



# **Building a Safer Future:**

## **Proposals for reform of the Building Safety Regulatory System**

### **Consultation Response**

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**The views expressed in this response are an official response to the Consultation by the Chartered Institution of Building Services Engineers**

The Chartered Institution of Building Services Engineers is the professional body that exists to:

*'support the Science, Art and Practice of building services engineering, by providing our members and the public with first class information'*

CIBSE members are the engineers who design, install, operate, maintain and refurbish the energy using systems installed in buildings, including homes, and are specifically trained in the assessment of heat loss from building fabric and the design of energy using systems for the provision of heating and hot water, lighting, ventilation and cooling and small power distribution in homes. Many CIBSE members work in the public sector in general and in higher education in particular.

CIBSE has over 20,000 members, of whom around 75% operate in the UK and many of the remainder in the Gulf, Hong Kong and Australasia. Many are actively involved in the energy management of commercial buildings for larger businesses, and so this consultation is highly relevant to us and to our members.

As an Institution CIBSE publishes Guidance and Codes which provide best practice advice and are internationally recognised as authoritative. The CIBSE Knowledge Portal, makes our Guidance available online to all CIBSE members and is the leading systematic engineering resource for the building services sector. Over the last twentyone months it has been accessed over 200,000 times, and is used regularly by our members to access the latest guidance material for the profession. Currently we have users in over 170 countries, demonstrating the world leading position of UK engineering expertise in this field.

**Basis of the response**

This response is based on a consultation with the full corporate membership of CIBSE – that is the c. 10,000 members in the professional grades of membership and also registered with the Engineering Council. In addition the response has been considered and developed in discussion with the Technology Committee of the Institution, the Education, Training and Membership Committee, the specialist Divisions covering lighting and digital engineering, and was the subject of a paper to the Board of Trustees of the Institution which was discussed at the Board meeting in July 2019.

The draft response has been circulated widely within the Institution and incorporates feedback from a number of respondents.

## **Introductory Remarks**

The Institution is pleased to respond to the consultation paper on the proposals for reform of the Building Safety Regulatory System. Due to the process of co-ordinating a collective response on behalf of an Institution of some 20,000 members, with over half of them being professionally recognised engineers, it is not feasible for us to use the online tool.

There are several significant issues which it is important to raise in relation to the consultation, which merit and indeed require additional responses. These are set out in the following paragraphs.

### **1. Building Safety is about life safety, not just fire safety.**

The consultation is titled “proposals for reform of the building safety regulatory system”. However, it is heavily weighted towards fire matters. Fire is mentioned in the first four paragraphs of the Ministerial foreword and the only national safety statistics included in the consultation are the fire statistics in Annex B.

But building safely is about more than just fire safety. Whilst the trigger for the review of Building Regulations and fire safety was the tragic fire at Grenfell Tower in June 2017, it must be recognised that the trigger could so easily have been the collapse of the wall at Oxfords School in Edinburgh. We would then have been focussed much more on structure and less so on fire.

In addition to fire and structure there are other life safety issues addressed by the Building Regulations. They contain measures to reduce exposure to radon gas – a known carcinogen. They include measures to reduce the incidences of slips, trips and falls on stairs, which are a more significant cause of accidents than fires. They include Part P to address electrical safety. They include measures to make balconies and balustrades safe and to prevent falls from them, or through them. Part J seeks to prevent us being asphyxiated by combustion products. These are all relevant safety matters which the regulations rightly address.

The concerns about design, installation, compliance and enforcement which Grenfell has so starkly exposed equally apply to other hazards. They also touch on one other growing threat of premature death: overheating buildings. The recent Committee on Climate Change (CCC) progress report cites a published and peer reviewed paper from researchers at UCL which suggests that overheating in buildings will, if not addressed, lead to some 4,500 premature deaths per year by 2050.

By comparison, Annex B of the consultation indicates that there were a total of 1550 fires involving fatalities in the whole period from October 2011 to September 2018. So there is a gathering storm as we continue to build new dwellings that are not adapted to the changing climate, without wishing to be alarmist, if we do not address the very real life safety issue of overheating then we are not really building a safer future.

So whilst we recognise the trigger for this review is the tragedy of Grenfell, and we recognise the need for government to be seen to address the very real fire safety issues it has exposed, we also need to recognise the clear warnings of the CCC that we need to better adapt our buildings to the future climate too. We should do this in parallel, treating our buildings and our regulations for them as a system, as Dame Judith so eloquently stated in her review.

The main consequence of this is that we need to achieve building safety in the round, embracing a number of hazards and addressed by a range of disciplines, and not just fire expertise. And as we embark on reviews of other parts of the Building Regulations beyond Part B we also need to consider how those reviews can contribute to building a truly safer future.

## **2. Regulators and enforcers.**

### **2.1 Roles and responsibilities**

There seems to be some confusion around the roles of regulators and enforcers. Paragraphs 307 – 312 of the consultation are very clear about the proposed building safety regulator – its role, its national scope, its independence, impartiality of advice and accountability to Ministers. CIBSE welcomes the overall concept of the regulator set out in these paragraphs.

Chapter 6 proposes a more robust enforcement regime. This echoes calls that CIBSE has been making for some 20 years, and which until relatively recently received little welcome. However, it is now accepted that parts of the current regulations are typically not complied with and are either unenforceable or go unenforced. We comment on this in some of our answers to specific questions.

But it is a matter of some concern to us that there appears to be confusion amongst leading industry bodies about the proposed national regulator and the role of local enforcement bodies. It needs to be absolutely clear that the new national regulator will undertake the roles set out in paragraph 310, and that they will do this independently and be accountable to parliament via Ministers. This is already true of the Office of Product Safety.

Local enforcement bodies need to be just that – local enforcers of the regulations set by the national regulator. They need to be freed from the dilemma which currently faces them. On one hand they are competitors in a market place for building control services, and on the other they are the sole enforcers of the regulations as far as the current regulatory regime permits them to enforce.

### **2.2 Regulatory independence**

The proposals for an independent regulator for building safety set out in the consultation are welcome. It is essential that the regulator is genuinely independent and free of potential conflicts of interest. The importance of this is highlighted by some of the concerns now being reported about the relationship between the Boeing Aircraft Corporation and the Federal Aviation Authority in the US in the aftermath of the Boeing 737 Max safety problems.

These concerns will also be relevant in relation to the Office of Product Safety, and the concerns about the recent recall of certain consumer appliances, where it is suggested that the faults were known for too long before action was taken. If the regulatory regimes for buildings and for products are to be credible then there has to be clear independence.

Similar concerns apply in relation to the selection of building control bodies by developers, the potential conflicts for local authorities dealing with their own building stock, and the inability of local enforcement to intervene in work being controlled by approved inspectors. All of these conflicts need to be removed, without damaging the building control skills base, a concern which is discussed in the following section.

### **2.3 Building Control expertise and Capacity**

It must be clear to anyone reading the Independent Review or the current consultation document that the analysis of the review and the proposals being set out in the consultation have one clear implication for building control professional services: we are going to need more building control professionals, not fewer.

Whilst the future structure of the building control system may not yet be clear, in spite of the apparent pressure from the insurance market to effectively limit the Approved Inspectors arrangements for all but the larger and/or more established providers, it is obvious that we need to retain the expertise, confidence and services of all genuinely competent building control professionals.

Under the proposals as set out to date there appear to be roles for these professionals within the new regulator, in local enforcement, and in the wider industry providing professional support to Principal Designers and Contractors and even to Clients on regulatory compliance. As the burden of responsibility and accountability rightly shifts over to the supply chain, the need for genuine building control expertise in these bodies is likely to grow.

At the same time, the current siloed approach linked with the lobbying by some in the building control sector is doing nothing to retain the esteem, talent, competence and capacity desperately needed for the proposed regulatory regime to be effective and successful. This needs addressing as a matter of urgency, and needs action by the Department. It cannot be left to the market.

### **3. Reasonable measures**

There are several references in the consultation to people being required to “ensure” things. Quite simply, this is not realistic: in most cases nobody will be able to ensure outcomes, and they will certainly not be able to obtain insurance cover for any claims that they can. So you are asking people to expose themselves individually, which cannot be right. The most appropriate formulation, subject to legal advice, is that people may be required to “take all reasonable steps”, or similar, to achieve compliance.

### **4. The evidence base**

One of the challenges of deciding what needs to change is developing the evidence base to inform policy changes. CIBSE is aware that some of the problems the industry faces are being kept from wider view by the legal environment. Failures often lead to legal action, but often that is settled in such a way that knowledge about failure and how to avoid it is suppressed. Appendix 1 to this response looks at this in more detail. It is highly relevant to the considerations about occurrence reporting and the need to understand what is really happening and what the current areas of failure are.

## Consultation question responses

### 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.*

Yes, the CIBSE agrees with the view that the new regime should go beyond the scope initially proposed by Dame Judith Hackitt.

The initial criteria set out in Dame Judith's review of 30m / 10 storeys was too tall and residential buildings of 18m / six storeys should be used to reflect a practical fire-fighting height and bring the review in line with Scottish regulations.

In addition to multi-occupied residential buildings of 18 metres or more the scope should also be broadened to any type of building that houses vulnerable people and any building over 18 metres where people sleep, including any mixed use building. The definition of vulnerability needs to include those with a short term vulnerability, to include places of entertainment which may hold large numbers of people unfamiliar with means of escape and under the influence of alcohol.

The consultation is unclear about the process and status for mixed use buildings. A tower may have one part of the building for offices (not currently in scope) and another part is residential and in scope (like the Shard, for example). CIBSE believes that if any part is in scope, the whole building should be in scope. This needs to be made clearer in implementation of the proposals.

Any new regulatory framework should also anticipate that the scope may well, within a few years, need to broaden to cover further building types and that it may well broaden to include health, accessibility and welfare issues.

*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?*

Regulations must be unambiguous, ideally with a pass/fail criterion that sets clear minimum requirements that can be checked systematically, with the requirement to publish any metrics that the assessment depends on. As Dame Judith recommended, whole buildings should be treated as whole systems, even where there may be multiple occupiers.

There needs to be absolute clarity over what is a regulation and what is guidance, and the tendency to view guidance as regulation, or to treat guidance as a certain route to compliance needs to be addressed.

For there to be more rigorous enforcement, there needs to be real clarity over what is being enforced – the example of Regulation 38 being considered unenforceable by the current building control enforcement bodies is covered by the Independent Review.

The current scenario in which the Building Regulations themselves declare that non-compliance with certain requirements is not an offence needs to end.

Contravention of certain regulations is not an offence. The 2012 regulations insert a new Regulation 25, which replaces the previous regulation 47 in the 2010 regulations:

*“47. The following regulations are designated as provisions to which section 35 of the Act (penalty for contravening building regulations) does not apply—*

*(a) regulations 17, 17A, 25A, 27, 29, 37, 41, 42, 43 and 44; and*

*(b) regulations 23, 25B and 26, in so far as these Regulations apply to Crown buildings or to building work carried out or proposed to be carried out by Crown authorities.”*

So currently, if you do not carry out pressure testing, or commissioning, then nobody can lift a finger. Parliament in its wisdom has determined that aspects of the Building Regulations are effectively advisory as they cannot be enforced.

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

Our view is that a responsible developer ought to be able to self-refer to the regulator if he/ she assesses that the building could be a higher risk; or that planning authorities should be able to call in the building if it is perceived to fall within scope of the higher risk regime.

*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.*

Non-residential buildings should be considered based upon a risk rating, rather than by using the purpose group system adopted in the Approved Documents. Setting out such a risk category strategy is beyond the scope of this answer, but should include an analysis of the building's occupancy, storage and physical characteristics and construction etc., in conjunction with the fire risk assessment required through the Regulatory Reform Order. It should also consider whether there is a risk that the occupants' ability to respond to an emergency situation may be impaired.

*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 agree with those listed in paragraph 42 (below)

- Prisons – prisons, detention centres and other secure premise
- Hospitals – health care institution providing patient treatment where patients are kept in overnight or for an indeterminate time
- Supported/sheltered housing – premises where vulnerable people are supported and provided with a safe and secure home and
- Educational buildings – boarding schools and halls of residence.

We propose that the following additional categories should be included:

- Student housing
- Hotels over 18m in height
- Entertainment venues of any height

It would also be appropriate to review the list to consider which buildings should be included within these regulations from a safety perspective, taking account of our introductory remarks about safety being about more than fire and structure, as follows:

### Structure

- Buildings whose nature makes the prevention or fighting of fire more challenging – this may well include historic buildings which were not designed with current technologies and practices in mind.
- Buildings whose nature means fire could spread more quickly or unpredictably than would be expected
- Buildings whose nature makes escape from fire more difficult, such as prisons

### Occupants

- Occupants who are likely to be asleep, and would therefore need to be awoken before any other actions are possible
- Occupants who may be vulnerable to certain extreme environmental conditions such as overheating or episodes of air pollution affecting their internal environment
- Occupants who are likely to be unfamiliar with their building, but otherwise mentally fit, such as in a hotel or student accommodation
- Occupants who permanently would struggle to follow evacuation procedures, such as infants / toddlers / children, and people who are disabled
- Occupants who may temporarily struggle to follow evacuation procedures, such as those under the influence of alcohol
- Occupants who may temporarily have difficulties escaping fire, such as patients in a hospital or prison inmates
- Buildings with large numbers of occupants where the risk of mass-hysteria/ panic is increased, such as entertainment venues or stadia.

Many of these may come within the scope of the proposals for existing buildings.

Government needs to set out a programme of progressive roll-out over a period of time based on prioritising types of building that present the highest risk.

*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 design phase of these buildings, including sheltered housing, and hospitals, may identify greater risk as the occupants of these buildings are likely to take longer to escape during a fire.

The potential for design changes later in the project and construction phase to affect escape strategies is significant and these buildings would benefit from 'golden thread' and safety case procedures as much as higher rise residential buildings.

*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.*

Our answer is the same as for the questions above, in that we think the new regime should apply to all buildings which house vulnerable people – which would include sheltered housing, irrespective of height. The key factor is risk to human life and safety (and not just fire and structural failure, but also environmental episodes such as overheating and environmental pollution. It is likely that those in sheltered accommodation may be more vulnerable than the wider population. There may need to be a phased implementation towards this overall goal.

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

We agree with the suggestion in paragraph 52, ‘that for example, a new duty to cooperate and coordinate could be imposed where there are two or more persons responsible for fire safety within a building regulated by different legislation, namely a responsible person (under the Fire Safety Order) and a new accountable person role proposed for the multi-occupied residential areas of the building 18 metres and above.’

Any mixed-use building should be subject to the new regime throughout its life, regardless of the original mix of uses, to guard against any loopholes arising through the use of the Permitted Development regime. This would guard against, for example, a mixed use building over 18m with office accommodation being turned into residential accommodation under the Permitted Development regime. This needs to be clearly in scope of the new rules. Where there is new legislation it should mirror the new fire safety order.

## **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, we agree with the overall approach or aligning with the Construction (Design and Management) Regulations 2015 (CDM), a view the CIBSE has consistently taken. It is sensible to link the duties to existing CDM requirements. However, the proposal to require anyone to “ensure” anything is wholly inappropriate and unachievable. And almost certainly uninsurable. The word ensure should be replaced by a term such as “take all reasonable steps”.

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

The duties are comprehensive, but we think it should be made clear that the designer is responsible for the foundation of the safety case and to document the purpose and use of the building.

*Where duties pass from one duty holder to another – especially likely in occupation – there should be clear requirements about handover from one duty holder to another both to ensure effective handover and to minimise the risk that the new duty holder inherits poor practice from a previous duty holder.*

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

We agree this is desirable, but for this to work the dutyholder needs to be under the jurisdiction of English Law. There is also a question around the term “legal entity” – is this in line with the HSE use of the concept of the controlling mind – for example in relation to site safety?

Also, if individuals are to be attracted to perform this role, they must be able to get insurance, which we fear could become difficult. Again, the requirements on the individual can only be to take all reasonable steps, they cannot be expected to “ensure building safety”.

The controlling legal entity must also be identified. If the named individual leaves the legal entity remains responsible. There will need to be clarity over the termination of the named individual’s responsibility when they change role or retire. However, the “legal entity” approach also requires a clear arrangement when the legal entity owning, or responsible for, or controlling a building in scope changes. The changeover of responsibility and residual liability will need to be clear.

*Q. 2.4. Do you agree with the approach outlined in para. 66, that we should use Construction (Design and Management) Regulations 2015 (CDM) as a model for developing dutyholder?*

Yes, we agree with this approach as the CDM model is tried and tested, and familiarity with the system will streamline implementation. There are some detailed considerations, however. The new building safety regime will impose additional duties on the CDM dutyholders for buildings in scope of the new regime. There are therefore going to be three classes of construction work:

Work outside the scope of both CDM and Building Safety;

Work in scope of CDM but out of scope of Building Safety, eg a two storey development of new houses;

Work in scope of CDM and Building Safety

Clarity over the duties, responsibilities and liabilities of the dutyholders under each regime is essential. The new building safety regime will need clarity over the new duties. And it needs to be clear that having a duty to get something produced is not the the same as a duty to produce it: there will be many tasks under the new regime that will require multiple inputs by the team, and this needs to be clearly recognised and even encouraged or incentivised.

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

We agree that this would be a good development. However, we are concerned that the 30-metre height specified in the consultation (as opposed to 18 metres) potentially creates a three-tier system, which will be confusing. We assume this is being suggested (rather than falling in line with the proposed 18 metres for the new regime) because it would be difficult for fire departments to resource. We suggest that this be a requirement over 18 metres and to introduce an additional fee to cover fire consultees and to provide resources. It is pointless allowing buildings in the 18m to 30m category to miss this stage, only to be faced with significant requirements to change the design when the fire service do comment on the design.

We need to accept that Fire and Rescue authorities are the relevant experts in fire safety and access requirements, so should be consulted. This should not be handed to other agencies who do not have the same level of fire related expertise. It will add significantly to their workload and provision will need to be made to cover this. But if we are serious about “building a safer future” then we need to make these changes.

We are aware that this is not the view of a majority within the National Fire Chiefs Council. However, it is our view that the fire and rescue service are the experts in this matter and that public safety and confidence is best served by their statutory involvement. It is also the most efficient way to address fire safety concerns at the earliest stages of considering a development proposal. We need to resource the fire and rescue service to apply their expertise properly.

There needs to be greater interaction at the pre-application phase bringing building control and planning together. In our view there needs to be an additional consultation stage, pre-planning, that would present an opportunity for authorities to identify buildings that present a higher risk.

When considering how to involve the fire and rescue service, consideration needs to start to be given to the presentation of information about the building asset, as this is the very start of the golden thread. Digital presentation of information should start at this point, and not be adopted later in the process. Work under the Permitted Development regime will of course fall outside this framework, which could be a significant loophole.

*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. responsibilities under building regulations? Please support your view.*

We agree with this requirement. We think it should be made explicit that the fire statement should contain all the fire safety related material which will constitute the safety case. However, the format of the “fire statement” for delivering the information should be carefully considered to form the earliest part of the golden thread. Diagrams or models may provide more meaningful information exchange, and should be in a form that can be passed on through the evolving design process. The “Fire Statement” should also include consideration of reduction of fire risk, use of fire suppression and means of occupant escape and fire fighter access. Please see our more detailed responses to the questions on digital information management and exchange.

*Q. 2.7. Do you agree that fire and rescue authorities should be consulted on applications for developments within the ‘near vicinity’ of buildings in scope? If so, should the ‘near vicinity’ be defined as 50m, 100m, 150m or other. Please support your view.*

We agree with this approach, but we think the definition of ‘near vicinity’ will have to be set by individual planning and fire authorities because the risk of restricting access by fire engines and ensuring hose lengths are adequate, will vary depending on layout and street arrangement. This is another reason why planning may need a call in power under the new regime, to address a proposed development out of scope that might be considered to have an impact on the fire safety of a nearby in scope building.

*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.*

All buildings within the ‘near vicinity’ will need to be considered to check that they pose no access risk for the building in scope.

Any development that could hinder access to the building in scope should also be considered. Any building that could materially change the fire risk profile of the building in scope should be considered, for example, storage of flammable materials, or extension or a development that could affect fire and rescue access, including any structure or landscaping within the zones representing the emergency access routes and operational areas.

*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, they should be given status of Client at gateway one, and be responsible for the fire statement, otherwise they can avoid responsibility for setting up the project in a compliant way. We think they should be given this status even earlier – in gateway ‘zero’ that we propose under Q 2.5.

*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, early engagement assists in communicating design intent and increasingly the likelihood of identifying hazards early. Again, our view is that this should take place at a ‘gateway zero’. It will be more efficient and less disruptive to sort out any issues and requirements as early in the process as possible. The formal planning application stage is too late.

*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?*

Planning is the appropriate mechanism in our view. But we would emphasise, again, that a pre-planning stage needs to be made statutory too. The planning application stage is too late on in the process. Most developments would go through such a pre-planning process, so making it mandatory would not be onerous. The potential for the current permitted development regime to provide loopholes to the new regime also needs to be guarded against.

*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, we agree. We think one omission is that within the Construction Control Plan produced by the principal contractor should be a requirement to detail competences of those in the team who will be responsible for handling changes.

The information requirements at this point provide a fundamental underpinning of the proposals for a “golden thread”. The ISO 19650 international series of standards defines best practice information management and is very appropriate and relevant at this point.

BS EN ISO 19650 parts 1 and 2 were adopted in the UK with a national annex in late 2018. These should be explicitly adopted in the new regime as the key standards to underpin the golden thread. As well as providing a rigorous methodology for information management, they also cover such matters as document naming conventions, which will be critical for an asset over a 60 year life, or longer. These standards have been developed over the past decade with a huge investment by UK plc – both taxpayer funding, primarily via BEIS, and a very considerable investment by companies and by professional bodies, including CIBSE and many others within the CIC.

To provide further clarity, the following details should be included:

a) ‘Full Plans’ needs defining. They cannot be produced solely by the principal designer, others have the required competencies to produce the required coordinated plans and specifications.

All documents need to be in a non-proprietary format (eg. PDF). All annotations and specification references should use a structured classification system such as Uniclass 2015, which is the UK implementation of ISO 12006-2, as detailed in BS EN ISO 19650-2.

Specifications must be specific to the project – not simply a standard reference specification. Best practice methodology needs to be demonstrated with respect to monitoring changes to standards within specifications during the life of the project

b) 3D digital models are essential. The plans and 3D model should align with each other with the model created first and the drawings generated from it. Objects in the 3D model need to be coordinated with plans and specifications using a classification system, and the 3D model should be in a non-proprietary Industry Foundation Class (IFC) format (BS EN ISO 16739:2018) as detailed in BS EN ISO 19650.

c) A “Fire and Emergency File” risks of being treated the same as “Health and Safety files” and “Building log books” – if produced then left on a shelf and never looked at. The intention of this proposal needs to be delivered via digital methods and in such a way that the building manager will actually use and maintain the information it contains throughout the life of the asset.

Much of the scope of this proposal could be covered by using the processes set out in BS EN ISO 19650.

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

Yes, we agree. The Principal Designer and Contractor are appropriate.

*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 this will enforce Client accountability. The client no doubt would offset this duty by appointing a principal designer and contractor. If the BS EN ISO 19650 process is followed, then the client will be expected to appoint an information manager to undertake this role. The standard provides protocols for the checking and validation of information and models before they are shared more widely within the project team.

This information could then be exchanged with the building control enforcement body and with the Regulator if required. And also if either of those parties has the skills, competence and technological resources to use digital information management and tools.

This is a potentially serious challenge: regulatory and enforcement bodies need to adopt “BIM” (but see below our reservations with this term and acronym – digital information management and exchange is a more accurate description) otherwise everyone else will be using BIM and then turning out traditional paper based material for the enforcement and regulatory processes. That is little short of insane – if we want to digitise the industry and reap the economic benefits of doing so, we have to digitise the whole industry including its regulators and enforcers.

*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, to ensure the gateway is effective and information submitted is correct. However, it will be critical for the regulator to have sufficient manpower to consider applications in a reasonable time. It is important that permission can be phased and conditional.

*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, but there should be limited discretion and the criteria and timescales should be made clear. Regulatory oversight of public safety has to take precedence over the financially driven “race to the bottom” to which Dame Judith referred. Digitisation of checking processes could potentially aid turnaround times. Please see extended comment under 2.14.

*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, to ensure compliance and provide real teeth to these new regulations. There should be a review of the work and if it does not comply and remediation is not possible, then it should be pulled down. Failure to allow this will facilitate the less scrupulous to work more cheaply and less safely. Without such a sanction there is a risk that work will proceed anyway or shortcuts not be identified and remedied.

*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, to ensure compliance. The HSE has such powers. It is essential that the regulator has such powers to use when it is necessary, proportionate and in the public interest. Knowledge

that they can require this will have an effect on market responses. It is important for the national regulator to have these powers, and not just the local enforcement agency.

*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. However, we recognise the challenges there will be in terms of capacity when the system is initially introduced. Once bedded in, it should become routine that no work starts on site prior to approval and that the regulator responds within strict regulatory guidance. The important thing is for the developer to understand what that time scale is.

The timescale will be resource dependent, though we would suggest no more than eight weeks. Local bodies will need to be consulted on what is achievable. The timescale established should be based on scope and complexity. This would need to be set between gateway one and gateway two.

There needs to be a recognition that these proposals are creating new tasks and that these will take time and need competent people, both in industry and in the new regulator, fire and rescue and planning systems to deliver. It cannot be delivered within existing resources – additional resources will be needed.

Digitisation of checking processes could potentially aid turnaround times, and this raises a key question about the adoption of building information modelling within the regulatory regime. If we are to benefit from the widespread adoption of BS EN ISO 19650 to drive the digital development, exchange and delivery of information, then that needs to extend to the regulatory bodies as well. If the regulator is checking project information, they should be doing this within the common data environment of the project. This will help to reduce timescales and make approvals more efficient. It also removes the risk of information for compliance being separate from information for project activity.

It also has implications for the competence of those working in the regulator and also those in the enforcement bodies at local level – they will need digital skills and access to the digital tools to be able to adopt this approach. This is a real culture shift for the regulatory and enforcement community.

*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.*

We think it should be eight weeks or by agreement. But there should be scope for the building safety regulator to suggest reserved matters – elements that would need to be addressed to gain full compliance, but that would allow work to continue in the meantime.

There may also be extenuating circumstances beyond the control of the regulator.

If the proposals are not compliant and cannot be addressed through reserved matters, then the building safety regulator will need to reject them.

Our view is that this new stringent process should drive a culture change. The industry has to move away from expecting the state to do its compliance work for it and instead submit proposals that they expect will meet the compliance requirements and allow a smooth passage through the regulatory gateways and processes.

If the regulator has not been provided with sufficient information, then timescales will need to be extended while additional information is requested and submitted, this is normal in other jurisdictions.

Digitisation of checking processes could potentially aid turnaround times.

*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. We think this requirement should be to consult and then to agree on a way forward. The requirement may need to extend beyond the Principal Contractor – it will need to involve relevant sub-contractors. In many health care buildings the mechanical and electrical services contract may be significantly larger than any other aspect of the building, for example, and requires careful co-ordination with other disciplines.

*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. Again, consult and agree. This may delay the project, but is required to ensure such changes are monitored. It will not cause as much delay as having to remove defective or unacceptable work, or not being able to occupy at Gateway 3.

*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.*

At least all of the above, and anything else which might compromise the delivery of a safe building. The list above does not appear to address product substitution issues.

Changes in any major product or material should be included, as a change or substitution can be highly significant and material changes in, for example, access or acoustics can have a major impact on fire safety. Defining certain circumstances has potential for 'gaming' the system.

Seemingly insignificant changes can also have a major impact on building regulation compliance in other areas, for instance decorative finishes can dramatically affect and disadvantage those who are visually impaired. All changes need to be verified by a competent professional and lodged in the regulator compliance process.

*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, this needs a tight timescale. The timescale should be set by agreement, and be one that is appropriate for the scale of the project. A period of between two and four weeks may be appropriate. It is essential the time agreed is adhered to, to allow the Client to programme work and keep to project deadlines. If projects are delayed because of a hold up with the regulator, then one imagines that there could be a move by the client to sue.

The building safety regulator should be notified of any changes as soon as they are contemplated by the dutyholder: the regulator needs to be part of the communication. Digitisation of checking processes could potentially aid turnaround times.

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

When the change affects the risks considerably, or when the change is unacceptable and alternatives have to be considered.

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

Yes, we agree. We also think it should be extended to specification and that the designer should confirm that the building has used the products specified, or approved substitutes. This is another area in which adoption of digital processes and information management will aid efficiency of these processes.

*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, again timescale by agreement. The RICS has suggested two weeks, pointing out that a fast turnaround at this stage is essential to allow occupation.

*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.*

No. But we suggest the building safety regulator could stipulate reserved matters, whereby compliance is not entirely agreed until certain issues have been attended to, but the project is not held up, on the understanding that these issues will be dealt with. This would mirror what currently happens in the planning process.

If the regulator is not provided with sufficient information, then timescales need to be extended while additional information is requested and submitted, this is normal in other jurisdictions.

*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. In our view this represents an important lever to change behaviour. A potential block to occupation will ensure the process is followed properly.

*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. Again, to give the new legislation teeth and help drive a change of culture.

*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.*

Ideally, no. The building is either safe, or it's not. As well as being risky, it may also be confusing to provide a partial certificate of building safety. However, partial occupation is currently quite common and there is likely to be pressure for it to be permitted. If it is allowed it will require careful control and rigorous scrutiny.

We think that the consultation is unclear about the process and status for mixed use buildings. So, for example, a tower where one part of the building is for offices (which are not currently in scope) and the other part is for residential which will be in scope (like the Shard, for example). We strongly believe that if any part is in scope, the whole building should be in scope, but this needs to be made clearer in the implementation of the proposals.

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

Yes. Any proposed work that impacts on the fire strategy of a building in scope needs to be covered and a major refurbishment has just as much potential to affect fire safety. There is a concern about “minor” changes. A number of minor changes could collectively have a significant impact on the safety of the building, and care will be needed in framing the legislative requirements. Again, mixed use buildings should be included if any of the uses is in scope.

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

We agree with the approach in principle. But we envisage this to be problematic. For example, projects that are underway now and have not had to go through gateway one or two, may not then be able to meet the requirements to get through gateway three, if it were suddenly a requirement because they are very unlikely to have the right information in place, and some of that can't be collected retrospectively. It will necessitate a relaxation of requirements in some cases.

Also, Gateway 3 introduces a requirement on the principal contractor and designer, which may be difficult to deliver under the contractual arrangements in place on the project. This will need careful implementation.

For those buildings that have already been constructed it may mean instead putting in place enhanced inspection measures to ensure that buildings comply with new regulatory measures and are safe to occupy.

## **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.*

Yes, providing a layer of checks by the authorities will give the process teeth and minimise risk. But we are conscious this will require a huge amount of work on behalf of the regulator. It will require careful and selective implementation for those buildings that have already been built, see answer to Q4.1 c).

*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, the content is suitable. The safety case is a view of the building information model. The safety case, key data, golden thread etc must be seen as a whole: a structured database capable of representing every aspect of the site, building and history, and acting as an index to any secondary documentation such as unstructured product data and certificates.

There is a non-proprietary digital vehicle capable of supporting this role, which is the Industry Foundation Class, defined in ISO 16739, which is currently being adopted as a British and European Standard. IFCs are the relevant ISO standard, are already understood by many in the industry, and can be exploited as a file format, as an XML schema, as a semantic web resource or as a standardised programming interface. They can also be automatically checked for any required degree of completeness, continuity and compliance to both data and regulatory requirements.

The IFC is carefully layered and sub-divided so that core information relating to project history, building and site can be captured, but more specific entities, properties and more 3D information can be included if available. This makes it flexible and adaptable to the needs of both new and existing buildings.

*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. This approach will ensure that the safety case is regularly consulted and updated as appropriate as work proceeds or issues arise.

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

All options need to be explored, including enforcing retrospective work onto developers or contractors who have not satisfied safety requirements, as well as payment from the public purse. We have to ensure that people are not left to live in dangerous buildings. The Housing Defects Act of the 1980's provides one potential model for the provision of public funds to remedy defective buildings where there had been a systemic failure to protect the interests of homeowners.

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

We agree with this approach; it is important to have an accountable person and this process will classify them appropriately. But it is worth pointing out that to be able to pursue the accountable person, the scope of this Act has to be able to reach overseas territories in the same way as the Bribery Act.

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

Yes, with overseas ownership. The accountable person must be required to appoint a UK-based representative – and there must be sanctions the UK government can draw on if they don't, see answer 3.5. There may also be difficulties where legal entities have ceased to trade. This may require some consideration in developing any register of accountable persons, or criteria for them, that those who have previously held that role in a legal entity that has ceased to trade may need to be barred from a similar role in another legal entity, at least for a qualifying period.

*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, there should be no difference in procedure whether a building is new or an existing one.

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

Yes, to ensure the regulator is aware of changes and always has the correct name.

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

This question rather assumes that respondents agree with the concept of the building safety manager. There are already a number of people who undertake many of the responsibilities required of the proposed building safety managers, but they are not currently identified by that title. There is some work to identify the competences required of the proposed role and then it will be easier to identify the pool of potential dutyholders. The maintenance of a safety case is a new role, and for existing building the requirement will be to create and maintain a safety case.

We have some concern that it might be difficult finding people to take on this responsibility, particularly if the scope of the new regime is widened to 18 metres. And it might be difficult to obtain insurance for building safety managers.

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

The resident engagement strategy is also a new role, requiring significant skills in dealing with residents. Some potential candidates will need training in this role to be effective in supporting residents and helping them to feel safe in their homes. Unsuitable building safety managers could do more harm than good.

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

No, we do not think there is sufficient clarity on this relationship and in particular on the legal responsibilities and liabilities. In the event of a breakdown in the relationship between an appointed building safety manager and the accountable person the building safety manager may require some statutory protection if they are victimised for trying to do their job as the legislation requires.

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

Yes, we agree in the main. But the circumstances in this section need further development. Would they include a scenario in which a building safety manager had left the role because the accountable person had made their position untenable? Should this not be managed by allowing the regulator to remove the accountable person instead? This could all begin to get quite legally demanding, as the accountable person may be the face of a legal entity that does not want to play by the new rules.

*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.*

The absence of a safety regime, or the absence of staff to operate the building under the safety case, are grounds for removal of the licence to occupy.

However, the regulator should not be involved in nominating parties, except, possibly, for an emergency period while a building which has lost its licence is evacuated, and needs to be safeguarded. There will also need to be a very clear system for redress for those residents affected by the removal of a licence to operate. This will be a very serious call, and earlier intervention would be far preferable. Compulsory safety works would be far preferable to removal of a licence.

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

This is not really a question CIBSE can answer, It may depend on the reason for the appointment, and associated ongoing proceedings.

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

Again, not a question CIBSE can answer.

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

This is also outside CIBSE's remit, but absolutely not by the residents

*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, this shows clearly to the occupants that the building has met the safety criteria.

*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?*

There is a concern with the references to documentation. If we are to implement the golden thread then the reference should be to information. Wherever possible the information should be delivered digitally – see detailed answers in relation to the use of BIM and the golden thread. Use of digital information will allow a degree of automated data checking, which can be developed if the information is required in a structured format and is based on the existing information management standards.

*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.*

Yes, it is essential, applying only to certain parts will cause confusion and the suggested method is the only way to address whole building safety.

*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 conditions proposed are suitable. Any condition should identify the primary evidence expected, and any secondary supporting evidence.

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

Yes, the duration should match the risk of the building, rather than being a blanket five years.

*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, we broadly agree. A review may be triggered by evidence of a significant discrepancy between the 'golden thread' information on which the licence to occupy was issued and evidence of the actual situation in the building.

## **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, bringing BIM into the project would be beneficial for improving accountability, productivity, and quality. It is not defined anywhere what the 'BIM standards' actually are. "The BIM standards" are constantly changing, as they progress from British to European and International titles, so the mandate would vary as different standards come online.

Robust information management is essential to delivering the golden thread, and needs to be implemented on all projects according to BS EN ISO 19650. The BS EN ISO 19650 series of standards are the overarching framework, with a number of other standards supporting the implementation of the framework.

The golden thread is at the heart of the BS EN ISO 19650 standards and those that they reference in support. The golden thread is all about information management and having a structured data set will support the preparation of the safety case and may also allow data checking to be automated, as noted in answers to questions in section 2.

“BIM”, or rather Digital information management, should be implemented in all three scenarios identified in this question. The level of implementation to existing buildings may need to be adapted to be realistic, but digital information management should be required. In the long run it is the cost-effective solution to providing the information to underpin the safety case. In existing buildings in particular the emphasis should be on digital information management, not just “BIM”, although that applies to all cases to a degree.

A mandate isn't sufficiently strong or indeed enough. There is ample evidence available that demonstrates that central government did not really implement “BIM Level 2” on all of its projects despite a “mandate” since 2016. It was also unclear what “BIM level 2” really was.

The use of digital information management needs to be a regulatory requirement on at least all buildings in scope. The regulation needs to be clear – ideally a clear and simple requirement on the client to undertake information management according to the BS EN ISO 19650 series.

Annex D already defines the correct information that is needed. By adopting the latest digital information management standards then the information (plans, specifications, 3D models) is given meaning and is open format so that it is not locked into proprietary software. The data is structured and classified so that consumers of the data can answer their queries quickly with minimal manual work. The data is coordinated so that plans, specification and 3D model will not conflict. The rules on suitability and revisions are captured in the correct way so that the “golden thread” can be realised in practice and through the life of the project.

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

Yes, in time. This could not be made a requirement overnight because there is a lack of skilled people who would be able to make the most of digital assets to improve management of the building. There would need to be set timetable for rolling this out on a mandatory basis, perhaps progressively over five years.

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

This question underlines the need to understand what exactly is meant by “mandating BIM” for existing buildings. If it means creating accurate 3D digital models of existing buildings, then we think that this would be extremely difficult and costly to do. We think that cost has been underestimated for laser scanning and converting this information into a BIM model, for example. It would also potentially flood the market with unscrupulous practitioners, if there was a requirement to do this in the short-term. It is potentially highly intrusive for occupants.

This question needs to be set in the context of creating a digital information model for an existing building to support the creation and maintenance of the safety case for the building. This will require some careful judgement about what it is cost effective and valuable to model on a building by building case. Wherever possible information about existing buildings in scope should be digital, to enable it to be updated and maintained. If it is not going to be maintained, then it is very doubtful that it is worth creating the information at all. For residential buildings there will be the added complexity of the capturing key information about individual dwellings, especially where they are leasehold. The “duty to co-operate may need to explicitly include a duty to provide information about works undertaken. Again, digital tools and digital enforcement should make this much more readily manageable.

The suggestion in paragraph 59 of Annex A that digital models should be frozen is deeply troubling, suggesting a fundamental misunderstanding of the whole process, value and potential benefits of digital information management. It is strongly recommended that MHCLG engages with the UK BIM Alliance and the BSI committee responsible for information management and BIM at an early opportunity to explore the true potential of digital information management in building a safer future.

*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.*

A range of relevant standards are already available or in development. It is important that these are used. The BS EN ISO 19650 series of standards are the overarching framework, with a number of other standards supporting the implementation of the framework, as described below.

Consideration should be given to the data schema for the information required. A consistent method of data delivery needs to be established, then delivery of this information to relevant people and bodies (such as building occupants and fire services) may be readily established. This could also allow for analytics on a large number of buildings to understand what works and what does not.

Standards are being developed for manufacturer product information. The responses to the questions in chapter 5 cover this. It is essential that the design/record information links to the data on the products.

Information/data should be based on openBIM standards to make it neutral and provide longevity ISO 16739 should be used as the data specification.

BS EN ISO 7200 identifies what information should be used to manage technical documentation including: Author, Technical checker and approval person and other key bits of information. These properties should be captured to ensure traceability. Nomenclature be in line with BS 8541-1 and ISO 4157-2 and guidance provided on how this should be done.

ISO 8000-61 provides a framework for data quality management that would further support the effective management of the golden thread. Principles from ISO 30401:2018 - Knowledge management systems will also help manage knowledge about the building over its life, particularly through changes of duty holder.

That aside, we believe that the current and developing BIM standards are sufficient and allow the industry to move forward quickly. Adding further requirements and complicating matters is not pragmatic.

*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.*

Incident and near-miss reporting should also be included alongside the safety case review to help understand how buildings are performing and what has almost happened. Standard reporting templates should be used to assist analysis and support digital information management and exchange..

Risk level and safety rating should be added to the key data set in order to make it easier to search for high risk buildings etc.

The key dataset should be defined as a structured data set or schema so that it can then be represented and transferred in different data transfer/storage formats. The BSI B/555 committee and UK BIM Alliance should be involved in defining this data schema.

*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, we agree. However, there could be the possibility that it could pose a security risk.

All the key datasets should NOT be publicly available. There will be considerations about duty holder privacy and some information may be sensitive. There are security issues. PAS 1192-5, which is being developed into BS EN ISO 19650-5 deals with security minded building information modelling and is a key standard. The ISO 27000 series standards deal with security of IT systems and both are important on this topic. It needs really careful consideration before information is put in the public domain.

It is unclear how an open dataset will provide comfort to residents, without the context of drawings and other information and technical knowledge it could cause more issues. A list of all doors may show that some are fire rated and some may not be, because they don't need to be. But residents may not appreciate that, and the information without adequate context may alarm and not reassure. An interactive home information pack or online 3D model may provide more value to residents, explaining why the design is how it is. Data sets are for the exchange of data between software not for people. We need to make the information more appropriate for use by residents.

Openly publishing personal information and contact details may conflict with GDPR, however, residents do have the right to easily find out the names of duty holders. Perhaps communications need to be routed to duty holders via the regulator rather than publishing contact details. This would avoid retaliation or victimisation of residents with legitimate and reasonable queries by unreasonable landlords.

Each item of the dataset should be given a security rating with guidance as to what is published. For example, a military accommodation block could have none of the information published, a prison could have a limited amount published, a housing block could have more of the dataset published. However, some aspects such as details of an access control system should probably never be published.

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

Yes, we agree. However, it could pose a security risk or be exploited in other ways and this should be considered in detail. The full details of the golden thread information should not be generally accessible to the public, see answer above.

Para 207 is correct, however 205 appears to contradict this. We suggest that information on the golden thread such as safety plans, specifications and 3D models should be available on request to residents and their representatives by an appropriate process. They should not be made public for security reasons. Some items may not be readily accessible to residents as they may need specialised software to access them. It may not be appropriate to provide some of the data in a "takeaway" form, again, for security reasons.

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

No further data other than that covered in previous responses is required.

*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.*

It is critical to the success of this activity that a data schema be provided for the effective handover of information. This should be defined in standards and explained in guidance, to allow a technically robust system with plain language guidance to help those who do not have the skills to understand the technical nature of standards and the level of detail.

An exemplar set of project information should be created and made publicly available, otherwise organisations will develop their own interpretations. This exercise will hugely improve the quality of the information for thousands and thousands of buildings and support industry adoption and compliance.

There needs to be review of current handover information in industry. O&M manuals, health and safety files and log books need to be rationalised into one structured asset information model. This also needs to reference unstructured information such as drawings and documents.

Practitioner comments include:

“Current requirements are not always followed for every project. Tighter legislation should ensure that provision of this information is no longer considered optional.”

“Handover information at present is poor and is often left until the end. Information provided by sub-contractors/manufacturers is completely different, and is usually collated by an admin person into one chaotic mess. “

“We need to express how important this is and that it should be done throughout the construction industry by trained technical people.”

“We also need the standards for product data to take effect so that manufacturers data is structured in the same way.”

*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.*

Much information about existing buildings exists, but is in multiple data stores, poorly organised and managed and at risk of inadvertent loss. The legislation should support aggregation of existing information into a single place or area of accountability. Work to obtain a safety certificate may identify information that is missing or incorrect and trigger survey activities.

During occupation, the information on the Common Data Environment (CDE) should be updated for minor refurbishment work. For alteration work, the design/construct gateways should be followed as for a new build.

Better processes need to be put into place with the implementation of PAS1192-3 (soon to be BS EN ISO 19650-3). Information needs to be created for each job, no matter how small even if it's a sign-off sheet confirming that the relevant person has inspected it.

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

Yes, we agree with the principle that each of these parties should be responsible for reporting defined occurrences which might affect safety and health, although details on how to recognise the specific occurrences to be reported should be provided. However, the question is not clear (although para 217 is clearer) on the period of time during which each dutyholder will be expected, or have a duty, to report.

*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.*

Allowing workers to have a reporting mechanism that will not dissuade them from reporting safety concerns is important, and will require a mechanism that allows them to address the regulator, anonymously if wished. An online system may be the most appropriate system. Can the HSE model be adopted?

*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, we agree this seems a sensible timeframe, as this will allow for more information to be gained before having to report. However, in some cases the "occurrence" may go undiscovered for some time if the list after para 222 is adopted. For example, early decay of a structural component is only likely to be identified some time after the decay has occurred. So the definition of when an occurrence is considered to have occurred as well as of what constitutes an occurrence will be important.

*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 scope is suitable. Other health and safety concerns have other protocols for reporting.

*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. There probably needs to be a catch all to cover anything else which might jeopardise any aspect of the life safety of the building. Please also see our general remarks about safety being a wider topic than just fire and structure. What about occurrence reporting of gas or electrical safety, safety occurrences on stairs, or problems with excessive internal temperatures, especially in places where those with respiratory conditions who are at risk from exposure to elevated temperatures, live.

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

Significant occurrences of physical or mechanical, electrical, plumbing and fire protection assets not meeting current regulations. This should also cover the installation of any equipment that penetrates a fire compartment boundary and is found not to be adequately fire stopped.

*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, the process of design does not suit occurrence of these items or similar as the design process is fluid and will be checked at building control and gateway stage.

*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. It is essential that anyone who reports concerns to the regulator has statutory protection when doing so.

*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.*

Professional Engineering Institutions in the Building Sector, particularly but not only CIBSE, IStructE and the Institution of Fire Engineers, already cover the discipline specific competence to a national standard overseen by the Engineering Council and that system has not been found to be in need of reform, so should be confirmed and left in place

There should be a single statement of the enhanced competence requirements against which all candidates should be assessed. The enhanced requirements should be set by an independent national regulator, although it is recognised that they may wish to work with BSI and the Engineering Council to develop the detailed requirements.

The enhanced requirements need to recognise discipline specific competence. They also need to ensure that those coming forward with discipline specific competence are fully up to date with Continuing Professional Development (CPD) and related requirements. In the early stages of an overarching scheme there may be many applicants who completed their discipline specific competence assessments many years ago, and it is important that their current competence is confirmed as part of the enhanced competence assessment.

Once registered those on the overarching register will also need to demonstrate that they are maintaining their competence at the enhanced level. CIBSE is able to advise on the appropriate checks for building services engineers, and other professional bodies will be able to do the same for their specific disciplines. It is also essential that there is a clear and consistent means of candidates demonstrating that they are competent.

If there is to be formal recognition of additional or enhanced competence prior to registration as a Principal Designer or Contractor, or as a Building Safety Manager, then it should be against a single national 'standard'.

A single body such as the proposed national regulator or a body delegated by the regulator should determine who is competent to undertake these three roles, and therefore who goes on the register. We cannot have the scenario which emerged for energy assessors with a number of certification bodies competing to train and register energy assessors. Some were UKAS accredited, others were not, and it was a very confusing situation which drove down standards. That did not work for energy, and it certainly will not work in this case.

These requirements should only relate to the additional overarching enhanced competencies and should not replace, overlap or duplicate any aspect of the current discipline specific accreditation of competence already overseen by the Engineering Council and other regulators of professional competence assessment such as the RICS, CIOB or ARB.

For the overarching competence requirements BSI offers a nationally recognised, open and transparent system for the development. But if BSI is to be involved, then it needs to be a British Standard (BS), not a Publicly Available Specification (PAS). A PAS does not require the same level of consensus as a BS, and in this case that could be a fundamental flaw. It needs to be moved through the system quickly, but it needs to be a BS.

There are issues around the potential costs of the standard and access to it for those who want to know what it requires without being registered, possibly including residents who have concerns. So the cost model for this will need care to ensure true openness and transparency. There is a very strong case for this standard to be freely available to anyone who wants it – as is UKSPEC and indeed all relevant legislation.

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

It is unclear what the point of the regulator is if that is not what they are for. In twenty years' time a new generation of dutyholders and regulators will have grown up for whom Grenfell is the dim memory that the Kings Cross fire in 1986 is now to many. The fact that the regulator is there to promote safety is vital. Arguably, it is because the role of the Building Regulations may have been rather overlooked by some parties in recent years that we are having to deal with the whole issue in such depth now. The regulator needs to be clear why they exist, and why parliament set them up.

*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. The whole point of establishing these roles is to deliver safer buildings, and so those in those roles need to be clear that it is their duty, and those appointing them need to be clear that is their duty, not just to do as told in line with commercial drivers of any of the parties involved. This is all about how we move away from a race to the bottom.

The intent here is admirable, but 'to promote building safety' is very open to interpretation and so careful legal advice and drafting will be required. The current difficulty of taking enforcement action over some aspects of Building Regulations due to an absence of examples of what compliance looks like should be a cautionary lesson here, and the drafting needs to avoid this pitfall here as far as possible.

*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.*

It should apply to all construction work in line with CDM. The dutyholder should be responsible for the compliance of all work controlled by the Building Regulations. This is not the same scope as CDM. A relatively quick but significant piece of work may not fall in scope of CDM, but should still comply with the new regulatory regime.

## **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.*

A guide to fire safety should be given to residents (or residents told where this information can be found on line). There is a clear need to engage in some research here into how this is best done. There must be scope for an app to give residents advice and information via digital means, rather than paper delivery, although this will not be suitable or accessible for all ages.

*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, this is important to alleviate concerns. It needs to be implemented with attention to security too – see our responses to Questions in section 4.

*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, any of the above. There also needs to be a duty on that nominated person to use the information responsibly, especially where wider disclosure could pose a security problem.

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

Yes. Again, research into how this might most effectively be delivered would be worthwhile.

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

Yes. Again, research into how this might most effectively be delivered would be worthwhile.

*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. It is important that residents appreciate that their actions are critical to building safety and that they have a stake in and a personal responsibility for the safety of the building. This relates to their day to day behaviour, such as not blocking fire doors open or leaving combustible materials in common parts of the building.

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

Appropriate requirements include providing details of proposed alterations to their units, to allow these to be agreed in advance and included in the golden thread of information, if appropriate. Residents should also be required to provide details of designers and contractors for the work to enable the building safety manager to assess whether they have the competence to undertake the proposed work in a building in scope. There may need to be a permit system for such works, which will need to be covered in the management summary. Finally, when work is completed, there is a need for details of the works to be lodged with the building safety manager;

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

We think there needs to be sufficient notice periods and a residents' response mechanism to cover rights for privacy at certain times. There also needs to be a mechanism for accountable persons abusing the requirement. Abuse of the duty to co-operate should be a serious disciplinary and licencing matter for any building safety manager.

*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, the accountable person or building safety manager should be the first port of call for residents. There should be a process to record when concerns are raised, to protect both parties. Again, there is scope for research into what digital tools could be used to address this and provide a consistent and auditable approach across buildings in scope.

*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. This is one reason why a whistleblower route and protection is required.

*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.*

This needs to be co-ordinated with the recent legislative changes in housing legislation to enable residents to seek redress for defective housing.

## **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, every five years is suitable. More frequently would be too onerous.

*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, although the interface with local authorities (planning and building control) should be detailed. There needs to be a clear distinction between the regulatory role and the enforcement role of local bodies, which need to be distinct.

*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.*

The proposed new Regulator is key to successful reform and will have a key role in setting the culture towards compliance and enforcement. CIBSE understands the imperative for rapid action, and hence the appeal of using an existing model, such as the HSE. Whilst this may provide a rapid mechanism for setting up the new Regulator, it could limit the opportunity for the new regime to be genuinely independent and to be established with a clear culture. The new Regulator will need to drive the cultural change that Dame Judith highlighted as being essential in the construction sector.

There is a risk that legacy issues and existing cultures may be absorbed into any new model and will hinder culture change. The new regime will need to be ready and resourced to be able to provide proactive advice and it is vital that this pro-active culture is firmly established from the very outset of the new regime. This may not be easy if an existing regulatory body is used as the incubator.

The opportunity to set something up new which is free from legacy cultures or issues is the model most likely to deliver wholesale benefit and engage the sector. There are other models which should be reviewed to inform the creation of a new body, for example in the Civil Aviation Authority. Ultimately getting the culture right is essential of the new Regulator is to be a successful contributor to building a safer future. There will also need to be significant education and learning if there is to be a changed way of working.

*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.*

Government has had the opportunity to see a draft of the report. Unfortunately it has not yet been published and so respondents to the consultation are unable to express any views on Steering Group recommendations. However, we can offer some observations.

The competence framework should refer to UK-SPEC. Many professionals are in roles that should require the assurance that comes from membership of a professional body that tests both knowledge and application. There is an opportunity here to make UK systems stronger.

For the overarching competence requirements BSI offers a nationally recognised, open and transparent system for the development. But if BSI is to be involved, then it needs to be a British Standard (BS), not a Publicly Available Specification (PAS). A PAS does not require the same level of consensus as a BS, and in this case that could be a fundamental flaw. It needs to be moved through the system quickly, but it needs to be a BS.

There are issues around the potential costs of the standard and access to it for those who want to know what it requires without being registered, possibly including residents who have concerns. So the cost model for this will need care to ensure true openness and transparency. There is a very strong case for this standard to be freely available to anyone who wants it – as is UKSPEC and indeed all relevant legislation.

*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.*

Even without having seen the recommendations, we consider that the industry should take responsibility for driving competence, working through established mechanisms such as the Engineering Council.

*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, but vested interests will need to be kept under control.

*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, there should be an interim committee. It should draw upon the current CSG and its knowledge of the competence objectives, but would benefit from some additional participation from the industry.

*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, this will remove ambiguity on what should be included in these requirements. Whilst we understand that considerable initial work has been done to explore the constraints on the approach, there is still concern that the 'inventory list' could be problematic, and potentially anti-competitive.

How are bespoke products that are tailored to a specific project to be addressed?

Who owns the list and who is the arbiter for entry?

How long will it take and what happens whilst the list is being established not to disrupt projects, not only on site but also those at a design stage?

CE marking is also not just related to the CPR, but to the eco-design framework directive, the low voltage electromagnetic compatibility, gas appliance, boiler efficiency, lifts, and pressure equipment directive, the F-Gas Regulation, and possibly others. This will need care to avoid unintended consequences.

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

Yes, this is a sensible starting point. But this aspect of the consultation is not well explained or understood, and it is not yet sufficiently clearly defined to be able to express a view. There needs to be more explanation and further engagement with the industry on this proposal, to avoid the significant difficulties, disruption, confusion and costs experienced due to the regulatory changes introduced in December 2018 with inadequate expert consultation.

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

Existing products already have standards around fire retardation or spread of flame, or for structural properties; adding them to another list may not help improve safety and will add cost. This aspect of the consultation is not well explained or understood, and it is not yet sufficiently clearly defined to be able to express a view. There needs to be more explanation and further engagement with the industry on this proposal.

*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.*

This aspect of the consultation is also not well explained or understood, as in answer to 8.3

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

This aspect of the consultation is not well explained or understood, as in answer to 8.3

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

Yes, this is important. Product marketing has been misleading and ambiguity is a risk.

*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, as new products enter the market to support modern methods of construction (MMC) they will require regulation to ensure compliance. There is a real dilemma here. MMC in particular, and innovation in general, require new products and processes to be acceptable for placing on the market. However, when dealing with products which may be key safety elements of a building and required to last for over 60 years, there is a challenge in knowing how rapidly to allow such innovations to be used widely on the market.

All MMC systems should be designed using a systems engineering approach such as a “V diagram”, to ensure that new innovative systems are validated by testing, from component level to full 3D assembly, before being deployed.

MMC products (2D, 3D etc) are generally based on a ‘system’ or ‘platform’ design and then applied to a scheme. This should also be considered as it may mean that an MMC product is being integrated into a wider design solution.

The “required standards” need to be defined quickly as major investments are being made into the development of products (including factories and equipment). Manufacturers of MMC products (who could be contractors or housebuilders, for example, rather than traditional product manufacturers, need to be consulted directly. The term “required standards” itself raises questions – are we suggesting that there should be a different standard for a modular bathroom, for example? A bathroom needs to comply with the functional requirements of the building regulations, however it is made and assembled. In demonstrating that the bathroom meets the

functional requirements the builder may rely on standards, but at present our building regulations do not “require” standards to be met. Some clarity over what is intended by this term would be helpful.

Unfortunate and well documented cases, such as large panel construction, the failure of which led to a major revision of the structural building codes in the UK in the 1970s to address risk of disproportionate collapse, and the precast reinforced concrete homes case, where long term durability failings led to a national programme of remediation at taxpayer expense in the late 1980’s and early 1990’s both demonstrate the risks involved in innovative construction solutions. High alumina cement is another example of an innovation which went dangerously wrong – but it was a product innovation not a modern method of construction.

There was also a serious structural issue in the 1980’s and 1990’s with certain grades of stainless steel wire used to support suspended ceilings in swimming pools – the wire was prone to a form of corrosion caused by the product of a chemical reaction of bathers urine mixing with chemicals used to sterilise the pool water. It took a fatal accident with a ceiling collapse in a Swiss swimming pool to reveal this flaw. It was not MMC – it was an incremental product innovation that went wrong. Ensuring that products are safe is not limited to MMC.

This is not to be anti-innovation, but to recognise that introducing new ways of providing homes, which for many owner occupiers are the biggest investment of their lives, requires real care and due diligence and long-term monitoring of new products and materials to protect those consumers and their health and safety over the longer term.

Will those regulators have access to the broad range of skills and knowledge needed to enable robust decisions about wider rollout of MMC? And will those decisions be co-ordinated with those who may be insuring buildings constructed using MMC, to ensure long term consumer protection?

*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.*

The text of the consultation document in paragraph 349 is confused about the identity and roles of regulators and enforcement bodies, and this confusion spills over into this question (and to some extent the preceding question too).

A regulator is a national body, whether the Office of Product Safety, or the independent Building Safety Regulator proposed earlier in the consultation. They set the standards and requirements, the testing regimes and any third party oversight requirements.

Building control bodies and trading standards, both referred to in para 349, are local enforcement bodies. They are not regulators. They have national “associations”, but these are a form of public sector trade body, and are in no way a regulator, and must not be mistaken as such or indeed treated as such in departmental considerations and consultations.

Both the regulators and the local enforcement bodies have a role to play in ensuring that ALL forms of construction are manufactured and installed safely and that as far as building regulations apply are safe to occupy. However, we need to be careful that we do not end up with a markedly different and more onerous regime for “modern methods of construction” which becomes a barrier to innovation.

It is essential that this is undertaken by an adequately resourced national body. It is a key role for the product safety regulator in association with the building safety regulator to consider this, especially for buildings in scope. Building control do not have the knowledge, skills and resources to do this.

*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.

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

There needs to be a requirement that certification provides clear details of what the product is certified to be used for, and if need be what exclusions may apply.

*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.

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

In principle, subject to detailed and rigorous assessment and surveillance of the scheme.

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

Yes, there should be a minimum standard to avoid ambiguity and promote consistency.

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

As above.

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

## **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, we agree with the principles, but the details must be clarified. There needs to be early intervention in projects to reduce the risk of failures becoming embedded into design and the cost of eliminating them becoming disproportionately high. It is essential that the regime is not reactive and does not stand back and allow errors to become serious before the regulator intervenes. This is another reason why the regulator will need people with high levels of skill and expertise in building control as well as in the use of digital design tools to enable them to be actively involved in checking the design up to Gateway 2 and also in overseeing the project in construction and through to Gateway 3. The Regulator will also need these skills for dealing with existing buildings.

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

Yes. There need to be significant penalties to demonstrate the seriousness of these offences.

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

Yes, clarity on regulations and performance for products, without an EU harmonised standard is important.

CE marking is also not just related to the CPR, but to the eco-design framework directive, low voltage directive, EMC, gas appliances, boiler efficiency, lifts, pressure equipment, F-Gas, and possibly others. How will these be addressed? They all contribute significantly to overall safety of a building.

*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?*

Yes, as this will be faster and more efficient than criminal prosecution, although that option needs to be retained.

*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, as often extrapolating a date for the alternative (when work was completed) is inaccurate and the defect discovery date is accurate and fair. Regardless of the completion date, the defect should have the best possible chance of being corrected by enforcement.

Consideration should be given to encouraging early remedial work with less onerous penalties – if someone accepts responsibility for a defect and for fixing it quickly they should be encouraged and any further penalties (if further penalties are appropriate) should recognise the early remedial work.

*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?*

Yes. It should be extended to 10 years to match typical warranty or liability periods. The start time of the ten year period needs to be considered carefully.