

## **Building a Safer Future: Proposals for reform of the building regulatory system**

### **Introduction**

London Councils is a cross-party representative body for all 32 London boroughs and the City of London Corporation. As such, has a direct interest in the outcome of this consultation from the perspective of both a social landlord, and as a champion of the safety and prosperity of local communities throughout the capital.

We welcome the opportunity to comment on the government's consultation for the implementation of the recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety.

London Councils recognises and applauds the thorough analysis and bold recommendations in Dame Judith Hackitt's Review, and the rigour with which the government has adhered to the vast majority of her recommendations. We agree with many of the proposed actions in the consultation, and in some areas, as this response outlines, we believe they must go further or consider more carefully the unintended implications.

For Local authorities there are widespread new duties as landlords, planning authorities, and environmental health inspectors. These new duties, such as safety case reviews, creating and maintaining digital records and the 'golden thread', represent significant new costs for councils.

Alongside these new burdens are the burgeoning costs of remediating the consequences of the systemic failings in fire safety (remediating ACM cladding, fire doors, non-ACM dangerous cladding, compartmentation breeches) which have and are consuming huge amounts of resource for local government. Whilst we welcome the government funding for ACM cladding remediation, these do not cover the full costs of the wider systemic regulatory failings and need to be addressed with the upmost urgency.

Below are our key messages from the consultation followed by a detailed response to the consultation questions. London Councils looks forward to continued engagement with the Ministry as we work together to shape these proposals into a system of regulation that will usher in the culture change needed to keep our residents safe in their homes.

### **Key messages**

- **Buildings in Scope** – we welcome the ambition of government in lowering the threshold from the 30m threshold in the Hackitt recommendations to 18m for multi-occupancy residential buildings. We question however, the rather arbitrary use of the 18m threshold. In our view it should reflect at least the current capabilities, and recommendation, of the London Fire Brigade (LFB), and apply to all multi-occupancy residential buildings above 11m in height. We have also stated previously, and reaffirm that call here, that the scope of what constitutes a multi-occupied, high-risk building, should include all

buildings where vulnerable people sleep (excluding private individual dwellings), such as hospitals and care homes, which are often less than 18m high.

There have been multiple examples of buildings falling just short of the 18m threshold experiencing life threatening fires; not least of which the June 2019 fire at the De Pass Gardens building in Barking which is just under the 18m scope and destroyed 20 flats. Had the fire occurred at night while people were sleeping, the potential for loss of life would have risen significantly.

- **Transition period** – whilst we believe in putting resident safety first in calling for the broadening of the scope of buildings, this widening will significantly increase the number of buildings in scope and is simply not deliverable for local authorities without corresponding new burdens funding, and a phased roll-out of the new regime. We strongly recommend a pragmatic approach whereby a minimum of a 5-year transition period is put in place, working towards the 11m threshold in a phased approach based on height and risk. Without this it is simply undeliverable with available resources and institutional skill levels.
- **Addressing the skills deficit across the sector** – there is a skills deficit in vital areas pertinent to upholding the new duties that will arise from the implementation of the Hackitt recommendations. We need stronger action from government and a detailed roadmap on how it will implement a national training programme for professions such as Environmental Health Officers (EHO) and Fire Engineers to address this need. We are also calling for funding to initiate and build on local government's own training initiatives to fund apprentices, professional qualifications and to attract high calibre people into the sector helping to fill these voids and usher in a new era for fire safety regulation.
- **The leaseholder access problem** – gaining access to leaseholder owned properties in multi-occupancy residential buildings is a key concern of London Councils, and is often raised by the Housing Directors Fire Safety Group as an ongoing detriment to fire safety in blocks.

The Building Safety Manager (BSM) and/or the accountable person will not be able to holistically manage a building without robust powers to enter, inspect, and enforce action where appropriate. Government must urgently bring forward legislation to address this shortcoming.

- **Ensure a whole building, holistic approach is taken** – this means individual households, common areas, commercial units in the same building, and fundamental building structural elements like claddings systems and construction methods are considered as a whole, by one inspection body that has oversight when assessing fire safety risk.
- **Fire safety inspections** - we have the Housing Health and Safety Rating System (HHSRS) inspection for individual dwelling, and the Fire Safety Order (FSO) for common areas: as we have discovered with the recent failings in cladding systems, neither is well designed to deal with systemic whole building fire safety issues. We are therefore calling for a new piece of legislation, one framework, to deal with fire safety matters in all buildings within scope. This will include mixed use buildings where commercial and residential reside in the

same building. We propose that the Fire and Rescue Services (FRS) have primary responsibility for fire safety in all parts of all multi-occupancy buildings within scope, utilizing this new legislation.

- **Approved inspectors** – Dame Judith stated that the competitive nature of regulation with approved inspectors competing against local authority building control has led to a “race to the bottom” in regulation and recommended that approved inspectors should no longer be allowed to carry out building control for high-risk buildings. The consultation seems to avoid this question completely stating only that:

*‘we are committed to continuing to use the valued expertise of both Approved Inspectors and local authorities under the new regime. In line with this, we are working with the Joint Regulators Group and representatives of Approved Inspectors and local authorities to identify ways of minimising conflicts of interest’*

We are calling for affirmative action on this and adherence to the Hackitt recommendation. Developers should not be able choose their own regulator, no other local regulatory service operates in competition with private companies as to do so, as we have seen, undermines public safety.

- **Principal Contractor duties** – we believe an omission from the dutyholder responsibilities exists for contractors. They should be made accountable for ensuring their operatives are “competent” and have sufficient skills and knowledge to undertake work; for ensuring they have robust quality management systems in place; and for constructing a safe building.
- **Automatic Fire Suppression Systems (AFSS)** – London Councils supports the installation of sprinklers in new builds that fall within scope. We are also calling on government to provide central funding for the retrofit of AFSS as part of a proportionate risk-based programme of fire safety management in existing buildings.
- **Resources** – London Borough Councils are only too aware of the financial implications of fire safety issues stemming from the systemic failings in fire safety and building regulation that have come to light since the Grenfell fire tragedy. We believe that any new duties imposed upon council landlords must be fully funded by government.

We further support the Local Government Association’s (LGA) call for a holistic approach to building safety. The current approach to addressing emerging fire safety issues is not cost effective, requiring building owners to address each new crisis individually i.e. fire doors, HPL cladding, ACM cladding etc. The sector and government should invest in making buildings safe, working holistically and with the judgement of a qualified fire safety expert.

- **System flexibility** - the scope and regulatory detail should not be fixed in detail in primary legislation. Regulation of this nature needs to be able to flex and adapt readily to changing circumstances, technologies, and developments in the sector.

- **The building safety regulator** – it is unclear in the consultation paper whether the vision for the new building safety regulator (hereafter referred to as 'the regulator') is for a regulator carrying out its own inspections and front line duties etc. or whether it will hold powers which it delegates to local authorities, the FRS, or the HSE where appropriate. It is important to set out this vision early. We believe that utilising local enforcement bodies is the most efficient use of resources and support the LGA's proposed structure for the new regulator.

## **Detailed response to consultation questions**

### **Chp. 2: Stronger requirements for multi-occupied high-rise residential buildings**

#### **Scope of buildings to which new requirements apply**

#### **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.**

- Previously we have called for the buildings in scope to reflect the current capabilities of the LFB (front line equipment carried by services is fit for external firefighting and rescue up to 11m in floor height) and apply to all residential buildings above 11m in height; we reaffirm that call here. There have been multiple examples of buildings falling just short of the 18m threshold experiencing life threatening fires, not least of which the June 2019 fire at the De Pass Gardens building in Barking which is just under the 18m scope and destroyed 20 flats. Had the fire occurred at night while people were sleeping the potential for loss of life would have risen significantly.
- We have also stated previously that the scope of what constitutes a multi-occupied, high-risk building, should include all buildings where vulnerable people sleep (excluding private individual dwellings), such as hospitals and care homes, which are often less than 18m. We reaffirm that call here. The vulnerability of residents and building complexity should be the key determinant in assessing risk.
- Whilst we believe in putting resident safety first in calling for the broadening of the scope, this widening will significantly increase the number of buildings in scope and is not deliverable without corresponding new burdens funding, and a phased roll-out of the new regime. We strongly recommend a pragmatic approach whereby a minimum of a 5-year transition period is put in place, working towards the 11m threshold in a phased approach based on height and risk. Without this it is simply undeliverable with current institutional capacity.
- In the event that the threshold remains at 18m, it would still be necessary to have a 5-year phased transition period. Further, we believe that definition should be modified to a definition of '18m in height or 6 stories; whichever comes first'. This would militate against developers gaming the system by building just under the 18m threshold.
- There is a skills deficit in vital areas pertinent to upholding the new duties that will arise from the implementation of these regulatory reforms. We need stronger action from government and a detailed roadmap on how it will implement a national programme for professions such as Environmental

Health Officers (EHO) and Fire Engineers to meet this need. We are also calling for funding to initiate and build on local government's own training initiatives to fund apprenticeships, professional qualifications and to attract high calibre people into the sector.

- The system needs to be able to rapidly adapt to the emergence of new, previously unforeseen problems. The inability to do so in relation to ACM cladding is one of the major flaws in the existing system.
- We object to the premise of setting a higher limit at Gateway One (30m) than at Gateways 2 and 3 – this misses vital opportunities to address fire safety issues at an early stage.

### **Other residential blocks of flats**

#### **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?**

- The Lakanal House inquest recognised the need to address the regulatory vacuum that exists between the FSO and the Housing Act. The problems generated by the failure to do so have been clearly illustrated in subsequent years.
- At present under the HHSRS, local authorities are unable to take action to ensure that items imperative to the integrity of a block's fire protection system – such as fire-resistant doors – are adequate unless it can demonstrate the issue poses a risk to a person within a year within a given dwelling. In this scenario, the probability of fire is so low that it often makes it difficult to enforce.
- Similarly, the FSO applies to "common areas" and fails to take a whole building approach by assessing individual homes for breaches of compartmentation.
- We are calling for one piece of legislation, one framework, to deal with fire safety matters in all buildings within scope. This would simplify and add clarity to the process, avoiding things 'falling through the gaps'. We propose a new piece of legislation be drafted, and that through this legislation the FRS take primary responsibility for fire safety in all parts of all multi-occupancy, and multi-use buildings within scope.
- This approach will allow buildings – including mixed-use – to be regulated holistically, and will allow a whole building risk assessment approach. Further, it should include a provision to accurately identify the "responsible person", which should be in line with the new regulator's definition of the "accountable person" for consistency.
- The Housing Act has proved an effective tool for the mitigation of hazards in the home, including for houses in multiple occupancy (HMO) and should continue to apply in these cases.

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

- With the addition of a new regulator the consultation is recommending adding a layer of regulatory complexity. We will have four layers:
  - The FSO – for common areas
  - The HHSRS – across the board

- The Regulator for +18m buildings (also a separate gateway (1) for +30m)
  - A strengthened building control and planning.
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- A multi-layered system should not continue, the new legislation should be used to streamline and remove gaps in the existing framework.
  - Generally, the London boroughs work very well with the LFB. In 2013 a joint protocol was developed between the London boroughs and LFB to codify the divisions of responsibility in regard to enforcing the Housing Act 2004 and to seek to overcome the gaps and ambiguities in the regulatory framework.
  - We believe that EHOs do not have the right skill set or capacity to lead on fire safety under the HHSRS. Under the existing housing protocol, LFB take the regulatory lead.
  - As an interim solution the housing protocol for cooperation between London Local Authorities and the LFB should be reviewed with a view to codifying these into legislation. This has proved effective at fostering cooperation to date.

### **Non-residential buildings where multiple people sleep**

#### **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 have previously stated that all buildings where vulnerable people sleep (except private individual dwellings) should be designated as high risk, and that all buildings should be covered under the combustibles ban from external wall systems. This should include supported and sheltered housing, hotels, hospitals, boarding schools and student accommodation. Further to this position, any building which is considered higher-risk, including workplaces, places of assembly, and places of entertainment – should also be considered at the design and construction phase.
- Legislation will also need to allow for flex should issues come to light which are currently unforeseen. For example, 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.

#### **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 answer 1.4 above.

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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)

**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?**

- Other stakeholders are better placed to respond to this question.

**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.**

- We believe that all locations where vulnerable persons sleep should be included, and all supported/sheltered housing should be considered high risk, unless proven otherwise. The categorisation of a building as extra care Vs. sheltered, no longer defines the risk to the occupants. Residents will have a range of care or support needs and individuals with severe care needs may be resident in a supported living unit due to the lack of appropriate housing availability.

### **Mixed use buildings of 18 metres and above in height**

**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?**

- As per our answer 1.2 above, fundamentally, we need to ensure that buildings can be considered as a whole, irrespective of the use which individual parts of them may be put to.
- Currently, the FSO has jurisdiction over commercial parts and any common areas between the two, and over parts of the building where compartmentation between the residential and commercial parts are breached. However, it is not always possible to tell whether compartmentation is breached. Secondly, the FSO only applies in the commercial parts of a building where there are 5 or more employees; this leaves small businesses with residential above vulnerable and is a key weakness of the legislation.
- Commercial units can have a variety of interested parties e.g. freeholder, leaseholder, tenant, agents etc. This can cause confusion as to where fire safety duties lie. It is important therefore, to have a single superior "accountable person" identified, with responsibility for the structural /fire safety of a building. This may be a superior leaseholder or the freeholder, dependant on the terms of the lease.
- Lease implications impact on identification of the accountable person. The accountable person must appoint a BSM to manage the building as a whole, the costs being apportioned to the leaseholder/ tenants via the relevant lease clauses.
- We need overarching legislation to state this, which would override responsibility clauses in leases. This legislation would need to give the BSM sufficiently robust powers to ensure tenants fulfilled their duties and operated in accordance with the BSM requirements.

### **Chp.3 - A new dutyholder regime for residential buildings of 18 metres or more**

#### **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 welcome the thoroughness of establishing a clearer set of responsibilities for dutyholders in the design and construction phase.
- We are concerned however, that the phrase 'as far as is reasonably practicable' appears with all three of the consultation's proposed dutyholders during the design and construction phase. Surely building regulations 'must' be complied with in all circumstances? Adhering to regulations in this vague sense, and leaving legal ambiguity, is partly the cause of the systemic failings that have been identified over the last two years.
- In the event the 'as far as is reasonably practicable' terminology is not amended, a list of potential scenarios where it is not practically possible would be necessary to provide clarity.

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

- Principal Contractors should be made accountable for ensuring their operatives are "competent" and have sufficient skills and knowledge to undertake work; for ensuring they have robust quality management systems in place; and for constructing a safe building. It shouldn't be solely down to the client to check the quality of works, contractors need to take responsibility for the quality of their work.

##### **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 agree that this is the best route to ensuring dutyholders comply with their responsibilities.
- The exercise of identifying building owners and enforcing against them, with regard to remediating dangerous ACM cladding, has been problematic for many local authorities. In order to militate against this in future scenarios, and to stave off a rush to register buildings in Shell companies pending more rigorous regulation, there must be an identified individual dutyholder who can be held to account.
- Most Boards will have a named H&S portfolio owner and most Executive teams will also have a named Exec Director responsible for H&S. The concept that there is a "controlling mind" is well established, as such we do not believe that the identification of a named dutyholder for building safety is out of step with current practice. As per H&S legislation, this would be the Chief Exec for Councils.

##### **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.**

- Yes. CDM is a tried and tested system with logical principles, which is familiar to most professionals.

### **Gateway one – before planning permission is granted**

#### **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?**

- We support the LFB position which is that it's not in the best interests to have FRS as statutory consultees at gateway one for planning approvals – responsibility for safe design at gateway one should rest with developers and designers.
- We strongly support the view that FRS access should be considered in detail at the planning stage, however we believe that this should be part of the existing, but enhanced planning regime. FRS will be available to provide bespoke guidance where required and will continue their role (alongside the regulator) at gateway two.
- To accompany this proposal, we recommend mandatory training for building control officers with the ability to refer complex cases to the FRS where necessary. Local Authority Building Control (LABC) have a well-regarded training regime which could satisfy this need.

#### **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.**

- We agree with the premise of submitting a fire statement with planning applications; embedding fire safety thinking in the earliest design is an important element of changing the culture around fire safety. However, the resources and expertise do not currently exist in local authorities and would need a significant investment in a national skills programme to transform this reality.

#### **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.**

- Adjacent developments can have significant impact on firefighting provisions to existing buildings and often the existing building owner is unable to influence/ prevent adjacent developments which could detrimentally impact on their buildings.
- Despite this, FRS consultation should not be necessary with an effective Approved Document B, and an effective early planning and design process.

#### **Q. 2.8. What kind of developments should be considered?**

- Other stakeholders are better placed to respond to this question.

**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 believe that a dutyholder must be in place as early as gateway one, and that the Fire Statement must be prepared by the dutyholder and passed to the dutyholder for gateway two as the development progresses. It is essential that the whole process remains consistent and unambiguous to ensure dutyholders 'know their responsibilities' under law.

**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.**

- A properly staffed and resourced regulator could make a valuable contribution to the embedding of fire safety in the early design. Despite this, if the regulatory requirements are clearly defined in the Approved Documents and Guidance, there should be little need for this.

**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?**

- If planning teams were properly resourced and given local flexibilities over planning charges, they could resource themselves sufficiently to assimilate these new duties over time.
- There are additional advantages to this approach. LABC estimates that possibly 70 per cent of plans, documents and other records pass through local authorities. This would be advantageous to compiling a single digital record from the very start.
- Developers also have the option to consult the regulator at gateway one as per answer 2.10.

**Gateway two – before construction begins**

**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.**

- We agree that the four requirements: Full Plans, 3D digital model of the building, A Fire and Emergency File, Construction Control Plan, mentioned look logical.
- It is the case however, that many projects do not proceed in a linear way. It is unlikely to be economically viable to produce a whole building design prior to commencement of work. A phased, sometimes bespoke approach may be necessary.
- The 3D model proposal also needs unpacking. For example, is it envisaged that this will serve as the model for the life of the building and be updated with repair/refurb/maintenance works? Further, will the planning control office retain these 3D models or the regulator?
- These responsibilities also add a significant burden on already over stretched planning teams. Local flexibilities over planning fees, or commensurate funding will be needed to bring this into practice.

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

- Yes, however an additional dutyholder is needed - Principal Contractors. Contractors should be made accountable for ensuring their operatives are “competent” and have sufficient skills and knowledge to undertake work; for ensuring they have robust quality management systems in place; and for constructing a safe building.

**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?**

- Yes. Ultimate responsibility needs to lie with the client or their representative. This role for the Client is already part of the expectations of the CDM Regulations.

**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. Too many developers proceed at risk without consideration to the implications at occupation. This leads to significant design/ material changes during the construction project, which reduces the quality of the end building.
- This regulatory requirement provides a key incentive for developers to be proactive and timely when designing, compiling, and submitting fire safety information. The hard stop would allow inspections in stages, any deviation from agreed plans would subsequently have space to be put right.
- This would also provide certainty at gateway three that the building had been delivered as planned, and reduce the need for invasive inspections.

**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.**

- Yes. It seems sensible to leave discretion to the regulator lest large complex developments become financially untenable due to the risk of construction delays. It will be important in this case to ensure this route doesn’t become a back door to poor compliance, and doesn’t become the modus operandi for all developments.

**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, the regulator needs real punitive powers in order to foster compliance across the entire sector. We have seen a “race to the bottom” culture in building standards proliferate across the sector with deregulation, this power for the regulator will dissuade work starting before the appropriate permissions have been issued.
- However, reasonable justification would be required for removal or uncovering of work to prevent abuse of regulatory power.
- The cost implications of this should lie with the dutyholder at construction stage.

**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.**

- See answer 2.17.

**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?**

- There should be a target timescale to foster efficiency in the regulator and instil confidence when tendering for developers. LABC have recommended the existing two month requirement for local authorities be adopted; we support this view.

**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.**

- Yes, timescales may have to be stepped proportionately to the risk and complexity of the building.
- The timeline should also not include time when the regulator is waiting for additional information from the dutyholder i.e. the clock should stop.

### **During construction – laying the groundwork for gateway three**

**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, this is fundamental as any changes during the construction phase will impact on the occupation phase and original design strategies/ concepts.
- It is also critical to maintaining the 'golden thread' of information.

**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, although there needs to be clear guidance on what constitutes a 'major' or 'significant' change.
- This would also be covered in our suggestion in answer 2.13 that the principal contractor should have a duty to construct a safe building.

**Q. 2.23. What definitions could we use for major or minor changes?**

- Other stakeholders are better placed to respond to this question.

**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?**

- There should be a target timescale to foster efficiency in the regulator and instil confidence when tendering for developers, especially with complex projects which may need adaptations as new challenges are uncovered.

Failure to attain approval in a timely manner could detrimentally effect home building targets.

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

- Where the building is complex and the proposed changes require specialist knowledge; modelling and/ or assessment due to the complexity of the proposed building/ design.

**Gateway three – before occupation begins**

**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.**

- Yes, we agree this duty. We believe this should have the same significance as in the Scottish system where dutyholders sign the final completion document to say they have delivered their duties.
- We would also state that a clear division of responsibilities be mandated for the principal designer and the contractor (see answer 2.13). It is essential that all dutyholders know exactly what their duties are to avoid any ambiguity.

**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?**

- There should be a target timescale to foster efficiency in the regulator and instil confidence when tendering for developers. Failure to have buildings signed off for occupation in a timely manner could lead to escalations in development costs.

**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 answer 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, we strongly agree this point. Allowing a building to be occupied before the registration has been granted raises the probability of residents living in unsafe buildings.
- Other relevant factors which make this essential are: decanting a building after it has been identified as unsafe is likely to see residents moved into temporary accommodation, which comes with its own set of risks and costs; investigating building safety is more complicated and resource intensive once it is occupied; as we have seen with ACM remediation and the interim fire safety measures, there are financial implications for leaseholders, for which there is currently no satisfactory answer.

- There also needs to be flexibility in the process to reflect the different models in the development market. For example, a council who may be building for its own use, may wish to register the block at Gateway two, as they will also be the owner at Gateway three, whilst a developer may transfer ownership to another party (end user) at the end of the construction phase. It should be noted that some buildings which have been speculatively built may sit unoccupied for a period before registration for occupation.

**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, as per answer 2.19 above, it is essential that there be real consequences to allowing a potentially unsafe building to be occupied.

**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.**

- As we have stated throughout this consultation response, we believe it is essential that a whole building approach is taken, as such there should be no partial occupation of a single building until it has passed gateway three for occupation.
- However, an exemption could be made where there is a distinct boundary between the area under construction and the area under occupation e.g. a phased handover of independent blocks of flats on a regeneration project. Each building, however, would need to pass through the gateways before being occupied lest it undermine the entire gateway system.

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

- We do not agree this point. All buildings within scope that are undergoing a major refurbishment, whether those that require planning consent, or those permitted under General Permitted Development Order 2015, should start at gateway one.
- There is a potential constraint also at gateway three. Many refurbishments are carried out with residents in situ. In order to avoid unnecessary decants of buildings, it will be necessary to make provisions for these circumstances within the gateway three criteria.

**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 agree this approach.

## **Part B – Duties in occupation**

### **Safety cases**

**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.**

- In principle we agree this position. However, the term 'safety certificate' implies that the regulator has approved the building as safe. This risks transferring responsibility from the dutyholder to the regulator. It must be made clear that the onus is on the dutyholder to ensure building safety. Having received a building safety certificate should not diminish this responsibility.
- However, there needs to be clear guidance regarding content and standards which need to be achieved, specifically for existing buildings. Councils are concerned regarding what "standard" needs to be attained and in what timescale to ensure a certificate is attained for existing buildings.
- These safety cases will be resource intensive exercises for building owners, no matter what the detail reads for regulatory compliance, the social sector will need to be adequately resourced to carry out these new burdens.

**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 support LABC's approach, that the local authority must be represented to provide input on existing buildings choosing their most appropriately qualified professional which may require an interdisciplinary approach (Building Control for structure and fire, Housing/Environmental Health for tenants etc.)
- We also support the LGA position following their investigations into Large Panel System Buildings. This is that the safety case must contain evidence of the materials used and method of construction and subsequent strengthening/refurbishment. 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.**

- The minimum 5-year safety case review cycle should be risk-based. We support the NFCCs position that the safety case should also be reviewed in line with the wording of the FSO if:
  - there is reason to suspect that it is no longer valid; or
  - there has been a significant change in the matters to which it relates including when the premises, special, technical and organisational measures, or organisation of the work undergo significant changes, extensions, or conversions.
- This would also mean the safety case should be reviewed, at least to some extent, if the Accountable Person or BSM change.
- A further factor to consider is that with the often-limited levels of information available for older buildings, and/or high costs to obtain that data, it will take significant time and resources to prepare safety cases for many buildings. With the skill deficit in needed professions i.e. fire engineers, EHOs, it would be advantageous to phase the cycle so that all buildings do not need safety case reviews at the same period: every five years.
- It is suggested that the accountable person might opt to do destructive type 4 fire risk assessments. Even in this case, the difficulties posed by leaseholder

law, make it very difficult to gain access to sometimes a very large proportion of flats in a block. Taking this approach requires significant time, as such invasive assessments can only be undertaken during void periods (taking voids out for inspection, impacts on housing wait times) or during major block refurbishment projects which require decant or have sufficient impact on residents' quiet enjoyment.

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

- We are resolute in the fact that leaseholders should not be held accountable for remediating fire safety issues that have arisen due to systemic failings in the centralised regulatory system. Government must shoulder some of the responsibility for these systemic failings, just as developers should be held accountable for work they have carried out which does not adhere to standards.
- We further support the LGA's call for a holistic approach to building safety. The current approach to addressing emerging fire issues is not cost effective, requiring building owners to address each new crisis individually i.e. fire doors, HPL cladding, ACM cladding etc. The sector and government should invest in making buildings safe, working holistically and with the judgement of a qualified fire safety expert.

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

- Yes, we agree with this position.
- However, thought needs to be given to how accountable people will be designated in large complex buildings such as those with multiple owners.
- It will also be necessary to put processes and penalties in place to account for buildings which have not registered with the regulator.

**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 support the idea that the identification of an individual should be a statutory requirement notified formally (similar to the Scottish warrant).
- Where existing buildings are registered to a non-UK based Shell company, it has proved difficult for local authorities to identify a legal entity for enforcement of ACM remediation work.
- Additionally, multi-use buildings mixing residential and commercial, and large complex organisations, with multiple interested parties/owners etc.

**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.**

- Yes, existing buildings (due to ageing infrastructure; uncontrolled changes; lack of information etc.) are potentially the greater risk, and far outweigh new builds in quantity.

**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, this is essential to maintaining consistency across the golden thread of information.

**A new building manager role**

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

- Ensuring that those employed to maintain and manage the building have the necessary skills, knowledge and experience;
  - Maintaining information management systems to facilitate safe management of the building;
  - Maintaining the safety case for the building so that risks are proactively identified and mitigating measures put in place and maintained;
  - Ensuring that necessary and appropriate building remediation is undertaken to ensure that the conditions set out in the building safety certificate are met;
  - Engaging residents in safe management of their building through a Resident Engagement Strategy that includes routes of escalation for resident concerns;
  - Ensuring that fire risk assessments for the whole building are undertaken and reviewed regularly and any recommendations are undertaken in a timely manner; and
  - Being responsible for reporting mandatory occurrences to the building safety regulator.
- Yes, the proposed duties look sensible.

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

- This is currently a role that does not exist; meaning that there will be implications for upskilling and recruiting. What qualifications etc. will be needed to prove competency to the new regulator? And what funding or central programmes will there be for the new roles?
- It should also be noted that the cost of a BSM may become too onerous for leaseholders in smaller buildings, and should be considered.

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

- There needs to be a clear and direct line of access between the BSM and the accountable person. Often building managers do not have day to day direct line of contact with senior management.

**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.**

- Yes, we agree these circumstances.

**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.**

- Where there is more than one building occupier and the parties cannot agree on a shared appointment, or the accountable person fails to appoint one within an agreed timeframe.
- Where action is being taken against a building by an enforcing authority, the regulator may need to appoint an interim manager whilst any issues relating to management are resolved.
- Where the regulator appoints a BSM, consideration of contractual matters and payment needs to be outlined along with the scope of their powers.

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

- We believe a minimum of a 12 month appointment would be an adequate approach. Unless the accountable person can demonstrate a suitable alternative appointment has been made.

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

- In the event of the property being transferred to a new owner and/or the accountable person appoints a suitable replacement with an adequate notice period.

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

- The regulator will need to cover the cost and seek cost recovery from the accountable person.

**Registration of multi-occupied residential buildings of 18 metres or more and the building safety certificate**

**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.**

- We agree the registration scheme, although refer to answer 3.1 which raises concerns about the building safety certificate.
- The building safety certificate regime will need to be bolstered by an adequate suite of sanctions to avoid non-compliance.

**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?**

- Yes, we agree these principles.

**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 agree with the whole building approach (as individual elements cannot be seen as disparate parts when they are intrinsically linked).
- We do not believe however that the duty to cooperate between residents and the dutyholder is strong enough to enable the BSM or accountable person to fulfil their duties sufficiently.
- The issue of accessing leaseholder flats could in some cases prevent access to a large proportion of the building. Also, there is the mixed use problem with commercial properties underneath residential. With the caveat that these two issues are resolved the whole building approach seems logical.
- It will also be essential in this case to ensure the new fire safety inspection regime/ legislation is suitably designed to cover the whole building as per our earlier statement.

**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 agree this in principle.

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

- We agree that the building safety certificate should be synchronised with the safety case review schedule (see answer 3.3).

**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?**

- Yes. A review should be initiated following changes and at regular intervals, proportionate to the risk.

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

### **Digital standards**

**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 is not currently widely used for the building occupation phase and would require a significant amount of financial and personnel resources to implement across councils.
  - Whilst it has benefits for the design and construction phase, BIM is not a sufficiently robust tool at the current time to support the occupation phase. We would support a move towards this standard however, but would need clarity on the level of BIM requirements that would be appropriate, and an ample transition period.

**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.**

- Other stakeholders are better placed to respond to this question.

### **Key dataset**

**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.**

- It is the expectation that the basic building pathology and residual risk information would be available via the Health & Safety File.

### **Openness and Transparency**

**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.**

- Basic information (where there are no security implications) should be available for residents and stakeholders. This can be facilitated via the resident engagement strategy.
- We see no benefit that building information is made available to the wider public; this would raise unnecessary security concerns.

**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, we agree. See answer 4.4.

### **Golden thread in design and construction**

**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.**

- Information in the golden thread for the design and construction phase should correlate with the gateway requirements. This is important for consistency within and across buildings.

**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.**

- The development of a British Standard would be of great benefit to a well functioning golden thread.

### **Golden thread in occupation**

**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.**

- No. However, we agree with paragraph 212 that gathering the data on existing buildings will be a lengthy and resource intensive exercise. With this

in mind, it will be essential that local authorities are properly resourced, a concerted national skills programme is enacted, and that a suitable transition period of at least 5 years is put in place. Proceeding without this policy architecture in place is setting the regime up to fail.

### **Mandatory occurrence reporting**

**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, we agree this duty.

**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.**

- Other stakeholders are better placed to respond to this question.

**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?**

- Timescales should be aligned with current 'Reporting of Injuries, Diseases and Dangerous Occurrences Regulations' (RIDDOR) requirements which is 10 days for dangerous occurrences.

**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?**

- Yes, we agree this position.

**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.**

- Yes, we agree this position.

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

- Other stakeholders are better placed to respond to this question.

**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.**

- Yes. Where the design/ specification is seen to be at odds with safety principles, and where feedback from consultees (building control and FRS) is not being acted upon.

**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, whistleblowing is an effective mechanism for public safety.

### **Ensuring dutyholders have the competence to do the job**

**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, it is essential that key persons holding duties for building safety are independently verified as competent.

### **The building safety regulator's statutory objectives and the general duty**

**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.**

- Yes, a safe building depends on the education of building users and the construction sector.

**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.**

- Yes, it's essential to usher in a true culture change around building safety that all users of buildings, and those that work on them, are aware of the requirements for the safe use of buildings.

### **Extending dutyholder roles to all building work**

**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.**

- All building work must be applied to dutyholders' roles and responsibilities. Clear duties for all building work will allow enforcement action against the appropriate person, clarify responsibilities, and avoid an overly opaque and complex system.

## **Chp.4 - Residents at the heart of a new regulatory system**

### **Core information which all accountable persons will be required to provide**

**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 this list with the stipulation that the resident responsibility section include the restrictions on residents and resident good practice such as: changing fire doors, undertaking internal works, subletting, and third-

party installations etc. Building safety depends on residents upholding their duties as well as other stakeholders.

## **Exemptions**

**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.**

- Yes, we agree this list and the security position.

**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).**
- We agree in circumstances where the person has power of attorney or is acting as an advocate.

## **Requirements for a Resident Engagement Strategy**

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

- Yes, we agree this in principle.

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

- Yes, we agree this in principle.

## **Proposals for residents' responsibilities**

**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.**

- Resident behaviour is a key cause of building fires, and is essential for maintaining whole building fire safety, especially with regard to maintaining compartmentation.
- The BSM and/or the accountable person will not be able to holistically manage a building without robust powers to enter, inspect, and enforce action where appropriate. The existing requirement under the RRO to coordinate and cooperate does not work in practice and is untested. We do not believe that adopting a similar approach with individual tenants/ leaseholders will work in practice and is unlikely to be enforced via the courts.
- There should also be a duty on residents to cooperate with regulators or enforcement agents exercising the power of the regulator.

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

- Power for the BSM to enter and inspect dwellings with notice (intrusively if required), without the need to refer to the courts for an injunction.
- Power to serve notice on tenants/ leaseholders to remedy defects (dependant on lease terms) in specific timescales.
- Power to remedy defects where notice has not been complied with and recover costs.
- Power to enter leasehold premises to undertake works (with notice) to landlord services/ spaces to maintain security and safety of the building, without the need to refer to courts for an injunction.

**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?**

- Simple and clear guidance regarding proportionality for landlords and the right to refer the BSM/accountable person to the regulator where a resident believes they have not acted suitably, proportionate to the risk, would suffice.

**Internal process for raising safety concerns**

**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.**

- Yes, we agree these criteria.

**Route of escalation**

**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 broadly agree this point. Although, the burden of proof will be a key aspect here as it could become very resource intensive for both the regulator and local authorities if they have to review the building safety processes for trivial resident complaints.

**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. With regulation currently in a flux and state of significant change, it is vital that concerns raised by residents in the wrong place find their way to the regulator.

**Chp.5 – A more effective regulatory and accountability framework for buildings**

## **Establishing a national building safety regulator**

**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**

- Yes, we agree this frequency. This would fit neatly with the 5-year transition period after which the effectiveness of the regulatory changes could be reviewed.

**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.**

- Broadly we agree these functions. We would say however, that the creation of a new standalone regulator will exacerbate the already severe lack of key skills within the sector as the regulator populates itself. This points ever more urgently to the need for a national skills programme and commensurate funding.

**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.**

- No. There is insufficient capacity and expertise within existing bodies and Local Authorities to facilitate the quantum of work. This strategy would require a suitably long transition period and a significant funding stream.
- We do however, support the continuation of work through the JRG to improve building safety ahead of legislation, but caution as to how much can be achieved with current resources.

## **Oversight of competence**

**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. There is a skills shortage across the sector and there needs to be an overarching framework to allow professional bodies to develop members to facilitate demand.

**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 an independent chair to work with industry and professional bodies to develop competency and drive culture change.

**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 agree that the proposed functions look like a reasonable place to start from. We would note however, that this work is in its infancy and flexibility must be an integral part to allow for future developments.

**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.**

- We suggest that works should commence sooner rather than later, and that the Industry Response Group (IRG) should be developed to progress its work.

**Establishing roles and responsibilities**

**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.**

- Other stakeholders, such as LABC, are better placed to respond to this question.

**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.**

- Other stakeholders, such as LABC, are better placed to respond to this question.

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

- Other stakeholders, such as LABC, are better placed to respond to this question.

**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.**

- Broadly we do agree. However, one of the problems that has arisen from the systemic failings uncovered with ACM cladding and other items such as fire doors, is a mismatch between test parameters and real-life installation practices. We therefore advocate a greater collaboration between the lab and practitioner aspects of the new regime to develop a testing regime that more accurately emulates real world conditions.

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

- Yes. Construction product fire test data should be included along with a statement of quality assurance in the manufacturing process.

**Strengthening national construction products oversight**

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

- Yes, we support the proposed functions.

**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.**

- Yes, we agree this position.

**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 this position.

**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, we agree this position.
- 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 crucial that a criminal offence is introduced for the supply of non-compliant construction products. This omission does not align with the regime for consumer products and limits the powers of trading standards to investigate liability.

**Encouraging independent assurance**

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

- Other stakeholders, such as LABC, are better placed to respond to this question.

**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?**

- Other stakeholders are better placed to respond to this question.

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

- Yes. We support mandatory third part certification of products and installers for all life safety products and product installation. This needs to be supported through the application of minimum standards, and a robust system of regulation, quality checking and oversight.

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

- Yes, it is essential that there are minimum standards applied across all schemes so that clients can be assured of consistency.

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

- Yes, clients can be assured that irrespective of which scheme is used that they will attain a consistent standard of quality.

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

- Other stakeholders are better placed to respond to this question.

**Chp.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?**

- Yes, this is consistent with other regulatory approaches.

**Q. 9.2. Do you agree we should introduce criminal offences for:**

- an accountable person failing to register a building;**
- an accountable person or building safety manager failing to comply with building safety conditions; and**
- dutyholders carrying out work without the necessary gateway permission?**

- Yes, we agree this position. We do however, support the use of notices (enforcement/ prohibition) prior to court action, in line with other regulatory systems.

**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.**

- Yes, we agree with this position.

**Making civil sanctions available to deter and punish breaches of building safety**

**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, both civil and criminal penalties must be available; see answer 9.2.
- It is vital that penalties actually applied for non-compliance in practice are severe enough to act as a deterrent and not simply factored into tenders as 'the cost of doing business'.

**Enforcement action under the Building Act 1984**

**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. Identification of a defect equates to acknowledgement that there is a safety risk present; as such, action is required from that point onwards to redress the risk. Due to the embedded nature of many risks such as cavity barriers, it is often dependent on time for the issue to arise.

**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 believe that the limits for taking enforcement action should be six years, which is in line with the statute of limitations.