LONDON FIRE BRIGADE

Consultation Response

31 July 2019

Subject

Building a safer future: Proposals for reform of the building safety regulatory system

Organisation

Ministry of Housing, Communities and Local Government

Introduction

London Fire Brigade (LFB) is London's fire and rescue service - one of the largest firefighting and rescue organisations in the world and we are here to make London a safer city. Decisions are made either by the London Fire Commissioner (the statutory fire and rescue authority for Greater London), the Mayor of London or the Deputy Mayor for Fire and Resilience. A Fire, Resilience and Emergency Planning Committee of the London Assembly holds the Commissioner, Mayor and Deputy Mayor to account.

Executive summary

London Fire Brigade welcomes this consultation that will take forward the recommendations based on Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety (the Independent Review). As we have stressed throughout this process, if buildings are not designed, built and maintained with fire safety as a priority then people will be put at risk. Buildings built this year will potentially be homes for the next 50 years or more – the people who live in them need to be safe and feel safe. Firefighting operations are underpinned by key assumptions about building design and how they will behave in a fire. When dangerous and often hidden conditions exist due to failures of design, build and maintenance the effectiveness of the operational response will be seriously undermined and the safety of both members of the public and firefighters could be severely compromised. **Fire and rescue services cannot be regarded as a safety net for failures in the built environment and for when those with responsibilities for building safety do not take their responsibilities seriously.**

More detail is needed before we can be confident that these proposals will deliver the fundamental change that will fix a 'broken system' as Dame Judith described it. The fundamental changes need to include cultural change and the lack of that is an ongoing issue.

The responses we have provided to the consultation questions are dependent upon the assumptions and expectations we have on the following issues:

- that the duties of an overarching regulator with powers that extend across all buildings will be taken forward through legislation;
- that the government recognises the need for greater competency and skills in the industry and will take the necessary steps to address it;

- that there will be a full review of Approved Document B that will include extending the requirement for automatic fire suppression systems (AFSS) into more buildings and ensure appropriate access and facilities for firefighters;
- that the new framework will be sufficiently flexible to allow for emerging themes to be addressed and subject to regular review.
- that there will be clearly delineated roles and responsibilities to ensure accountability

As we have emphasised throughout this process, it is essential that reform to the system deals with the built environment in the round and does not just focus on high-rise residential premises. The new system needs to be designed to prevent tragedies rather than just reacting to them. Consequently, we have called not just for a strong regulator but one with powers that extend to all buildings and who will be proactive when addressing risk.

Our assumption from the consultation document and the call for evidence on the Regulatory Reform (Fire Safety) Order 2005 (RRO) is that there will be a new piece of legislation, introduced by MHCLG, to create the Building Safety Regulator (the regulator) which would set out its duties both generally for all buildings, and specifically for buildings prescribed as 'in scope' for parts or all of the building's life cycle from design stage onwards. The proposals contained within this consultation appear to suggest a 'top down' approach with specific requirements for the buildings in scope, but do little to address issues in the wider built environment. We recommend a 'bottom up' approach whereby the expectations of safety are well defined for all buildings with a further uplift for those the building safety regulator determines are in scope. The framework needs to have regular review periods and should allow the regulator to adapt as required.

The consultation document states that it will be the responsibility of the regulator to determine what is in scope – it is fundamental to this new approach that this power stays with the regulator, rather than government, though the Secretary of State should be able to direct the regulator to act, where appropriate. Further, the scope should include the 'higher risk buildings' from day one rather than rely on the regulator to designate them later. This must include premises where vulnerable people live or are staying such as hospitals, care homes, and sheltered housing which either have a 'stay put' or a 'progressive evacuation' strategy in place because of difficulties in evacuating vulnerable residents. In these cases it is imperative that measures are put in place and maintained to keep them safe while firefighters can attend and tackle the fire.

We further assume that this new legislation will provide the mechanism for the 'golden thread' so that there is clear passage of information and responsibilities during the whole life of a building and that it will provide a mechanism for adding conditions to the golden thread when required (e.g. a safety case). We have emphasised that the golden thread should consider from an early design stage that this information will inform the fire risk assessment. The in-use fire risk assessment should never be 'from scratch' but should be a result of a continual development process, culminating in an assessment based on the design information that has been passed along the design supply chain. This ensures that the level of detail relating to the systems and other control measures within the building is high from the outset and that the end user and their risk assessors are not reliant on 'I have a compliance certificate from building control' as the evidence of what is in the building.

As above, it is essential that the new legislation allows any buildings to be brought into scope by the regulator. Existing or revised regimes such as building regulations, health and safety

and general fire safety would, we assume, continue to apply and be enforced in the normal way, with oversight from the regulator who would hold responsibility for matters such as arbitration and determination at building regulation and occupation stages. A further assumption is that buildings in scope would follow the relevant gateway paths including ongoing compliance with any additional conditions or requirements under the regulatory oversight of the regulator. Proposals arising from the Home Office call for evidence would form one of the ongoing general regimes in an upgraded format from the existing RRO, as would the amended Housing Health and Safety Rating System under the Housing Act 2004. Demarcation between these two regimes needs to be improved by the revisions.

Competency is key to ensuring public safety in the built environment and we have long-standing concerns about competency and skills across the industry. As stated in our original call for evidence on the Independent Review (October 2017), we have observed a decline in competency and skills in the sector, particularly in the last five years. This competency issue relates to individuals and organisations taking part in initial design stages of premises, those assessing and approving designs (including fire authorities), those undertaking building works and making changes to the original design and those carrying out fire risk assessments once the building is occupied. There are countless points in a building's life where decisions are made that can have potentially dangerous consequences. Everything from a poor choice of building materials through to badly designed refurbishments could undermine a building's safety and put lives at risk. Ensuring that buildings are safe is dependent upon having more people in the industry who are qualified and experienced to give these decisions proper oversight.

We have previously called for an urgent, full, technical review of Approved Document B and welcomed the commitment within the Government's implementation plan published in December 2018 to a full technical review and the subsequent call for evidence to which we responded in March 2019. As we stated in that call for evidence, the primary purpose of the guidance is to support the functional requirements of the Building Regulations but, due to the historic lack of regular review, it often lags behind common practice and new and developing construction methods and techniques. We have sought an ongoing commitment towards a regular review period of the guidance, and recommend that there should be a period of no more than five years between reviews. This aligns with the recommendation made in Dame Judith's final report.

One specific area where we have consistently called for reform is the use of AFSS, such as sprinklers and water mist. There is clear evidence that AFSS plays a highly significant role in reducing the impact of fire as part of an appropriate package of fire safety measures. We believe that action could be taken in this area before the full technical review of ADB takes place to make AFSS mandatory in all buildings housing vulnerable people, such as care homes and sheltered accommodation, and in schools. The mandatory requirement for AFSS in blocks of flats is currently set at 30m and we believe this is woefully insufficient. The requirement for AFSS in new build blocks of flats and retrofitting to existing buildings should also be extended significantly further than it currently is. Despite all the evidence and widespread support for sprinklers, our evidence shows that the voluntary approach for their inclusion in buildings is not working, with developers consistently ignoring expert advice on when they should be included. That is why we have made public calls for the Government to step in.

We have also urged that a full review of firefighting access and facilities takes place to ensure that firefighters are offered the highest level of protection when entering buildings and are

afforded the best opportunity to preserve life and prevent significant damage to buildings. This review should also include the vehicular access arrangements and the provision of water for firefighting purposes, including fire hydrants.

The new framework needs to be flexible to allow for emerging themes and be subject to regular review. In this response we reiterate what we have said in previous consultation responses - that while 18m aligns with current guidance (ADB and British Standards) in respect of areas such as firefighting shafts, it is an historical height which does not reflect modern firefighting equipment and practices. A flexible system would allow the current threshold to be reviewed and a threshold which is more reflective of modern firefighting equipment, such as 11m, to be considered.

In terms of the building regulations approval process there have been times LFB has been advised that clients have 'shopped around' for a building control body prepared to agree a design in order to get approval. This clearly presents a risk to public safety. We believe the new regime should address this by removing the ability for an applicant to choose their own approval body.

This executive summary highlights our overarching response to this consultation. We also draw your attention to the following key points from each chapter.

Chapter 2 – Stronger requirement for multi-occupied high-rise residential buildings

- The list of buildings which are "in-scope" doesn't go far enough. For new buildings under construction the proposal set out in this consultation is that it is limited to all multi-occupied residential buildings of 18m and above only. It should include a wider range of buildings, including care homes, hospitals and specialised housing, to protect the most vulnerable.
- The rationale for the 18 metre as the threshold should be subject to regular review.
- Specific consideration needs to be given to the legislative fire safety regime for vulnerable people. particularly to the developing specialised housing sector.
- Where there is more than one dutyholder there needs to be a lead nominated dutyholder to co-ordinate compliance.
- Mixed use buildings should be treated holistically, i.e. if they have any parts which count as being in scope than the regulatory framework should apply to the whole building.

Chapter 3 – A new dutyholder regime for residential buildings of 18 metres or more

- We strongly support the view that fire service access should be considered in detail at the planning stage, as part of the existing, but enhanced, planning regime. Fire and rescue services will be available to provide bespoke support and guidance where required and would continue their role alongside the building safety regulator. Responsibility for safe design should rest with developers and designers; we would not welcome fire and rescue services being made statutory consultees for planning approvals.
- We agree that the proposed gateways are at the right check points, however, we believe the height thresholds should be consistent between the gateways. The height threshold of buildings where these gateways are required should be subject to regular review.

- We broadly agree on the safety case proposals, but we suggest these should be applied to all buildings and that they should also include information relevant to the fire risk assessor and the fire and rescue services, as well as the accountable person. We would also want to see them include the intended evacuation strategy at design stage.
- We broadly agree with the registration and building safety certificate process proposed.
- We agree with golden thread, but would like the key data sets included in it to be expanded.

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

- We broadly agree with the approach to resident engagement.
- It is important that residents receive information about their responsibilities in maintaining the safety of where they are living. Tenancy and lease agreements should be adjusted and more clearly written to support this requirement and should include rights of access by landlords to inspect, manage and maintain fire protection equipment.
- It is important that residents understand the evacuation strategy and if for any reason they cannot adhere to it, the accountable person should put into place additional measures for them.

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

- We agree there should be a single national regulator to provide oversight for the whole system. The inspection and enforcement activity should be delivered through working with local regulators.
- We broadly agree with the functions of the regulator as set out in paragraph 315.

Chapter 6 – Enforcement, compliance and sanctions

- We agree with robust enforcement and sanctions with a broader range of penalties, including on the spot fines.
- We agree with a strengthening of the enforcement and sanction regime to ensure those that are responsible are held to account.

Conclusion

A holistic approach is needed to building safety and change must be taken forward as a built environment issue, not just focussing on high-rise residential buildings. The culture of doing the minimum to meet requirements needs to be eradicated. People in charge of designing and building new premises need to show that they have taken an approach which will keep people safe for the lifetime of that building. We reiterate what we said at the start of this response – that fire and rescue services cannot be regarded as a safety net for failures in the built environment and for when those with responsibilities for building safety do not take their responsibilities seriously.

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

Q. 1.1. Do you agree/ that the new regime should go beyond Dame Judith's recommendation and initially apply to multi-occupied residential buildings of 18 metres or more (approximately 6 storeys)? Please support your view.

We agree that there is a need for application of stronger requirements for multi-occupied residential buildings between 18m and 30m in height in addition to those of 30m and above and would like to see that applied for all gateways – not just gateway two and gateway three. Although ongoing actions should result in cladding issues being remedied, there is a need for a stronger regimes to ensure that past mistakes or poor design are not repeated in the future. Buildings over 18m (or the equivalent threshold) require additional precautions through adequate facilities for the use and safety of the fire service and it is essential to ensure that these are well designed, provided and adequately maintained. However, we do recommend that the rationale for the 18 metre is reviewed and a threshold which is more reflective of modern firefighting equipment such as 11m is considered (see responses to Chapter 3). There should be programme of regular review for these thresholds.

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?

We consider that, in practical terms, the requirement for all risk assessments (fire, health and safety) must commence in design stage (goal and safe working method) and continue as a set of 'living documents' that are subject to review and revision (with outcomes feeding into design, construction and building control considerations and site and construction management). All aspects of fire safety, including hot works and other process risks, together with site safety as the premises develop, should be included with a view to handing over a 'day 1' set of risk assessments. This should be accompanied by overarching management plan (for premises within scope of the more stringent regime this would be the safety case) and all relevant supporting documentation – working like a clearer form of the existing Building Regulations article 38 package of information. Historic documentation showing how and why design changes were made during construction (and how that has been accounted for in terms of risk) should be included.

Responsibility and culpability for the development, review, implementation and handover to the next 'duty holder ' in the construction and occupation chain should be clearly assigned where appropriate by reference to duty holders under other legislation as being the prescribed overseeing duty holder.

For existing buildings within scope, a higher degree of fire risk assessment than is likely to have been conducted should be required to provide a sound baseline for consideration of the appropriate management and emergency strategy for the premises. That is likely to now include testing and thorough review of fire compartmentation and measures to reduce the spread of fire on the premises, regardless of any building regulation approvals or certificates

that may have been issued. This would go beyond that which enforcing authorities have, on the basis of existing national guidance, necessarily required.

It should be clear that where buildings have parts which are in scope and parts which are not, one regulatory framework should apply to the whole building and it should be treated holistically.

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

It is of primary importance to ensure that both regimes operate using corresponding and complimentary definitions of the parts of the multi-occupied domestic premises that are to be regarded as 'used in common' (which should include the structure, external envelope and the dividing walls between occupancies).

Subject to the existing review of the Housing Health and Safety Rating System (HHSRS), the regime operating under The Housing Act 2004 should allow authorities enforcing that regime (and the courts) to fully take into account enforcement findings. It should also be able to take into account action taken by fire and rescue authorities and other regulators, such as the Health and Safety Executive (HSE) or local authority departments under other legislation (e.g. Management of Health and Safety at Work, Gas Safety, electrical safety etc.), when determining risk levels for enforcement purposes.

Statutory demarcations for primacy in enforcement of fire safety requirements should be considered. We would recommend consideration be given to fire and rescue authorities enforcing all aspects of general fire safety in any premises for which (a) measures or facilities have been (or under recent laws should have been expected to be provided) for the use or protection of firefighters (i.e. protected stairs, rising fire mains, ventilation); and (b) other blocks of flats for which the design concept or current expectation would be for firefighting and rescue to be conducted internally (i.e. not via ladder/window).

The Housing Act enforcement mechanism should be reviewed in conjunction with the Regulatory Reform (Fire Safety) Order 2005 (RRO) to ensure that enforcement is reasonably achievable. For example, in one case where action was taken by a local authority (under the Housing Act) to improve flat front doors, the notices were required to be served on the leaseholders. This resulted in multiple notices and ultimately numerous failures to comply and the prospect for the local authority of taking numerous separate prosecution was far from ideal or palatable. The matter took several years to resolve and the local authority were unwilling to repeat the process on other blocks. In other cases, fire and rescue authorities may seek to improve existing protection to means of escape (flat front doors) on the basis of article 17 of the RRO. That is often contested on the basis of lack of provision in leases. Where use of article 5(3) of the RRO is considered, this can have the same result as a Housing Act case. Ultimately for both regimes, it is necessary for there to be a named person or role within the

landlord/organisation who can take action and a means for them to do so must be read into leases through implied or legislatively set covenants and powers to enforce them.

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.

The key factor is the health and safety capabilities of the anticipated users of the premises, for example the level of ability to identify a fire occurrence and evacuate the premises (or otherwise act in accordance with the evacuation strategy and move to a place of relative safety).This may be affected by physical or mental health issues (including risk awareness due to immaturity, alcohol or drug use or misuse), external factors such as security issues.

That will directly link to the numbers of persons potentially involved and so for which even significant fire and rescue service intervention, will result in persons being left at risk or placed at risk (e.g. persons who may be injured if moved due to frailty, medical conditions and treatment/surgery).

Examples we have seen include premises being constructed as specialised housing where detection and warning levels in living accommodation has been reduced to the bare minimum on the basis of what is required for a flat. No account has been taken of the vulnerability of the residents and the need for the earliest possible warning to allow evacuation of the flat. We have also noted vulnerable persons with higher risk behaviours being allocated accommodation from which they have little or no prospect of being able to self evacuate but for which the fire safety provision is only at standard 'flat' level or with minor additions.

Consideration must also be given to the construction method and the potential for this impact on either short term or longer term fire and/or structural safety. The safety of construction workers who may be at risk during construction, renovation and demolition works (for example workers undertaking ACM removal have been identified by both LFB and HSE as being at risk, so we must presume were at similar risk when the ACM was applied in the first place). This is also discussed in our separate response relating to modern methods of construction in chapter 6.

However, further work is required in this area to improve analysis of fire trends and casualties. For example, whether recorded fires and injuries in hospital premises are more prevalent in mental health premises or units (which may also be secure units) or the nature of fires in places of custody. A number of notable fires, including fatal fires and fire injuries, have occurred in the mental health units at hospitals. Reported fires in main hospital premises can be unwanted fire signals recorded (correctly) as fires. We have experienced cases where no local investigation of a fire signal has been conducted, resulting in significant number of recorded fire calls.

For some higher fire risk premises it may not be necessary to apply the entire new regime as specific additional fire safety requirements (e.g. a requirement for AFSS or specified minimum staffing supervision levels) may be sufficient or more appropriate. For places of custody, the design and construction may be of little impact on fire occurrence during use where this relates to deliberately started cell fires. Detection and suppression will reduce life risk but not the occurrence of fires. However, removal of Crown immunity from building control requirements (and so premises operated by statutory undertakers whose position now appears anomalous in the built environment context) and provision of third party review of standards, may assist with ensuring standards of compartmentation and so aid minimising potential fire spread in currently largely unregulated premises.

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?

We take this question to mean which premises require heightened levels of regulatory control and supervision during design and construction in order to ensure safety during occupation. If that is the case then we consider all of the cited premises uses and residential care homes should be considered. Though we also consider that diligent application of existing regimes by enforcing bodies could and should provide this for all classes of premises regardless of existing perceived risk levels if adequate resources, guidance, benchmarking, competence levels and third party appraisal of work were provided.

However if the question relates to risk arising to workers during construction then principally we consider that relates to height and depth of the premises (travel distances as the project develops and before all general fire precaution may be in place) and/or the construction method. For example, the widely reported fires in the Peckham area around 2010 on two timber frame construction sites that destroyed the frames and damaged nearby low rise flats.

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?

The growth of the specialised housing sector (supported sheltered) remains an area of significant concern. That arises from a number of factors including:

- Vulnerability of residents not being adequately considered;
- Premises being cited as one use (social housing/rental flats) and being put to use as specialised housing with minimal (if any) alteration or upgrading;
- Lack of control or oversight of end users or ability to determine when the accommodation is not suitable for their ongoing use.

The distinction between accommodation providers and care providers is not helpful in this regard and the lines between what genuinely constitutes a private dwelling and what ,in reality, is merely a licence to occupy (with care provision being a prerequisite) can be very blurred resulting in legislative gaps in the safety of end users.

Separately all other premises expected to be used by numbers of vulnerable person who may have limited or no ability to take self-help action in the event of a fire in their accommodation (or which begins to affect their accommodation).

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.

Primarily the ability of end users (possibly present in a yet to be determined number) to respond to a fire event on a self-help basis. Where users are unable to adequately respond then fire prevention, suppression, premises management and staff response will be crucial to minimising risk. Many of the fatal fire and fire related injury cases we investigate involve cases where the victim was from a vulnerable group and exhibited higher fire risk behaviour e.g. smoking or use of naked flames. In many cases, mobility and/or mental health issues have meant there was a limited ability for the occupant of living accommodation to self evacuate from their residential unit. Although ensuring adequate compartmentation and detection through more stringent requirements may be beneficial, in many of these cases we are aware of it is the staffing and management of the premises, including any form of emergency response and the lack of a legal ability to give effect to risk reduction within what they assert to be a private dwelling that is really at issue.

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?

It would be beneficial to have a designated 'lead' dutyholder to co-ordinate risk assessment and implementation of findings together with co-ordination of management of fire safety including maintenance requirements . At present this only applies, to a limited degree, where there is a risk of an explosive atmosphere.

Chapter 3 - A new dutyholder regime for residential buildings of 18 metres or more

Part A - Dutyholder roles and responsibilities in design and construction

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

Yes, LFB agree that the basic duties set out are the correct ones, albeit with additional commentary here, and in 2.2 below.

A key aspect of this is correlating all guidance and legislative definitions of roles to create a clear flow from design to occupation. For example; responsible person (under the Regulatory Reform (Fire Safety) Order 2005 – (the RRO), person having 5(3) responsibilities (RRO), client, ultimate occupier, duty holder, building safety manager and other similar terms may have overlaps and inconsistencies. Similarly client, principle contractor and those undertaking the works provide the potential for confusion unless well defined and consistent. It should be clear where overlaps occur as to what the responsibilities of the particular roles are, and how they transfer into other roles or legislative requirements.

We recommend that guidance is issued which clearly sets out the transfer of responsibilities between roles defined by different pieces of legislation.

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

Yes, LFB believe the wording should not consider mere compliance with the building regulations. As we explained in **DCLG consultation on the Independent Review of Building Regulations and Fire Safety in October 2017,** some designers openly express their belief that they are only expected to design to the bare minimum standards to achieve compliance with the building regulations, rather than the fundamental expectation of seeking to achieve an acceptable level of safety within their design. In other words, they are seeking a route to compliance rather than a route to a 'safe' building.

Furthermore, compliance with the building regulations is often sought by following guidance such as Approved Document B (ADB) or using it as a basis for comparison. In terms of ADB, LFB experience it is often deemed to be the 'maximum' level in terms of benchmarking a fire safety design as it is considered to represent the level of risk acceptable to society.

For example:

- Inappropriate solutions - there are solutions within ADB for which subsequent research has shown to demonstrate potentially less favourable levels of safety than previously thought, or at least results in limitations on where they should be applied. For example, the use of an automatic natural openable vent to ventilate a common corridor. Research has shown that this type of vent may be vulnerable to wind conditions negating their

performance in certain circumstances. The most recent versions of ADB (2019) were seeking clarification of the wording and did not address technical shortfalls such as this. New knowledge/understanding should not be ignored or dismissed and should also be considered when following the design approach in ADB or applying a comparative assessment. Often British Standards will address these areas but without a substantial review of ADB, such items as these have remained in that document. For example, BS9999 now places a limitation on the height of a building where a natural automatic vent might be appropriate.

- Suppression - currently if following ADB, a hotel where people are unfamiliar with the building and will be sleeping, can be built of any height without suppression. Other occupancy types such as offices require suppression over a 30m threshold and BS9999 now addresses this by requiring suppression in hotels above 30m. Some designers will freely admit they are using ADB rather than BS9999 to avoid the (comparatively insignificant) cost of suppression.
  LFB believe the guides should go further and require suppression in all buildings housing vulnerable people and all buildings over 18m. We believe the safety case for suppression is so compelling that it is difficult to argue a case on safety grounds against such widespread use of suppression.
- Combustible cladding - some in the industry are of the opinion that some combustible cladding combinations may have complied with building regulations at the time of construction of particular buildings by virtue of wording contained in ADB at the time – even if those combinations have since been shown to be clearly unsafe. This reiterates our opinion that some in the industry have lost sight of the significant difference between designing for safety and designing for mere compliance.

Therefore the duty of the dutyholder should go further than simply seeking compliance with building regulations. While that should be a given, the onus on safety should be far greater.

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

Yes, LFB support the clarity of a named individual, which should provide benefit particularly to residents. Often, in our experience, having a corporate entity responsible has the potential to dilute the accountability and doesn't provide those who need direct access to someone empowered to rectify issues. This would make a more transparent and accountable oversight process.

Q. 2.4. Do you agree with the approach outlined in paragraph 66, that we should use Construction (Design and Management) Regulations 2015 (CDM) as a model for developing dutyholder responsibilities under building regulations? Please support your view.

Yes, while we appreciate the benefits of using CDM as the basis for a model, it should not be seen as a panacea to solve all the current issues. Under CDM there is an expectation for a

designer to use materials so the building can be used and maintained safely once it is built, and CDM was applicable to the Grenfell Tower refurbishment project. From evidence provided in Phase 1 of the Grenfell Tower Public Inquiry, it appears that the materials used were not ones which enabled the building to be used safely.

Therefore it is important to ensure that the roles and responsibilities are appropriate, and that the system is accompanied by a suitable regulator with a suitable risk based enforcement model and sufficient resources and sanctions available to them.

Any regime where the onus of compliance is placed upon a dutyholder is only as good as the enforcement regime that accompanies it.

Q. 2.5. Do you agree that fire and rescue authorities should become statutory consultees for buildings in scope at the planning permission stage? If yes, how can we ensure that their views are adequately considered? If no, what alternative mechanism could be used to ensure that fire service access issues are considered before designs are finalised?

No, we strongly support the view that fire service access (and other areas – see our answer 2.6 below) should be considered in detail at the planning stage. However we believe that this should be part of the existing, but enhanced, planning regime. We also recommend that the gateways are at a consistent height threshold, that the height threshold should be reviewed to consider a more appropriate height, and that the regime encompasses all buildings with an uplift for certain buildings/occupancies – see below for further information.

The entire framework needs to have regular review periods and should allow the regulator to adapt as required.

Having FRS as statutory consultees at planning stage would:

- Create a significant additional burden on FRS for little benefit. Being a statutory consultee does not in itself guarantee that our advice would be followed.
- This will create unnecessary duplication for FRS/Building Safety Regulator as there would remain the further statutory consultation at building regulations/gateway two stage. Gateway two is where the most benefit will be derived from FRS/Building Safety Regulator input.
- Culture change is more likely to be driven by market forces and incentives to avoid the hard stop at gateway two.
- FRS will potentially be viewed as a source of free design advice at planning stage, whereas we should remain fully independent of the design – with clients/designers taking full responsibility for safe design.

Enhancing the system with planners considering the fire statements would require detailed guidance on the fire statements for both planners and applicants, and LFB would welcome being involved in the drafting of such guidance. The guidance for fire statements would likely reference building regulations guidance such as ADB. We caution however that, as described by our response to MHCLG consultation on Approved Document B in March 2019, that we

also seek a full review of firefighting access and facilities. This is to ensure that firefighters are offered the highest level of protection when entering buildings and are afforded the best opportunity to preserve life and prevent significant damage to buildings and the environment.

Following our recommendations, the applicants would submit a detailed fire statement (see our answer to 2.6 below) which the planners would assess in the same manner in which they currently assess other planning requirements. Planning departments, assisted by their building control departments should be able to gain competence to appropriately assess fire statements. Planning departments could be assisted by appropriate guidance, training and by engaging third parties for specialist advice where necessary. Notwithstanding that, the onus for designing safe buildings (and having the competency required to do that) rests with the designer, so gateway one should be about the designer demonstrating this rather than the planners 'approving' a building as being safe.

Should the submission contain elements which do not follow guidance then FRS/Building Safety Regulator should be asked for advice.

We therefore recommend that local planning departments consider the detailed fire statements, with support from their building control departments if necessary.

In addition to the question posed, it remains unclear to us why gateway one is being proposed at a 30m threshold, whereas gateways two and three (and the full scope) are being proposed at 18m. For example; for a residential building of 25m the first gateway is gateway two, in which case the same issue could occur (as in this consultation paragraph 77) in that the design could be approved at planning stage without key fire safety issues such as fire and rescue service access being given appropriate consideration.

Furthermore, we understand that Government estimates the 30m threshold to include 40-100 buildings per year. With many thousands of buildings being proposed at planning stage annually, we question if this goes far enough to encompass where the risk exists.

We therefore recommend that gateway one threshold is set at the same height as gateways two and three.

In terms of the threshold itself in our response to MHCLG consultation on banning the use of combustible materials in the external walls of high-rise residential buildings in August 2019, we highlighted that while 18m aligns with current guidance (ADB and British Standards) in respect of areas such as firefighting shafts, it is a historical height which does not reflect modern firefighting equipment and practices. Therefore 18m could be considered, at best, to be out of date, but perhaps more appropriately an arbitrary threshold.

We therefore recommend that the threshold of 18m is reviewed and a threshold which is more reflective of modern firefighting equipment such as 11m is considered.

Furthermore having a specific system for high rise residential buildings in scope, which is limited, and excludes many other buildings, and within that system having a separate regime for planning (buildings over 30m) and building design and occupation (buildings over 18m) appears overly complex. While we appreciate this is intended to simplify the process for buildings in scope, this may have the unintended consequence of confusing the entire building

design process by having a multi-tiered system when considering many of the parties involved work across many different building types.

There are clear benefits from many parts of the proposed system that will be equally applicable to other buildings, not only those where people are the most vulnerable. We are cognisant that the recommendations in their entirety may ultimately prove too onerous to be applied to all building types, and that the building safety regulator may be best to be solely focused on where people are the most vulnerable. However as the safety benefits are so great, at least some of the components will be suitable for all buildings.

The system as it is currently described appears to be a 'top down' approach focussed on high rise buildings but doing little to address the wider concerns when applied to other buildings. We think a 'bottom up' approach of considering what is appropriate for all buildings (such as the fire risk assessment having its origins in the original design) and then considering what uplifts are required specifically for the buildings in scope would be advisable.

So a standard core regime would be beneficial with the requirements for buildings in scope (and potentially some other buildings) having increased expectations above that core regime.

We therefore recommend that parts of the system proposed should ultimately be applied to all buildings, with the in-scope buildings having increased requirements.

Q. 2.6. Do you agree that planning applicants must submit a Fire Statement as part of their planning application? If yes, are there other issues that it should cover? If no, please support your view including whether there are alternative ways to ensure fire service access is considered

Yes, we have suggested similar within the Mayor's Draft New London Plan. LFB would like to see the fire statement specifically include the following:

I. How the proposed development is expected to comply with the functional requirements within building regulations for access to the site for the purposes of firefighting (as currently covered in part B5 of the Building Regulations), ensuring that this is considered at the earliest stage of the development. In particular the Fire Statement should consider:
    a. appropriate access into and around the site for fire appliances; and
    b. appropriate access and facilities within the building(s) provided for firefighting.
II. Information about water supplies for firefighting in accordance with Water UK's national guidance document
III. A statement on how the proposed development would meet the expectations within the LFB position statement on automatic fire suppression systems (AFSS).
IV. A demonstration on how they are going to meet the other functional requirements of the Building Regulations (B1-B4; either using prescriptive guidance such as ADB or BS9999/BS9991 or a fire engineered solution). This will include for example how the design will address the control of external fire spread. It will also address another issue we encounter where due to height limitations placed by planning, building designers have not factored in the space requirements for vital plant such as ventilation; within

the planning height limitation they might seek to maximise floor space by designing occupied floors up to that limitation. They are then seeking inappropriate ventilation solutions because of the lack of space at the top of the building for plant.
This will also include how the design is supporting the use of a single escape route in a very tall building, or how amenity spaces are being designed.

V. Information on construction methodology, particularly with respect to modern methods of construction such as engineered structural timber.

VI. Information on how the design will meet the future requirements of a new additional aspect to 'secured by design' which will include fire safety.[1]

The proposal for fire statements within the consultation document, and expanded upon here, will mean more upfront design for those buildings. We believe this is a good thing, and this upfront design is something we are seeing more of lately. This upfront design 'de-risks' the project from solutions being approved at planning but questioned later in the design at building regulations stage. The Qualitative Design Review (QDR) process as described by BS 7974[2] will assist.

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.

No, as per our response 2.5 above, we are of the opinion that when suitably competent local planning department should consider the fire statements (assisted by appropriate guidance). If, as we have recommended, this applies to other building types and a suitable height threshold is applied, then new applications will have to have site access for fire appliances (amongst other things) appropriately considered. Therefore by giving buildings the appropriate level of scrutiny, there may not be a need to apply additional requirements for any radii.

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

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

See our answer to 2.7 above.

[1] We are currently in discussions with police on how an additional aspect to secured by design could include reference to fire safety.
[2] BS 7974:2019 Application of fire safety engineering principles to the design of buildings. Code of practice

Q. 2.9. Should the planning applicant be given the status of a Client at gateway one? If yes, should they be responsible for the Fire Statement? Please support your view.

Yes, we are of the opinion that applying a dutyholder role such as client is appropriate at gateway one.

The key is in maintaining a connection (via the Golden Thread) from the initial design considerations and assumptions, through to the occupation. All parties (including the client prior to the planning stage) should be cognisant of the need to ultimately produce a fire risk assessment (as well as general health and safety risk assessments) and should be working towards ultimately informing the content of that.

The 'in-use' risk assessment should never be 'from scratch' but should be a result of ongoing revisions of the assessments and plans that have been passed along the design supply chain. This will ensure the level of detail about the precautions built into the premises is high from the outset, and avoid any need for the end user and their risk assessors to rely on the final / completion certificate as the sole documentation about the building.

This will also provide consistency if the applicant passes their client status to others commissioning the building work and the passing of the information is subject to a formal handover process.

Q. 2.10. Would early engagement on fire safety and structural issues with the building safety regulator prior to gateway two be useful? Please support your view.

Yes, we support early engagement and we actively encourage designers to follow the principles of a QDR set out in BS 7974 for complex buildings. That QDR involves stakeholders which in many cases will include LFB.

The description around gateway two suggests that the gateway should be seen as a dialogue between the client and the building safety regulator. We also suggest that a revision will be required to procedural guidance[3] to clearly show that early engagement between the regulator and the client/design team is likely to assist the approvals process.

However, we do caution that there is limited resources available to FRS and we assume to the building safety regulator, so it has to be accepted that early engagement may not be required in every case.

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?

No, we are of the opinion that if the fire statements reflect our expectations as described in our response to 2.5 and 2.6, then sufficient scrutiny should be applied at the planning stage, however the finalisation of the design will be at the gateway two phase.

[3] Building regulations fire safety procedural guidance (2015 – 5th edition)

A consequence of that additional scrutiny required at planning stage, and the commitments within the fire statement to comply with building regulations/appropriate guidance may require more design at the planning stage against the current minimum requirements. In our opinion, that additional design focus would be welcomed and in fact may assist the design team and client by reducing the compliance risk at latter stages.

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.

Yes, while the information in paragraph 89 and Annex D are appropriate, there is additional useful information such as the QDR record and information leading to design solutions encapsulated in meeting minutes. The Construction Control Plan should also detail how services shall be installed and brought into operation as the building progresses. For example there is a need for the firefighting lift and associated lobbies and risers to be in service and extended to match the height of the building as it is progressively built. Reference could be made to HSG 168[4] and the Fire Prevention on Construction Sites Joint Code of Practice[5].

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

Yes, whilst the dutyholders proposed might be appropriate, they will of course be supported by other specialist contractors, such as smoke control contractors and fire engineers. It is important that those specialist contractors are not shielded from their responsibility and accountability of their designs by the principal contractors' responsibilities.

Q. 2.14. Should the Client be required to coordinate this information (on behalf of the Principal Designer and Principal Contractor) and submit it as a package, rather than each dutyholder submit information separately?

Yes, as an overarching principle, the information should be submitted as a package and there would also be benefits in the information being submitted via a single party. In our experience when multiple parties provide information it can result in disjointed information transfer, and it then falls on those receiving it to provide a further administrative function and chase outstanding information.

Furthermore, handing this responsibility to clients may result in a general increase in 'informed' clients.

Q. 2.15. Do you agree that there should be a 'hard stop' where construction cannot begin without permission to proceed? Please support your view.

Yes, without the hard stop there may be a similar situation as there is now in that the building control consultation often occurs after work has commenced to such a stage that remediation is difficult/impossible, or too costly and/or clients/design teams refuse to do so. The risk of future enforcement action is not guaranteed, and in some cases is significantly less of a burden

[4] HSE HSG 168 Fire safety in construction
[5] Fire Protection Association Fire Prevention on Construction Sites *The Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation*

than that of remediation, therefore there may be little incentive for remedial works without a hard stop.

LFB believe the following requirements will strengthen the regime:

- FRS comments on future compliance with the RRO and observations on B1-B5 should have a requirement to be considered and responded to.
- The fire safety regulator should oversee a dispute resolution process for all buildings.
- Developers/applicants should not be able to 'shop around' for a compliant approver.

Q. 2.16. Should the building safety regulator have the discretion to allow a staged approach to submitting key information in certain circumstances to avoid additional burdens? Please support your view.

Yes, however, while theoretically the proposals may work, practically there may be significant difficulties which have the potential for greater delay and cost implications that we assume the proposal is seeking to avoid.

The expectation set out in paragraph 95 suggests that the plans would be approved prior to the staged approach, however the finer design detail may not be available within the plans. Therefore the detailed development will be a necessity to approving the latter stages, but this might instigate conflict at the point which building work has progressed. An example of this might be where the principle of the smoke control is agreed at the stage where the plans are available, but the further design detail and analysis may show that the system does not meet its design criteria. With the staged approach the smoke control shafts may already be in place if this further design detail was allowed to lag behind work on site. Whilst the hard stop might still be available to the regulator, the example given might require physical changes to foundations/structure at a significant time and cost burden.

Notwithstanding this, in our opinion any staged approach should only be used in exceptional circumstances otherwise it would become the norm and will not assist the cultural change required.

Q. 2.17. Do you agree that it should be possible to require work carried out without approval to be pulled down or removed during inspections to check building regulations compliance? Please support your view.

Yes, this will assist in determining compliance where the solution in question has subsequently been covered by other construction. An example is cavity barriers whereby once covered it is sometimes not possible to determine their number, location, specification and fixing. Often the only way to determine that is to remove some construction materials (e.g. walls) to investigate - although less intrusive methods should be used where available.

This allowance might be the greatest potential incentive as the risk may be unpalatable to most clients. Any such action would need to be proportionate, and accompanied by an appropriate mediation system.

The application of this by the regulator, or the recognition that it could be used, should ultimately drive the required cultural change. This will punish those seeking to cut corners and game the system and thereby benefit those who seek to undertake works in the correct manner.

Q. 2.18. Should the building safety regulator be able to prohibit building work from progressing unless non-compliant work is first remedied? Please support your view.

Yes, similar to our answer to 2.17, this ultimate sanction should drive cultural change and may reduce the burden of costly remediation at a late stage of build. Again there is a need for the action to be proportionate.

Q. 2.19. Should the building safety regulator be required to respond to gateway two submissions within a particular timescale? If so, what is an appropriate timescale?

Yes, the existing timescales for building regulations were developed in the early 1980s with the Building Act. These were therefore set when building design was simpler and largely followed codified approaches. With buildings and the analysis to justify solutions becoming more complex, the information provided at gateway two for some buildings will be extensive and highly detailed. This will require the building safety regulator to invest significant time and resources to appropriately assess the information provided.

Timescales need to be sufficient enough to be able to adequately asses the information provided, whilst supporting the industry by not delaying construction longer than is necessary. They would also need to consider the administrative arrangements for liaising with other regulators who would need to be consulted as part of the process.

Q. 2.20. Are there any circumstances where we might need to prescribe the building safety regulator's ability to extend these timescales? If so, please provide examples.

Yes, notwithstanding the general increase in complexity, detailed in 2.19 above and the corresponding suggestion for increase in timescale, for projects with the highest complexity the building safety regulator should have the ability to extend the timescales without unduly delaying construction.

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

Yes, the Principal Contractor may not be intimately familiar with some of the key design objectives and small changes during construction may prejudice those in a safety critical manner. Some of those key principles and interactions between systems may be explained very briefly within a fire strategy for example, but are easily lost within the volume of information. Referring back to the design team is vital to ensure that changes are fully considered and that oversight on matters such as substitute materials are picked up and considered holistically for fire and other relevant/associated matters.

Q. 2.22. Do you agree that the Principal Contractor should notify the building safety regulator of proposed major changes that could compromise fire and structural safety for approval before carrying out the relevant work?

Yes, however, the terminology will be important. The terms such as 'major' and 'compromise' are subjective and may be open to convenient interpretation in the same way that the current 'non worsening' expectations within Building Regulations are interpreted. Terms such as 'has any effect on' might be more appropriate. Without the absolute clarity, loopholes will exist and it is likely that they will be exploited.

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

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

As per 2.22 above, major and minor will always be subjective and giving examples may potentially be more misleading than helpful. For example, substituting the outer rainscreen cladding product with another during construction will only be considered major by someone competent to assess its fire performance. We have seen examples where this product substitution has occurred during construction where it appears that some aspects such as thermal performance have been suitably assessed, yet the fire performance has not been. There should therefore be a requirement for the Principle Contractor to attain that competent advice to assess the impact of any proposed design change.

Q. 2.24. Should the building safety regulator be required to respond to notifications of major changes proposed by the dutyholder during the construction phase within a particular timescale? If yes, what is an appropriate timescale?

Yes, similar to our response to questions 2.19 and 2.20 above, the current timescales for responding to building control consultations may not be appropriate for very complex buildings. Therefore it should not be assumed that similar timescales that exist for building regulations would be appropriate for responding to changes during construction. It is likely that a tiered approach will be necessary as some changes (although major), may require little in terms of additional analysis and justification. But conversely, some changes of a single product

or system will require significant analysis. These might require not only analysis of the constituent parts, but also a holistic analysis to assess the effect on other areas.

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

Similar to the answers above, the complexity of the design will impact the need to extend timescales, alongside the overall impact of the proposed design change. For projects with the highest complexity, or the greatest impact on the overall safety design, the building safety regulator should have the ability to extend the timescales without unduly delaying construction.

Q. 2.26. Do you agree that a final declaration should be produced by the Principal Contractor with the Principal Designer to confirm that the building complies with building regulations? Please support your view.

Yes, although there are points where LFB is unclear of the details of the proposals, and we would welcome clarification.

LFB believe that requiring a declaration from the Principal Contractor and Principal Designer would reinforce that it is the responsibility of those undertaking the works to comply with building regulations. The proposal to declare compliance would provide a clear accountability mechanism, for those responsible for the building's safe design to demonstrate that the building had been constructed to the required standards in accordance with the regulations. We recommend that to assist compliance, and drive culture change, that it also becomes an offence to make misleading, or even ill-informed, confirmation claims of such a nature.

This will also provide a clear record for any future challenge, which will help drive the culture change needed. Such declarations should be coordinated as part of the overall duties of the client.

However, LFB is unclear in regard to paragraph 103, which suggests that the declaration would replace the completion/final certificate. Without a clear understanding of the role of the regulator, we are uncertain if the proposals are suggesting the regulator would take over the role of the approval body from current building control bodies.

LFB is concerned that if not designed correctly, this process would create a self-certification scheme for high-risk work, which would be at odds with the purpose and intent of the reforms. Typically, where self-certification schemes exist, these are introduced to create efficiencies for low-risk building work.

Therefore, LFB suggest that the declaration would be a useful *addition* to the current process; but we do not endorse the declaration replacing the final/completion certificate from the building control body.

In conjunction with the proposed declaration, we see benefit in there being a process whereby there is a judgement from a third party who is independent of the design. This could be

implemented by retaining the final/completion certificates and additional measures such as the declaration and ensuring that applicants cannot chose their own regulator.

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?

Yes, as discussed in 2.19 and 2.20 above buildings are becoming more complex and the justifications and analysis similarly more complex. The information provided at gateway three for some buildings will be extensive and highly detailed requiring the building safety regulator to invest significant time and resources to appropriately assess.

Timescales need to be sufficient enough to be able to adequately asses the information provided, whilst supporting the industry by not delaying construction longer than is necessary. They would also need to consider the administrative arrangements for liaising with other regulators who would need to be consulted as part of the process.

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.

Yes, notwithstanding the general increase in complexity detailed in 2.19 above and the corresponding suggestion for increase in timescale, for projects with the highest complexity the building safety regulator should have the ability to extend the timescales without unduly delaying construction.

Q. 2.29. Do you agree that the accountable person must apply to register and meet additional requirements (if necessary) before occupation of the building can commence? Please support your view.

Yes, we are of the opinion that the registration and building safety certificate are an intrinsic part of the gateway three process.

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

Yes, as this is intended to be a hard stop that prevents occupation without agreement that it is safe to do so, there needs to be an offence with sufficient sanctions to ensure this.

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

Yes, partial occupation may be appropriate in certain circumstances if supported by a fire statement which includes a pre-emptive fire risk assessment in accordance with the RRO (or any changes made to legislation following this consultation). However, this is one of the most

problematic and risky periods of occupation and care should be taken to plan and manage this period carefully.

We understand that financing models often require the sale of individual units (flats, apartments) at certain stages to fund completion of the works. Sometimes this model results in lower floors being sold and occupied whilst construction continues to floors above. That can result in sharing of escape routes and specific fire safety measures such as firefighting lifts, suppression systems and rising mains not being available on all floors that are either occupied, or have construction continuing. We have also seen evidence of developments being partially occupied without access to appropriate fire hydrants / water for firefighting. Focus will be required on the physical fire separation, the safety systems and the management of each section. For example partial occupation may be appropriate whereby there is complete fire separation with no potential breaches such as doors, between the occupied and construction areas, and where all safety systems are available for both parts. This might preclude circumstances where the occupied and unoccupied parts share an escape route. In such a case the escape routes for the occupied and construction areas should be independently sufficient to support safe evacuation.

As discussed in 2.12, the construction control plan should consider in detail how these areas are separated and how the fire safety systems are made available at all times.

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

Yes, that a building is starting from scratch in terms of design, or if it a significant refurbishment (such as that described in the consultation), should not influence the level of regulatory oversight applied. The ultimate safety of residents should not be dictated by their location in a newly built versus a newly refurbished building.

There remains a fundamental disconnect between the non-worsening conditions of building regulations and the expectations of continuous improvement through the fire risk assessment process set by the RRO. Regulation 4(3) of the Building Regulations 2010 states that where the work did not previously comply with Schedule 1 that when the new work is complete it should be no more unsatisfactory in relation to that requirement than before the work was carried out.

As we highlighted in **the Independent Review** this is interpreted as allowing fire precautions to be removed and replaced on a like-for-like basis – meaning a building can be refurbished many times but the general fire precautions may never get improved to modern standards. This runs contrary to the principles of prevention outlined in the RRO, that premises risk assessments should adapt to technical progress and seek to continually reduce overall risk within buildings.

In some of the most concerning cases, non-worsening is sometimes applied whereby had the building been occupied at the time of the consultation, LFB would have undertaken enforcement action under the RRO. Despite this, as far as the Building Control Body is

concerned, the existing condition is still considered to be the base standard for measuring compliance with the building regulations.

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?

Yes, while we broadly agree with the transitional arrangements, we believe strong emphasis should be placed on full compliance with the requisite gateway. For example, those projects that enter at gateway three should be expected to provide an identical level of information and be exposed to an identical level of scrutiny at this gateway, as if they had entered at gateway one. There might be a tendency to assume that because the project wasn't exposed to the beginning of the process that this somehow justifies a 'lighter touch' approach, which in our opinion is inappropriate.

Chapter 3 – A new dutyholder regime for residential buildings of 18 metres or more

Part B – Duties in Occupation

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

We agree that the safety case should be made available for scrutiny by the building safety regulator prior to the issuing of a building safety certificate. We do not foresee any issues with this process with regard to new buildings within scope. However, the range and number of existing, occupied, buildings within scope the means that scrutinising these in a reasonable timeframe would be a significant demand on the building safety regulator. Careful consideration needs to be given to the appropriate time frame for the existing buildings to have a safety case in place and this should take into account the needs to reassure residents.

As set out in answer 1.2 above, for existing buildings within scope, a higher degree of fire risk assessment than is likely to have been conducted in the past will be needed. This will inform the safety case. This is likely to now include testing and review of fire compartmentation and measures to reduce the spread of fire on the premises, regardless of any building regulation approvals or certificates that may have been issued. This would go beyond that which enforcing authorities have necessarily required.

It is likely that as more intrusive surveys are carried out then new remedial works will be identified. The key issue is that sufficient information is available to properly inform a current assessment and safety case. Failure to previously identify these matters should not give rise to litigation or civil liability other that potentially for those whose omissions gave rise to the defect in question.

Currently, the term 'building safety certificate' is not defined within the glossary contained within the consultation document. As the certificate is a fundamental part of the new regime and previously did not exist, this should be clearly defined for the understanding of both accountable persons and regulators.

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?

Yes, we agree that a safety case should contain all content as detailed.

However, the scope of the safety case should be expanded to include interaction with emergency services, facilities to support their activities and information that may need to be provided to them in case of emergency incidents e.g. plans of the building to aid incident commanders.

Conversions (e.g. offices to flats) should be treated as new builds for the purposes of the new regime.

The safety case should be reviewed post emergency incident or any other event which may indicate that the safety case and/or supporting documents may no longer be valid. We would recommend that the building safety regulator issues advice to accountable persons with regard to any issues that may effect the safety of buildings within scope and the need to review safety cases. E.g. wide ranging product recalls of common household items (such as unsafe white goods) and previously unknown structural issues (such as those surrounding Large Panel System (LPS) blocks of flats).

Many existing high rise buildings in scope were built to older standards especially the provisions of access and facilities for firefighters. This has resulted in many high rise purpose built blocks of flats above 18 metres with anachronistic installations including incomplete or non existent rising mains and firefighting lifts installed to now out of date standards. The safety case should include all necessary information concerning the access and facilities for firefighters and the new regulatory framework should ensure upgrades to facilities where necessary.

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

Yes we agree that the safety case is a reasonable approach for existing, occupied, buildings.

As set out in answer 1.2 and 3.1 above, for existing buildings within scope, a higher degree of fire risk assessment than is likely to have been conducted in the past will be needed.

This approach will ensure the maintenance of the building since its construction and any change that has occurred over its life span.

A type 4 fire risk assessment would only be required on initial application for a building safety certificate, as a fire risk assessments reviewed annually by a competent person would be adequate to assess risks on an ongoing basis. This is providing any maintenance or refurbishment activity is carried out in accordance with the regime and does not breach or compromise any of the buildings compartmentation, passive fire protection or structural safety. Any person or company undertaking a fire risk assessment, must have access to the safety case and any other relevant documentation in order to carry out the assessment. Emergency plans should be in place in case of an major incident, especially in the case of residential care homes in scope due to issues with rehousing vulnerable persons and providing the support they need.

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

We believe that all options should be explored in order to find the most effective way of ensuring safety critical actions can be carried out in a timely fashion without putting the safety of residents or firefighters at risk.

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

Yes we agree with the approach detailed in paragraph 159 but would highlight specific difficulties in identifying accountable people in receipt of funds when then they do not provide a UK address, which is not currently a requirement.

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.

Further to our answer to 3.5 above, building owners who reside abroad, corporations who do not have a registered UK address and 'funds' that own buildings as part of stock transactions, are all examples of where the concept of an accountable person maybe difficult to name.

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

Yes, as existing buildings may not have been built or refurbished to the standards of the new regime and may not have been subjected to suitable and efficient maintenance, the risk in these buildings may be deemed higher. To ensure the risk is managed and the safety of residents is achieved, an accountable person needs to be easily identifiable. We would welcome more information relating to the transitional arrangements. Care should be taken to ensure that they mean occupied buildings are brought within the full regime as quickly as appropriate. The transitional arrangements should be centred on a risk based approach.

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

At no time should the building be occupied without an accountable person. Any failure on behalf of the accountable person to register with the Building Safety Regulator prior to transferring accountability should be an offence.

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

Yes, any transitional plan would need to be mindful of the current capacity of the sector to fulfil such roles to ensure that there are sufficient competent persons able to assume these duties for the buildings in scope.

This role will require a high degree of competence, however we are concerned that these competencies are not widespread throughout the industry.

There should be discussion in terms of all the requirements as to how they will be phased in to ensure that a lack of capacity does not compromise safety of buildings by creating situations

where certain roles cannot be fulfilled. This is not limited to availability of competent persons, but also consideration of how long before the requirements of a safety case and golden thread should be demonstrable for existing buildings.

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

Yes, though more detail is required. All the suitability requirements, be it competence, experience or qualifications will need to be scalable dependent on the type of building and its risk profile. A competence framework for the role is a requirement to clearly define what is necessary to become a suitable building safety manager, for specific building types, including for resident engagement. We would like to see more detail on how this will be achieved. The consultation document is unclear on what 'necessary team and funding' (para 170) would be assessed.

Both paragraphs 168 and 171, describe the regulator being satisfied that a person appointed as a building safety manager meets the tests for registration. The consultation document does not describe what these 'tests' are and how they can be met. Any test criteria needs to be clearly defined and easily understood by all parties.

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

Yes, however we can see scope for misunderstanding if the accountable person may also act as the building safety manager without transferring their responsibility or liability for complying with the building safety certificate and the safety case. The delineation between the roles, if held by the same person needs to be more clearly highlighted.

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

Yes, at no time during occupation of a building in scope, should it be left without an appointed building safety manager in post, even if only for a temporary period. We welcome the provision that when the accountable person has not submitted a valid application to register the building, including a named building safety manager, would be an offence. We also welcome that, as a final option, an independent building safety manager can be appointed by the regulator.

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.

Yes, in extreme circumstances such as where the business operating the building safety manager goes out of business or the building safety manager can no longer carry out their functions (e.g. accident, illness, sudden death etc.), however the expectations should be that

the accountable person has the responsibility for this and the regulator only steps in when those responsibilities have not been met.

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

An interim building safety manager should be appointed only as a short-term measure. The appointment should be long enough to ensure that the accountable person is aware of what is needed to ensure the ongoing safety of the building does not suffer, due to the appointment of an insufficiently competent replacement. The creation of the new criminal offence should ensure that the accountable person is proactive in the appointment of a suitable new manager. This would have to account for the need to grow capacity to ensure sufficient numbers of people are trained to be competent in this role.

There should also be a transitional handover period between the independent building safety manager to induct the new building safety manager, for a seamless take over of the role and responsibilities.

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

Where the regulator has appointed a building safety manager, this appointment should only end upon the accountable person submitting a valid application for a building safety manager. This is to ensure, that at no time is the building left without a building safety manager in situ. However, to discourage the accountable person from using this appointment indefinitely, there should be penalties. Any penalty system used must be such that it can not be seen as a cheaper alternative than appointing a building safety manager themselves.

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

We believe that all options should be explored in order to find the most effective way of ensuring safety critical actions can be carried out in a timely fashion without putting the safety of residents or firefighters at risk.

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.

Yes, a registration scheme for residential buildings within the scope of the new regime is a way of providing assurance and transparency, as long as it is effectively regulated with the appropriate sanctions for non-compliance.

We agree that the building safety certificate containing all relevant details should be displayed within the building. The display of a certificate is important to reassure residents that their building is considered safe, as well as provide details of who is responsible in order to escalate concerns and complaints. It should be made a criminal offence to not display the building

safety certificate, much like the offence to not display a premises licence under the Licensing Act 2003.

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

Yes, the application form should be a standard form to be able to be completed online. A model application form should be provided for the reference of applicants.

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.

There is a need to nominate or legally define the person who is to coordinate in a manner similar to article 12 of the FSO (and the Dangerous Substances and Explosive Atmospheres Regulations 2002) but this cannot be reliant on the presence of dangerous substances. Freehold owners or majority users might be considered appropriate at sub-safety case levels and it may be necessary to provide a civil remedy or power to allow the legally nominated/appointed person to require others, including flat owners, to cooperate without enforcing authority intervention.

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

Yes, the requirements would represent a minimum standard and set out the expectations of the information and documents that should be available to those regulating within a building. The key consideration is that all aspects of safety that may impact on the building, including those from other legislative regimes, are covered. A holistic approach should be taken to look at all aspects of safety, including materials and energy supplies, general health and safety, and process risks etc. all of which should inform the safety case.

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

Yes, agree there the proposals will seek to ensure the conditions of the certificate reflect any new or additional requirements of the new safety case. We also agree that a maximum duration for the validity of a certificate should be set. The renewal date should be indicated on the certificate so that it is clear to residents and the building safety manager when the certificate has expired.

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

Yes. In addition, the proposed circumstances should also allow for review where there has been a health and safety failing or a fire incident of note e.g. fire and/or smoke spread from the dwelling of fire origin. .There is a need for guidance about when reviews are required.

Chapter 3
Part C - Duties that run throughout a building's life cycle

Q. 4.1. Should the Government mandate Building Information Modelling (BIM) standards for any of the following types and stages of buildings in scope of the new system?

a) New buildings in the design and construction stage, please support your view.

Yes, although the Government should be mandating digitisation of information – not just BIM.

The key is maintaining a connection (via the golden thread) from the initial design considerations and assumptions through to the occupation – and there are many benefits to ensuring that connection is captured in a digital format. All parties (including the client prior to the planning stage) should be cognisant of the need to ultimately produce a fire risk assessment (as well as general health and safety risk assessments) and should be working towards ultimately informing the content of that.

The system as it is currently described appears to be a 'top down' approach focussed on the high risk buildings but doing little to address the wider concerns when applied to other buildings. We think a 'bottom up' approach of considering what is appropriate for all buildings (such as the Fire Risk Assessment having its origins in the original design) would be more appropriate. This could then be complimented by considering what additional uplifts may be appropriate for the buildings in scope.

We therefore consider it appropriate that the expectation should apply to all building types and occupancy types and should be designed in a scalable way. To ensure the digital information is available in an emergency it should form part of the business continuity planning for the premises.

Whatever system is ultimately used it should be accessible to all and free of associated licensing costs.

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

Yes, as per our answer to 4.1 a) above we think the system should be scalable and applied more widely than the current limited scope.

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

Yes, although further to our answer to 4.1 a) above, this should be a longer term aspiration which will require a phased implementation. There may be significant costs associated with this which might be prohibitive to parts of the sector.

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

We are not experts in the field so cannot comment.

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.

Yes, in addition to Location, LFB recommends:

- That information is retained about what a building, or development were known as during design and construction. The unique building identifier and building names will often come later in the design/build process. These can be designated names such as 'Block A6' during design which can cause complications in the storage and retrieval of information following name changes.

In addition to Size, LFB recommends:

- Number of basement levels in use.
- The name of cores/stairs.
- Where rising mains are associated with stairs/cores that the inlet points are named and marked. For example 'Dry Rising Main 1 serving North stair located adjacent to main residential entry on High Street'.
- Areas which require increased levels of protection (compartmentation, ventilation or suppression) for example a substation.

In addition to Building Type/Purpose, LFB recommends:

- Use of floors or particular areas. For example it is becoming common to provide amenity spaces throughout the height of residential towers and these can be varied in their use, control of the spaces and evacuation regime.
- Building occupant information, particularly in buildings with a mix of residential and commercial uses. For example if there was a shop below a residential tower this could include a description that the shop will be available to the general public who will be awake but unfamiliar with the building.

In addition to Years Built and Refurbished LFB recommends:

- Year design started. This may have implications in terms of design codes used and legislation applied.

In addition to those areas in the key dataset, LFB recommends:

- That the date of any updates and reviews are included.

There should also be a key subset of information detailing the facilities for the use of operational firefighters.

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.

Yes, LFB support the concept of openness, transparency and particularly supporting residents with sufficient information. However caution should be applied in terms of the language used so as not to cause unnecessary alarm or distress. For example stating that a single item is faulty may not in itself be an issue if that item was one in a link of protection measures and is associated with an area of low risk. That faulty item may be sufficiently mitigated by appropriate management for example, and may be subject to an appropriate schedule for remediation. However for someone not used to fire safety language, that may seem more of a concern than it is in reality. We have had experience of residents misinterpreting the level of risk following information provided in a fire risk assessment. The balance must be sought with holding those responsible to account, and enabling residents to feel safe.

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

Yes, however the detail of what is included is important alongside how that information is presented.

For example; if the detail is contained within the golden thread information but not in the key dataset made available to residents; this may provide a potential point of failure. If the information was not available to residents it might not be passed on to contractors engaged by a resident such as a tv/telecoms technician who may need to breach the compartmentation. Therefore that technician (or other party) may not end up with the information they need to maintain the compartmentation required. This may be dealt with via a process whereby the residents require agreement from the building safety manager for any works of this type.

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.

Yes, as covered in our answer to 4.1(a), the fire risk assessment should have its origins in the design and construction phase, and will be built up over time culminating in a full picture and understanding of the building being handed over for the fire risk assessor to then assess (and others such as those undertaking the health and safety risk assessment). Therefore information should be considered at this point which will ultimately be relied upon for the fire risk assessment. It would assist the final understanding of the design to demonstrate how it has developed over time, including the rationale and justification for the final solutions and change control records.

Q. 4.7. Are there any specific aspects of handover of digital building information that are currently unclear and that could be facilitated by clearer guidance? If yes, please provide details on the additional information you think should be clearer.

The handover of information must be provided in such a way that it will be understood by the building safety manager, responsible person and others. While we appreciate the proposals are significantly advanced from the current guidance provided for regulation 38 of the building regulations, in many cases we see large operation and maintenance manuals passed to an occupier which are primarily in technical language and which the end user might be unfamiliar with. While we are not proposing to 'plain English' all technical language, as that is often not possible or appropriate, needs of the end user are clearly a key principle of the handover of information. This could be achieved by the guidance proposed in this section of the consultation document

Further to the above, LFB recommends that sufficient sanctions are available and are applied where necessary, to ensure compliance with this expectation of information contained in the handover. Within the industry it appears common knowledge that the current regulation 38 information is routinely handed over poorly, yet to our knowledge failure to comply with this Regulation has not resulted in legal sanctions. Notwithstanding that, we do know of some building control bodies who suggest they will not provide a completion/final certificate unless they are satisfied the information has been passed.

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.

Yes, the golden thread, should include a history of the design principles and assumptions which will be required to inform the fire risk assessment. It is not sufficient to assume that the building regulations have been complied with, or guidance such as Approved Document B has been followed, to suitably inform the fire risk assessment. This information will be extensive in some cases, and critical detail risks becoming lost within the sheer volume of information. Therefore, information such as constraints, future limitation on use/change and testing and maintenance requirements should be clearly highlighted.

For example, the introduction or change to full height doors for aesthetic reasons may render a smoke control system ineffective in achieving its primary purpose of protecting the stair from smoke. This would be a critical constraint of the system, however may only be described by one line of text within the initial fire strategy. While that single line may have been sufficient during design, it might not be sufficient to ensure the end user understands the consequences or risks of making such a change.

We also recommend that information is presented in such a way that will enable the end user to procure effective services such as maintenance and testing of fire safety systems. For example we have seen evidence of initial maintenance contracts being provided to installers of smoke control systems, and then after the completion of that contract the maintenance contract is given to another party with little knowledge of the system. The second contractor

therefore had little knowledge of what is needed to be maintained and how, and little knowledge of limitations of the effective operating lifespan of various components. A consistent system of required knowledge and competencies alongside the testing and maintenance requirements of the systems would assist. Within that should be detail required for holistic testing and maintenance, for example the need to test the actuation of a ventilation system via the fire alarm system and how to do that. Undertaking that incorrectly such as weekly smoking of detectors may have a detrimental long term effect of clogging the detection method, and testing the smoke control system and the detection system in isolation of each other is not testing for the effective actuation.

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

Yes.

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

Yes, however as the principles of such a culture are based on individuals' knowledge and training care should be taken not to create a perverse incentive to remain unknowledgeable or untrained. The culture should also have a mechanism whereby the knowledge or training which has been identified as a consequence of the occurrence is addressed as a priority. Furthermore, many 'just culture' interpretations have points around intent, negligence and impairments which we consider critical. Lack of knowledge or training should not be used to mask intent, impairment of negligence leading to an occurrence.

Both the industry and government will need to agree to adhere to the principles and the government will need to provide oversight to ensure the culture is maintained.

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

Yes, although this should not preclude immediate action being taken on either mitigation or remediation. For example a failure or unavailability of a critical component (e.g. suppression, smoke control or firefighting lift) may require immediate mitigation. That immediate mitigation should be addressed and not be delayed by the 72 hour reporting period.

A suitable and sufficient safety case should have detail regarding contingency measures that are required when critical systems are unavailable. Those contingency measures may include a need to restrict occupation in certain areas without the critical systems being unavailable. For example, in a tall block of flats if the suppression system is not operational careful consideration will need to be given to how safe residents are to remain occupying their homes.

There is currently a culture of waiting to be told what to do amongst some within the industry. This has been highlighted by the reluctance to remediate combustible cladding issues with some having responsibility waiting for explicit instructions from central government. Addressing this 'waiting to be told' culture is a vital aspect of these proposed reforms.

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

Yes, the existing schemes such as CROSS may be an appropriate basis on which to build upon for a mandatory scheme.

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

Yes, please see additions below.

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

Yes, the prescriptive list proposed will be dependent on what is ultimately in scope, and would benefit from an all encompassing category for potential fire safety occurrences so as not to exclude a possible issue which has not been foreseen.

Another specific category could be:

- Category – Occurrences relating to unexpected or uncontrolled damage to the building.
- Example – Dry riser outlets have been removed illegally.

The level of reporting required should be proportionate, and not result in extreme numbers of reports referred to the building safety regulator.

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

No, during the design stage the specifics will be developing over time and will follow an iterative process, therefore any safety concerns might be alleviated through further design development. There may be little to be gained through occurrence reporting during this process. For complex projects the principles should be established following a qualitative design review (QDR) as detailed in BS 7974[6].

Any technical divergence of opinion should not normally be considered appropriate for occurrence reporting and should be rectified at Gateway 2.

[6] BS 7974:2019 Application of fire safety engineering principles to the design of buildings. Code of practice

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

Yes, whistleblowing protection is vital in supporting those who are most readily able to spot issues to feel able to safely report those issues.

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

Yes, as we highlighted in our response to **DCLG consultation on the Independent Review of Building Regulations and Fire Safety in October 2017**, there are competency concerns throughout the industry.

A national framework would be essential in improving the levels of competence, but also the consistency as competence can be very subjective without a reference framework.

While the building safety regulator will require competent staff we caution that fire and rescue service (FRS) competence should not be depleted to support the new regulator at the expense of the FRS's being able to sufficiently fulfil their regulatory functions, particularly if the scope of the new regime remains limited. FRS's will still be responsible for enforcing fire safety in a range of buildings which may present much higher risks than those within the proposed limited scope; retaining staff with the right skills and knowledge to undertake this work is therefore crucial to avoiding a two tier standard of safety..

We note the register proposed in paragraph 234 of the consultation. Whilst we are supportive of such a principal we also suggest that the register should contain further details of specifically what building types and occupancies the entity or individual is competent in providing specialist advice for. We are of the opinion that buildings in scope should initially include as a minimum, premises where vulnerable people live, or are staying such as hospitals, care homes or sheltered housing. Competency to provide advice in one area does not automatically infer competency to provide advice in another.

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

Yes, the building safety regulator will experience much that would be of benefit to the wider industry, such as:

- common design trends and issues associated with those;
- common failure modes of systems;
- common misunderstanding or misinterpretation of guidance;
- emerging technologies and understanding.

As examples, wide ranging product recalls of common household items such as unsafe white goods, previously unknown structural issues (such as those surrounding Large Panel System (LPS) blocks of flat) or the recent issues fire doors providing fire performance which is less than required.

The building safety regulator should also have a mechanism of learning from the experiences of the fire and rescue services, which in turn should be returned to the industry. Fire and rescue services learn from:

- Attending fires and other incidents;
- Investigating fire incidents;
- Auditing premises for compliance with the Regulatory Reform (Fire Safety) Order 2005 (RRO);
- Enforcing against non-compliance with the RRO;
- Reviewing and commenting on Building Control Consultations.

Whilst the building safety regulator will be initially taking some of those roles from FRS for buildings in scope, the experience from other occupation types remains valuable.

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

Yes, although if relating specifically to those buildings under the dutyholders' control there is largely the expectation to do this under the RRO and general health and safety legislation currently.

If the dutyholder is expected to promote building safety more widely than their own buildings, this will be limited by their experience.

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

Yes, as we have said in our answer to 2.5 we believe a multi-tiered system may be overly complex and create more margin for error, therefore applying to all building works will apply consistency.

Other areas of this consultation appear to suggest a 'top down' approach with specific requirements for the buildings in scope, but do little to address issues in the wider built environment. We recommend a 'bottom up' approach whereby the expectations of safety are well defined for all buildings with a further uplift for those the building safety regulator determines are in scope.

While separate from the full bottom up approach we are advocating, which includes the legislation, we also appreciate the benefits in the wider expectations of accountability this specific proposal for alignment will provide.

The entire framework needs to have regular review periods and should allow the regulator to adapt as required.

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

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

Yes - we agree that the list of items in paragraph 253 should be proactively provided to residents.

It is important that residents receive information about their responsibilities in maintaining the safety of where they are living. There is a balance to be struck in how much information is given to ensure residents do not become fearful that a fire may occur as this could lead to a reduced quality of life and significant mistaken complaints and concerns passed to other regulators.

In addition to how to reduce the risk of fire, resident responsibilities should also be provided and explained, for example why it is important not to change their front door to a UPVC door and the importance of not hoarding combustible materials.

Consideration should be given to how residents will be updated with changes – for example via a regular bulletin. The fire and rescue service can also support these messages through community engagement through our youth work, home fire safety visits, and community events.

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

Yes - we agree that access to all information about building safety by residents is preferable but with some caveats.

Much of this information may be technical in nature that may not be readily understood by most residents and therefore potentially misinterpreted. This may generate unnecessary concerns. Therefore such building safety information needs to be provided in plain language that will be understood by residents. This will include 'safety cases', 'building safety certificates' and 'fire risk assessments'.

The building safety manager/accountable person also needs to be sufficiently competent in order to be able to communicate this information effectively.

Members of the public sometimes do not understand fire risk and therefore what a fire professional might constitute a minor matter could be taken to be something that would require immediate resolution whereas in reality this is not usually the case.

For example - where a fire risk assessment has resulted in significant findings to action, it may be prudent for these to be explained or redacted in some way. Rectification works can sometimes legitimately take some time to resolve, for example a schedule of replacement of fire doors throughout a building may require funding and procurement processes, extensive consultation with residents and authorities having jurisdiction such as building control bodies, and potentially court action if residents are unwilling to engage. This may lead to frustration for

residents and complaints to local authorities and regulators that will potentially divert their resources away from other higher risk activities.

Some housing providers and local authorities use online systems to upload their fire risk assessments which enables them to be updated as and when required. Subject to the comments above these could be useful if opened up to residents to see the information at any time, and any actions taken.

The fire and rescue service is encouraging fire risk assessors to identify vulnerable people within the building in order to assess risk and also advise on an appropriate evacuation strategy, for example identification of hoarders. This can present an issue in terms of privacy and therefore would need to be redacted in some way to comply with data protection legislation.

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?

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

Yes - we agree that vulnerable residents should be able to nominate a person to act on their behalf. Consent would need to be given and we would suggest this could be a variety of people depending on who cares for the resident. Some residents will find the information hard to understand for various reasons and therefore for accessibility purposes they should be able to allocate any nominated person if they have the mental capacity to do so.

There needs to be some level of scrutiny in order to ensure the nominated person is not taking advantage of the resident in any way (safeguarding).

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

Yes, we agree with the proposed requirements. The management summary should be transparent with a leaning towards communication and engagement with residents. The proposed management summary covers a wide scope for this.

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

Yes, the roles and responsibilities would need to be very clearly stated as this can sometimes be confusing with multiple 'responsible persons' involved e.g. building safety manager, freeholder, leaseholder, managing agent. The engagement plan would be a useful tool where the building is constantly changing hands. The engagement plan should also detail how the residents will be provided with updated information.

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

Yes, in our experience residents can contribute to fire safety issues within buildings, mainly because they do not always understand, or sometimes ignore or damage, the fire precautions within the building. For example, removing self closers from flat front doors or replacing them entirely with non fire resisting doors, storing items or waste in common parts, damaging fire doors and electrical fittings etc.

Information should be provided to residents to explain their responsibilities and potential sanctions that can be taken if they ignore these. Tenancy and lease agreements should be adjusted and be more clearly written to support this requirement. They should include rights of access by landlords to inspect, manage and maintain fire protection equipment.

Residents should have enough of an understanding of the evacuation strategy for their building to be able to make a decision about whether they can adhere to the strategy based on their level of mobility and cognitive ability. If for any reason they cannot adhere to the evacuation plan, they should inform the accountable person who should then put into place a personal emergency evacuation plan (PEEP) and update the information provided on site for fire and rescue services. Additional protection methods should also be considered. For example contacting the fire and rescue service for a home fire safety visit, consideration of telecare and personal sprinkler systems.

If the scope of this consultation is extended, this advice should apply to all premises types.

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

As above, residents should also inform the accountable person of any incidents or near misses in order for the fire risk assessment to be updated.

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

Yes – GDPR/Data Protection legislation would apply here in the case of sensitive/personal information being used and stored by the accountable person.

All accountable persons/building safety managers should be trained in safeguarding and there should be a policy in place, for example visiting flats where there are vulnerable people living. A record of entry into flats should also be kept.

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

Yes, fire and rescue services also have a responsibility to swiftly respond to any 'Alleged Fire Risk' where an imminent and serious risk has been identified. This should also be explained

and sufficient information imparted about fire risk should be given to residents in the internal process to avoid unnecessary delays.

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

Yes with some caveats.

Concerns unresolved internally can be addressed by a requirement on the accountable person or other regulators to convene something similar to a 'Safeguarding Panel' where the accountable person and regulators meet to discuss, agree and implement solutions as in paragraph 290. This paragraph seems to contradict with paragraph 286.

If these cannot be agreed or the complainant is still unsatisfied - the complaint should be escalated to the Building Safety Regulator for final arbitration and decision.

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

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

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

Yes, it will be imperative to build in a formal review process with the ability for changes to be implemented following the review. While we believe generally that five years might be appropriate however there should be the requirement to review if urgent risks arise within this prescribed period.

Q. 6.2. Do you agree that regulatory and oversight functions at paragraph 315 are the right functions for a new building safety regulator to undertake to enable us to achieve our aim of ensuring buildings are safe? If not, please support your view on what changes should be made.

Yes, subject to clarification of;

correlation with responsibilities under existing regimes;

whether the register will cover companies, or individuals, or both;

the guidance drafting and approvals process.

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.

Yes, however the scope of this and the necessary detail to provide this on a voluntary basis may be too much. For example, registering the name of the duty holder or accountable person where these initially live outside of the UK could be a difficulty.

Again, it may be difficult to put in place a BSM as the qualifications required for this role may preclude numbers of people applying. There is also the question of the financing of these posts and is the cost to be borne by an individual(s) or an organisation?

The two parts above are the core elements to push this forward and without these in place to reassure residents and pursue the ideals of the functions it could be difficult to commence these roles without legislation. A legally binding competence framework needs to be put in place in the first instance.

A number of residential buildings that are higher risk residential buildings (HRRB) or commercial and HRRB that are currently in the system either post planning awaiting construction, being constructed or under construction and part occupied will have a separate regime placed upon them whilst having undertaken the legal processes pre these functions from a building safety regulator. Will these require a safety case or will they be missed in the system?

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

Yes. A stronger framework and non conflicting guidance will be an assistance to everyone within the sector. Providing that the separate documents state and mean the same thing and that there is consistency in definitions and meanings in any glossary of any document this should be a sound way forward.

It should be noted that even in some British Standards(BS) that the committees choose to use differing terms, phrases and meanings for the same elements. This would need to be eradicated and perhaps the BS for standard terms and phrases be reconfigured for all to use as the standard approach. Terms used in buildings such as those used as part of design or in the safety case should be enshrined in legislation so that any meaning is specific and clear to all those who choose to use them.

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.

Yes, however, some industry professionals have yet to be included within the Competence Steering Group (CSG) and some professionals are skilled at higher levels. For example, fire inspectors will be at level 4 whilst building control staff will be at level 7. Is there a need to ensure that all staff are working through competence to be at the same level? Also, the competence for fire and rescue staff will only affect England and the other UK countries are not currently part of any scheme, so how can this be dealt with UK wide?

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

Yes, however, it should be noted that fire risk assessor schemes nominally register a company and not an individual. Work would need to be completed so that individual assessors are not disadvantaged by this committee.

If the committee signpost to existing BS and other guidance documents then cognisance should be taken off the terms and definitions used as in a number of cases there is conflict between meanings. In addition there can also be conflict between standards and guidance and in a number of cases, guidance, particularly that which supports the RRO, is now out of date and not fit for purpose. There can be too much guidance issued and the committee should present a specific suite of documents that must be followed, as opposed to allowing any document to be followed.

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.

Yes, we agree that there should be an interim committee to continue driving the development of competency standards. This committee should ideally continue the work of the Industry Response Group (IRG) in developing competency frameworks across the sector. As it is proposed for the committee to be industry-led, it should be established by the Government. This will ensure there is sufficient independence and neutrality to their work in order to drive the required cultural change.

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.

Yes, however, any product list would not explain how separate products work together in a system and how product standards such as Conformité Européenne (CE) marks, are for specific references only and may not even relate to fire. Therefore, only products with standards that reference fire should be included on the list. We would recommend that a clear qualification and approval process for products to be included on this inventory list is created.

The inventory list needs to be fluid with a system to allow for adding new products, such as in the case where new standards are developed and products designed and manufactured to meet this should qualify for the list. Also, a system for removing any products on the list that are subsequently found to not have the expected performance is required.

In addition, it needs to be recognised that a product list is in reference to a particular product, not how that product performs as part of an installation alongside other products within the list.

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.

Yes we would agree that products recognised within the Approved Documents make a good starting point for an 'inventory list'. However, before any product is added to the list, regardless of if they are already advertised within current statutory guidance, they should be subject to scrutiny to ensure they are of a suitable standard. This is especially the case when dealing with fire resistance and the change to European classification in the 2018 building regulations amendments.

We note that often committees drafting standards can have a strong influence from specific sectors. We recommend where possible that committees are made up of a wide range of interested stakeholders with a maximum representation from any one sector.

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

This question is outside our area of expertise. However, all products that are used or to be used as part of the fire safety for a premises and meet a specified standard should be included

in the list. References need to be made as to how products interact with each other to form a system or installation, for example; fire dampers and the elements of a smoke control systems.

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.

Yes, correct labelling and traceability of products is of the utmost importance. This will help prevent products being installed in buildings without any certification or justification which demonstrates their performance in fire and will ensure products are selected for their fire performance, not based solely on cost. It is important that the proposed regime and any published standards do not conflict with the guidance in the Approved Documents and that the declaration of performance also clearly identifies any limitations of the product and its compatibility with others. Without a robust regulatory regime, it is conceivable that the combinations of unsafe materials or products may be used, which when combined with circumstance could lead to another tragedy. Labelling and traceability has been demonstrated to be an issue already where batches of faulty or 'fake' fire products have been sold and their location of installation can not be easily identified.

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

Yes, products should have certification or a process such as a data sheet which demonstrates their performance in fire. This could include a summary of any fire testing and its performance with regard the amount of and toxicity of the products of combustion. Product standards must clearly indicate what the standard refers to, so installers know the standard is relevant to the proposed use/installation.

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

Yes we agree that there should be a single national regulator to provide oversight for the whole system to ensure that construction products are fit for purpose. However, the inspection and enforcement regime should sit with local regulators. Where products may be certified for a specific reason, the regulator should ensure that the product is suitable for its intended use as a separate entity or as part of an installation or system. Consideration should also be given to enforcement action against online retailers based outside of the UK, who sell products that do not have the required fire performance. This method of sourcing goods has already lead to an increase in fire risks from consumers purchasing cheaper alternatives to a manufacturers product, for example, mobile phone chargers that contain less components and critically the safety features.

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

Yes we agree that regulators have a role to ensure modern methods of construction meet required standards. Where fabrication occurs off site, for example, then those individuals with

knowledge and experience in building standards should be part of the inspection process to ensure that these modern methods of construction meet rigorous standards of build quality. Although it is important that technological advances and more sustainable construction methods are not hindered by regulation, these should not come at the detriment to the safety of the product and its performance in a fire.

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

Yes we agree the regulator should have a role in ensuring that not only do modern methods of construction meet required standards, but also they are used and installed safely to manufacturers recommendations. As with our response to question 8.7 above, it is imperative that modern methods of construction have sufficient build quality. Products that form part of construction need to be compatible with the installation or fabrication to ensure the safety of people.

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

Yes, there should be a responsibility on the industry and the regulatory system to publish the risks arising from any manufacturer found breaking the law or any product found not to be of acceptable standards. This transparency helps to ensure, that where such issues are identified, designers or installations are made aware and can take steps to remove, replace or redesign using more suitable products or products from a different manufacturer.

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

Yes; in addition to the outlined requirements, consideration should also be given to:

- a register of reported near misses and dangerous occurrences involving products;
- data should be made available for products that have been tested and failed those tests; and,
- an extension of the 'whistle-blowing' process into the manufacturing of products should be a consideration.

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?

Yes, London Fire Brigade (LFB) would support any process that gives greater oversight, transparency and regulation of product design, manufacturing and whole of life suitability.

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

Yes, these schemes will provide a method for the accountable person to demonstrate due diligence on an ongoing basis against a measurable set of standards. To ensure the standards of any scheme will rely on a robust system of regulation, with regular random sampling of manufacturers, their products and the installation process.

We assume that the proposed scheme does not extend to the ban of combustible materials.

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

Yes we agree that minimum standards should be included in order to promote consistency and raise standards across the industry. These standards should provide a benchmark, where the minimum standard is set to a level where safety of people is achieved, rather than the minimum to achieve compliance.

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

Yes, the benefits of third-party schemes having minimum standards ensure that the consistency, competence, quality and performance of a company or product can be measured. The scheme also ensures that the criteria is not just met as a one off, but consistently.

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

Yes, the challenges for third-party schemes having minimum standards is the difficulty for those schemes to robustly check the quality and continued quality of the manufacturing or installation process. These schemes require sampling of work at random intervals which may prove difficult on site, due to the size and scope of building projects. Sampling of the manufacturing process may also be problematic, due to the number of products involved in the building process and where the manufacturer is based. Third party schemes can be costly for the manufacturers and installers, in terms of meeting the minimum standards, which may drive up the cost of the project, and meeting the required competency of the scheme. . The financial burden of this may be too high for some companies which could lead to an industry shortage and less options for clients.

Chapter 6 - Enforcement, compliance and sanctions

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

Yes. However, there appears to be a degree of crossover between the proposed three steps (also referred to as stages in paragraph 360 of the Building a Safer Future consultation). This is notably the case for intervention at steps 1 and 2. There also appears to be a confusion between steps 2 and 3 in relation to notices and orders.

We support the principle of three clear stages in essence being 'advice and guidance', 'informal action' and then 'formal action' and strongly recommend that which step action commences at must be dependent on the risk and severity of the contravention or failure.

We would strongly recommend a review of the powers available to all enforcing authorities to facilitate compliance and where necessary gather evidence for legal proceedings including powers to obtain information, access premises and require statements from witnesses.

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

(i) an accountable person failing to register a building;

Yes. This is commensurate with other licensing and/or registration schemes and with the ethos of existing offences under the RRO.

(ii) an accountable person or building safety manager failing to comply with building safety conditions; and

Yes, although this will be dependent on the as yet undetermined nature of the new regime. It is presumed that many requirements in existing legislation will continue to apply and be enforced so it would be unusual to replicate those as conditions of a certificate or licence to operate.

For an effective regime we would anticipate that some 'mandatory conditions' would better serve public safety as part of an upgrading of existing legislation. For example a requirement to ensure building wide risk assessments, and who is to co-ordinate that, would be a logical and useful extension of the risk assessment and co-operation and co-ordination requirements of the RRO and the Management of Health and Safety at Work Regulations 2006.

(iii) dutyholders carrying out work without the necessary gateway permission?

In principle, yes .

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.

This is outside scope of our work.

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

Yes. Such a regime should be available at all levels of health and safety and fire safety enforcement whether local or national. If operated in the same or similar manner as that for some Housing Act offences this would serve as an immediate deterrent and provide investment into enforcement work.

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

Yes. Although there is a time limit with the Building Act 1984, no such time limit exists under the RRO so offences are principally determined from date of discovery and decisions on whether to prosecute being a matter of public interest test and evidential test considerations.

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?

There should be a mechanism for correction of any building regulations failure that poses a risk to premises users, the wider public, or the environment - regardless of when those defects are found.

We agree that the time limits should be extended and consider 10 years or longer preferable to a shorter period. However, this may cause significant overlap, duplication and confusion with existing and future legislative regimes for ongoing safety.

As a point of Other issues will be (a) where the relevant enforcement action is to be targeted i.e. to the developer (if they still exist), insurers, or the person currently responsible for the premises; and (b) which enforcing authority should take the relevant enforcement action.