paragraph 212 that the compilation of golden thread information for existing buildings will be a long process in some cases and in particular for large panel systems blocks where significant intrusive work may be necessary.

**Q. 4.9. Do you agree that the Client, Principal Designer, Principal Contractor, and accountable person during occupation should have a responsibility to establish reporting systems and report occurrences to the building safety regulator? If not, please support your view.**

Yes. The LGA supports the view expressed by Structural-Safety that 'the existing voluntary CROSS reporting system for structural safety issues will be enhanced by the addition of reporting for fire safety issues to improve public safety'. We would like to see mandatory reporting for occurrences where the level of risk for affecting life safety is high for all buildings that are considered high risk and voluntary reporting.

**Q. 4.10. Do you think a 'just culture' is necessary for an effective system of mandatory occurrence reporting? If yes, what do you think (i) Industry (ii) Government can do to help cultivate a 'just culture'? Please support your view.**

The LGA thinks this is probably the case and notes that the CROSS system provides an example on which to build.

**We have no comment on Qs 4.11- 4.15.**

**Q. 4.16. Do you agree that the building safety regulator should be made a prescribed person under Public Interest Disclosure Act 1998 (PIDA)? If not, please support your view.**

Yes, we agree.

**Q. 4.17. Do you agree that the enhanced competence requirements for these key roles should be developed and maintained through a national framework, for example as a new British Standard or PAS? Please support your view.**

Yes. Common standards of competence are essential if the new system is to work.

**Q. 4.18. Should one of the building safety regulator's statutory objectives be framed to 'promote building safety and the safety of persons in and around the building'? Please support your view**

**Q. 4.19. Should duty holders throughout the building life cycle be under a general duty to promote building safety and the safety of persons in and around the building? Please support your view**

Yes. The proposals at Q4.18 and 4.19 are in line with Dame Judith Hackitt's

emphasis on the need for a change of culture away from simple compliance with regulation and towards an emphasis on safety.

However, this needs to be clearly defined in the legislation in order for it to be enforceable.

**Q. 4.20. Should we apply dutyholder roles and the responsibility for compliance with building regulations to all building work or to some other subset of building work? Please support your view.**

We would not support any relaxation of the obligation that already exists on all work to comply with the regulations

**Q. 5.1. Do you agree that the list of information in paragraph 253 should be proactively provided to residents? If not, should different information be provided, or if you have a view on the best format, please provide examples**

We agree that this information should be a minimum requirement. However, we would also suggest that the information set out in paragraph 258 should also be provided as a matter of course, rather than on request. Indeed, several local authorities have already proactively taken the step of publishing fire risk assessments – or a summary of information within them - in the public domain.

This will reduce the risk that residents are reliant on the cooperation of their landlord in order to receive basic information about the safety features of their homes – this is particularly important where residents have vulnerabilities. It would also be more aligned with the proposals around the key dataset in chapter three.

We agree with the proposal that information is not released where it might compromise the safety of buildings and their residents. However, we do not believe that the information in paragraph 258 falls within this category.

**Q. 5.2. Do you agree with the approach proposed for the culture of openness and exemptions to the openness of building information to residents? If not, do you think different information should be provided? Please provide examples.**

See our answer to question 5.1 - this information should be provided as a matter of course. It should also include the resident engagement strategy itself, as this will enable residents to support and challenge the accountable person on how resident engagement is planned and delivered.

**Q. 5.3. Should a nominated person who is a non-resident be able to request information on behalf of a vulnerable person who lives there? If you answered Yes, who should that nominated person be?**

- Relative,
- Carer,
- Person with Lasting Power of Attorney,
- Court-appointed Deputy,
- Other (please specify).

Yes, residents should be able to nominate non-residents to request information on their behalf. However, the bureaucracy involved in this is a good argument for making safety information available as a matter of course, rather than on request.

**Q. 5.4. Do you agree with the proposed set of requirements for the management summary? Please support your view.**

**Q. 5.5. Do you agree with the proposed set of requirements for the engagement plan? Please support your view.**

Yes, we agree with both proposed sets of requirements. We also suggest that residents are given information on:

- how to access the results of any (for example) resident satisfaction surveys taken by the accountable person.
- where to find information that may be published by the building safety regulator on broader building safety trends, risks, or programmes.

**Q. 5.6. Do you think there should be a new requirement on residents of buildings in scope to co-operate with the accountable person (and the building safety manager) to allow them to fulfil their duties in the new regime? Please support your view.**

Yes, we agree. Local authorities in their function as landlords have experienced significant difficulties in accessing properties to carry out inspections or works deemed essential to ensure the safety of other residents. There should also be a duty on residents to cooperate with regulators or enforcement agents exercising the power of the building safety regulator.

**Q. 5.7. What specific requirements, if any, do you think would be appropriate? Please support your view**

This might include a duty to allow access for inspections and to install sprinklers/carry out other works, if deemed necessary by the regulator to ensure the safety of other residents, and if reasonable notice is given before entry. It might also include a duty on residents to provide details of major works that have been carried out on the home, e.g. proof of gas safety checks, and to ensure they don't carry out works which may pose a risk to fire safety, e.g. drilling holes in flat entrance doors or otherwise breaching compartmentation.

We would recommend using existing tenancy or leasehold contracts between residents and landlords – where they have functioned effectively – to provide a model for what a duty to cooperate could usefully include.

**Q. 5.8. If a new requirement for residents to co-operate with the accountable person and/or building safety manager was introduced, do you think safeguards would be needed to protect residents' rights? If yes, what do you think these safeguards could include?**

Yes, safeguards will need to be put in place against this measure being abused by landlords to undermine a resident's right to privacy or evict residents.

For example, the new regulator may need to set out in regulations who has the right to enter residents' homes, and on which grounds. This will then provide a firm basis on which residents can challenge entry, if necessary.

Special consideration will also need to be given to how the duty to cooperate will apply to vulnerable residents. Many local authorities already have significant experience of this as set out in e.g. hoarding policies, which detail:

- Actions to be taken to reduce risk
- How to achieve balance between support and enforcement
- Safeguarding and other legal considerations

These, and similar policies, can be used to understand which safeguards are generally put in place when residents pose a risk to themselves and others.

**Q. 5.9. Do you agree with the proposed requirements for the accountable person's internal process for raising safety concerns? Please support your view.**

We agree that the points for inclusion in the internal process are correct. However, this should not involve a requirement on the accountable person to set out a wholly different process for raising and considering safety concerns.

Generally, local authority landlords have one complaints policy that applies to all council activity, including housing. This is cost-effective and – most importantly - clear to residents. Imposing top down changes on the way complaints about housing are handled will lead to fragmentation and confusion for residents trying to make complaints. It will also have resource implications for all council services, not just housing, and additional costs to handling housing complaints would have to be paid for from the Housing Revenue Account (i.e. tenants' rents).

However, in light of the Government's proposals, we suggest that the accountable person must ensure that the relevant information about their existing complaints process is set out in the resident engagement strategy, alongside specific information about how safety concerns can be escalated. Complaint triaging processes will also need to be adapted to ensure that safety-related complaints are given top priority, and this should also be made clear in the resident engagement strategy.

**Q. 5.10. Do you agree to our proposal for an escalation route for fire and structural safety concerns that accountable persons have not resolved via their internal process? If not, how should unresolved concerns be escalated and actioned quickly and effectively?**

Yes, we agree, subject to the caveats in our answer to question 5.9.

**Q. 5.11. Do you agree that there should be a duty to cooperate as set out in paragraph 290 to support the system of escalation and redress? If yes, please provide your views on how it might work. If no, please let us know what steps would work to make sure that different parts of the system work well together.**

Yes, we agree. The current system of regulation and redress is complex and fragmented, and currently undergoing significant change, which means that it is unlikely to be clear to residents which regulator has responsibility for which type of complaint. It is vital that concerns raised by residents in the "wrong" place find their way to the building safety regulator.

Many of these regulators, such as the housing ombudsman, will have triage processes which determine which complaints are addressed mostly swiftly. The duty to cooperate should ensure that these processes are adapted to allow safety-related concerns to be quickly identified – including where a safety-related complaint is not obvious as such - and passed onto the building safety regulator. The regulator should support the bodies subject to the duty to make these adaptations to ensure they have the required sophistication and nuance.

**Q. 6.1. Should the periodic review of the regulatory system be carried out every five years/less frequently? If less frequently, please provide an alternative time-frame and support your view.**

The review should be carried out every five years.

**Q. 6.2. Do you agree that regulatory and oversight functions at paragraph 315**

**are the right functions for a new building safety regulator to undertake to enable us to achieve our aim of ensuring buildings are safe? If not, please support your view on what changes should be made.**

See our section headed 'The new regulator' above

In relation to i (b) it is important to appreciate the significant cost that would be incurred if the system were to be based on say annual inspections of buildings by the fire and rescue service. It is as yet unclear whether this would be recoverable or requires long term funding but it will undoubtedly require significant funding to establish.

**Q. 6.3. Do you agree that some or all of the national building safety regulator functions should be delivered ahead of legislation, either by the Joint Regulators Group or by an existing national regulator? Please support your view.**

While the HSE has an important contribution to make to this work and we would be happy to see some or all of the functions delivered as soon as possible, we do not think that setting up of a department of the HSE as a precursor to the BSR is the right approach. This would be outside the HSEs existing remit and would all too easily metamorphose into their creation of a central regulator that is either stand alone or which lacks the correct governance structure for a body that has a relationship with local government along the lines proposed for the BSA. We do support the continuation of work through the JRG to see what can be achieved in improving building safety ahead of legislation but we are unsure how effective that can be without a specific and significant funding stream.

**Q. 7.1 Government agrees with the Competence Steering Group's recommendations for an overarching competence framework, formalised as part of a suite of national standards (e.g. British Standard or PAS). Do you agree with this proposal? Please support your view.**

Yes, we agree.

**7.2. Government agrees with the Competence Steering Group's recommendations for establishing an industry-led committee to drive competence. Do you agree with this proposal? Please support your view.**

Ultimate responsibility for overseeing competence should not rest with industry but with the national regulator.

**Q. 7.3. Do you agree with the proposed functions of the committee that are set out in paragraph 331? Please support your view.**

**Q. 7.4. Do you agree that there should be an interim committee to take forward this work as described in paragraph 332? If so, who should establish the committee? Please support your view.**

MHCLG should establish it with JRG support

**Q. 8.1. Do you agree with the approach of an 'inventory list' to identify relevant construction products to be captured by the proposed new regulatory regime? Please support your view.**

**Q. 8.2. Do you agree that an ‘inventory list’ should begin with including those constructions products with standards advised in Approved Documents? Please support your view.**

**Q. 8.3. Are there any other specific construction products that should be included in the ‘inventory list’? Please list.**

Yes – the basis for this inventory should be the Approved Documents, which highlight the importance of wide range of products and systems for building safety.

However, the system must be flexible to new additions when required by the regulator.

**Q. 8.4. Do you agree with the proposed approach to requirements for construction products caught within the new regulatory regime? Please support your view.**

**Q. 8.5. Are there further requirements you think should be included? If yes, please provide examples**

We are broadly supportive of the proposed approach, with the following additional points:

- Information on the installation and maintenance of the product should also be a requirement.
- Declarations of performance should be clear and consistent across product categories and issuing third party certification bodies
- Test houses and third party certification bodies must assume responsibility for the clarity and accuracy of their certification documents at the point that they are issued, and manufacturers should have redress to the construction products regulator where they have concerns about this
- Declarations should include clear statements on whether products meet the relevant regulations and standards, and what standards these are
- Manufacturers should have limited discretion in how to evidence their claimed performance – consistency in approach is needed to support clients to procure safe products
- Declarations of performance should be available for longer than a period of ten years. Instead, they should be kept until the product stops being on the market, plus the lifetime of the product itself, as this is the length of time for which a regulator might feasibly need to see the declaration
- Manufacturers should be required to put in place measures to ensure that products consistently meet the standards claimed in the declaration of performance. Self-certification should be removed as an option for achieving this – this allows too much scope for poor quality, unsafe products to remain on the market

**Q. 8.6. Do you agree with the proposed functions of a national regulator for construction products? Please support your view.**

Yes. The following functions should be added:

- A whistleblowing function for when products, or their installation and maintenance are suspected to be non-compliant, or when certification and accreditation schemes are suspected to be incorrectly certifying the safety of a product

- Support for dutyholders to develop their competence in specifying safe products

**Q. 8.7. Do you agree construction product regulators have a role in ensuring modern methods of construction meet required standards? Please support your view**

**Q. 8.8. Do you agree that construction product regulators have a role in ensuring modern methods of construction are used safely? Please support your view.**

Yes, we agree.

**Q. 8.9. Do you agree with the powers and duties set out in paragraph 350 to be taken forward by a national regulator for construction products? Please support your view.**

Yes. This regulator must also have provisions in place to exchange intelligence and information with other regulators.

The regulator must also have a whistleblowing function, for when products or certification schemes are suspected to be non-compliant or insufficiently robust.

It is also crucial that a criminal offence is introduced for the supply of non-compliant construction products. The non-existence of this offence does not align with the regime for consumer products, and limits the powers of trading standards to investigate liability. This is a loophole in the law which has created significant issues for buildings owners trying to get redress for having been supplied with non-compliant fire doors.

**Q. 8.10. Are there other requirements for the umbrella minimum standard that should be considered? If yes, please support your view.**

**Q. 8.11. Do you agree with the proposed requirements in paragraph 354 for the umbrella minimum standard? If not, what challenges are associated with them?**

Our experience with supporting local authorities with non-compliant fire doors has shown that the certification regime is opaque and not well-understood. Any minimum standard should ensure clear, consistent and accessible information. It should be clear following the certification process whether the product being supplied conforms exactly to the product specified in the certification documents, or alternatively whether it falls within an acceptable range of deviations, as set out by robust regulations, e.g. the extended application standards.

Certification should also make it clear whether products meet the standards required by regulations, and what this means for the contexts in which they can be used.

Certification should also include information which allows for product traceability, including information related to installation and maintenance.

We agree with the elements set out in paragraph 354.

**Q. 8.12. Do you agree with the proposal for the recognition of third-party certification schemes in building regulations? Please support your view.**

**Q. 8.13. Do you agree that third-party schemes should have minimum**

**standards? Please support your view.**

**Q. 8.14. Are there any benefits to third-party schemes having minimum standards? Please support your view**

**Q. 8.15. Are there challenges to third-party schemes having minimum standards? Please support your view.**

We agree that third party schemes should have minimum standards which encompass the elements set out in our previous answer. Our experience with supporting local authorities with non-compliant fire doors demonstrates that third party accreditation can be a vital additional level of assurance. However, schemes are not well-understood, and requirements are opaque and subject to commercial confidentiality. There has also been anecdotal evidence – previously shared with MHCLG – that third party schemes are not always robust, and can erroneously certify dubious products.

Minimum standards would be an important way of ensuring that the product supplied is the product specified, and that it is a safe product for use in the intended context.

However, we do not see the value in making minimum standards voluntary: having a range of accreditation products on the market – some of which provide the desired level of assurance and some of which don't – risks adding an additional layer of complexity to an already confusing assurance regime. It is also unclear how consumers will be able to determine whether a third party certification complies with the proposed standards. There may therefore be a case for third party accreditation to be to a compulsory minimum standard.

## **Chapter 6: Enforcement, compliance and sanctions**

**Q. 9.1. Do you agree with the principles set out in the three-step process above as an effective method for addressing non-compliance by duty holders/accountable persons within the new system?**

Yes

**Q. 9.2. Do you agree we should introduce criminal offences for:(i) an accountable person failing to register a building;(ii) an accountable person or building safety manager failing to comply with building safety conditions; and (iii) duty holders carrying out work without the necessary gateway permission?**

Yes, although under (ii) it should be a defence to have complied with guidance as is the case with Building Regulations

However, we do not think the dutyholder's "statutory objective to promote safety" is defined sufficiently clearly. Any new, wide-ranging obligation must be clear and easily understood if it is to work.

**Q. 9.3. Do you agree that the sanctions regime under Constructions Products Regulations SI 2013 should be applied to a broader range of products? Please support your view.**

**Q. 9.4. Do you agree that an enhanced civil penalty regime should be available under the new building safety regulatory framework to address non-compliance with building safety requirements as a potential alternative to criminal prosecution? Please support your view.**

Yes because civil restitution may serve more purpose than criminal prosecution, although we think both should be available.

**Q. 9.5. Do you agree that formal enforcement powers to correct non-compliant work should start from the time the serious defect was discovered? Please support your view.**

Yes. The correction of these defects imposes a serious - in some cases – unbearable – burden on blameless homeowners and/or taxpayers. This is unacceptable. It is in our view impossible to ensure beyond doubt that work such as the installation of cavity barriers or of joints embedded in concrete has been done properly without destructive testing and so enforcement is to an extent reliant on a defect emerging over time.

**Q. 9.6. Do you agree that we should extend the limits in the Building Act 1984 for taking enforcement action (including prosecution)? If agree, should the limits be six or ten years?**

We agree that these should be extended to ten years.