



Ministry of Housing,
Communities &
Local Government

A reformed building safety regulatory system

Summary of responses to the 'Building a Safer Future'
consultation



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1. Introduction

Methodology

The 'Building a Safer Future' consultation was launched on 6 June 2019 and closed on 31 July 2019. During this time, the consultation was extensively promoted with residents of high-rise residential buildings, and the fire safety and built environment industry.

Responses to the consultation were received either through a dedicated online tool or by email to the Ministry of Housing, Communities and Local Government. Emailed responses either came as text documents structured around the questions in the consultation or as unstructured text responding in general terms to the proposals in the consultation. Respondents were encouraged to identify whether they were responding as individuals or on behalf of an organisation.

Who Responded?

Table 1 shows the number of responses received through the available routes and in what form they were categorised for analysis ("coded"). In total, 871 responses were received, of which 368 were through the online tool, 384 as structured text documents, and 119 as unstructured text. Of those who responded, 548 responded on behalf of an organisation and 323 responded as individuals.

All consultation responses were read and factored into the policy development process, but given the varied formats used to respond it was not possible to code all responses.

Table 1: Number of consultation respondents

	Organisation	Individual	Total
Online platform	168	200	368
E-mailed: Structured text/document	292	92	384
E-mailed: Unstructured text/document	88	31	119
Total	548	323	871

Given the breadth and depth of the consultation, respondent numbers varied for each section. Table 2 shows the number of respondents for each section.

Table 2: Number of consultation respondents per section

Consultation modules	Total number of Respondents answering at least 1 question within the module	Total number of respondents responding to at least half of the module questions	Total number of respondents responding to all module questions
Scope of buildings to which new requirements apply	563	460	349
Duty-holder roles and responsibilities in design and construction	578	461	203
Duties in occupation	487	415	198
Duties that run throughout a building's life cycle	573	416	115
Residents at the heart of a new regulatory system	428	363	212
Establishing a national Building Safety Regulator	513	451	397
Oversight of competence	495	444	374
Establishing roles and responsibilities	424	368	211
Enforcement, compliance and sanctions	499	445	211

Analysis of Responses

All responses received have been assessed by officials, with data collected and coded, where responses allowed, on whether the respondent agreed or disagreed with the policy proposal. Analysis of the main themes from open-ended questions (that were not codable) was undertaken and where appropriate identified in this document. Where unstructured responses did not fit the consultation structure, they were assessed separately with the themes informing the Government's overall response to the consultation.

Interpreting Findings

The consultation was promoted widely to encourage participation from residents of high-rise residential buildings, the construction, fire safety and building management industries, and other stakeholders. Respondents were asked to identify if they were responding as an individual or on behalf of an organisation. As such, the data reported in this document represents the views of those who responded.

The following has been used to quantify the level of support for the proposals set out in the consultation:

- Majority of respondents >50%
- Overwhelming majority >85%
- All respondents 100%

Many comments and explanations were received during the consultation and, given the format of these free text responses, it is not possible to interpret the strength of these comments. As such, where possible we use 'a few' respondents where less than 50 respondents raised an issue, 'some' where 50-149 respondents raised an issue, and 'many' respondents where 150 or more respondents raised an issue.

The data tables that accompany this document should be reviewed in parallel to this document. These tables summarise the responses to the quantifiable questions asked in the 'Building a Safer Future' consultation.

2. Stronger requirements for multi-occupied high-rise residential buildings

This section of the consultation sought views on the buildings the Government proposed to bring into scope at the outset of the more stringent regulatory regime and on whether the scope should go further than Dame Judith Hackitt's recommendation to start with all residential buildings over 30 metres (or around 10 storeys) in height and include multi-occupied residential buildings of 18 metres or more.

This proposal sought to apply more proportionate rigour to buildings that have the potential for catastrophic incidents and cause multiple fatalities.

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.

The majority of respondents agreed that the new regime should go beyond Dame Judith's recommendation. However, there was no clear consensus on what should be covered by the initial scope. Suggestions included that a lower height threshold or other determining factors beyond height should be considered. Other comments considered a higher threshold to help capacity and build competence.

Respondents' proposals included:

- all multi-occupied buildings of 18m or more;
- buildings where vulnerable people are housed (e.g. care homes and hospitals, or any place where people sleep);
- buildings over 11m (3 storeys) to align with fire service (front-line appliance) rescue capability;
- buildings with a complex structure; and
- 30m (as a starting point at least) so that capacity of the sector can adjust and build competence.

There was concern that a simple height threshold could trigger gaming of the system, and it was suggested that a consideration of the number of storeys as well as height of a building would be more helpful. Respondents also sought clarity on how height would be measured including, for example: how basements, mezzanine levels and rooftop terraces, and buildings of mixed use, would be treated in determining the height of a building.

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?

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

Respondents took a range of views on how the Government could ensure the current regulatory framework is managed holistically. Although some suggestions were similar, there was no clear weight behind a specific proposal.

Key themes in the suggested approaches included:

- one single piece of legislation, bringing together all the different pieces of legislation covering fire and structural safety in multi-occupied residential buildings.
- one single piece of guidance to cover both regimes, including laying out the regulatory framework in an accessible and concise way and providing comprehensive guidelines. As part of this, comments were made on the Approved Documents review, with respondents calling for them to be simplified and made more user friendly;
- Better enforcement mechanisms for both the Fire Safety Order Fire Safety Order and the Housing Health and Safety Rating System - with comments suggesting that while the Fire Safety Order did generally work well for workplaces, enforcement became an issue in buildings where both regimes applied.
- Possible solutions put forward were:
 - clear guidance on roles and responsibilities, including which enforcement body was responsible for different parts of a multi-occupied building;
 - the introduction of a statutory duty for enforcing bodies to co-operate;
 - both bodies to carry out joint inspections;
 - Fire and Rescue Services having the power to go beyond the front door;
 - an accountability framework to ensure co-operation;
 - either the new regulator or the local authority should have the power to decide on which body should enforce, should a dispute arise;
 - one regime should apply in multi-occupied residential buildings - it was suggested that the Fire Safety Order was the most appropriate mechanism for managing fire safety, therefore removing fire as a risk from the Housing Health and Safety Rating System.
- Other comments also included disapplying the Fire Safety Order to multi-occupied buildings and that the Housing Health and Safety Rating System should be the primary regime;
- clarity and alignment of definitions, for example to address the disparity between the definition of 'common parts' in both regimes;
- extending the definition of common parts in the Fire Safety Order to include front doors and external walls; and
- improving competence across the sector to increase the success of both regimes in operation.

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.

Building on responses to question 1.1, respondents suggested a wide range of factors should inform which non-residential buildings should be subject to the new regulatory arrangements during design and construction. Many respondents felt that the vulnerability of the user, and particularly their ability to evacuate in the case of a fire, should be considered. Buildings in which users engaged in potentially high risk behaviour was also suggested. Some respondents felt that a user-centred approach should have much broader application and any building where there was a 'sleeping risk' (i.e. buildings with sleeping accommodation) should be subject to the new regulatory regime.

Other factors were put forward in relation to the nature of the building itself, particularly in consideration of:

- the fire prevention and evacuation strategy in place;
- the fire risk or historic rate of fire;
- whether the building relied on a high level of compartmentation or phased evacuation;
- proximity to other buildings; and
- the storage of combustible materials.

While factors for consideration were wide ranging, other comments included:

- for certain buildings, application of the new regulatory arrangements in its entirety would not be appropriate;
- other buildings had their own regulators and guidance; and
- an independent initial risk assessment should be conducted to inform whether a building was high risk.

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?

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?

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.

Agreement with the list of proposed 'higher-risk workplaces' varied. Overall, a majority of respondents agreed that hospitals and supported/sheltered housing were higher-risk during the design and construction phase, but those responding as individuals were more likely to agree than those responding on behalf of organisations. Fewer than half of respondents agreed that they considered prisons or residential education buildings to be higher risk.

Respondents also proposed other building types that they would consider higher risk, the most common being:

- care homes;
- hotels; and
- residential educational buildings.

Less common suggestions included:

- pubs;
- nightclubs;
- places of assembly;
- industrial buildings;
- buildings where flammable material is stored; and
- buildings where there is partial occupation.

Certain respondents made clear that this consideration should be for the design and construction phase only.

When asked to name types of buildings within these broad categories that were concerning from a fire and structural perspective, sheltered and supported housing was a commonly raised category. Respondents also named hospitals and prisons due to the difficulties in evacuation, and educational buildings (including boarding schools, schools with dormitories, primary and secondary schools and Special Educational Needs schools).

Comments on the inclusion of certain categories of sheltered and supported housing included:

- all categories of this type of building should by default be in scope unless proven otherwise that it should not;
- it should be dependent on the vulnerability of user of the building, particularly in relation to their health, and their ability to respond to a fire on a self-help basis, including their ability to understand fire alarm systems, and the level of staffing;
- it should be based on building structure including size, fire safety measures (e.g. sprinklers) and fire evacuation strategy; and
- it should be on a case by case basis as there would be differences between different sheltered and supported accommodation, including the types of residency.

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?

Respondents made a variety of suggestions as to how to ensure the fire safety of a whole building in mixed use, and recognised this could be an area of potential confusion and challenge.

Certain respondents interpreted the duty to co-operate, as opposed to having one Responsible Person, as mutually exclusive options, whereas other respondents felt that even with a duty to co-operate, overall responsibility should be established between the Accountable Person and the Responsible Person.

In that context, there was some support for a duty to co-operate when two or more persons were responsible for different parts of the building under separate legislation, with suggestions that this should be made a requirement in legislation.

The majority of responses, however, suggested that there should ultimately be one body or person in charge. There was a range of suggestions for who this should be and how this should operate:

- both freeholder and leaseholder were suggested with no strongly weighted view towards one over the other;
- there should be a designated lead for fire safety only;
- the person responsible for the residential elements of a building should have primacy;
- there should be a role for the=to oversee that all relevant duty-holders and Responsible Persons are fulfilling their responsibilities;
- the owner with the largest impact e.g. most floor space or most occupants should have overall control;
- overall responsibility should lie with the person who has the more onerous legislation requirement;
- the person responsible for the more vulnerable occupants of a building should oversee fire and safety management of the whole building, including provisions concerning 'non vulnerable' residents; and
- in the cases of mixed used buildings, the Accountable Person should include all names (within its building registration) of those who hold responsibility in relation to fire and structural safety within a building.

Further suggestions included:

- having a memorandum of understanding at local or national level between enforcing bodies, as well as a responsibility for enforcing bodies to demonstrate compliance with a duty to co-operate;

- independent third-party inspection as a means to ensure all bodies were co-operating; and
- Article 22 of the Fire Safety Order could be amended as a means of ensuring co-operation across regimes.

3. Duty-holders and Gateways

This section of the consultation sought views on proposals for the duty-holder regime which would operate in the design and construction phase and would place much greater responsibility on those designing and constructing buildings in scope to demonstrate how they are managing safety risks.

Duty-holder's roles and responsibilities in design and construction

Q2.1: Do you agree that the duties set out in the consultation are the right ones?

The overwhelming majority of respondents agreed that the duties set out in the consultation were the right ones.

Of those who agreed, comments included that the duties were reasonable, proportionate and placed responsibilities with those who were in a position to control risk, and that it was essential that these duties were specified in legislation.

There were suggestions that the duties set out in the consultation should go further to also include:

- the duties should extend to compliance with all elements of building regulations and not just fire safety;
- they should include an independent fire regulatory inspector;
- the proposed fire statement should be produced or assessed by a competent person before submission; or
- there should be verification of fire-related features which are concealed by later operations for example cavity barriers or fire stopping.

Of those respondents who did not agree with the duties set out, common reasons given were:

- the duties were not onerous enough;
- the duties were too onerous;
- the principal designer could not ensure that the designer takes account of current building regulations;
- the duties did not reflect commercial practices of sub-contractors choosing materials and products; or
- the roles would become uninsurable.

Q. 2.2: Are there any additional duties which we should place on duty-holders? Please list.

The majority of respondents did not see the need to add additional duties above those listed in the consultation.

Of those respondents who did think there should be additional duties, there was no clear consensus on what these additional duties should be. Responses included comments on the precise wording of the duties, suggesting that the duty-holders should “comply with building regulations” rather than “so far as it reasonably practicable”.

Examples of other additional duties proposed included:

- a duty should be placed on duty-holders to seek an acceptable level of safety, not just compliance;
- the Client should be responsible for appointing an independent Clerk of Works with the necessary skills and expertise to carry out inspections; or
- a fire engineer duty-holder should also be introduced with specific duties to provide fire and life safety controls for buildings within scope of the enhanced regulatory regime.

Q. 2.3: Do you consider that a named individual, where the duty-holder is a legal entity, should be identifiable as responsible for building safety? Please support your view.

The majority of respondents considered that where the duty-holder is a legal entity, a named individual should be identifiable as responsible for building safety.

Many respondents commented that this would provide clarity of lines of responsibility and accountability. Other reasons given for agreeing included that the proposal would overcome the current difficulty in identifying the person responsible for the premises or carrying out the work and provide a single point of contact to communicate quickly any matters of building safety.

Of those respondents who did not agree, reasons given included:

- in some situations, such as voluntary boards, the responsibility would not be proportionate, and the duty should instead be covered by good governance practices;
- a single individual may not be permanent within that organisation; no single individual could have the skills, knowledge and competence to warrant such a liability and therefore it should be a joint responsibility with specialists;
- the potential for a single individual to become a scapegoat;
- a single individual may not have the authority, influence and financial control to discharge duties on their own; and
- personal criminal liability for non-compliance would be a significant departure in practice from the current health and safety liability framework.

Q. 2.4: Do you agree with the approach outlined above, that we should use Construction (Design and Management) Regulations 2015 as a model for developing duty-holder responsibilities under building regulations? Please support your view.

An overwhelming majority of respondents agreed that the Construction (Design and Management) Regulations 2015 should be used as a model for developing duty-holder responsibilities under building regulations.

Some respondents commented that the Construction (Design and Management) Regulations 2015 was a well-established model which the construction industry was already familiar with, therefore aiding implementation.

Other comments included:

- the Construction (Design and Management) Regulations 2015 was due to be reviewed in 2020, so any reforms would need to be compatible;
- a greater level of prescription may be needed for some areas than currently under the Construction (Design and Management) Regulations 2015;
- there was a disconnect with the role of the 'Responsible Person' under the Fire Safety Order, (usually appointed at handover, when design and construction work is complete); and
- there may be a need to add a requirement that the procurement process and material standards prioritises safety requirements over cost considerations.

Gateway one – before planning permission is granted

Q2.5: 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?

The overwhelming majority of respondents agreed that fire and rescue authorities should become statutory consultees for buildings in scope at the planning permission stage.

When asked how we can ensure that fire and rescue authorities' views are adequately considered it was suggested that it would be beneficial to consult the Fire and Rescue Service as the relevant experts in fire safety and access requirement, and because matters can be decided at the planning stage that are not part of the building control process, such as road layouts, which are difficult to change later.

However, even amongst those respondents who supported our proposal, there were concerns about whether the Fire and Rescue Services would be sufficiently resourced and funded to undertake this function (and if not, the impact this could have on the planning system), and the fact that the Fire and Rescue Services view is not binding.

The National Fire Chiefs Council and the majority of Fire and Rescue Services who responded to the consultation opposed our proposals on the grounds that:

- becoming a statutory consultee will increase Fire and Rescue Service workload and Local Planning Authorities will not have to follow their advice;
- the number of buildings Fire and Rescue Services see where issues arise in relation to water and access is small, as well as there being a number that never proceed to build phase; and
- this may duplicate what Fire and Rescue Services review during Gateway two.

The National Fire Chiefs Council instead proposed that Local Planning Authorities should consult Fire and Rescue Services on 'highest risk' developments, or where proposed Fire and Rescue Service access and water supplies arrangements (as set out in the 'Fire Statement') do not meet standards.

Other respondents disagreed on the grounds that buildings tend to change between planning and construction and designs will not be finalised at Gateway one, and Local Planning Authorities often already consult the local Fire and Rescue Service on issues relating to fire risks for major developments.

It was suggested that building control and/or utility companies should be statutory consultees at Gateway one, to consider compliance with Part B of the Building Regulations (Requirement B5: Access and facilities for the fire service). It was also argued that we should lower the height threshold of Gateway one from 30 metres to 18 metres so that it is consistent with the scope of Gateways two and three.

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.

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; and**
- **Other.**

The overwhelming majority of respondents agreed that Fire and Rescue Services should be consulted on applications for developments within the 'near vicinity' of buildings in scope.

There was no consensus on a definition of 'near vicinity', and comments included that it should be determined on a case by case basis. Respondents who made this recommendation, also proposed that this be based on the size, height or type of buildings

in the vicinity. It was also suggested this should be determined by risk and risk factors like access issues, local infrastructure and material composition of buildings nearby.

Other proposals for defining 'near vicinity' included:

- requiring the National Fire Chiefs Council and Building Safety Regulator to define 'near vicinity';
- requiring individual Local Planning Authorities and Fire and Rescue Services to define 'near vicinity';
- 'vicinity' should not be defined as a distance but should instead be considered in a site-specific risk assessment;
- it should be related to surrounding risks such as other high hazard buildings in the vicinity or only be relevant if altering access routes or changing highway layouts; and
- may need to be dependent upon location, for instance in inner London, this would cover many more buildings than other parts of the country.

The National Fire Chiefs Council and several Fire and Rescue Services strongly opposed the proposal that the Fire and Rescue Service should be consulted on 'near vicinity' applications, arguing that 'if a building is to be constructed in accordance with the guidance contained in Approved Document B then it should not be built in such a way that access requirements to existing buildings are restricted or that enables a fire to spread from one building to another'.

The National Fire Chiefs Council proposed that strengthened guidance should encourage Local Planning Authorities to consult Fire and Rescue Services on developments which are considered to compromise fire service access and water supplies, or where these do not meet current standards.

Other respondents disagreed with the proposals on the grounds that they saw no justification for consulting on developments within the near vicinity, or due to concerns about the Fire and Rescue Service workload and resources.

When asked what types of development the Fire and Rescue Service should be consulted on, the most popular option was for all developments within the defined radius to be considered.

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.

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.

The overwhelming majority of respondents agreed that planning applicants must submit a Fire Statement. The main argument of these respondents was that the Fire Statement should go beyond fire service vehicle access and access to water supplies.

There were differing views on what the Fire Statement should include. Examples included:

- demonstrating compliance with Part B of the Building Regulations (or at least Requirement B5: Access and facilities for the fire service on access and facilities for the fire service);
- information about water supplied for firefighting in accordance with Water UK's national guidance document;
- construction types and methodology, including the use of any combustible materials/cladding within the construction design;
- other prevention and fire safety measures, including accessibility; detailed evacuation plans / escape strategies; compartmentalisation and spread of surface flame;
- alignment with the Mayor's draft London Plan policy requires all 'major development' proposals to be submitted with a 'Fire Statement' covering a broad range of matters such as passive and active fire safety measures; and
- active and passive fire safety measures.

There were also suggestions that the Fire Statement should be produced or assessed by a competent person before submission.

Where respondents disagreed that planning applicants must submit a Fire Statement, comments included that planners would not have the right knowledge to assess a Fire Statement, and that building control could alternatively assess this as part of a Building Regulation Application.

The overwhelming majority of respondents thought that the planning applicant should be given the status of a Client.

It was also suggested that the planning applicant should be required to produce the Fire Statement. Reasons for this included that this:

- promotes clarity of responsibility and accountability;
- supports early engagement;
- provides a point of contact for the Building Safety Regulator;
- provides continuity for the golden thread; and
- prevents speculative applications.

Others suggested that an alternative person such as the architect or planning consultant, rather than the planning applicant, should be given the status of a Client and questioned whether the planning applicant has the level of competency needed to be made a Client.

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.

The overwhelming majority of respondents agreed that early engagement on fire safety and structural issues with the Building Safety Regulator prior to Gateway two would be useful. Some respondents noted that early engagement could be useful to address issues and prevent them becoming difficult or costly to remedy down the line, with the Building Safety Regulator helping to shape submissions. Some respondents felt this would help to maintain the golden thread of information. It was suggested that engagement with the Building Safety Regulator should take place before Gateway one is reached.

Concerns were raised about the resource implications this would have for both the Building Safety Regulator and duty-holder, and whether the Building Safety Regulator would be able to operate on a cost recovery basis.

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?

The majority of respondents agreed that planning permission was the most appropriate mechanism, with those responding on behalf of organisations being more likely to agree than were these responding as individuals.

Reasons given by those respondents who agreed with our proposal included that it ensures the relevant fire safety issues would be considered early on in the process, and that it is a familiar process to developers. It was suggested that using the planning process would encourage greater responsibility to consider fire and structural risks at an early design stage, and that this process should help make the link between the planning and building regulations processes to ensure that designs in planning do not conflict with the functional requirements of building regulations.

Reasons for disagreeing with our proposal included:

- planning permission is about assessing the suitability of a site for a particular project;
- it would be too burdensome on the planning system;
- the planning permission stage is either too early for considering fire and structural risks as the relevant details will not be available (so Gateway two is more appropriate) or the planning permission stage is too late (so these issues should be considered at pre-planning application stage); and
- this could instead be done through Building Regulations/ Local Authority Building Control as a more appropriate mechanism to consider fire and structural risks.

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.

The overwhelming majority of respondents agreed that the proposed Gateway two information requirements were right. Of those respondents who agreed, suggestions about how the information should be used included:

- incorporating it into a phased design approach, as projects do not always progress in a linear way and some parts are contracted before building design is fully decided;
- that a degree of flexibility may be needed to make this work as plans and fire safety management continually evolves, and all information may not be available right away; and
- to provide an outline of the management expectation of Duty holders / Accountable Persons where a building has varied from standard guidance, once it has been occupied.

Respondents had mixed views about the purpose and potential benefits of 3D digital modelling for buildings, with concerns including:

- that the requirement is disproportionate unless needed by the Building Safety Regulator;
- potential expense and difficulties of rolling out 3D modelling and whether duty-holders will be set up to use Building Information Modelling - noting that alternative programmes to Building Information Modelling are used; and
- the need to have a standard specification to ensure consistency.

Where respondents felt that the information requirements were too onerous, reasons included that it may not be known at the time (e.g. procurement / appointment of certain duty-holders may happen later) and could delay construction beginning. It was not clear if the potential for allowing a staged approach to Gateway two would mitigate such concerns.

Q. 2.13: Are these the appropriate duty-holders to provide each form of information listed at paragraph 89?

The overwhelming majority of respondents agreed that the proposed duty-holders should provide the specified information. Comments highlighted the importance of a co-operative approach, suggesting that duty-holders would likely be an organisation rather than an individual. There were also comments that the information requirements would place significant liabilities on the Principal Designer and very little on Designers. These comments argued that the Principal Designer role should not include design work, as it is a coordination and leadership role without direct contractual authority over other Designers and cannot take responsibility for any Designer's work. A further suggestion

was that the architect should produce the first two documents, and a fire engineer the third.

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 duty-holder submit information separately?

The overwhelming majority of respondents agreed that the Client should coordinate the Gateway two information and submit it as a package. There were however mixed responses as to whether the Client (as the 'controlling mind') or Principal Designer (in line with existing Construction (Design and Management) Regulations 2015 requirements) should submit the information. It was argued that a single person coordinating the information would be beneficial as it would provide clarity and prevent confusion for the Building Safety Regulator. Respondents also noted that duty-holders should have a responsibility to coordinate and work with each other on the information required in submission.

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.

The overwhelming majority of respondents agreed with the proposal to introduce a hard stop where construction cannot begin without permission. It was felt that this would help prevent, as with the current situation, consultation occurring after work has commenced, thereby making any necessary changes to the design more challenging and costly. Agreement was much higher among respondents representing organisations than those responding as individuals.

Concerns were raised about the timeliness of responses delaying construction and the need to ensure delays preventing approval were in respect of major issues, rather than delayed due to process. Other suggestions included that developers should be able to proceed at risk.

Respondents who disagreed voiced concerns that a hard stop could hinder progress on developments, cause delays and increase costs. Comments included that retrospective building checks should be used to ensure compliance, and that the Building Safety Regulator should be able to issue a stop notice if it has concerned that work is progressing too far without information being provided.

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.

The overwhelming majority of respondents agreed with the proposal for a staged approach – commenting that this is realistically the way buildings often develop and therefore this approach is practical. A few respondents felt it was important the new regime allowed for flexibility.

Comments from those who agreed included that there should be strict conditions and effective management of this process. It was recommended that the duty-holder would be required to demonstrate they are managing the process effectively. It was also felt that the 'hard stop' would help this process to work well.

Other suggestions included there should be a clear and consistent approach to determining when a staged approach would be permissible and that this approach should be the exception rather than the rule as all building elements are interconnected. Additional comments included that the staged approach would disincentive duty-holders from developing their designs upfront and lead to fragmentation, non-compliance and loopholes.

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.

The overwhelming majority of respondents agreed that the Building Safety Regulator should be able to require work to be pulled down or removed during inspections. Many respondents felt that this would act as a good sanction and would therefore encourage compliance and act as a deterrent for unsafe work.

There were comments that this should be a last resort if the duty-holder was unable to provide evidence that the work was compliant. It was also suggested that this should be subject to an appeals mechanism. Concerns raised by respondents who disagreed included the potential delays and disruption which pulling down or removing work could cause.

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.

The overwhelming majority of respondents agreed with proposals for prohibiting building work from progressing until non-compliant work has been remediated. Many respondents felt that this would encourage full compliance by acting as a strong deterrent to ensure contraventions were not covered up and that inadequate work was rectified. It was felt that this would drive cultural change and potentially reduce the cost burden of remediation at a later stage of build.

There were comments that these powers would need to be used proportionately - for example, with regard to risk, and should only be used in the right circumstances where it is necessary to ensure safety. Comments from respondents who disagreed included that this could cause costly delays to projects and would be too disruptive. Other respondents felt that this prohibition should only apply to the work/sections considered to be non-compliant and not wider work on the building. It was also suggested that the Building Safety Regulator should be held to account and there should be an appeals process in place if duty-holders felt a decision was unfair.

During construction – laying the groundwork for Gateways

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

The overwhelming majority of respondents agreed that the Principal Contractor should have to consult the Client and Principal Designer on changes to plans. It was suggested that fire engineers, sub-contractors and designers should also be consulted.

Other comments included that this process would support the golden thread of information (ensuring the original design intent was preserved and changes managed through a formal review process); that it would prevent inappropriate product substitution; and that this consultation should also involve the architect responsible for the original design of the building.

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?

The overwhelming majority of respondents agreed that the Principal Contractor should notify the Building Safety Regulator of any proposed major changes before carrying out the relevant work. Agreement with this proposal was considerably higher for those responding as part of an organisation than as individuals. Comments included that this would deter duty-holders from submitting acceptable proposals at Gateway two in order to gain approval for construction and then subsequently making unacceptable changes without the regulator's knowledge. A few respondents raised concerns with how minor and major changes would be defined and recommended that clear definitions be provided. Many respondents felt that all changes (rather than major changes alone) should be approved by the Building Safety Regulator.

Respondents who disagreed argued that while the Building Safety Regulator should be notified of major changes, it should be the Client (who has overall responsibility for co-ordinating information) rather than the Principal Contractor who notifies them. Other respondents suggested that the Principal Designer should notify the Client after discussing changes with the Principal Contractor.

Q. 2.23: What definitions could we use for major or minor changes? (Multiple choice)

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

There was a mixed response in terms of how we should define major vs minor changes with no clear consensus on how to approach this. Similar proportions of respondents answered positively to each of the multiple-choice options.

Comments, in addition to those on the changes listed in the consultation document, included:

- that all the definitions included in the consultation could be considered major, plus substituting materials/products;
- major changes should relate to the proportion of the project affected by the change;
- changes to the mode of work and thus competencies required of duty-holders/contractors should be included.
- changes to the occupant type should be considered;
- changes to the fire strategy (including evacuation strategy and occupation management strategy) or structural design should be considered major;
- that it is difficult to distinguish between minor and major as definitions are subjective and the compound impact of change should be holistically considered; and
- that the approach should focus on outcomes therefore a prescriptive list is inappropriate and could be subject to gaming and would not necessarily be future-proof.

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?

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.

The overwhelming majority of respondents agreed that the Building Safety Regulator should have to respond to Gateway two applications within a particular timescale.

Of the respondents who suggested a timescale, about three quarters stated one to two months. Respondents also commented that the timescale should be dependent on the complexity and size of the project, and the quality of the information submitted.

A few respondents proposed that the existing timescale for full plans applications (maximum of 8 weeks) should be applied to Gateway two applications as a useful comparison.

It was suggested that the Building Safety Regulator should offer an indication as to when it would respond upon receipt of the application, whilst others suggested that a sliding scale of timescales would be needed.

The majority of respondents agreed that there would be some circumstances where it might be necessary to prescribe the Building Safety Regulator’s ability to extend these timescales, such as:

- the Building Safety Regulator requiring more information (it was suggested that the timescale should only begin when the Building Safety Regulator has received a sufficient application and should pause while the Building Safety Regulator was waiting for information);
- complexity and size of the project;
- whether the duty-holder has provided a comprehensive application;

- whether the Building Safety Regulator needs to consult other experts/regulators before approving or rejecting the application;
- dispute resolution if the Building Safety Regulator and other experts/regulators disagree.

Q. 2.24: Should the Building Safety Regulator be required to respond to notifications of major changes proposed by the duty-holder during the construction phase within a particular timescale? If yes, what is an appropriate timescale?

Q. 2.25: What are the circumstances where the Government might need to prescribe the Building Safety Regulator’s ability to extend these timescales?

The overwhelming majority of respondents agreed that the regulator should have to respond to change control requests within a particular timescale. However, there were differing views as to what the timescale should be. The most common suggestion was that the timescale should depend on the complexity of the change. When suggesting a specific timescale, the most common response was 1 month, followed by 2 weeks.

It was noted that timescales should not compromise safety. Other suggestions included that timescales need to be based on a number of factors, including the nature of the proposed change and the data/reports required to demonstrate that the change will achieve the equivalent level of safety as the original approach/material.

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?

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.

The overwhelming majority of respondents agreed that the Building Safety Regulator should have to respond to Gateway three submissions within a particular timescale. Responses on appropriate timescale varied – common choices were 1-2 weeks, 1 month and ‘dependent on project complexity’.

Other reasons offered by respondents included:

- whether significant changes to plans occurred during the construction phase;
- where the building has a complex range of future occupants; and
- whether the Building Safety Regulator needs to consult other experts/regulators before approving or rejecting the application.

Reasons for extending the timescale included:

- project complexity;
- phased or staged occupation;

- additional information or advice needed;
- disputes;
- ensures accountability;
- review work; and
- other relevant comments.

Other reasons offered by respondents included:

- whether significant changes to plans occurred during the construction phase;
- whether the building has a complex range of future occupants; or
- whether the Building Safety Regulator needs to consult other experts/regulators before approving or rejecting the application.

Gateway three – before occupation begins

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.

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.

The overwhelming majority of respondents agreed that the Accountable Person must apply to register their building before occupation can commence otherwise buildings could be occupied before the regulator was satisfied with the building work. Respondents argued this would ensure a specific competent individual or entity was accountable for the ongoing safe management of a building. It was proposed that the registration process should form part of Gateway three and respondents sought clarity on how the registration requirements would work where partial occupation was being sought. It was questioned whether minor issues should prevent occupation.

The overwhelming majority of respondents agreed that it should be an offence to allow a building to be occupied before registration has been granted. Comments included that this would prevent developers cutting corners.

Other comments expressed concern that making registration a prerequisite of any occupation of a new building could add considerable cost and risk to the construction of buildings in scope. It was also argued that it could be difficult for landlords and other stakeholders to obtain funding and insurance for construction projects where the occupation of a building could be withheld at the end of the construction phase. It was also suggested that small financial penalties, in comparison to the substantial profits of construction companies, would not be a sufficient deterrent.

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.

The majority of respondents agreed with this proposal. Comments from those who agreed included that partial occupation was necessary as many projects currently have phased completions to ensure they are financially viable – particularly for large developments.

Of those respondents explaining their answer, some commented that partial occupation must not compromise resident safety. The following were suggested by respondents:

- the intention to partially occupy must be set out at Gateway two, so that the fire strategy reflects that the building will be partially occupied;
- There should be full compartmentalisation between the areas being occupied and the areas still under construction;
- it should only be permissible for lower floors;
- the relevant part of the building should fully comply with building regulations;
- a fire strategy/safety case, that has assessed all the risks which ongoing building works pose to the occupied areas (similar to a pre-emptive Fire Risk Assessment in accordance with the Fire Safety Order), should be in place;
- partial occupation could be allowed provided the Fire and Rescue Service (in addition to the Building Safety Regulator) were content;
- escape routes/egress points were not compromised, and an evacuation strategy agreed;
- 'fit out' is all that is left to complete for the un-occupied part of the building;
- the occupied area is complete and approved for occupation;
- there is no compromise to the overall building safety system and that all necessary requirements can be demonstrated for the part to be occupied;
- ongoing construction activities are adequately segregated and secured from the occupied areas;
- the type of occupant is taken into account when deciding whether occupation is appropriate;
- the Accountable Person can demonstrate they are aware of and capable of managing any additional risks that result from partial occupation;
- in relation to mixed use premises – e.g. commercial property, only the ground floor is occupied, while work on floors above continues;
- partial occupation is only allowed for entirely separate buildings within the same development; and
- the Accountable Person needs to demonstrate they are competent and understand the risks associated with a partially occupied building.

Of the minority of respondents who argued it should not be possible to partially occupy, reasons included:

- the building is not being considered holistically as proposed by Dame Judith: buildings should only be occupied once all areas are safe and compliant with regulations otherwise safety could be compromised, and risk increased;

- allows scope for loopholes and interpretation of guidance - with buildings creeping towards being occupied before they are fully compliant;
- confusion and reduced safety;
- contractors' operations can create fire risks.

Comments from these respondents included that in very exceptional circumstances partial occupation could be allowed. These respondents recommended that safety systems of the occupied part should be fully separated from areas still under construction.

Approach to significant refurbishments

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

The overwhelming majority of respondents agreed with the proposals for refurbished buildings.

Points raised included:

- risks were greater for a refurbished building;
- gateways should apply to decanted buildings only;
- refurbishment should be followed by a review of the safety case;
- refurbishment triggers could be aligned with works that impact on fire or structure or are subject to building regulations;
- concerns about applying refurbishment to Permitted Development Rights;
- the disconnect between the non-worsening clause in the building regulations and the requirement in the Fire Safety Order to adapt to technical progress. It was suggested that this should be overcome by reviewing the safety case when there was reason to suspect it was no longer valid;
- that a lack of capacity in the Building Safety Regulator would result in delays;
- the critical nature of the safety case in maintaining safety in occupied buildings; highlighting that minor changes can have a cumulatively severe impact on safety; and
- concerns that information for existing buildings may not always be available and obtaining it has associated costs and delays, which may discourage refurbishments.

Transitional arrangements

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?

The majority of respondents agreed with the proposed approach to transitional arrangements for Gateways, with comments that they were a sensible and logical approach. It was noted that as all buildings needed to be built responsibly and in line with current regulations and that all buildings would have to be brought into scope eventually, there should not be issues with transitioning.

Of those respondents who agreed, comments included that the transitional arrangements should be communicated well in advance so that developers, designers and construction companies would be able to plan for changes. Other respondents suggested a reasonable transition period should be put in place.

Among respondents who disagreed, concerns were raised with the approach in relation to buildings that had already obtained planning permission or had begun construction. There were also suggestions that the new arrangements should only apply to buildings where a planning application had not yet been made.

There were respondents that agreed with the approach at Gateway one and two but felt it would be difficult for buildings in the construction phase to pass Gateway three. These respondents suggested design and construction teams would have been following current standards and Construction (Design and Management) Regulations 2015 and would therefore be unlikely to have all the required information and documentation readily available.

Of those respondents who disagreed, comments included that applying these arrangements would be impractical and confusing due to mixing the two systems. Respondents argued that applying different regulations at different stages in the new system could cause confusion, so new regulations should be applied at a single point.

There were also comments that applying these arrangements to projects in construction could compromise the contractual process or contracts already in place.

Alternative arrangements which were suggested included:

- an enhanced inspection regime for buildings already in construction;
- buildings in the construction phase following the same regime as existing buildings;
and
- transitional arrangements that made allowance for the current level of documentation.

4. Duties in occupation

This section of the consultation sought views on proposals for the more stringent regulatory regime when buildings in scope are occupied.

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.

The overwhelming majority of respondents supported the proposal that the Building Safety Regulator should assess the safety case prior to issuing the Building Safety (now Building Registration) Certificate for both existing stock and those buildings yet to be occupied at Gateway three.

Respondents commented that this was a key step if the new regime was to deliver the intended outcomes. However, there were concerns raised, for both existing and new building stock, as to the practical implications of a safety case review at the point of building registration. These included:

- regulatory capacity and technical expertise would need to be sufficient to ensure reviews of the safety cases happen within statutory timescales and undue delays avoided, especially at busy periods such as the end of a builder's financial year. Serious delays at this time could cause significant issues to homeowners, builders and investors;
- a suitable transition period would be required, to give building owners and occupiers time to prepare for the requirement to produce the building safety case as part of any registration process;
- the need for greater clarity on how the Building Safety Regulator would feedback the outcomes of the application process, and what the process would be where an initial application had been inadequate; and
- existing stock might require a more flexible approach to producing safety cases, due to difficulties such as obtaining specific information and gaining access to individual dwellings.

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?

The majority of respondents agreed with the proposed content of the safety case, although it should be noted that the proportion of respondents agreeing who were responding as individuals was higher than those responding on behalf of an organisation. Respondents stressed that the focus should be on the people who interact with the building, as much as the physical measures that are present, to manage fire and structural risks.

Respondents' comments included that the context in which the case for safety is made (e.g. the design intent in respect of occupancy groups, whether the building has vulnerable residents or whether building operates a stay-put strategy) was a key factor.

Others thought that it was not sufficient to reference the resident engagement strategy, but that evidence of how residents are engaged, informed about safety measures, and supported to live safely, should be a central tenet of the safety case. Respondents felt that how residents can raise concerns, and how those concerns will be given proper attention, should always be clear.

Respondents also called for guidance, templates and example safety cases to be published, in order to further help industry satisfy any content requirements. Respondents called for any guidance to be statutory, in order to provide unambiguous clarity on exactly what information needed to be covered by a safety case and how it should be assembled and presented in order to receive regulatory approval.

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 overwhelming majority of respondents agreed that this is a reasonable approach for assessing the risks on an ongoing basis.

There were concerns that it would be challenging for the safety case to capture the complexity of the information, while remaining accessible as a management and operational tool. Respondents also noted that the contents of the safety case should show more than the physical audit of the measures within the building and articulate how information flowed through the system. Examples given included: the safety case articulating the change management process for managing identified defects in or future changes to a building; and setting out how continuous improvement would be demonstrated.

Respondents highlighted the importance of the interplay between building owners and occupiers in managing risks on an ongoing basis; and that the new regime must recognise the rights of occupiers and the need for owners to have appropriate rights of access in order to take a whole building approach.

Respondents noted that the Building Registration Certificate would only show that arrangements for managing fire and structural risks were valid at the time of issue and that reliance should not be placed on fixed term periods to trigger a comprehensive review. Suggestions for triggers indicating the safety case or supporting documents may no longer be valid included:

- new information becoming available concerning potential hazards and their mitigation;
- refurbishment activity;
- concerns raised by residents;
- risk reports; and
- previously unknown structural issues (such as those surrounding Large Panel System blocks of flats).

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

Respondents provided a range of comments regarding how costs to residents of crucial safety works could be mitigated, including:

- all options should be explored in full;
- a position should be set out publicly as soon as possible to provide clarity to residents, building owners and the market;
- the potential costs of introducing a safety case regime should not be a barrier to having the right regulatory regime in place in the best interests of resident safety;
- it would be unfair to place the costs of historical remediation to existing building on residents and leaseholders as it was not seen as their fault that remediation work was needing to be undertaken;
- where requirements for safety works are identified to be the result of changes to Building Regulations it should be the responsibility of the Government to bear these costs as owners of the guidance;
- where works are identified as a result of a failing by the constructor during the construction phase, the constructor should be held liable, regardless of the age of the building;
- where failings in the management of risk within a building leads to the requirement of additional works, the cost should be borne by the organisation responsible for managing the building; and
- residents and leaseholders should only bear the costs of remediating existing buildings where it was clear it was as a result of their actions and in those instances, the Government should look closely at existing leasehold regulations.

Options suggested for mitigating the costs of remediation included:

- the Government providing additional grant funding like the existing funding available for ACM cladding; and
- the Government providing zero per cent interest loans to help in spreading the costs out over a longer period of time.

Respondents also suggested that phasing remediation costs by those most critical to least would spread out potentially high one-off costs. It was also suggested that the Government could establish a central fund for remediation, funded by a levy on the industry modelled on the Pension Protection Fund.

Other comments included that any future remediation costs would be more straightforward as new buildings will have gone through the new Gateway process, and will thus be less likely to require major works. It was also suggested that it would be easier to identify specific duty-holders if large one-off costs were to be recovered.

Respondents also felt that for new builds, a mandated sinking fund or new insurance product should be considered by Government and the industry if new evidence comes to

light in the future that leads to large-scale remediation. It was also suggested that new occupants should be given a copy of the safety case with projected costings, so they were aware of the potential costs associated with repair work to the building before purchase and occupancy.

A new Accountable Person

Q. 3.5: Do you agree with the proposed approach in identifying the Accountable Person? Please support your view.

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.

The overwhelming majority of respondents agreed with the proposed approach in identifying the Accountable Person.

The overwhelming majority of respondents thought there were specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an accountable person. Examples included: mixed used and residential buildings with complex freehold, head leases, sub leases and licence arrangements, resident management companies, offshore company structures and special purpose or joint venture vehicles.

Respondents also noted that in large companies it may be difficult to co-opt an individual board member as the Accountable Person given the distance of the role from the detailed management of building, and the individual criminal liability being proposed.

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.

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.

The overwhelming majority of respondents agreed that the Accountable Person requirement should be introduced for existing residential buildings as well as for new residential buildings.

The overwhelming majority of respondents agreed that the transfer of the building safety certificate from one Accountable Person to another should only be undertaken by the Building Safety Regulator. Concerns raised included:

- the ability of the new Accountable Person to 'reach back' to previous Accountable Persons in terms of liability relating to the fire and structural safety of their building;
- the impact on property rights in terms of who can take ownership of a building in scope and potential consequences for the property market; and

- the impact on timescales of a transfer on the conveyancing process.

Respondents also noted the need for the Building Safety Regulator to approve the transfer the building safety certificate would contribute to the transparency and completeness of the golden thread for the benefit of residents' safety.

A new Building Safety Manager role

Q. 3.9: Do you agree with the proposed duties and functions of the Building Safety Manager? Please support your view.

Q. 3.10: Do you agree with the suitability requirements of the Building Safety Manager? Please support your view.

Q. 3.11: Is the proposed relationship between the Accountable Person and the Building Safety Manager sufficiently clear? Please support your view.

The overwhelming majority of respondents agreed with the concept of the Building Safety Manager role and the suitability requirements of the Building Safety Manager.

The overwhelming majority of respondents felt the relationship between the Accountable Person and the Building Safety Manager was sufficiently clear. Comments included that this showed clear boundaries of responsibility and appropriate apportionment of activities in relation to the fire and structural safety of buildings.

Concerns were raised about whether the competence and capability required to fulfil these roles was currently available in the sector, with others commenting that these capabilities would differ subject to the complexity of the building. It was suggested that the gap in capacity could be filled by the gradual upskilling of managing agents, facilities managers and estate managers to meet the suitability requirements set out in the consultation.

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.

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.

Q. 3.14: Under those circumstances, how long do you think a Building Safety Manager should be appointed for?

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

Q. 3.16: Under those circumstances, how do you think the costs of the Building Safety Manager should be met? Please support your view.

An overwhelming majority of respondents agreed with the circumstances proposed for when the Building Safety Regulator would appoint a Building Safety Manager. Some respondents stressed that this should be a 'last resort' power.

Circumstances offered by respondents for when the Building Safety Manager would need to be appointed by the Building Safety Regulator included when:

- there is evidence that the incumbent Building Safety Manager does not meet the required competence;
- a Building Safety Manager has acted with impropriety or dishonesty;
- there is resident dissatisfaction which the Accountable Person has failed to adequately address;
- the incumbent Building Safety Manager is on long-term leave;
- it has not been possible to locate and register an Accountable Person;
- the Accountable Person is an administration or receivership; or
- the Accountable Person is in serious breach of the building safety certificate conditions and enforcement action has been taken against them.

Respondents also stressed the need for transparency in the Building Safety Regulator's procedure for appointing a Building Safety Manager and that this should be an open and fair competitive process.

Respondents had a range of views on the appropriate length of appointment for when the Building Safety Regulator did appoint a Building Safety Manager, from 3 months to 1 year, to an indefinite appointment with an option for review. The most common recommendation was that the length of appointment should be determined by the Building Safety Regulator, ending only once the issue had been resolved to the Building Safety Regulator's satisfaction.

Suggestions for how to cover the costs of the Building Safety Manager when they were appointed by the Building Safety Regulator included:

- in whole by the Accountable Person;
- irrecoverable costs by the Accountable Person and management costs through service charges;
- by the Building Safety Regulator in the first instance to be then recovered from the Accountable Person; and
- that the costs could be passed to residents in these circumstances.

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.

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?

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.

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

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

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?

An overwhelming majority of respondents agreed that the proposed registration scheme was an effective way to provide assurance and transparency. Across the related proposals, the overwhelming majority of respondents were supportive of the proposed characteristics of the building safety certificate and that the issuing of a building safety certificate should come with attached conditions.

Respondents commented that more details were required on the form of the new Building Safety Regulator before they were able to fully comment on whether the new system would enable effective management of fire and structural risks in high rise buildings. Other comments included that the Building Safety Regulator would need to be adequately resourced with the rights skills to allow for effective implementation, compliance and enforcement of the new system. Comments suggested there also needed to be a degree of transparency within the new system, with suggestions of a quantitative rating indicating the safety of the building detailed on the building safety certificate, or a public register of buildings.

An overwhelming majority of respondents agreed with the proposal that the Building Registration Certificate should apply to the whole building. Comments included that it should be made clear that for this to work in practice required that the Accountable Person and Building Safety Manager should have the ability to access all parts of the building (common parts and individual flats). Respondents were also keen to see alignment between the Fire Safety Order given its role in regulating the common parts of a residential building.

A majority of respondents agreed that five years was an appropriate duration for the building registration certificate. Among those who disagreed, respondents' views ranged from one to ten years, with a few public sector organisations suggesting that five years was too long. It was suggested that the Building Safety Regulator should have the power to undertake more frequent inspections and that the proposals that the Building Registration Certificate could be reviewed by the Building Safety Regulator if required.

The overwhelming majority of respondents agreed with proposals to attach special and voluntary conditions to the Building Registration Certificate. It was suggested that conditions should be agreed in consultation with the Accountable Person and would need to be 'SMART' (specific, measurable, achievable, relevant, time-bound), in particular as

criminal liability was proposed for instances of non-compliance. Comments from respondents that did not support proposals to charge for registration of a higher risk building included that the Government should cover these costs and any remediation works which may occur as a result.

The overwhelming majority of respondents agreed with the proposed circumstances under which the Building Safety Regulator could decide to review the certificate.

5. Duties that run throughout a building's life cycle

This section of the consultation sought views on proposals for duties that run throughout a building in scope's life cycle, to support specific system reforms detailed in the design and construction and occupation phases.

The golden thread of information

Q. 4.1: Should the Government mandate Building Information Modelling 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.**

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

There was strong support for the Government to mandate Building Information Modelling standards for new buildings in design and construction and occupation. Respondents noted that Building Information Modelling would support the golden thread and therefore support increased building safety. It was noted that Building Information Modelling is an 'effective system' and could be relatively easy to implement. There was feedback that suggested the Government could look beyond Building Information Modelling and use this as an opportunity to increase digitisation throughout the construction sector to develop 'digital twins', enable 'sharing data in real time' and ensure 'fully interoperable systems'.

The majority of responses were supportive of mandating Building Information Modelling in new buildings, however respondents raised concerns about the cost of implementing and maintaining Building Information Modelling compliant software, the current lack of digital skills/capacity in the sector, and the complexity of implementation. Potential cost to industry was noted in comments, including by respondents who were generally supportive of Government mandating Building Information Modelling.

Respondents also noted that mandating Building Information Modelling would have a disproportionate impact on smaller businesses. This did not always mean respondents thought Building Information Modelling should not be mandated but that the Government should be aware of the potential impact on the sector.

For existing buildings, the majority of respondents considered that Building Information Modelling should not be mandated in occupation. Respondents raised various concerns including cost and the impact on smaller companies, suggesting that Building

Information Modelling was too prescriptive. Respondents also noted that Building Information Modelling can be implemented to a variety of standards and a large representation body for the construction industry emphasised that it was difficult to respond to the proposals without more detail on which standard the Government was proposing to mandate. A respondent noted that before Building Information Modelling could be mandated for existing buildings there would need to be greater research on how Building Information Modelling can efficiently be applied to existing buildings.

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

Respondents had mixed views on whether there were any standards or protocols other than Building Information Modelling. Some respondents noted the work currently being undertaken by the British Standards Institution, and through other methods, to develop and improve Building Information Modelling guidance. Respondents considered that facilities management systems and software (which may not follow Building Information Modelling standards) could be an appropriate alternative to Building Information Modelling for existing buildings. There was no consensus as to an alternative among respondents that did not support mandating Building Information Modelling (for existing buildings) there was no consensus as to an alternative.

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.

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.

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.

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.

A majority of respondents thought there were other areas of information that should be included in the key dataset in order to ensure its purpose is met. A majority also thought that there was not any additional information, besides that required at the Gateway points, that should be included in the golden thread in the design and construction stage.

A majority of respondents thought there were specific aspects of handover of digital building information that are currently unclear and that could be facilitated by clearer guidance. A majority also thought that there was not any additional information that should make up the golden thread in occupation.

Respondent feedback to these questions was focused on suggesting additional information to be included in the golden thread rather than the key dataset¹.

Respondents suggested additional variables that could be included in the key dataset and that the key dataset should include details on the number of residents and energy performance. Respondents emphasised that the key dataset should be interoperable with other datasets (for instance the asbestos register) and that the Government or Building Safety Regulator should keep the list of variables under review, as it may need to be amended in the future.

Respondents also emphasised that there should also be a separate dataset for emergency services to provide high level building information when an incident has occurred.

Respondents agreed that during design and construction the information in the golden thread should be restricted to the information required through the Gateway process (Q 4.6). For existing buildings, a majority of respondents agreed that for buildings in occupation the information in the golden thread should be restricted to the information required through the building registration and safety case process (Q 4.8), though there were differences between those responding on behalf of organisations and individual respondents. There was a near-even split for organisational respondents, while the majority of individual respondents agreed with the proposed contents of the golden thread in occupation.

There were only a few suggestions for additional information that went beyond the proposals for the safety case² – for instance respondents suggested the Government should have more detailed occupancy information in the golden thread (such as real time information about the number of people in the building).

Respondents also referred to the importance of ensuring consistency and standardised formats to enable a smooth handover and so that information would be utilised effectively (Q 4.7). Feedback also emphasised the importance of having clear requirements on what information should be provided and in a clear structure. The Government is engaging with stakeholders to understand how to support better information handover and is working with the British Standards Institution on developing a standard to support the handover of information at different stages of the building lifecycle.

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.

¹ Most of the additional information suggested is to be included in the golden thread as it would be a requirement of the Gateways, building registration or safety case processes (for instance fire and structure risk analysis, the building plans). This information will not form part of the key dataset, which is a 'data set' on all buildings in scope. Documents, risk analysis and reports would not be stored within the key dataset but may be stored within the golden thread if they are required through the Gateways, building registration or safety case processes.

² Most of the suggested additional requirements to the golden thread would be covered by the safety case requirements (for instance details on maintenance, refurbishment records and provision of information to residents).

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.

A majority of respondents supported publishing the key dataset. Comments included agreement that this would support greater openness and transparency and help drive culture change and greater accountability within the sector. Respondents, however, felt that publication would be dependent on the level of detail within the key dataset – as detailed information could undermine building security.

There were a few concerns raised about ensuring privacy of residents and effects on building value and security issues. Respondents argued information that could compromise building safety and security should not be published. Other comments included that the key dataset information should only be provided to residents and not be publicly available. It was also suggested that any published information could undermine the safety and security of a building.³

Respondents also commented that the key dataset information should only be provided to residents and not be publicly available and that information in the golden thread should not be widely shared and emphasised concerns about potential security issues if there was wider access to the golden thread.

An overwhelming majority of respondents agreed with the proposals relating to the availability and accessibility of the golden thread. There was feedback that potential residents should have access to more information in order to make a proper assessment of their future home. Among the minority of respondents who disagreed it was suggested that the Government could go further in making the golden thread open, whilst still recognising that some information could not be shared as it would undermine the security and safety of the building and residents.

Raising concerns and learning mistakes

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.

A majority of organisational respondents and an overwhelming majority of individual respondents agreed with proposals for duty-holders to have a responsibility to establish reporting systems to the Building Safety Regulator.

Comments included suggestions that the approach could be modelled on the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013. There were also comments that Confidential Reporting on Structural Safety should be extended and strengthened. Others expressed concern that it may be difficult to engage construction related professionals in honestly using the mandatory occurrence reporting system.

³ Government's proposal in the consultation document was that no information should be included in the key dataset that could undermine residents' privacy or safety or the security of the building and the local area. The consultation also set out that the key dataset would also not include any information that could undermine intellectual property, commercial confidentiality or data protection.

Respondents also commented that the Government should provide guidance to provide clarity on the process of reporting and what would constitute an occurrence.

As well as those listed in the proposals, a few respondents argued that the scope should be widened to including building managers, contractors and designers. Others noted that making Principal Designers and Principal Contractors accountable at the occupation stage would be inappropriate due to their lack of involvement at this phase.

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 and (ii) Government can do to help cultivate a ‘just culture’? Please support your view.

An overwhelming majority of respondents agreed that a ‘just culture’ was necessary for an effective system of mandatory occurrence reporting. Respondents suggested that it could be achieved by:

- instilling a sense of moral duty across the sector;
- senior staff setting an example by embracing a safety culture and through encouraging reporting of occurrences and near misses;
- implementing a comprehensive education and training scheme across the sector; and
- highlighting good practice for example through industry awards.

The expansion of Confidential Reporting on Structural Safety was noted as a means for Government to cultivate a ‘just culture’, with respondents citing its status as an established and trusted body. It was suggested that the Government could provide guidelines for training to ensure good awareness across the sector. Respondents also commented that the Government need to provide robust protection for workers, in particular with regard to whistleblowing, and that the Building Safety Regulator would need to have strong enforcement powers to act on reported occurrences, for example to punish gross negligence.

Respondents who disagreed with the proposal commented that the phrase ‘just culture’ was too vague to be useful, or that it would be too difficult to achieve due to a perception of a highly punitive culture currently in existence in the industry.

Q. 4.11: Do you agree that, where an occurrence has been identified, duty-holders 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?

A majority of respondents agreed that an occurrence should be reported to the Building Safety Regulator within 72 hours.

Among those who disagreed and felt the reporting time should be shorter, reasons given included:

- the new regime should emphasise immediacy to avoid losing information over time;

- that 72 hours would set a benchmark for delay; and
- that occurrences during occupation were of a higher risk to life and should therefore be prioritised. Respondents with this view suggested a range of alternatives from one to 24 hours.

Some respondents felt that a period of longer than 72 hours should be allowed for duty-holders to report an occurrence. Feedback from these included that a fixed period was seen as being too inflexible and did not account for very complex cases where it may take longer for duty-holders to understand the scale of the problem and plan the necessary action. Comments from respondents with this view suggested that a staggered approach could be taken, whereby duty-holders could issue pre-notification to the Building Safety Regulator of an occurrence immediately upon discovery, with further details on what action was being taken shared over a longer period, for example one week.

There were respondents who noted that if the occurrence was over a weekend then it may prove difficult to conduct an internal consultation, and the 72 hours should be replaced by a period specified in working days. It was also noted that the period for reporting an occurrence under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 was ten days and this could be used to keep consistency across the sector.

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?

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.

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

A majority of organisational respondents and an overwhelming majority of individual respondents agreed with the proposed scope of mandatory occurrence reporting. Of those that disagreed, comments included that the mandatory occurrence reporting should go further and cover as wide a range of occurrences as possible, including all occurrences which could pose a risk to life such as mechanical, water, gas or electrical faults and issues related to residents' behaviour. Respondents also sought clarity on what did and did not constitute a structural and fire occurrence, for example if any electrical fault would be classed as a fire-related safety risk.

Whilst the overwhelming majority of respondents agreed with each of the proposed list of occurrences to be included, there was feedback that these were too vague, which could lead to a situation whereby many minor reports would be made due to fears from duty-holders of non-compliance. There were also comments that the proposed list was too prescriptive and that this may lead to a 'box-ticking' culture.

It was also suggested that enforcement should be judged on a case-by-case basis, with enforcement action only being taken for major instances of negligence where there is an occurrence with a high risk to life.

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.

There was a mixed response to the proposal for mandatory occurrence reporting during the design stage of a building. Proposed occurrences for the design stage included:

- improper use of materials that could cause a structural or fire hazard;
- poor workmanship, such as incompetently-produced drawings;
- instances whereby an unauthorized change to design is made which could pose a safety risk, for example substitution of materials; or,
- when advice from expert consultees (local authority, fire officers, etc.) had not been acted upon.

Among respondents who did not agree that a system of mandatory occurrence reporting would work well during the design stage, reasons for doing so included feeling that the design phase was too iterative a process, in which error and correction was inherent. If it were to be included, these respondents emphasised the need for the Government to set clearly defined definitions of each occurrence.

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.

An overwhelming majority of respondents agreed with this proposal.

Ensuring duty-holders 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.

The overwhelming majority of respondents agreed that enhanced competence requirements should be developed for the key roles of Principal Designer, Principal Contractor and Building Safety Manager, and that these should be developed and maintained through a national framework. In support of this proposal, respondents commented that it would ensure a consistent approach and reliable demonstration of competence, and give assurance that those appointed were sufficiently competent.

Respondents had differing views on the form of these frameworks including:

- supporting the British Standards Institution standards process as it is seen to provide a consensus approach that will bring together a range of expertise and allows for independent scrutiny and periodic review; and

- a code of practice owned and published by Government (or the Building Safety Regulator) as a British Standards Institution standards process would be too lengthy, rigid and require fees to access.

Regardless of the form of the frameworks, respondents commented that they should be freely available.

Other views provided by respondents who agreed included:

- relevant sectors must be involved in the development of competence standards and training to ensure they are fit for purpose;
- organisations offering certification or qualifications should be subject to independent scrutiny or third-party accreditation;
- a legal framework and effective enforcement mechanisms would be required to guard against non-compliance, including the ability to identify where individuals or companies has been removed from roles or are no longer qualified;
- the competence requirements should also be expected across other safety-critical disciplines; and
- that experience should be a fundamental part of the frameworks, in order to recognise existing professional/trade qualifications and aid take up from professional/trade bodies.

Of the remaining small proportion of respondents who disagreed, reasons included:

- feeling that the existing systems for assessing competence were sufficient and the proposals only added complexity;
- setting formal competence requirements may be too restrictive;
- the costs of training to achieve the necessary competence requirements and skills gap of people capable of fulfilling these roles; and
- that a two-tiered system may result in companies placing less competent workers in the less regulated part of the industry which could impact on the safety and quality of buildings not within scope of the enhanced regulatory regime.

Other key themes raised by respondents included:

- that sufficient lead-in time would be required before full implementation in order to carefully consider the costs, address skills shortages and train existing professionals to the required levels; and
- that the Government should consult with the insurance market to ensure adequate professional indemnity would be available at commercial rates.

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.

The overwhelming majority of respondents agreed one of the Building Safety Regulator's statutory objectives should be framed in this way.

Themes identified in comments from those that responded positively included:

- a statutory objective could play an important role in promoting a change in culture within building safety and management;
- the objective should be broader than the wording in the consultation document and apply more widely. For example, to support greater competence amongst professionals working on buildings; and
- further detail and clarity on what the objective looks like in practice would be welcome.

Comments received from the minority that responded negatively included queries related to the scope of the proposed framing of the objective.

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

The overwhelming majority of respondents thought duty-holders should have a general duty to promote building safety and the safety of persons in and around a building throughout the building life cycle.

From those who responded positively to this question, themes included:

- that this duty should complement existing duties stemming from other legislative requirements;
- greater detail is required on how duty-holders would be able to demonstrate that they are meeting this general duty as promoting building safety is open to interpretation; and
- the culture of fire safety that would be promoted under this general duty needs to be embedded in the normal day to day management of buildings in scope in a similar manner to other industries such as food hygiene.

Of the minority who responded negatively to this question, responses focused around the value added by a general duty when duty-holders will have specific duties already imposed on them. Concerns were also raised over how this general duty would be enforced.

Extending duty-holder roles to all building work

Q. 4.20: Should we apply duty-holder 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.

The overwhelming majority of respondents agreed that the duty-holder roles and the responsibility for compliance with building regulations should apply to all building work or another subset of building work.

Respondents' comments included:

- Current legislation was poorly defined and usually refers to owner of premises when builder is the one causing the issues. Clearly defined roles for enforcement were also needed;
- this is in line with the principles behind the Construction (Design and Management) Regulations 2015 and if not done in this way may lead to two different standards being applied, depending on building size rather than other risk factors such as complexity of a structure;
- all building work should be included so that the entire building envelope is effectively managed, and compliance ensured;
- buildings operate as a system, where all elements are interdependent. The Building Regulations, suitably updated, offer an excellent framework for this; and
- currently, the duty-holders have a responsibility for producing safe designs that can be constructed safely. The Construction (Design and Management) Regulations 2015 require individuals and companies to self-test for their competency prior to undertaking a duty. The compliance with building regulations is already a requirement, therefore applying the recommendations for fire safety to these roles should not be a burden.

Of those respondents who didn't agree with the Government's proposals, responses included:

- concerns about levels of bureaucracy;
- that the requirement to comply with the building regulations is already in place for all buildings. If what you are proposing is to make one duty-holder responsible for certifying compliance for all the works, we do not agree. Liability should lie with that designer/contractor responsible for their particular element of the building regs;
- all buildings have to comply with building safety, as set out in the building regulations. All those involved in design and construction already have obligations, so additional obligations are not required. This is likely to add more confusion; and
- responsibility for compliance with Building Regulations is perfectly clear at present and that we should not 'improve' this by inventing new job titles and roles and confusing responsibilities.

6. Residents' Voice

This section of the consultation sought views on proposals to empower residents within a new building safety system with residents at its heart.

Residents at the heart of a new regulatory regime

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.

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.

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? (Multiple choice)

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

The overwhelming majority of respondents agreed with the proposed list of core information that should be proactively provided to residents. In agreeing with this proposal, respondents also commented that the information must be clear and easy to understand, and available in different languages where appropriate. It should also emphasise the importance of residents understanding their responsibilities in helping to reduce fire and structural safety risks in their building, for example, by providing a fact sheet of things residents should and should not do.

A few respondents expressed concern that information may be too technical in nature and therefore difficult to understand and open to misinterpretation. Respondents also requested that consideration be given to how technical information in documents such as fire risk assessments and planned maintenance and repairs schedules can be presented in a way that is useful and easy to understand for residents.

The overwhelming majority of respondents agreed that there should be a culture of openness in information sharing, alongside some exemptions, with comments emphasising that transparency in information sharing would be vital to build trust between landlords and residents. Respondents raised concerns that the Accountable Person (or Building Safety Manager) may refuse to comply with a request for information without good reason. To address this, there were suggestions that the types of exemptions allowed should be clearly set out by Government and if information is withheld or redacted

after a request is made, the resident should receive a written explanation of why this is the case.

Concerns were raised over the requirement to provide historical documents, particularly where information about a building may not be available. As there is no current requirement to retain historical fire risk assessments and under data retention policies, information is usually disposed of after a certain period of time.

The overwhelming majority of respondents agreed that a nominated person who is a non-resident should be able to request information, with respondents supporting the list of possible nominated people. Comments included that there should be clear safeguards that require the nominated person to demonstrate that they have a legitimate interest in supporting the resident and advising that the nominated person should be advised to treat the information responsibly. Respondents also suggested that consideration should be given to the capacity of a vulnerable person to give consent to a nominated person to request information on their behalf.

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

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

Respondents indicated overwhelming support for the proposed Residents' Engagement Strategy – with the overwhelming majority of respondents agreeing to both the proposed set of requirements for the management summary and engagement plan. Concerns were raised that specific elements could be overly prescriptive while others suggested that additional elements should be added.

Respondents' comments or issues raised by respondents were broadly in the following areas:

- the importance of face to face communication and engagement between residents and their Building Safety Managers for effective resident involvement;
- the level of decision making that would be delegated to residents in practice, with some concerns raised about what level of real influence residents would have;
- the ambitious level of expectation on the roles under the new regime, with particular reference to the Building Safety Manager;
- potential low levels of interest from residents to participate in decisions on building safety matters. Findings from some research into resident engagement has found that residents wished to be reassured about the safety of their building without necessarily wanting to engage in the specifics of fire or structural safety;
- the potential barriers that residents may experience when approached by the Accountable Person (or Building Safety Managers) to get involved, for example on personal liability, and the involvement of residents who have English as a second language;
- the importance of measuring the effectiveness of the resident engagement strategy to ensure consistency of standards, while recognising the need for clarity on how this will be approached and how any associated costs will be met; and

- the need to align with proposals set out in the Social Housing Green Paper to avoid duplication.

Some respondents felt that, in some cases, it will be necessary for the Accountable Person to balance requirements to involve residents in decision-making against requirements to fulfil their other duties. It was felt that there may be some decisions on safety that cannot ultimately be subject to resident choice.

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.

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

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?

The overwhelming majority of respondents agreed that there should be a new requirement on residents to co-operate with the Accountable Person to allow them to fulfil their duties in the new regime. The overwhelming majority also agreed that safeguards would be needed to protect residents' rights, if a new requirement for residents to co-operate with the Accountable Person or the Building Safety Manager was introduced.

Responses emphasised the need for a duty that applies regardless of tenure, as there will be a lack of consistency across existing lease and tenancy arrangements concerning residents' responsibilities. This was supported by responses suggesting that this could be overcome by introducing a statutory duty to co-operate rather than implying terms into individual agreements.

A consistent theme throughout the responses was that Accountable Persons can only be reasonably expected to fulfil their duties as far as their powers will enable them to do so. It was suggested that resident non-co-operation could be a partial defence for Accountable Persons when being reviewed by the new regulator.

Concerns were expressed that the powers of the Accountable Persons must be balanced against residents' rights in law to 'quiet enjoyment' of their individual dwellings. There were concerns that any new powers may be exploited by Accountable Persons, particularly where they have poor relationships with residents in their building.

There were also concerns that Accountable Persons may exploit the duty by 'gold plating' properties and demanding reimbursement via service charges. A popular safeguard suggested was a role for the new regulator to act as an arbiter in cases of dispute. This was often linked to the proposed escalation route.

It was argued that responsibilities should be enforceable, but there was disagreement as to the nature of enforcement. Responses included that the new regime needed 'teeth' to

be effective and concerns were expressed about the effectiveness of sanctions such as fines, particularly in relation to vulnerable residents or those receiving welfare benefits. There were also suggestions that sanctions may lead to less safety incidents being reported as residents may be reluctant to come forward.

Comments pointed to the range of existing processes already in place to achieve resident compliance and enable the landlord or freeholder to access properties in specific safety related circumstances. Responses noted that most tenants already have legal duties to allow access to their landlord to carry out safety repairs where reasonable notice has been given as well as a duty to maintain the property in a 'tenant-like manner'. Particular mention was made of the responsibilities implied by the Landlord and Tenant Act 1985 as well as Article 17(4) of the Regulatory Reform (Fire Safety) Order 2005 which imposes a duty on occupiers of flats to co-operate with the Responsible Person so far as is necessary to allow them to comply with their fire safety duties.

Responses emphasised that court processes were often costly and time-consuming. The option of a fast-track court process was highlighted, where the Accountable Person would apply for a warrant/injunction where necessary. This process was seen as being made more efficient by a clear statutory duty that a court could refer to when making an order.

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.

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?

An overwhelming majority of respondents supported the proposals for both the internal complaints process and the escalation route.

Typical comments in support praised the proposals as 'sensible,' 'comprehensive' or 'proportionate' as well as agreeing with the concept of the 'no wrong door' approach to complaints handling to send the right message to providers and residents that building safety complaints will be taken seriously.

These respondents identified considerations for implementation including:

- the importance of aligning the new system with the existing regulatory landscape for housing;
- the challenge of agreeing the new processes in mixed tenure high rise residential buildings; and
- the need to avoid mainly social sector Accountable Persons having to reinvent or duplicate existing complaints handling and escalation processes.

From the proposed list of requirements for the internal complaints process, respondents stressed the importance of operating with a 'clear line of sight' through the different stages of the process from initial reporting, to initial response, investigation and resolution that

would be easy for residents to understand and use. Respondents also emphasised the importance of clarity on definitions and how different types of complaints would be handled, with widespread support for detailed guidance and a triage system operated by the Building Safety Manager that sets timescales for initial response, investigation and expected conclusion, determined by the severity of the issue raised.

Other suggestions from and comments by respondents included:

- the processes having the provision for residents to be able to whistle blow anonymously;
- the Accountable Person being able to self-refer issues to the regulator;
- the need for specific protections for residents to be built into the process to ensure that nobody is penalised for raising a complaint;
- the need for there to be protections for Accountable Persons against vexatious or serial complainants; and
- Accountable Persons always having the opportunity to address the issue prior to the complaint being escalated to the Building Safety Regulator.

Of those respondents who disagreed with the proposals, suggested alternative approaches included:

- greater use of local regulators and enforcement bodies;
- use of the Housing Ombudsman; and
- use of the Residential Tribunal Service or the Confidential Reporting on Structural Safety System.

Q. 5.11: Do you agree that there should be a duty to co-operate 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.

An overwhelming majority of respondents supported the proposal for a duty to co-operate as a key part of the system of escalation and redress. It was suggested that without a duty to co-operate there was a risk of duplication of effort and confusion. one respondent described a duty to co-operate as a vital part of the system to “reduce frustration and apathy for residents” with another pointing to its key role in ensuring that issues don’t “fall down the cracks between various authorities”.

There was feedback that the most effective approach to the duty to co-operate was via a formal framework or agreement between all the organisations covered, including suggestions that it should be established on a statutory basis.

These respondents identified the key considerations for implementation as:

- agreeing timeframes for complaint redirection between participating organisations and a consistent approach to their handling, audit trail and record keeping;

- identifying the right ownership for complaints quickly to avoid duplication or complaints stalling between different organisations; and,
- having effective signposting for residents, clear guidance for all the organisations covered by the duty and full alignment with the wider regulatory and redress landscape for housing.

Suggested models for the duty to co-operate included:

- using the Reporting of Injuries, Diseases and Dangerous Occurrences framework and Multi Agency Agreements as operated by the Health and Safety Executive;
- using the Care Act 2014;
- using the Community Trigger in the Anti-Social Behaviour Act 2014;
- using article 22 of the Fire Safety Order;
- adapting existing protocols between local authority departments, fire and rescue services, and housing associations; and
- mirroring existing arrangements between the Housing Ombudsman and the Social Housing Regulator.

7. Building Safety Regulator

This section of the consultation sought views on proposals to ensure robust oversight of the building safety and wider regulatory system, developing the Independent Review's recommendations by proposing a new Building Safety Regulator with broad functions.

Regulation and oversight

Q. 6.1: The consultation proposed a five yearly periodic review of the regulatory system. 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.

Q. 6.2: The consultation proposed three main functions of the regulator as:

- **overseeing the enforcement of the new regulatory regime for higher-risk buildings in scope;**
- **overseeing the competence of professions and trades working on buildings; and**
- **overseeing the building safety and the wider regulatory system as a whole.**

Do you agree that regulatory and oversight functions 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.

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.

A majority of organisational respondents and an overwhelming majority of individual respondents agreed with the principle of holding five-year periodic reviews. While the majority agreed with the five-year period, a few respondents suggested more frequent reviews, for example in the early years of the new regime. It was also suggested that the Government ensures that the review process is not overly burdensome.

The majority of respondents agreed with the proposed main functions of the regulator. A few respondents also highlighted that a full assessment of the proposal would depend on further detail, for example about how exactly the regulatory functions in respect of buildings in scope will be delivered.

Respondents who offered more substantial narrative assessments of the proposal tended to focus on three areas:

- There were differing views about the best model for delivering regulation in respect of buildings in scope, including favouring greater local responsibility and highlighting the importance of a role for the national regulator in operational delivery;
- Comments also highlighted that effective delivery of the Building Safety Regulator would depend on the right enablers being in place. Adequate resources would need to be made available. Additionally, respondents highlighted the importance of work to ensure that there are sufficient competent building control and other regulatory professionals in place to deliver the more stringent regulatory regime. There were differences of view about where the main competency gaps lay; and
- It was noted that there was potential for the reforms leading to a two-tier system. It would therefore be important for the Government and the new Building Safety Regulator to mitigate this risk as far as possible when implementing the new regime, and make sure there are effective processes to capture and respond to new and emerging risks to building safety.

Approximately half of respondents agreed 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. There were differing views as to which body would be best placed to deliver regulator functions ahead of legislation, with respondents suggesting the Health and Safety Executive or the Joint Regulators Group.

There were comments from respondents who were not clear about the practical implications of setting up a regulator in “shadow” form ahead of legislation and further clarity from the Government on its preferred approach was requested. Respondents who were not supportive of the proposal raised two main issues:

- the possibility that implementation without legislative backing could lead to inconsistent or watered-down forms of regulation; and
- the importance of full Parliamentary scrutiny of the new regime.

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 a Publicly Available Solution). Do you agree with this proposal? Please support your view.

The overwhelming majority of respondents agreed that an overarching competence framework, formalised as part of a suite of national standards, should be taken forward.

Feedback included that an overarching framework would ensure a clearly defined, consistent and reliable demonstration of competence, to give assurance that those appointed are sufficiently competent. Respondents also noted that an overarching framework for industry would help as there is currently no comparable system in place to

demonstrate a proven ability to assess fire and structural safety issues relating to high-rise and complex buildings.

Views differed between respondents on how the overarching competence framework should be captured and maintained. Respondents recommended a suite of national standards but there was no clear preference between the use of British Standards, or a Publicly Available Specification. Comments from respondents who expressed no preference suggested the use of Publicly Available Specification should be adopted in the first instance and, in the future, be developed into a British Standard to help mitigate against the perceived lengthy and rigid process of creating a British Standard.

Other comments provided by respondents included:

- irrespective of form, many felt the overarching competence framework should be publicly accessible;
- the framework should be capable of updates outside of the review cycle to ensure it is kept up to date;
- as well as the framework setting out the specific core knowledge, skills and behaviours required, a need for clear definitions of roles and technical terms to ensure consistency and reduce ambiguity;
- that relevant professional and trade bodies and areas of industry must be involved in the development of competence standards and training to ensure they are fit for purpose; and
- the framework be developed from national occupational standards and existing standards and schemes to avoid duplication and fill gaps in existing systems.

Of the remaining small proportion of respondents who disagreed, reasons included:

- formal competence standards applied to all those working on high-rise and complex buildings would have to be very general, therefore, ineffective in practice; and
- if used only on high-rise and complex building types it could create a two-tier system and therefore should extend to other buildings and it should recognise existing competence-based qualifications and apprenticeships.

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.

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

The overwhelming majority of respondents agreed that an industry-led committee should be established to oversee and drive competence.

Comments from those who agreed included discussion of standards expected of the committee. For example, it was suggested that membership of the committee must be representative of the different sectors of industry and achieve cross-industry support. This

was also a theme of respondents who were supportive of the proposals but wanted to ensure that there would be no commercial interest in the committee's leadership and membership. Respondents also called for the committee to be independent and transparent in order to function most effectively.

The overwhelming majority of respondents agreed with the proposed functions of the committee. The highest proportion of those that agreed cautioned against the specified list becoming conclusive as the work of the Competence Steering Group was continuing and there were likely to be other functions not yet identified. Many respondents wanted the proposed interim committee to be established and start work before deciding the final functions of the industry committee. Across both questions, there were respondents that were broadly supportive of the committee and its function but wanted to see the scope extended further to cover the whole construction industry, with others calling for licensing for the entire sector.

Reasons given by those opposing the establishment of a committee and its proposed functions included:

- scepticism that the committee should be industry-led due to the perceived vested interests in industry which could lead them to not take account of regulators' or residents' views, with a preference instead that the committee be housed and led by the new Building Safety Regulator (or Government) and be advised by industry when needed;
- concern that a committee alone could not drive the culture change needed in industry, including arguments that the proposals did not go far enough and there needed to be more effective sanctions in place for non-compliance; and
- that the establishment of a committee would be a time-consuming and unnecessary approach to improving standards when industry could make improvements in its absence.

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.

The overwhelming majority of respondents agreed that an interim committee should be established to take forward this work. Broadly the reasons for support were that this would ensure momentum from the work of the Competence Steering Group would be maintained and it would support industry with making progress in preparation for the new regulatory system coming into force.

Views differed among respondents on who should establish the interim committee. For those that agreed, the highest proportion of respondents wanted a Government body, with most stating the Ministry of Housing, Communities and Local Government, or a group it oversees such as the Joint Regulators Group, should establish the committee with the intention that this would transition to being held within the Building Safety Regulator. Other respondents commented that the interim committee continue with the current Competence Steering Group led by the Construction Industry Council.

Suggestions on the type of members that should sit on the committee included those with regulatory and technical expertise and those with a detailed understanding of the built environment industry, such as

- professional bodies;
- trade associations;
- representative construction bodies;
- trade unions; and
- academics.

Of those respondents who opposed the setup of an interim committee, reasons included:

- although a committee was needed there did not need to be one established in the interim, and instead change would be driven solely by legislation;
- whether this interim committee would have the right expertise to solve issues around competence and whether this should be an industry-led process; and
- that driving up competence levels before legislation came into force may potentially have a negative impact on capacity and capability in the industry.

8. Regulation of construction products

This section of the consultation sought views on proposals to strengthen the oversight and regulation of construction products to make manufacturers' responsibilities clearer; and increase market surveillance and oversight, including through a national complaints system; and extend and strengthen independent assurance schemes.

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.

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

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

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

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

The majority of respondents agreed with principles and the establishment of a comprehensive fully maintained and updated inventory list for construction products. Some cautioned that the risk of setting out the list in legislation could hinder its ability to be flexible, amendable and developed to include more products and systems when they are judged essential to fire safety and have a national standard in relation to performance.

Respondents also reinforced the principle that any inventory list should include all products that impact on fire and structural safety of buildings as well as products with standards advised in Approved Documents. The list should not just include component products but also incorporate how products are to be used or installed, for example, fire doors.

Where suggestions for specific construction products were provided, the need for 'obvious' fire, structure, guarding and glazing safety products, such as smoke control dampers, was cited by some respondents.

There was general support for the proposed approach, however, few provided supporting comments. Those provided suggested that any new requirements and associated processes must provide greater oversight, transparency and regulation of product design, manufacturing and whole of life suitability.

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.

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

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

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.

An overwhelming majority of respondents agreed with the proposed functions for a national regulator of construction products and there was strong support for the notion that the construction products regulator should not be a separate organisation from the Building Safety Regulator.

With regard to its functions, respondents commented that the new construction products regulator should:

- have powers to seize goods, issue stop notices, compel disclosure, require retesting and impose financial penalties;
- have powers to act should manufacturers break the law or products be determined as unsafe; and
- be provided with relevant information across all construction products with suggestions that a duty be placed on all actors in the industry to share information with the construction products regulator, if there is a public safety concern or if requested.

The overwhelming majority of respondents agreed that the construction products regulator should have a role in ensuring Modern Methods of Construction meet required standards and are used safely, reflecting concerns that products manufactured according to Modern Methods of Construction needed to be regulated at the point of installation, as well as the point of manufacture.

The overwhelming majority of respondents agreed that the powers and duties set out in paragraph 350 should be taken forward by a national regulator for construction products.

Encouraging independent assurance

In the consultation we set out our proposal to create a minimum standard for third party certification schemes that assure the manufacturing processes for construction products. We asked for views on what the standard should include. We also asked a wider set of

questions about whether it would be helpful to create minimum standards for third party certification schemes that assure the installation of construction products.

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

The majority of respondents said that our suggestions were sufficient. Respondents also suggested additional requirements, which fell broadly into four categories:

- Technical requirements for quality assurance;
- requirements for manufacturer to provide information to consumers;
- requirements on third-party certifiers to co-operate with the new regulator; and
- manufacturers to take more responsibility for encouraging and informing correct installation of their products.

Other themes included:

- Installation – responders proposed that installation be a more prominent part of the standard;
- golden thread – there were suggestions of ways the third-party certifier could encourage the flow of information between manufacturers, users and the regulator;
- longevity and maintainability of construction products – organisations and collective bodies raised the need for the longevity and maintainability of construction products to be considered alongside the requirements we set out in the consultation; and
- product testing – it was proposed that the new Building Safety Regulator should be notified of product test failures. Other responders believed it should be incumbent on manufacturers or test houses to publish test data.

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

The majority of respondents from organisations agreed with the proposals for recognising third-party schemes in building regulations, however it should be noted that about half of those responding as individuals agreed with the proposal compared with an overwhelming majority of those responding on behalf of an organisation.

The most commonly cited reasons for agreement were that it would be beneficial for products that are critical to fire safety, create consistency across buildings, and help discourage self-certification.

While supporting the proposals, responses included the need for further detail on the third-party certification standard, and highlighted that the quality of schemes would need to be high before they should be recognised in the building regulations.

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?

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

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

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

While recognising challenges, the overwhelming majority of respondents agreed with our proposals on assuring the quality of third-party certification. Reasons given included that they would bring consistency between schemes and clarity on the assurance they provide.

The overwhelming majority of respondents agreed with the suggested requirements proposed for the umbrella minimum standard. It was also suggested that there is a need for greater assurance of third-party certification of product installation schemes.

A few respondents recommended additional potential requirements for the minimum standard for product third-party certification, including requirements for quality assurance and requirements for the information that manufacturers should provide consumers. A few respondents recommended that there should be a better flow of information between manufacturers, users, and the regulator; with details of near-misses being fed from the consumer to the manufacturer, and the manufacturer providing more accurate information on product safety and scope of usage.

Regarding proposals for reporting failures or concerns regarding products to the relevant regulator(s), several responders proposed that the new regulator should be notified of product test failures, while other responders believed it should be incumbent on manufacturers or test houses to publish test data. Another recurring theme in responses was the need to consider the longevity and maintainability of construction products, so that there can be greater assurance that a product will last a certain amount of time, and perform within that period to a minimum standard.

In response to our question about the challenges to creating standards for third-party certification, there were concerns around the increased costs to manufacturers, the importance of clarifying the scope of a new standard, and how it would be implemented and overseen.

9. Enforcement, compliance and sanctions

This section of the consultation sought views on proposals to improve compliance and strengthen enforcement and sanctions within the new Building Safety Regulatory system framework.

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

The majority of respondents agreed with principles set out in the three-step process as it aligned with the approaches taken by other regulators, such as the Fire & Rescue Services and the Health and Safety Executive, as well as mirroring those set out in the Regulator's Code 2014. The three-step process was also commended as providing the opportunity for rectification before formal enforcement, thus providing duty-holders with multiple opportunities to comply.

Concerns were raised regarding how the Building Safety Regulator would operate on a local level as well as at the national level, without taking away from the responsibilities of current local authority building control who already have the expertise, proximity and familiarity to formally enforce on the ground. Respondents were of the view that the current enforcement system should continue as is (i.e. with local authorities) with added resource and funding. However, there was strong feeling amongst respondents that competition in this area must be removed in order for local authorities to operate enforcement measures effectively.

There was also concern about the creation of a two-tiered system, and that if the new regime did not align with other regulatory frameworks such as the Fire Safety Order, Construction (Design and Management) Regulations 2015 and actions taken by the Fire & Rescue Services, it would further complicate a busy enforcement environment.

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

- a) an Accountable Person failing to register a building;**
- b) an Accountable Person or Building Safety Manager failing to comply with building safety conditions; and**
- c) duty-holders carrying out work without the necessary Gateway permission?**

The overwhelming majority of respondents agreed with the proposals on where to introduce criminal offences. Respondents considered it a strong enough deterrent for non-compliance, whilst also allowing for culture change and the elevation of standards.

There were respondents that felt that these criminal offences were fundamental to upholding the new regime and were particularly reassured to see it aligned with that of existing licencing systems, such as that for Houses in Multiple Occupation. Other respondents sought more details on how these new offences would align with those of other sanctions regimes. It was recommended that these offences should also align with

those of the Construction (Design and Management) Regulations 2015 and the Health and Safety at Work Act 1974.

It was suggested that these sanctions should be civil, rather than criminal, with criminal offences being reserved as a last resort, for the most serious breaches and wilfully negligent action. A proportionate approach would, for example, avoid disproportionate action being taken against 'invalid' applications due to, for example, administrative delays. It was also proposed that enforcement notices should be issued instead of criminal proceedings.

There were individual issues raised with the detail underpinning how these criminal offences would operate in practice, including:

- where the individual liability would sit between the Accountable Person, Building Safety Manager, and at the corporate level;
- taking a proportionate approach to non-compliance in particular where actions were dependent on other people in the system; and
- the use of financial penalties, as a suite of measures are available.

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.

An overwhelming majority of respondents agreed that the sanctions regime under the Construction Products Regulations SI 2013 should be applied to a broader range of products. Comments included that industry is not currently regulated well enough and that manufacturers should be held accountable, expressing that this was fundamental to the new building safety regime.

Despite some strong views from respondents which recommended criminal sanctions, overall, approximately twice as many of the respondents who agreed with our proposals favoured civil penalties to criminal sanctions. Respondents also thought that 'statutory obligations are not service obligations and should not be inhibited', indicating considerable support amongst respondents for strong civil sanctions.

It was noted that the installation of the products in a system also needs to be of a good standard and checked.

There were concerns about the ability for trading standards to carry out enforcement action, citing a lack of training and knowledge of the regulations for construction products, which in turn leads to a lack of enforcement of the regulations.

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.

The overwhelming majority of respondents agreed with the proposal to have a civil penalty regime as a potential alternative to criminal sanctions. It was felt that due to the lower standard of proof required for civil offences, it would be a stronger and more effective tool to achieve compliance, which in turn would allow for non-compliant work to be remediated at pace. Respondents also commented that it would be less burdensome for all bodies involved, including the courts, as less resource is required to enforce civil sanctions. It was also suggested that a proportionate approach should be taken where both civil and criminal sanctions were used; and where civil sanctions were used for less serious offences and reserving criminal sanctions for major ones.

It was suggested that clear guidance on the offences, penalties and application of these penalties should accompany this for industry as well as an appeals process. The guidance should include the difference in the burden of proof for the different penalties and would itself would act as a deterrent.

However, there was disagreement with the proposal from a few respondents with the given reasons including:

- civil penalties not being a strong enough deterrent to criminal offences providing an effective behavioural incentive for industry; that statutory obligations should be met with criminal offences, due to the legal bearing of their duties;
- that larger organisations may be able to easily absorb monetary fines, as opposed to smaller organisations; and
- that some organisations might also wish to raise rent and service charges in order to recover the costs from residents.

The topic of establishing a proportionate approach prompted diverging views from respondents. Comments included those that agreed that fines should be proportionate to the turnover of the company or at least high enough to act as a deterrent, while others felt that a civil penalty regime is itself proportionate. Other respondents noted that the penalties should be variable, not fixed, so organisations are not able to compare fines/offences, possibly treating them on a case-by-case basis. There was also the view that fixed penalties are more easily understood and allow for faster resolutions.

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.

The overwhelming majority of respondents agreed with the proposal that formal enforcement powers to correct non-compliant work should start from the time the serious defect is discovered.

Where respondents agreed with this proposal reasons given included:

- providing a strong deterrent for non-compliant work; allowing for remediation work to take place;
- providing a clear starting point for the enforcement period; and
- addressing the backlog of defects in high risk residential buildings.

It was noted that a system of correction after completion of work was burdensome upon home owners due to the disruption caused and that enforcement relied upon defects emerging over time, while other respondents noted that this change should mean that the breach is remedied in an appropriate timeframe, for example within 12 months.

There were mixed views from respondents on inserting some leniency for good behaviour in the enforcement process, including responses that disagreed with the proposal entirely and instead suggested a transition period be implemented first, where the building owner/contractor had an opportunity to remediate.

While agreeing with the intent, there was challenge to the wording of “serious defect” and “latent defect” used in the consultation, with respondents suggesting that the word “defect” be clearly explained as there is a difference between something that is defective due to non-compliant construction and something that degrades over time to present a defect. Other respondents commented that serious and minor defects should not be treated differently. Other respondents disagreed with the word “latent” and suggested “non-compliant building work” instead, as “latent” has “extensive case law” associated with it, making it potentially burdensome in the courts.

Concerns were raised on how this proposal would work in practice, for example requesting more detail concerning how liability will work if the original companies dissolve. Costs, under section 36, will then unfairly fall to the duty-holders or freeholders who may then raise recovery costs by raising rents and service charges for residents. one respondent noted that, under contract law, if work has been finished by the time of discovery, there may be a right of action against the contractor, but the building owner cannot recover costs.

Another issue raised regarded insurance, with respondents noting that this change in time limits could cause difficulty with regard to professional indemnity insurance. It was queried whether it was possible to align the enforcement period with “standard contractual and tortious liability or if a standard project insurance period (decennial insurance)” can be considered for all projects.

Respondents also highlighted issues around the point of discovery and legal certainty, for example, if a whistle blower is to make the discovery, they are already in a difficult position to declare, affecting the point of discovery. In a similar vein, it was highlighted that many people can also become aware of the defect; a litigant may be able to claim that an individual was aware of a defect prior to the date of discovery declared, so the power would not be applicable. one respondent suggested the relevant time should be when the duty-holder discovers the defect; another that the trigger point should be when it is notified to the relevant body.

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?

A majority of organisational respondents and an overwhelming majority of individual respondents were supportive of the extension of time limits in the Building Act 1984, with others suggesting that time limits be removed altogether.

Of those respondents who suggested removing time limits completely, reasons included:

- prioritising the safety of residents;
- the likely negative effective on insurance costs; and
- that a defect would have to be remediated, with or without a formal enforcement period.

It was argued that the transfer of information from one duty-holder to another would need to be considered and how the latter may inherit defects, and the removal of a time limit would allow for the correct individual to be enforced against.

Respondents who agreed with the proposal to extend time limits provided differing views on the length of the extension. Alternative suggestions ranged from:

- 15 years as this would be “consistent with the period set out to cover the length of liability for product and material defects in the construction industry”;
- 12 years as this was aligned with the right to bring claims of latent defects under a contract executed as a deed; to
- 5 years as a lengthier limitation period will lead to higher insurance costs.