

BPF Response to the consultation on BUILDING A SAFER FUTURE



The British Property Federation

The British Property Federation (BPF) promotes the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.

In the context of this consultation paper, we have several different constituencies who take an interest in it: as clients in the development process, owners and managers of buildings, and those who procure insurance and other services.

General comments

We have sought to answer most of the questions covered and are generally very positive and supportive of much of what is proposed. There are, however, a few key aspects of our response to the consultation we wanted to highlight up front:

Scope – We believe that Government should start off as Dame Judith had recommended with buildings of 30m+ in scope, allowing for a significant new regime to be tested, before moving to 18m+ and other building types in two years.

Planning – We are concerned that Gateway 1 will not achieve much in terms of building safety as much of the structural design features only come at the early stages of Gateway 2. We are also concerned that as the regime was broadened out, it would become one more function for already stretched local authority planning departments.

Resources – It is vital that the appropriate resource is invested in the regulator and knock-on resource implications for Fire and rescue Authorities and Planning Authorities are addressed. The new regime will fall over and fail without this

Co-ordination during the design and build stage – We suggest this should be a function of the Principal Designer, rather than Client, in keeping with existing market practice.

Use of BIM - BIM/3D Models should not be mandatory. This won't always benefit the regulator's review, and some development/design teams are not set up to provide BIM.

Definition of the accountable person – We strongly support the proposal that identification of the accountable person should be by reference to their right to receive funds. It is consistent with other regimes, for example Control of Asbestos. The freeholder will not always be in day-to-day control of the building, for example, where there is a long lease to a head lessee.

Individual or legal entity – We are supportive of Dame Judith's recommendation for a named individual to have responsibility where the owner of the property is a professional. We are concerned, however, that in instances where ownership resides with a Residents' Management Company (RMC) or Right-to-Manage company (RTM) it may dissuade individuals from becoming directors – an already often difficult task. We therefore suggest that as with Commonhold

Associations, where the accountable person is a legal entity, the same should apply with RMCs/RTMs.

A resident's duty to cooperate – There needs to be a backstop to this, which allows referrals to the Building Safety Regulator where a resident is not cooperating. This should be a last resort and after various phases of communication and escalation.

Incentives/insurance – The regime being proposed will come with significant one-off and on-going costs for residents and owners, and Government should be considering how it can help ameliorate some of this through tax incentives, grants and loans. Similarly, incentives could be used to stimulate market activity, for example competencies. The insurance market could also help incentivise the regime through the structuring of premiums.

CHAPTER 2 - SCOPE

Q. 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 there should be different a timetable for bringing buildings in scope and that the proposals are right to differentiate between the design/build phase, with a longer transition for buildings in occupation.

We disagree, however, that the design/build regime should start applying to buildings of 18m. We think Dame Judith's rationale in recommending 30 metres was sound, in that she was trying to take account of the significant change that would occur and resource that would be needed in moving to a very different approach, in High Rise Residential Buildings. If there is not sufficient resource/expertise, for example in the Building Safety Regulator, the resultant delays and cost to applicants could be significant. It is therefore right to proceed as Dame Judith envisaged.

That said, we support bringing other buildings into scope and at a second phase, those between 18 metres and 30 metres should be brought into the new regime. Government should set a timescale for doing so, thus providing clarity to market participants. We would suggest two years after the initial 30m+ buildings are brought within scope.

There is an alternative approach, which would be to base scope on a risk-based assessment. There are some good statistics that may help with that:

<https://www.thefpa.co.uk/index.cfm? tkn=B1C3D209%2D571A%2D4F1D%2D86B2C059D2C731E7>

We would have concerns, however, that particularly during the design and build stage it may not be clear what is in and out of scope.

Q. 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 of Dame Judith's guiding principles was a desire for simplicity and therefore clarity for those involved in implementing building safety. We understand that in Scotland the common parts of

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multi-occupied residential buildings are not covered by the RRO/HHSRS. That would seem a sensible approach, with all legislative obligations in the planned building safety legislation flowing from this consultation document.

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

No response.

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.

We can only comment on halls of residence on behalf of our membership. Modern student accommodation is built to manage fire. You can't stop residents such as students being careless sometimes, but you can stop fire spread through sprinklers and fire breaks and other suppression mechanisms. Purpose-Built Student Accommodation (PBSA) is also well managed, with various professionals on-site 24/7. As far as we are aware there is never been a fire-related fatality in modern PBSA accommodation.

The primary building safety risk in student halls is the handover phase. Turnaround time between a building being completed, signed off and occupied can be short. We therefore think it makes sense to bring student accommodation within the scope of the new regime during the design and build phases. We are less convinced during the occupation phase, although the disciplines of the safety case are good ones and the sector will embrace the regime if it is applied to occupation, but with the caveat they will need it to be well-resourced.

Q. 1.5. Linked to your answer above, which of the 'higher-risk workplaces' in paragraph 42 would you consider to be higher-risk during the design and construction phase?

See our response to Q1.4.

Q. 1.6. Please support your answer above, including whether there are any particular types of buildings within these broad categories that you are particularly concerned about from a fire and structural perspective?

See our response to Q1.4. we would stress that a key factor should be how easy it is to evacuate such buildings. Clearly in that respect there is quite a significant difference between a prison, a care homes and student accommodation, with the latter far easier to evacuate than the former two.

Q. 1.7. On what basis should we determine whether some or all categories of supported/sheltered housing should be subject to the regulatory arrangements that we propose to introduce during the occupation stage? Please support your view.

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No response.

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?

We agree with the approach suggested, that a new duty to cooperate and coordinate could be imposed where there are two or more persons responsible for fire safety within a building regulated by different legislation, namely a responsible person (under the Fire Safety Order) and a new accountable person role proposed for the multi-occupied residential areas of the building 18 metres and above. Where there is ambiguity the Regulator should advise what is best.

CHAPTER 3

Part A - Dutyholder roles and responsibilities in design and construction

Q. 2.1. Do you agree that the duties set out in paragraphs 61 to 65 are the right ones?

We agree with the duties set out in the paragraphs.

Q. 2.2. Are there any additional duties which we should place on dutyholders? Please list.

No response.

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.

We disagree. We think this requirement will accentuate existing difficulties to recruit resident management company directors. We also think that there is an inconsistency in allowing the Commonhold Association to be the dutyholder, and yet with a RMC/RTM insisting on a named person. At the very least, we suggest Government should allow RMCs and RTMs to take the same approach as Commonhold Associations, and the legal entity should be the dutyholder. This would be in keeping with broader Government policy, which is encouraging more RMCs/RTMs.

Q. 2.4. Do you agree with the approach outlined in paragraph 66, 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 support this approach, in keeping with Dame Judith's recommendations. However, Government will need to be alive to some of the challenges it creates. One of those will be the creation of a new role – the Building Safety Manager – and the availability of sufficient people with the competences to perform such a role. The Industry Response Group has recommended this should be seen as more of a co-ordinator role and we agree.

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?

Making fire and rescue authorities statutory consultees would seem the simplest way to ensure fire service access issues are considered. It is important that this does not become a logjam in the planning application process and therefore we support that fire and rescue authorities should be under the same time limits as other statutory consultees to respond. Fire and Rescue Services are already financially stretched and may balk at such time scales, and we trust Government will consult and support them.

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.

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We agree with the Fire Statement approach outlined in the consultation paper.

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, 150m or other. Please support your view.

We support the Government's objective, but believe the proposed limits in the consultation paper will all be to some extent subjective. It would be better to frame the obligation to consult fire and rescue authorities whenever access is changed by building work within the vicinity of a building in scope.

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.

We support the third option: only developments which the local planning authority considers could compromise access to the building(s) in scope.

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.

We agree the planning applicant be given Client status. It is important, however, that the Client dutyholder can change during the design and build stage. The organisation that secures planning permission will often not be the organisation that proceeds to develop a building.

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.

We support this proposal.

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?

We think it is premature for considering all fire and construction risks. More appropriately covered during the early part of the "gateway 2" design stage.

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.

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BIM/3D Models should not be mandatory. This won't always benefit the regulator's review, and some development/design teams are not set up/have the resources to provide BIM. Pursuing this approach could just create a log-jam and lack of action.

The Full Plans should be provided in a phase approach (as described later in the report).

Q. 2.13. Are these the appropriate dutyholders to provide each form of information listed at paragraph 89?

A – Full Plans. Agreed this will be Principal Designer. For some submissions, the Principal Contractor will have taken on design responsibility and will be the PD.

All other information, agreed with the dutyholders suggested.

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?

We agree that the information should be co-ordinated as a single submission, but that this should be a function of the Principal Designer and not the client. Some clients will not have the resources to fulfil such a role.

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.

We do not agree. Enforcing that all plan details must be provided prior to starting all construction would cause delays and increased costs, and is wholly impractical in most procurement route scenarios.

The Scottish model should be used, so construction can proceed on the basis of approval of each package prior to commencement on site. Also, Client's should be able to proceed without approval at their own risk - and provide evidence of compliance as they proceed.

Inspection and approval of each previous construction stage prior to permission to commence the next stage is also unpractical, as in reality multiple stages will be overlapping.

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.

No – a phased approach should be standard. Giving power to the regulator to choose the approach creates risk in the development programme and procurement route.

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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.

Only if the Contractor is unable to provide evidence that the installation is compliant with the regulations.

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, we support this approach.

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?

Yes, 28 days.

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.

If the buildings is historic, listed, there are ownership complexities

Q. 2.21. Do you agree that the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans?

Yes. The PC will often be the PD, so the Client should be consulted.

There is, however, a wider issue, which is well acknowledged in the sector, but not really reflected in the proposed new approach. That is, that the best designed buildings often include consultation with the people who will have to manage them at earliest possible stages of design. There is therefore perhaps a need to also involve the property manager and/or/building safety manager, where they are known, at this stage.

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. Major Changes should be defined in the regulations to avoid ambiguity.

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);

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- Variations from the design standards being used;
- Changes to the active/passive fire systems in the building;
- Other – please specify.

-Item 1 – Agreed, except “structural design” should be replaced with “method of structural fire protection”, as structural design is too wide a definition.

-Item 2 – Major Change.

-Item 3 – Major Change.

-Item 4 - Minor Change (no need to notify). This definition is too wide and could have implications on immaterial detailed design development.

-Item 5 – Minor Change (no need to notify). This definition is too wide and could have implications on immaterial detailed design development.

-Item 6 – Major Change.

-Item 7 – Major Change should include changes to the Building Envelope Materials (in line with the recommendations on changes to building regulations).

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?

Yes, 10 days.

Q. 2.25. What are the circumstances where the Government might need to prescribe the building safety regulator’s ability to extend these timescales?

No circumstances, but there should be a mechanism for pre-consultation. No comment within the time period should be deemed as approval.

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.

The Principal Contractor should provide a statement of Building Regs compliance in 7 days.

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?

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Yes, as this will impact the ability for contractors to practically complete contracts and landlords to enter into leases with their tenants.

We recommend 14 days.

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.

It is difficult to justify extensions, because of the possible consequences. In purpose-built student accommodation for example, the late handover of a building can be financially catastrophic, in some cases meaning a year's rent may be forgone and compensation paid. Allowing extensions of Gateway 3, could therefore have significant consequences.

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.

We agree. However, the accountable person should be able to make a submission ahead of Building Regs sign-off and therefore allow the application process to run concurrently and dependent on Building Regs approval.

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.

We agree, but subject to the caveat in 2.31.

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.

Partial occupation should be permitted (to allow fit outs for example). To large extent it will also be driven by design (for example there are separate blocks or adequate fire separation measures).

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

We agree with the proposal to apply the same regime to refurbishments as for new buildings in scope. However, in keeping with our comments on 2.11 we think Gateway 2 is the better stage to consider fire and safety issues, regardless of whether the development is coming through the traditional planning route or PDR.

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 phased approach suggested in paragraph 107, which seems appropriate.

Part B – Duties in occupation

New safety case regime

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 think the approach is a sensible one, and replicates other systems around the world, where occupation is subject to a rigorous sign-off process.

However, it is imperative that the Building Safety Regulator is equipped to do this job, and to scrutinise building safety cases over a sensible timescale.

There is also the issue of existing buildings, which will increase the workload of the regulator substantially. The consultation document is scant on the specifics of the transition arrangements, and these will need to be clear and unambiguous.

All concerned, will need to ensure that buildings in occupation can remain in occupation wherever possible and safe to do so.

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 agree with the list suggested, but again with the caveat that existing buildings may not be able to evidence all these requirements.

The consultation document stresses that the Building Safety Regulator should have some discretion on existing buildings and we agree. There should also be some form of appeals mechanism where there is a dispute over evidence, which comes before having to resolve matters via Court or Tribunal.

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.

We agree with the approach set out in paragraph 141 that the registration will be reviewed every five years, but that there could be other triggers - for example as a result of occurrence reports, refurbishment activity, concerns raised by residents or risk reports, or where the accountable person requests it.

The new regime will create a bow wave of registrations and re-registrations, putting strain on the Building Safety Regulator and applicants. We therefore suggest that major building owners should be permitted to register buildings in a phased way over a period of years.

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

It is worth stressing first that implementation of the new regime will also involve day-to-day costs for residents, for example the employment of a Building Safety Manager.

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Government should therefore not only be considering cost-mitigation measures for crucial safety works, but also incentives help with the costs of one-off remediation and continuing compliance.

One issue, which we think merits further exploration, is some sort of insurance incentive for those who are following the rigours of the new regime.

We would also urge Government to explore the VAT status of remedial works.

Government should also consider introducing some sort of grants or low-cost loans to make good safety defects exposed in existing buildings.

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

We very much support this approach of identification by reference to their right to receive funds. It is consistent with other regimes, for example Control of Asbestos. The freeholder will not always be in day-to-day control of the building, for example, where there is a long lease to a head lessee.

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.

We rehearse again our concerns expressed elsewhere in this response, that making an individual responsible in a RMC/RTM situation, could make an already difficult task of recruiting directors to these bodies, yet more difficult. We would therefore recommend that RMCs/RTMs should be treated in the same way as Commonhold Associations, and the accountable person could be the legal entity, rather than an individual.

Q. 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.

We agree for buildings within scope. How the new regime is applied to existing buildings will require further consultation, however. Some of the evidence base for the safety case, for example, may not exist for existing buildings, and therefore some discretion will need to be applied by the Building Safety Regulator. There will also need to be significant resource in the Building Safety Regulator, if all existing buildings in scope are brought into this approach.

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.

We agree, but the circumstances may differ significantly and the regulator should take account of those circumstances. For example, the paper transfer of building between two group companies may not require much work on the part of the regulator, apart from a simple name change. On the other hand, the sale of a building to a new owner, with new management arrangements, may involve significant work as the Regulator explores the capabilities of the new owner/manager. In the

first example, the sensible course of action would be a transfer, with very nominal fee. For the second scenario, the applicant may want to start the five-year license process again. There will be a range of scenarios in between.

Q. 3.9. Do you agree with the proposed duties and functions of the building safety manager? Please support your view.

The functions of the Building Safety Manager are quite wide-ranging and will require several different skill sets. We therefore support the findings of Working Group 8 of the Industry Response Group that this is effectively a co-ordination role and that should be how the role is defined.

If Government pursues the role as defined in the consultation paper it will create almost a new profession and that will take time to grow as people retrain. It will be important that Government is confident of the supply pipeline of such professionals, certainly before embarking on broadening the regime, or bringing existing buildings into it.

An issue, which is not touched on, is delegation of duties. There needs to be a provision for the work of individual dutyholders to be transferred. It is not uncommon for people to take maternity/paternity leave or other extended leave of absence. There needs to be an easy transfer process, where such life events arise. In addition to the above, provision needs to be made to allow where appropriate, the dutyholder to delegate their obligations to a third-party specialist. This would be particularly relevant where the dutyholder is a Trustee of a pension fund or of an ownership vehicle such as a fund.

Q. 3.10. Do you agree with the suitability requirements of the building safety manager? Please support your view.

We support the suitability requirements.

Q. 3.11. Is the proposed relationship between the accountable person and the building safety manager sufficiently clear? Please support your view.

The relationship is clear. There may be instances, however, where the Building Safety Manager process may not run as smoothly as that outlined, for example, where the Building Safety Manager becomes insolvent. In such circumstances, there should be a short period during which the accountable person is able to source another Building Safety Manager of their choosing, before the regulator is forced to appoint one. We would suggest 10 working days, with an obligation on the accountable person to notify the regulator.

Q. 3.12. Do you agree with the circumstances outlined in which the building safety regulator must appoint a building safety manager for a building? Please support your view.

We agree that there will be circumstances in which the building safety regulator will have to appoint a building safety manager and therefore some methodology for doing that. Clearly this must not

allow the accountable person to abdicate their responsibilities and so the circumstances should be defined reasonably tightly. In circumstances where the accountable person is not culpable, they should perhaps be given the option of appointing another building safety manager of their choice instead of instantly moving to a position where they regulator steps in.

Q. 3.13. Do you think there are any other circumstances in which the building safety regulator must appoint a building safety manager for a building? Please support your view with examples.

Financial/business failure, insolvency etc. Also where the Building Safety Manager has failed to perform their duties.

Q. 3.14. Under those circumstances, how long do you think a building safety manager should be appointed for?

It is very difficult to put a time limit on. Ultimately for as long as it takes to ensure that the safety of residents is not compromised and where safe to do so it keeps them in their homes. To ensure that it doesn't become prolonged, however, perhaps there should be a three-monthly review, with some independent 3rd-party verification of the decision every six months.

Q. 3.15. Under what circumstances should the appointment be ended?

There should always be a presumption that the situation will be normalised and the Building Safety Regulator should be working with the accountable person to achieve that.

Q. 3.16. Under those circumstances, how do you think the costs of the building safety manager should be met? Please support your view.

We agree that costs should be recoverable and with the method set out in the consultation paper.

Q. 3.17. Do you agree that this registration scheme involving the issue of a building safety certificate is an effective way to provide this assurance and transparency? If not, please support your view and explain what other approach may be more effective.

A registration scheme is a good idea if properly resourced to avoid delay in issue.

The transitional implementation period suggested for existing buildings is necessary and requires further discussion/consultation.

We support the proposal to display a summary of the building safety certificate prominently in the buildings concerned.

Q. 3.18. Do you agree with the principles set out in paragraphs 180 and 181 for the process of applying for and obtaining registration?

We support the approach set out in paragraphs 180 and 181.

Q. 3.19. Do you agree with the suggested approach in paragraph 183, that the building safety certificate should apply to the whole building? Please support your view.

We support this approach to a point. We agree that a whole building approach is desirable, but the accountable person should be able to rely on a defence of reasonable endeavours, where they have informed and educated residents and taken action via the duty to cooperate where they are knowledgeable, to ensure that residents' individual flats are compliant.

Q. 3.20. Do you agree with the types of conditions that could be attached to the building safety certificate? Please support your view.

We support the conditions.

Q. 3.21. Do you agree with the proposals outlined for the duration of building safety certificates? If not, please support your view.

We support the proposal that the duration of the building safety certificate should coincide with the safety case renewal and be a maximum of five years, but may vary depending on the nature and risk of the building.

Q. 3.22. Do you agree with the proposed circumstances under which the building safety regulator may decide to review the certificate? If not, what evidential threshold should trigger a review?

We see this very much as a two-stage process and there perhaps needs to be some clear lines of demarcation between the two phases. There is first phase, where something has prompted the building safety regulator to consider a review, but as the consultation paper stresses "where evidence supports this." The regulator should be able to make inquiries and collect evidence without it formally being a review. If the regulator decides to proceed then it should formally be a review and the accountable person should be able to make counter evidence available, appeal, etc.

Part C - Duties that run throughout a building's life cycle

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.

No – BIM modelling is an expensive process that is not always cost effective. Furthermore, the integration of occupants' modifications to the model over the course of the building's life could well be disproportionately expensive – raising service charges and occupations costs.

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.

If the Fire safety plan is the centre of the golden thread, this might be a more logical core document, but we recognise that a protocol may need to be written to accommodate this. It is possibly better to leave these decisions to the Building Safety Regulator rather than constraining them now.

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 contents of the key dataset in paragraph 202 looks fine. In addition, the Government may wish to consider:

- Evacuation strategy
- Emergency access points
- Shut off valves
- Water supply locations

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.

We generally support transparency. The only information we are cautious about is making structural information generally available. Tall buildings tend to be the favourite target of terrorists and we therefore wonder whether that information should be publicly available, although clearly should be accessible to the Building Safety Regulator.

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.

Not least for the reason set out in our response to 4.4, we support the approach being suggested.

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 response.

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.

A prescribed minimum content would set a minimum standard and remove variation from suppliers of the service. If it is to run with the building, considering the speed with which technology is advancing it may not be appropriate to tie it to a medium – particularly hosting sites which may be superseded over time.

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.

The golden thread needs to be a manageable document, specific to the property and protocols and should avoid generic and extraneous documentation. If anything, it should be limited in content rather than extended unnecessarily.

Considering the content of the gateway requirements, no further documentation springs to mind.

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.

We support mandatory occurrence reporting. The sector is already familiar with such an approach via RIDDOR on Health and Safety.

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.

We worry that in residential leasehold there may be disincentives to mandatory occurrence reporting. The accountable person in such circumstances may be the leaseholders, via and RMC/RTM who may face significant costs in putting things right. There should therefore also be broader whistleblowing protection, which also allows other contracted parties, to report occurrences.

Q. 4.11. Do you agree that, where an occurrence has been identified, dutyholders must report this to the building safety regulator within 72 hours? If not, what should the timeframe for reporting to the building safety regulator be?

We would phrase this slightly differently, with an obligation to report an occurrence immediately, and the Building Safety Regulator given some powers of tolerance.

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Q. 4.12. Do you agree that the scope of mandatory occurrence reporting should cover fire and structural safety concerns? If not, are there any other concerns that should be included over the longer term?

We agree that this should be the focus.

Q. 4.13. Do you agree that mandatory occurrence reporting should be based on the categories of fire and structural safety concern reports identified in the prescriptive list in paragraph 222? Please support your view.

We support the list in paragraph 222.

Q. 4.14. Do you have any suggestions for additional categories? Please list and support your view.

No response.

Q. 4.15. Do you think the proposed system of mandatory occurrence reporting will work during the design stage of a building? If yes, please provide suggestions of occurrences that could be reported during the design stage of a building.

No response.

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.

In line with our comments on 4.10, we support protection of whistleblowers to the Building Safety Regulator.

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.

We support the proposal.

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.

It seems sensible to give the regulator not only its regulatory functions, but a more proactive role to promote building safety and the safety of persons in and around buildings.

The resourcing of the regulator should be commensurate with such responsibilities.

Q. 4.19. Should dutyholders 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.

We are cautious on this proposal. In principle it sounds sensible in taking the sector to a place where it delivers the cultural change Dame Judith Hackitt sought. In practice, however, parts of the sector are already struggling to access professional indemnity insurance and a general duty all adds to risk.

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 think this needs further thought and consultation. We are not against the principle, but what does it mean in practice? If it has virtually no substantive obligations, then will it have the desired impact? Are there other better ways of promoting a culture of accountability. If it does have a substantive impact, then is it proportionate, scaled, risk based?

Chapter 4 - Residents at the heart of a new regulatory system

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 with the list of information provided in paragraph 253. There is one additional piece of information, which relates to our response to Q5.6, and which we are not sure relates to general information or the management summary. It is how the landlord will treat instances of non-cooperation from residents. This may be an escalating suite of interventions set out in legislation, but it will still need to be communicated to residents.

We agree that the format of information should not be prescribed and therefore allow the accountable person to provide it in a variety of formats, from notice boards, to hard copy and electronically. The burden of proof, however, should be on the accountable person to show the information is accessible for all residents, particularly those who are vulnerable and/or have special needs.

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.

We support the culture of openness as described, and the proposed method dealing with exemptions.

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?

We agree that there should be a means by which a vulnerable person can nominate a non-resident. The list of possible nominees in the consultation paper seems sensible. To keep things simple and clear we suggest a nominated person cannot act for more than one household in a building.

If you answered Yes, who should that nominated person be?

- a) Relative,
- b) Carer,
- c) Person with Lasting Power of Attorney,
- d) Court-appointed Deputy,
- e) Other (please specify).

Residents' rights to information will be underpinned by a requirement on the accountable person to produce and run a comprehensive Resident Engagement Strategy. The accountable person, through their appointed building safety manager, will have to work in partnership with residents to ensure that they are involved in decisions about their building's safety.

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

We support the content of the management summary. We have a concern, however, about the timing of the production of the summary, as a condition of issuing a building safety certificate. Producing something in advance of occupation seems to go against the desire to have a consultative approach with residents. In some circumstances, the accountable person may also switch quite quickly from say, a developer, to a Residents Management Company. The developer in such circumstances may only be performing a temporary holding role until there is enough occupation by the residents. There should be provision for developers in such circumstances to lodge an abridged summary, with timescales lodged with the building safety regulator for submitting a full management summary, once the building is sufficiently full and responsibilities have passed to a Residents Management Company.

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

This seems a sensible list of minimum requirements.

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.

It is imperative to building safety that residents also understand their responsibilities and that there is some proportionate means of enforcing these. Most residents will want to do the right thing and therefore it is communicating to them their responsibilities. A few residents will either deliberately or negligently not co-operate. In such circumstances, there should be an escalating suite of interventions, which starts with communication, but as a last resort the accountable person should be able to refer cases to building safety regulator, which should have powers to intervene. At present, the only powers landlords have to intervene are forfeiture clauses in the lease, which is not an ideal sanction for such situations and a backstop to the regulator would therefore make sense from a leaseholder's perspective as well.

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

There will be a mixture of requirements from simple things like not obstructing fire escape routes, to more complex things, like alterations within residents' flats that may affect the fire safety integrity of the building.

We would not expect any forms of sanction against the resident in the first instance, but communication on their responsibilities and some direction as to how to put things right. We would

expect there would be further layers of escalation, and reference to the Building Safety Regulator would be a last resort. However, there has to be that backstop, otherwise the former layers lack credibility.

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?

We believe that the layers of escalation, route to the Building Safety Regulator, and powers of intervention the regulator would have at that stage, should all be laid out in legislation, rather than be left to the individual policies of an accountable person and their Building Safety Manager. As we have rehearsed under 5.1. some thought needs to be given to how the approach in legislation is communicated to residents and whether it forms part of the management strategy, engagement strategy, or both.

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 support the proposed requirements.

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?

We agree that residents should be able to escalate concerns to the Building Safety Regulator. We disagree that residents should be able to request a review of the building safety certificate. That is a very serious matter and should be a consideration that is made independently by the building safety regulator, based on their expertise, but taking account of representations by residents.

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.

The proposed duty to co-operate seems a sensible approach.

Chapter 5 - A more effective regulatory and accountability framework for buildings

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.

We support the proposals in paragraph 314 for an independent review every 5 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.

We agree with the functions set out in paragraph 315. However, in addition, the regulator should:

- a) Act as an arbiter of role ambiguity.
- b) Have a specific objective to act in partnership with the industry.

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.

We support the shadow approach as set out in the consultation paper. It is important, however, that to establish confidence in the new regime that any 'shadow' period is short and that Government moves swiftly to its intended final regulator(s).

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.

We support the proposal. However, Government should sign off the licenses to do this, rather than it being left to self-regulation.

Q. 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.

We support the proposal. The Competence Steering Group has in part gained its legitimacy from the broad range of stakeholders that have been involved. It is important in moving to an industry-led committee that is not lost.

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

We support the functions.

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.

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We agree with the proposal that Government should establish the Committee in the first instance, but that it should eventually report to the Building Safety Regulator.

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.

We support the proposed approach.

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.

We support the proposed approach.

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

No response.

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.

We support the proposed approach.

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

No response.

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

We agree with the need for regulator of construction products and the proposed approach and functions.

Should new regime apply to MMC?

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.

We agree with challenges explained in the consultation paper in regulating the quality of MMC and therefore agree that it should be within the remit of the construction products regulator.

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.

We support the proposal.

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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.

We support the duty as set out in paragraph 350.

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

No response.

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?

No response.

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

No response.

Q. 8.13. Do you agree that third-party schemes should have minimum standards? Please support your view.

No response.

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

No response.

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

No response.

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 dutyholders/accountable persons within the new system?

We agree with the principles set out in the three-step process. This seems a proportionate and fair approach to enforcement and compliance.

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) dutyholders carrying out work without the necessary gateway permission?**

We support the proposal that criminal sanctions should apply in ii. and iii. With respect to criminal sanctions for failing to register a building, we support this where the failure is to register a new building. It is difficult to respond with respect to existing buildings. The Government is right to recognise there will have to be some sort of transition period, but the detail on this remains vague. It is therefore difficult to judge what is fair.

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.

No response.

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.

This may be a way of addressing our concerns in response to Q9.2, and with existing buildings approaching the transition in a proportionate way.

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.

This is tricky, because it must apply throughout the supply chain. At present limitations are 6 or 12 years. What would be unfair is for the client or principal contractor to be forced to correct non-complaint work, but for them then to be unable to recover their losses from the contractor or supplier who was at fault for the serious defect. There is also the issue of retrospection, and whether such enforcement powers should just apply to new buildings, or existing ones?

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?

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It is difficult to answer 9.6, without knowing what the Government concludes on 9.5. If the timeframe starts from the time the defect is discovered, then six years may be sufficient.

Civil liability for carrying out non-compliant work

Comment: We note the consultation discusses section 38 of the Building Act 1984. There is no numbered question, but the consultation document stresses Government is seeking views on whether it should commence section 38 and, if so, whether section 38 requires any amendment before being brought into force?

We are concerned with the status of this question. Is it formally a part of the consultation or not? It is a big step to take to enact section 38, which would have significant consequences for the risks involved in building. Whether the insurance market was able to cope with indefinite liability would be a key consideration. It is part of the reason why builders provide warranties and take out defect insurance. Such a proposal requires far more investigation and consultation than an ambiguous prompt towards the end of this consultation.