

RIBA Response to MHCLG Building a Safer Future: Proposals for reform of the building safety regulatory system

31 July 2019

Introduction

The RIBA welcomes the proposals from MHCLG for a new regulatory system for the design, construction and use of higher risk buildings, but we urge the Ministry to make significant changes to the duties for all dutyholders and apply the proposed regulatory system to non-residential buildings with higher rates of fire and related injuries and fatalities.

The RIBA recommends that the proposed regulatory system should not stop at multi-occupancy residential buildings of 18m and above from ground level, but should include the following other types of building at any height:

- Supported/sheltered housing
- Care homes
- Hospitals
- Schools and residential educational buildings
- Prisons and detention centres
- Places of assembly
- Hotels and hostels

These building types should be subject to the proposed regulatory system during the design and construction phase and should be considered for inclusion in the occupation phase of the proposed regulatory system. They should also be subject to Building Safety Case reviews as soon as possible.

The RIBA supports the need for dutyholders in the design and construction phases of a project through the extension of The Construction (Design and Management) Regulations (CDM) 2015, to cover building safety. However, we do not support the duties for these dutyholders as set out in the consultation. They do not apportion liability reasonably and fairly or take into account the way buildings are procured and the contractual responsibilities of all parties involved and could be open to significant conflicts of interest. The RIBA would welcome the opportunity to work with MHCLG to help set appropriate duties for all dutyholders that enable the dutyholders to carry out their roles effectively, particularly on design and build projects, with the appropriate levels of contractual power and statutory responsibility.

The RIBA supports the proposal to develop an overarching competence framework for buildings in scope. The ARB as the statutory regulator for architects, rather than UKAS or the Engineering Council, should be responsible for the accreditation/licensing of qualifying bodies for architects, including the RIBA, who will hold registers of competent architects (Designers) for buildings in scope. The RIBA are also prepared to support the delivery of a Principal Designer accreditation scheme for architects.

The RIBA recommends that the proposed Building Safety Regulator should ensure that technical guidance given to industry is reviewed holistically, including key relevant British Standards. This must also include reviews of BS 9999: 2017 (Fire safety in the design, management and use of buildings. Code of practice), BS 9991: 2015 (Fire safety in the design, management and use of residential buildings. Code of practice) and BS 7974:2019 (Application of fire safety engineering principles to the design of buildings. Code of practice) where limits for risk-based fire engineering design should be considered, such as maximum travel distances.

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

Question 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 RIBA recommends that the proposed regulatory system should be widened to encompass a greater range of higher risk buildings and welcomes the extension of the proposed regulatory system to focus on multi-occupancy residential buildings of 18 metres or more (rather than the Independent Review recommendation that reforms should apply in the first instance to high-rise residential buildings over 10 storeys, equivalent to 30 metres or more).

These higher risk building types, where there is a significant risk that a catastrophic event could cause multiple fatalities, include; supported/sheltered housing, care homes, hospitals, schools and residential educational buildings, prisons and detention centres, places of assembly, hotels and hostels (see RIBA response to Question 1.5 for further detail).

Future consideration should be given to applying the proposed regulatory system to multi-occupancy residential buildings where the top floor is more than 11m above ground level or more than three storeys above the ground level storey, as the fire statistics show that there is also a high rate of fires in multi-occupancy residential buildings between 11m and 18m. The RIBA also acknowledges the evidence from the National Fire Chiefs Council (NFCC), who recommend an 11m (or 3 floors for some of the provisions in ADB) building height threshold is adopted, to reflect firefighting equipment and response. The NFCC confirm that buildings above 11m is the point at which FRSs are typically no longer able to rescue persons from the exterior of the building and are thus reliant on the interior protection measures of the building for escape and firefighting.

Although the consultation provides data from the Incident Recording System on the rate of fires, fire-related fatalities and casualties requiring hospital treatment in different types of building, the RIBA understands that such scoping data does not account for all fire-related incidents. As such, prisons and hospitals which have a duty to report fire-related incidents depict a much higher rate, when compared to the many fire unreported fires in flats.

The RIBA supports the application of the proposed regulatory system at the design and construction stage to new builds and major refurbishments of multi-occupancy residential buildings of 18m and above from ground level, and to higher risk non-residential buildings at any height, and to the occupation stage for both new builds and existing multi-occupancy residential buildings of 18m and above from ground level, with a suitable transition period, to ensure that fire and structural risks are adequately managed.

The RIBA recommends that duties should be imposed on Clients, Designers, Principal Designers, Principal Contractors and Contractors on all projects, by adding new duties to the existing Construction (Design and Management) Regulations 2015.

Supporting Evidence

Fire and rescue incident statistics – Home Office

Link: <https://www.gov.uk/government/collections/fire-statistics#detailed-analysis-of-fires-attended-by-fire-and-rescue-services-in-england:-latest-version> [Accessed 10/07/19]

Link: <https://www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables#dwelling-fires-attended> [Accessed 19/07/10]

Question 1.2

How can we provide clarity in the regulatory framework to ensure fire safety risks are managed holistically in multi-occupied residential buildings?

The RIBA recommends that any legislation, alongside any supporting guidance, should not have conflicting duties between the 'Responsible Person' under the Regulatory Reform (Fire Safety) Order 2005 and the proposed 'Accountable Person' under the proposed regulatory system. It should include a statutory requirement for the fire and rescue services and local authorities to co-operate with each other, to avoid the dutyholder receiving conflicting duties by the regulator from each of the pieces of legislation.

There should be clear boundaries between these pieces of legislation to ensure that there are clear lines of responsibility. Responsibility and associated regulatory power should be placed with the most appropriate body (see RIBA response to Question 1.3) and should avoid conflict which may not be able to be resolved with no party having overarching responsibility.

Question 1.3

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

The RIBA recommends that the Fire Safety Order is extended to include flat front doors as 'common areas' and to give fire services powers of access into all flats for fire safety purposes only. The proposed Building Safety Regulator should require the Building Safety Case to be reviewed by local fire services to help enable the fire services to carry out their duties under the Fire Safety Order.

This would place the correct statutory body (local fire and rescue services) in control of fire safety in multi-occupancy residential buildings, where they assess the risk to safety by first assuming that a fire will happen, as opposed to the Housing Health and Safety Rating System (HHSRS) where Environmental Health Officers consider the likelihood of a fire occurring, which is statistically very low.

There will need to be a route to reconciling any conflicting requirements placed on the Responsible Person by the fire service (through the Fire Safety Order) and the Accountable Person by the Building Safety Regulator as these will be the same individual in a residential building.

The RIBA recommends that local fire services should be required to approve the Building Safety Case on behalf of the Building Safety Regulator, which will help enable them to discharge their duties under an extended Fire Safety Order.

Supporting Evidence

Housing health and safety rating system (HHSRS) guidance

Link: <https://www.gov.uk/government/collections/housing-health-and-safety-rating-system-hhsrs-guidance> [Accessed 15/07/19]

Question 1.4

What are the key factors that should inform whether some or all non-residential buildings which have higher fire rates should be subject to the new regulatory arrangements during the design and construction phase? Please support your view.

The RIBA recommends that all non-residential buildings which have higher fire rates (and where the potential that a catastrophic event could cause multiple fatalities) should be subject to the proposed regulatory system during the design and construction phase.

All building types listed in Question 1.5 should be subject to the proposed regulatory system as described, as the risk profile is greater due to the vulnerability and mobility of users, users who are unfamiliar with the building, and buildings that are complex in nature or have complex escape strategies.

Question 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?

The RIBA recommends that that all ‘higher-risk workplaces’ as listed in paragraph 42 of the consultation are higher-risk and should be subject to the proposed regulatory system during the design and construction phase.

The fire statistics data provided and those available from the fire and rescue incident statistics (Home Office), including the potential that a catastrophic incident could cause multiple fatalities (see RIBA response to Question 1.4), the RIBA recommends that other building types, which have not been identified as higher-risk within the consultation, should also be included as ‘higher-risk workplaces’.

The RIBA considers all of the following building types (including those listed in paragraph 42 of the consultation) are ‘higher-risk workplaces’ and should be subject to the proposed regulatory system during the design and construction phase, at any height. These include:

- Supported/sheltered housing where vulnerable people are supported and provided with a safe and secure home
- Care homes, nursing homes, care homes with dementia care and dual-registered care homes, for any group
- Hospitals
- Schools and residential educational buildings, including boarding schools and halls of residence
- Prisons and detention centres
- Places of assembly
- Hotels and hostels

Supporting Evidence

Types of Care Home - Age UK

Link: <https://www.ageuk.org.uk/information-advice/care/arranging-care/care-homes/type-of-care-home/> [Accessed 19/07/10]

Fire and rescue incident statistics – Home Office

Link: <https://www.gov.uk/government/collections/fire-statistics#detailed-analysis-of-fires-attended-by-fire-and-rescue-services-in-england:-latest-version> [Accessed 10/07/19]

Link: <https://www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables#dwelling-fires-attended> [Accessed 19/07/10]

Question 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 RIBA recommends that all building types listed in Question 1.5 should be subject to the proposed regulatory system as described, as the risk profile is greater due to the vulnerability and mobility of users (supported / sheltered housing, care homes, hospitals, schools and residential educational buildings), users unfamiliar with the building (hospitals, places of

assembly, hotels and hostels) and those that are complex in nature or have complex escape strategies (hospitals, places of assembly, prisons and detention centres).

For buildings with Permitted Development rights, Gateway 1 should still be applicable if the building as proposed falls into scope of the proposed regulatory system. Although the scheme (building) would not be subject to the standard planning permission route, there should be a requirement that a Fire Statement is developed.

Question 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.

The RIBA recommends that where supported / sheltered housing does not have 24-hour staff, at the very least, should be subject to the proposed regulatory system during the occupation stage. The RIBA would however welcome all supported / sheltered housing, regardless of staff working hours, to be subject to the proposed regulatory system during the occupation stage.

If a category approach is adopted, further consideration should be given to what the triggers are when determining which categories are subject to the proposed regulatory system. The RIBA suggest that the following categories are considered:

- the number of workers
- roles of workers
- staffing hours through the day
- number of occupants / unfamiliar occupants
- visitors
- vulnerability and mobility of occupants
- access and egress

Question 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?

The RIBA recommends that the Responsible Person under The Fire Safety Order or the Accountable Person under the proposed regulatory system, should not have conflicting duties that cover the same scope. If, however, the interaction between these roles naturally leads to conflict which cannot be mitigated, legislation should be as such that one party would have overarching responsibility to address the issue.

The RIBA recommends that where there are two or more persons responsible for different parts of the building and different issues (such as health and fire safety) under separate legislation, there should be a duty on them to cooperate and coordinate with each other. The Fire Safety Order describes the functions and duties of co-operation and co-ordination (Section 22), which could be used a basis to ensure that a comprehensive approach to fire safety in mixed use buildings is achieved.

Supporting Evidence

The Regulatory Reform (Fire Safety) Order 2005 No. 1541

Link: <http://www.legislation.gov.uk/uksi/2005/1541/contents/made> [Accessed 19/07/10]

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

Question 2.1

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

No. The RIBA does not agree that the duties set out in paragraphs 61-65 including Annex C of the consultation are entirely correct. We have raised some questions and proposed some amendments below, and we would welcome the opportunity to work with the Ministry to develop these duties.

The RIBA supports the need for all those involved in a project to take responsibility and liability for their contributions to the project and agrees with the proposal that dutyholder roles in design and construction should align with those existing dutyholders identified under the Construction (Design and Management) Regulations 2015 (CDM) and applied to all design and construction work.

The RIBA recommends that CDM 2015 is extended to include new duties on Clients, Designers, Principal Designers, Principal Contractors and Contractors on all projects, although some duties will only apply to dutyholders if the building falls under the proposed regulatory system. If the Ministry is unable to extend CDM, then new parallel legislation should be created, which should not allow there to be two different Principal Designers on a project.

The proposals laid out in the consultation need to have due regard to the liabilities placed on dutyholders. The cost of insuring liability (through professional indemnity insurance and other insurances for civil claims) has increased significantly in recent years for all those involved in the construction industry, so it is important that the risks need to be apportioned fairly and reasonably in the proposed regulatory system. For this reason, the RIBA recommends that the term 'so far as reasonably practicable' is used to qualify many of the duties.

The RIBA recommends that the new statutory duties must be drafted to be deliverable regardless of the project's procurement route which has not been given due consideration in the proposed duties; for example, under CDM a Principal Designer cannot be novated to the Principal Contractor and can only be appointed by the Client. If it were made possible to novate a Principal Designer, then they would have a conflict of interest in carrying out their duties during construction as their fees will be paid by the Principal Contractor, rather than directly by the Client. This conflict would be similar to allowing Clients to choose and pay their own Building Control Body.

The RIBA recommends that the Ministry conducts a more detailed review of the proposed duties and what they are intended to achieve. The RIBA has some questions before the duties are finalised:

- Does the Ministry consider that independent inspection of building work for regulatory compliance is required during construction?
- In order to discharge their duties, should the Client have the benefit of independent site inspection, for example, carried out by a Clerk of Works or inspecting architect?

(If so, such inspection must be entirely independent of the Principal Contractor and construction team, which under Design and Build procurement with novation of the design team also includes the Principal Designer.)

The RIBA recommends significant changes are required to the duties. For the general duties listed in paragraph 62 of the consultation, the RIBA recommends that term 'so far as

reasonably practical' is included for most of the general duties and the role specific duties are removed, as follows:

General Duties for all Dutyholders in addition to those required under CDM 2015, Regulation 8:

1. Co-operate and share information with the Building Safety Regulator
2. Ensure, so far as reasonably practicable, compliance with the building regulations
3. Ensure, so far as reasonably practicable, Duties imposed upon them as Dutyholders are carried out
4. Ensure, so far as reasonably practicable, they and the people they employ are competent and only undertake work they are competent to do
5. Promote building safety and the safety of persons in and around the building

As written the proposed role specific duties place significant liabilities on the Principal Designer and very little on Designers. The Principal Designer role should not include design work, it is a coordination and leadership role without direct contractual authority over other Designers and cannot take responsibility for any Designer's work.

The RIBA recommends significant changes are made to the proposed duties in relation to the Gateway 2 and 3 processes. The RIBA have made amendments to the role-specific duties for Clients, Designers Principal, Designers, Principal Contractors and Contractors listed in Annex C of the consultation, to provide clarity and accuracy to the role that is expected of specific dutyholders. These are in addition to the Duties required under CDM 2015.

Clients

Client Duties for all projects:

- Make suitable arrangements for managing the building work so as to deliver compliance with building regulations and other building safety requirements including the allocation of sufficient time, resources and prioritisation.
- Appoint in writing a Principal Designer and Principal Contractor with the necessary skills, knowledge and expertise to discharge their functions relating to building safety effectively.
- Take reasonable steps to ensure that Designers, the Principal Designer and Principal Contractor comply with their responsibilities in relation to building safety as set out in regulation and the general duty.
- Establish the appropriate information management systems to facilitate successful collation of information, completion of work and handover.
- Ensure an updated Fire and Emergency File (Regulation 38 of the Building Regulations) is handed to the person who acquires the client's interest in the building, should the Client dispose of their interest in the building.

Client Duties for buildings in scope of the Building Safety Regulator:

1. Ensure, so far as reasonably practicable, an appropriate handover takes place between the key dutyholders at design and construction phase and the Accountable Person in occupation
2. Establish reporting processes to support an effective mandatory occurrence reporting regime.
 - Promote a 'just culture' within their project
 - Ensure, so far as reasonably practicable, reporting systems/mechanisms are in place to identify occurrences identified under mandatory occurrence reporting

- Report any occurrences identified to the Regulator
- 3. Ensure that the regulatory requirements of gateway submissions are met.
- 4. Gateway 1
 - Submit a Fire Statement
- 5. Gateway 2
 - Submit a Full Plans submission
 - Submit an initial Fire and Emergency File
 - Submit an initial Construction Control Plan
 - Submit a Building Safety Case
 - Where appropriate provide an assessment of how the building will be safe to occupy in a phased way
 - **Appoint in writing a site inspector, independent of the Principal Contractor, to provide scrutiny of the built works and Construction Control Plan ***
- 6. Gateway 3
 - Submit a complete Construction Control Plan
 - Submit a Building Safety Case in occupation
 - Submit a complete key dataset
 - Submit a final Fire and Emergency File
 - Apply for a provisional building registration
 - Where appropriate confirm that an appropriate handover of information to the Accountable Person in occupation has taken place;
- 7. Where the Client intends to become the Accountable Person in occupation, they must also:
 - Apply for full building registration
 - Submit a Resident Engagement Strategy

* If the Ministry intends for site inspection to take place, independent of the Principal Contractor, on all projects in scope of the Building Safety Regulator, then new duties for independent site inspectors will be required. This is due to the conflict of the Principal Contractor and Principal Designer being the same organisation or under the same contract in Design and Build projects.

Duties of the independent site inspector may include co-signing a declaration that the building has been built in accordance with approved plans of Gateway 2, or notified modifications, and to the best of their knowledge the building complies with building regulations, before Gateway 3.

Principal Designers

Principal Designers Duties for all projects:

1. Plan, monitor and manage the pre-construction phase and coordinate matters relating to building safety during the pre-construction phase to ensure that, so far as reasonably practicable, the project complies with building regulations.
2. Satisfy themselves that those involved in supporting the Principal Designer have suitable skills, knowledge and experience and where relevant, organisational capability.
3. Ensure, so far as reasonably practicable, cooperation between Designers, the Client and the Principal Designer to ensure they can discharge their regulatory responsibilities.
4. Take reasonable steps to ensure that Designers are discharging the duties outlined above and promoting the statutory objective.
5. Utilise information management system put in place by the Client in carrying out Principal Designer Duty 1 (above).

6. Coordinate an updated Fire and Emergency File (Regulation 38 of the Building Regulations) to be handed to the Responsible Person.

Principals Designers Duties for buildings in scope of the Building Safety Regulator:

7. Meet the requirements of the mandatory occurrence reporting regime, including reporting any instances identified and next steps to the regulator, Client and where appropriate Principal Contractor.
8. Gateway 1
 - Coordinate a Fire Statement with information supplied by Designers.
9. Gateway 2
 - Coordinate a Full Plans submission in consultation with the Client
 - Coordinate a Building Safety Case and an initial Fire and Emergency File
 - Coordinate the key dataset of the building (as planned);
10. During Construction
 - Contribute to the Construction Control Plan, engaging with the Principal Contractor and Designers to ensure, so far as reasonably practicable, minor and major changes are considered appropriately and that there is a strong rationale for them
11. Gateway 3
 - Contribute to a complete Construction Control Plan
 - Coordinate as designed Full Plans
 - Contribute to the development of the Building Safety Case for occupation and key dataset
 - Confirm to the Client that, to the best of their knowledge, any modifications to the approved plans of Gateway 2 have been appropriately considered by the relevant Designers and Contractors.
 - Contribute to an appropriate handover of the Fire and Emergency File and Building Safety Case in occupation to the Accountable Person.

Designers

Designers Duties for all projects:

1. When preparing or modifying a design they must take into account building regulations and any pre-construction information to meet building safety requirements and conditions.
2. Take reasonable steps to provide sufficient information about the design, construction and maintenance of the structure, by utilising the information management system put in place by the Client, to assist the Client, the Principal Designer, other Designers and Contractors to comply with their regulatory duties.
3. Must not carry out work in relation to a project unless they are satisfied the Client is aware of their duties set out in regulations.
4. Report safety concerns to the Client, Principal Designer or Principal Contractor.
5. Contribute to an updated Fire and Emergency File (Regulation 38 of the Building Regulations) to be handed to the Responsible Person.

Designers Duties for buildings in scope of the proposed regulatory system (duties only apply if the Designer is still under appointment on the project at the relevant Gateway):

6. Gateway 1
 - Contribute to the development of a Fire Statement
7. Gateway 2
 - Contribute to a Full Plans submission, Building Safety Case and an initial Fire and Emergency File.
8. During Construction

- Contribute to the Construction Control Plan, engaging with the Principal Contractor and Principal Designer to ensure, so far as reasonably practicable, minor and major changes are considered appropriately and that there is a strong rationale for them.
9. Gateway 3
- Contribute information for the Fire and Emergency File and Building Safety Case in occupation.

Principal Contractors

Principal Contractors Duties for all projects:

1. Plan, monitor and manage the construction phase and coordinate matters relating to building safety during the construction phase, to ensure that, so far as is reasonably practicable, the project complies with building regulations.
2. Satisfy themselves that those involved in supporting the Principal Contractor have suitable skills, knowledge, behaviours, experience and where suitable, organisational capability.
3. Ensure, so far as reasonably practicable, cooperation between Contractors, Designers, the Client and the Principal Designer to ensure they can discharge their regulatory responsibilities.
4. Liaise with the Principal Designer and share information relevant to the planning, management and monitoring of the pre-construction phase and the co-ordination of building regulations and building safety during the pre-construction phase.
5. Utilise information management system put in place by the Client in carrying out Principal Contractor Duty 1 (above).
6. Take reasonable steps to ensure that Contractors are meeting their Duties and are promoting the statutory objective.
7. Contribute to an updated Fire and Emergency File (Regulation 38 of the Building Regulations) to be handed to the Responsible Person.

Principals Contractors Duties for buildings in scope of the proposed regulatory system:

1. Meet the requirements of the mandatory occurrence reporting regime, including reporting any instances identified and next steps to the Regulator, Client and Principal Designer.
2. Gateway 2
 - Coordinate a Construction Control Plan that sets out how compliance with building regulations will be maintained and how changes will be managed and recorded during the construction phase
3. During Construction
 - Operate a Construction Control Plan, engaging with Designers, the Principal Designers and Client (where appropriate) to ensure, so far as reasonably practicable, minor and major changes are considered appropriately and that there is a strong rationale for them
 - Notify the Regulator regarding any major changes and include evidence that meaningful consultation has taken place with appropriate Designers, the Principal Designer and Client.
4. Gateway 3
 - Develop a complete Construction Control Plan
 - Contribute to the development of a complete Building Safety Case
 - Contribute to the development of the key dataset
 - Confirm to the Client (through a signed declaration) that the building has been built in accordance with approved plans of Gateway 2, or notified modifications, and to the best of their knowledge the building complies with

<p>building regulations and that an appropriate handover of information back to the Client has taken place.</p> <ul style="list-style-type: none"> • Handover the Fire and Emergency File and Building Safety Case for occupation to the Accountable Person <p>Contractors</p> <p>Contractors Duties for all projects:</p> <ol style="list-style-type: none"> 1. Plan, manage and monitor construction work carried out by the Contractor or by workers under their control, to ensure that, so far as is reasonably practicable, work complies with building regulations. 2. Must not carry out work in relation to a project unless they are satisfied the Client is aware of their duties set out in regulations. 3. Report safety concerns to the Principal Contractor.
<p>Question 2.2 Are there any additional duties which we should place on dutyholders? Please list.</p>
<p>Please see RIBA response to Question 2.1 for further detail.</p>
<p>Question 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.</p>
<p>No. The RIBA recommends that dutyholders should be legal entities, and that liabilities are placed with all directors / partners, rather than one named individual, to ensure corporate responsibility. The entity, as a whole, should be accountable in discharging their duties and having a responsibility for building safety.</p>
<p>Question 2.4 Do you agree with the approach outlined above, that we should use Construction (Design and Management) Regulations 2015 (CDM) as a model for developing dutyholder responsibilities under building regulations? Please support your view.</p>
<p>The RIBA welcomes using the principles of the Construction (Design and Management) Regulations 2015 (CDM) to determine the key dutyholders and to define the necessary scope and dutyholder responsibilities. The RIBA recommends that the CDM Regulations 2015 should be amended to incorporate these additional general duties for all buildings, and specific duties in relation to buildings in scope.</p> <p>This would negate the requirement for a parallel piece of legislation to be developed, solely to manage risks to building users in multi-occupancy residential buildings of 18 metres or more in height. Extending CDM Regulations 2015 will ensure deepest possible change in culture in the industry as proven by CDM and would leave no construction project without these necessary duties.</p> <p>An approach whereby two (or more) pieces of legislation are in force with the same (named) dutyholder roles may cause further confusion in the industry and to those directly affected by the works.</p> <p>Supporting Evidence</p> <p>Construction (Design and Management) Regulations 2015: L153 Link: http://www.hse.gov.uk/pUbns/priced/l153.pdf [Accessed 19/07/15]</p>

Question 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?

The RIBA have consulted with the National Fire Chiefs Council (NFCC) and we share the view that the Fire and Rescue Service (FRS) should not be made a statutory consultee for buildings in scope at Gateway 1, before planning permission is granted. The cost of this proposal would outweigh the benefits, as;

- it would impose an increased workload on FRSs, of which a large proportion of time (and associated cost) would be wasted on reviewing schemes which never proceed to the build phase.
- even as a statutory consultee, there is no authority to impose amendments and therefore, those in charge of preparing or modifying a design do not have to follow their advice.

The RIBA acknowledge that a mechanism is required at Gateway 1, when many of the overarching and fundamental design decisions are made, to ensure that fire service access and water supplies in the event of a fire are considered at this critical stage.

The RIBA recommends that the Building Safety Regulator should undertake a review of the Fire Strategy / Statement (See Question 2.6 below) at Gateway 1, to ensure that it demonstrates that appropriate building safety provisions (fire service access and water supply) have been made within the design. The advice of the Building Safety Regulator would ensure that Local Planning Authorities (LPAs) do not grant planning permission where proposals do not meet regulatory requirements.

The RIBA supports the NFCC position for strengthened measures, such as robust guidance, to aid the LPA when reviewing proposals and encourages a dialogue with local FRSs on sites which are of highest risk.

The RIBA recommend that FRSs should have an enhanced role in assisting the regulator at Gateway 2, to ensure that the strategy for fire service access and water supply on which permission was sought, is delivered, including any subsequent changes to the scheme design that would impact the strategy.

Question 2.6

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

Yes. The RIBA recommends that a Fire Statement should be a mandatory requirement when making a planning application for multi-occupancy residential buildings of 18m and above from ground level, and those referenced in Question 1.5. This document should form part of the 'required' documentation to validate a planning application. This would ensure that a holistic approach to fire safety is considered for these higher risk building types.

The key considerations for fire safety at this early but crucial stage, when access and design aesthetics of the scheme are developed and approved, should include;

- B5: Access and facilities for the fire service
- B1: Means of warning and escape
- B4: External fire spread
- A1: Structure (loading)

A requirement for information demonstrating how these regulatory requirements are met in the scheme design would ensure that access for the fire service and water supply in case of a fire are provided (Part B5), as well as identifying key design decisions in relation to Part B1 (means of warning and escape). This would, for example, be required to set out the number and positions of stair cores, exits and identify any potential issues when reviewing escape alongside neighbouring buildings, to ensure that proposals do not degrade the escape measures of existing buildings or vice versa.

There should also be greater consideration of Part B4 (external fire spread) at this stage, as although the appearance of the external walls is subject to the conditions of a planning approval, its materiality / specification should meet the Building Regulations.

Question 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.

The RIBA recommends that the LPA and the Building Safety Regulator as well as the Local Highway Authority, should review applications considering the surrounding context, but not FRs (see RIBA response to Question 2.5). This should be a holistic review, and not just for buildings in scope, as the regulatory requirement (Part B5) is afforded by all developments, and as such, any new developments should not negatively impact existing buildings, or vice versa (in scope or not).

However, where by some proposals are deemed complex, contentious or higher risk by the LPA (higher risk as defined in Question 1.5), then a route to escalate the case for advice from local FRs should be enabled to allow necessary consultation.

Although an initial review by the applicant, or applicants design team, could be made within the Fire Statement (assessing the proposed site and wider scheme locale), the LPA have a deeper understanding of the urban fabric and potential proposals / developments that may not yet be in the public domain, for example; planning pre-applications, policies (local plan), local growth strategies, local needs for specific building types and new highways infrastructure / routes.

The proposal to define 'near vicinity' should be approached carefully, and although it would immediately appear to provide a level of consistency of the criteria for which proposals are reviewed against, proposals that fall outside the defined distance for near vicinity may have a detrimental effect. The RIBA acknowledge that although it would be appropriate to apply a limiting distance, there should be a requirement for LPAs to consider future developments, policies and highways as part of this process that are beyond this limiting distance, which may impact the viability of the scheme or be detrimental to existing buildings and their occupants.

Planning authorities should also consider the impact on health of residents/occupants locally, depending upon the proposed building type. A building may not be deemed as 'higher risk' or 'in scope' as the consultation eludes to, but the likelihood of toxic smoke and chemical contamination of quite a wide area after a fire, even in a building with low occupation rates such as a warehouse, can have a catastrophic effect on the health of residents/occupants/public locally.

A further strand of information showing the consideration of fire service access at Gateway 2 (prior to construction) would be equally appropriate. Such information would identify any potential for closed roads or limited access to other sites during the construction works, to ensure that during the works do not impact other existing developments in the locale.

Question 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.

The RIBA recommends that the process should include all developments defined within the 'near vicinity', and any significant proposals outside of this scope (See RIBA response to Question 2.7). Although in most circumstances, single dwellings may not be an issue, a holistic approach should be adopted to ensure that it is proportionate, and each scheme assessed on its own merit. The RIBA recommends that there are no building type exceptions, which may in some circumstances impact the development and would not be considered otherwise.

As noted in Question 2.7, this process should be undertaken by the LPA, the Building Safety Regulator and the Local Highway Authority. Where proposals are deemed complex, contentious or higher risk by the LPA (higher risk as defined in Question 1.5), then a route to escalate the case for advice from local FRSs should be enabled to allow necessary consultation.

Question 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. The RIBA recommends that the applicant be given the status of a Client at Gateway 1 (this should not be confused for an agent acting on the applicant's behalf), and as with planning application, be responsible for the Fire Statement. The Client should carry this duty, as they have control of making suitable arrangements for managing the project, including assembling the project team and ensuring sufficient resources and time are allocated for each stage of the project.

Supporting Evidence

Application for Planning Permission

Link: https://ecab.planningportal.co.uk/uploads/apppdf/help004_england_en.pdf [Accessed 19/07/16]

Construction (Design and Management) Regulations 2015: L153

Link: <http://www.hse.gov.uk/pUbns/priced/l153.pdf> [Accessed 19/07/15]

Question 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. The RIBA recommends that there is a conduit by which the dutyholders and the regulator can review fire safety and structural issues prior to Gateway 2, developing the fire statement developed at Gateway 1 (See RIBA response to Question 2.6). This stage should consider the relevant requirements of Schedule 1 of the Building Regulations 2010 (with the inclusion of Part B2), namely;

- Part A (structure)
- paragraph B1 (means of warning and escape)
- paragraph B2 (internal fire spread – linings)

- paragraph B3 (internal fire spread – structure)
- paragraph B4 (external fire spread)
- paragraph B5 (access and facilities for the fire service)
- Part M (access to and use of buildings)

Engagement with the Building Safety Regulator can help ensure that sufficient detail is provided at the submission of Gateway 2, and any inappropriate design/aspects that would not subsequently comply with building regulation requirements are designed out/revised before Full Plans submission. This would bring other fundamental technical elements of the design together, that are naturally inter-dependent and could not be assessed as a stand-alone element of the design.

Question 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?

Yes. The RIBA agrees that the planning process is the most appropriate stage to consider fire and structural safety risks, by means of the Building Safety Regulator review of the Fire Statement.

Consideration and approval of fire and structural safety risks at this stage will avoid the need for design changes at Gateway 2, and subsequently retrospective changes to the planning permission (if relevant); thereby streamlining the process and avoiding unnecessary delays and inefficient use of the regulator’s time at Gateway 2. Review of such fundamental principles outlined in Question 2.6 and relevant structural risks at this stage (Gateway 1), would ensure that proposals which do not meet the relevant regulatory requirements, which have the greatest impact to a scheme, cannot obtain planning permission.

In most cases, a high-level principle approach may be sufficient. For example, the structural strategy for the scheme should be considered, so that the proposal can accommodate the structural solution. Such structural solutions may not be visible and, technically, as it stands, outside of ‘planning’ considerations which focusses on land-use, but would have an impact on the visual appearance of the building.

An extension of CDM would place duties on the Client and Design Team at this early stage, to ensure that such safety risks are considered at the start of a development, setting off on the right track to develop a building that will comply with the building regulations when built.

Question 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.

No. The RIBA agrees that the information listed in paragraph 89 (Full Plans, a Fire and Emergency File and the Construction Control Plan) is generally the right information but we question the need for a 3D model. If the Regulator does not need or will not use a 3D model, then this should not be a requirement.

The RIBA recommends that any information produced, is only such information that is required for safety purposes. During the project, the client may wish to have additional information or data to assist them in running their building, and caution should therefore be applied to ensure that such information is not confused with relevant safety information.

The RIBA recommends that any requirements should have accompanying guidance notes, to ensure that relevant and critical information is produced. Guidance may also suggest a base

level of detail and format, to meet a common standard, but should limit dutyholders to produce more information such that it sufficiently covers the complexity of the building.

If a route for a staged approach is permitted, then there should be sufficient guidance provided to detail how the proposed regulatory system would function and the staged information requirements (See RIBA response to Question 2.16).

Question 2.13

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

The RIBA has made amendments to the role-specific duties under each element of supporting documentation, to provide clarity and accuracy to the role that is expected of specific dutyholders (See RIBA response to Question 2.1). The forms of information are listed below with RIBA comments on each:

- a. **Full Plans** co-ordinated by the Principal Designer and submitted by the Client - detailed plans/specification of building works in respect of fire and structural safety and how these risks are being managed alongside the necessary specification in all other aspects of the building regulations;
- b. **3D digital model of the building** – The RIBA questions the need for this information but if required it should be co-ordinated by the Principal Designer and submitted by the Client
- c. **A Fire and Emergency File** – co-ordinated by the Principal Designer and submitted by the Client – which builds upon the Fire Statement produced at Gateway 1 and sets out the key building safety information. The file will then be updated and ultimately passed across to the Accountable Person for safety during the occupation phase;
- d. **Construction Control Plan** – produced by the Principal Contractor and submitted by the Client - describes how building safety and building regulations compliance will be maintained during the construction phase and how change will be controlled and recorded to deliver a safe building at the end of the construction phase.

Question 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. The RIBA believes that the Client should be responsible to compile and submit the information as a package at Gateway 2. The RIBA does not agree that the duty of co-ordination is for the Client to undertake, but rather compile, which is a significantly different obligation.

Question 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. The RIBA supports the proposal to introduce a 'hard stop' where construction cannot begin without permission to proceed, to require dutyholders to demonstrate how they intend to deliver compliance with the building regulations in a holistic manner, and any other relevant legislative requirements, that apply both during design and construction, and when the building is in use.

<p>Question 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.</p>
<p>Yes. The RIBA believes that where appropriate, there should be an allowance for a staged approach (submit package information), to facilitate construction. A clear and rigorous procedure should be in place to ensure that key information is submitted at the right time, and with the correct level of detail, to ensure that further design development would not jeopardise the fundamental fire and structural safety of the building. This should be qualified by developing a detailed Fire Statement at the outset (Gateway 1), where submitted packages provide the technical detail to meet the outset technical design aims.</p>
<p>Question 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.</p>
<p>Yes. The RIBA agrees that the regulator should be permitted to require work carried out without approval to be pulled down or removed during inspections to check building regulations compliance.</p> <p>The regulator should be clear as to the inspection regime process and clarity on what inspections and areas are to be reviewed, to negate unnecessary opening up of work, unless reasonably justified/ deemed necessary.</p>
<p>Question 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</p>
<p>Yes. The RIBA supports the view that the Building Safety Regulator has the powers to prohibit building work from progressing unless non-compliant work is first remedied. This sanction will act as a deterrent and incentivise dutyholders to comply with the building regulations.</p>
<p>Question 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?</p>
<p>Yes. The RIBA recommends that the Building Safety Regulator should be required to respond to Gateway 2 submissions within a set timescale (excluding any extensions where information is missing or additional information is required to clarify proposals – See RIBA response to Question 2.20), to not delay construction unnecessary.</p> <p>Consideration should be given to the available resource of the Building Safety Regulator and the administrative arrangements for liaising and gathering feedback with other regulators, the scope and complexity of the project, and if the project was submitted as a full or staged submission including how this would work in both scenarios.</p>
<p>Question 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</p>
<p>Yes. The RIBA believes that if project information submitted, which is required to access the schemes regulatory compliance, is missing, insufficient or non-compliant, then the Building Safety Regulator should be permitted to extend these timescales to consider revised / new</p>

<p>information. These extended timescales should be proportionate and relevant to the scope and complexity of the scheme.</p>
<p>Question 2.21 Do you agree that the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans?</p>
<p>Yes. The RIBA agrees that Principal Contractor should be required to consult the Client and Principal Designer on changes to plans. However, the Principal Contractor must consult the relevant Designer(s) to ensure, so far as reasonably practicable, that minor and major changes are considered appropriately and that there is a strong rationale for them.</p> <p>In making changes to the approved plans the Principal Contractor is taking responsibility for their compliance with the Building Regulations.</p> <p>If changes are proposed by the Client or a Designer, then the RIBA recommends that they consult the other parties.</p>
<p>Question 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?</p>
<p>Yes. The RIBA agrees 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 (See RIBA response to Question 2.23).</p> <p>If changes are proposed by the Client or a Designer, then the RIBA recommends that the Client must notify the Building Safety Regulator.</p>
<p>Question 2.23 What definitions could we use for major or minor changes?</p> <ul style="list-style-type: none"> • 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; <p>Other – please specify</p>
<p>The RIBA believes that all the types of changes listed above should be considered as major changes. Regardless of how small changes may appear, any changes which have a major impact to the scheme and undermine the layers of fire and structural safety of the overall strategy, should be considered as major and notifiable.</p>

Question 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. The RIBA recommends that the Building Safety Regulator should be required to respond to notifications of major changes proposed by the dutyholder during the construction phase within a particular timescale. The RIBA recommends that the timescale should be proportionate and relevant to the scope and complexity of the changes.

Question 2.25

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

The RIBA suggest that the Building Safety Regulator should have the powers to extend timescales where changes are complex and require a further in-depth review of the project. This may also include the requirement to review revised supporting statements and reports, as well as the need to consult other regulators. The timescale should be proportionate to the complexity of the change.

Question 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.

No. The RIBA agrees that the Principal Contractor should confirm, though a signed declaration that the building been built in accordance with approved plans of Gateway 2 (or notified modifications) and to the best of their knowledge the building complies with building regulations, but the RIBA does not agree that the Principal Designer should co-sign this declaration.

The Principal Designer is generally a sub function of the role of lead designer, carried out by the architect, on most projects as suggested by the Competence Steering Group in Annex E of this consultation document. Site inspection is not the same role and generally not provided by the lead designer on buildings in scope of the proposed regulatory system as these are often undertaken using Design and Build contracts when the design team works directly for the Principal Contractor.

RIBA recommends that the new statutory duties must be drafted to be deliverable regardless of the project's procurement route which has not been given due consideration in the proposed duties. Under CDM a Principal Designer cannot be novated to the Principal Contractor and can only be appointed by the Client. If it were made possible to novate a Principal Designer, then they would have a conflict of interested in carrying out their duties during construction as their fees will be paid by the Principal Contractor, rather than directly by the Client.

This conflict would be similar to allowing Clients to choose and pay their own Building Control Body.

The RIBA recommends that the Ministry conducts a more detailed review of the proposed duties and what they are intended to achieve. The RIBA has some questions before the duties are finalised:

- Does the Ministry consider that independent inspection of building work for regulatory compliance is required during construction?

- In order to discharge their duties, should the Client have the benefit of independent site inspection, for example, carried out by a Clerk of Works or inspecting architect?

(If so, such inspection must be entirely independent of the Principal Contractor and construction team, which under Design and Build procurement with novation of the design team also includes the Principal Designer.)

The Client could have a duty to appoint in writing a site inspector, independent of the Principal Contractor, to provide scrutiny of the built works and Construction Control Plan. Duties of the Independent Site Inspector may include co-signing a declaration that the building has been built in accordance with approved plans of Gateway 2 (or notified modifications) and to the best of their knowledge the building complies with building regulations, before Gateway 3.

On traditionally procured projects, the lead designer (and Principal Designer) will often carry out site inspection services and could be appointed as an independent site inspector.

Question 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. The RIBA recommends that the Building Safety Regulator should be required to respond to gateway three submissions within a particular timescale. This should be sufficient enough to adequately assess the information provided with other regulators but should not unnecessarily delay occupation.

Question 2.28

Are there any circumstances where we might need to prescribe the building safety regulator's ability to extend these timescales? If so, please support your view with examples

Yes. RIBA suggest that the Building Safety Regulator should have the powers to extend timescales where documentation required for gateway 3 is insufficient, or if significant changes were made to the approved plans and more thorough scrutiny is needed.

Question 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. The RIBA agree that the Accountable Person must apply to register and meet additional requirements (if necessary) before occupation of the building can commence. This requirement will ensure that there is an Accountable Person assigned to the building, and they have the necessary skills, knowledge and experience to discharge their duties and any conditions attached to the registration certificate.

Question 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. The RIBA agree that it should be an offence for the Accountable Person to allow a building to be occupied before they have been granted a registration for that building, otherwise the process can be undermined.

Question 2.31

Do you agree that under certain circumstances partial occupation should be allowed? If yes, please support your view with examples of where you think partial occupation should be permitted

Yes. The RIBA agrees that under certain circumstances partial occupation should be allowed. This should only be permitted if this has been agreed at Gateway 2 or has undergone a major change with approval during construction (though this approval may take much longer). Partial occupation should only be permitted where it has been demonstrated that it would be safe to occupy under the Building Safety Case. The Building Safety Case should consider the building type, any remaining construction, the length of that construction and the risks to users.

Question 2.32

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

Yes. The RIBA supports the proposal to introduce the Gateway processes for buildings in scope of the proposed regulatory system, including those identified in Question 1.5, which undergo refurbishment and subject to material alterations.

Question 2.33

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

Yes. The RIBA agrees with the approach to transitional arrangements for gateways. However, the RIBA recommends that buildings that have passed gateway 2 before the proposed regulatory system is implemented, should be considered on a case by case basis and not necessarily subject to all requirements which cannot be met due to the current status of the project. The Ministry should test this issue through the Early Adopters Scheme.

<p>Question 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.</p>
<p>Yes. The RIBA supports the proposal that the Building Safety Case should be subject to scrutiny by the Building Safety Regulator at Gateway 3, prior to the issue of a Building Safety Certificate. This would ensure that the Building Safety Case adequately identifies the associated risks and hazards and demonstrates that the appropriate limits, conditions and safety measures have been put in place, for the ongoing use of the building.</p>
<p>Question 3.2 Do you agree with our proposed content for safety cases? If not, what other information should be included in the safety case?</p>
<p>Yes. The RIBA agrees with the proposed content of the Building Safety Case as described in this consultation.</p>
<p>Question 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</p>
<p>Yes. The RIBA agrees that a Building Safety Case is a reasonable approach for assessing risks on an ongoing basis, as risks to safety manifest constantly, either through improper use, faulty products, non-fault causes, deterioration, refurbishment works and introductions of new technologies.</p> <p>The RIBA supports the proposal that registration should be reviewed every 5 years, which should trigger a formal review of the Building Safety Case by the Building Safety Regulator. Where any significant issues arise through reporting, for example as a result of occurrence reports, refurbishment activity, concerns raised by residents or risk reports, the RIBA agrees that the Building Safety Case may be reviewed more often in some buildings. Where the regulator identifies issues of a similar nature across various buildings, then the regulator should review the process to ensure there is sufficient clarity and guidance available for design and construction dutyholders, the Accountable Person and the Building Safety Manager.</p>
<p>Question 3.4 Which options should we explore, and why, to mitigate the costs to residents of crucial safety works?</p>
<p>The RIBA suggests that the MHCLG consult with those affected (residents) directly, and as described in conjunction with the industry, residents' groups and leaseholder groups, to establish the most suitable way forward. The RIBA would suggest that a further consultation should be undertaken with the insurance and mortgage markets, to assess the impact on these markets and any coverage issues for leaseholders.</p>
<p>Question 3.5 Do you agree with the proposed approach in identifying the accountable person? Please support your view.</p>
<p>Yes. The RIBA agrees that the approach outlined to identify an Accountable Person is reasonable, relating to a person who has control of the building (whether an individual, partnership or corporate body) and who's right it is to receive funds (whether through service charges or rack rent), directly or indirectly, from leasehold owners and other tenants of the buildings, which contribute to the cost of the maintenance and upkeep of the structure of the building. This places the duties on the most appropriate person to take the liability for them.</p>

<p>The RIBA recommends that the approach for identifying the Responsible Person under the Fire Safety Order should be the same for residential buildings to ensure clarity.</p>
<p>Question 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.</p>
<p>The RIBA supports the MHCLG position to have an Accountable Person in multi-occupancy residential buildings of 18m and above from ground level, legally responsible the maintenance and upkeep of the structure of the building.</p> <p>Further consideration should be given to residential buildings below 18m and the scope of the Fire Safety Order, to ensure that the fire service have the power to inspect fire safety measures more deeply, where these buildings would fall outside the scope as described in this consultation. Currently, there are no provisions in the Fire Safety Order to give powers to the local fire services over flat front doors or any other fire safety measures within the flats, for example, flat fire alarm systems (See RIBA response to Question 1.8).</p>
<p>Question 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.</p>
<p>Yes. The RIBA supports the proposal to introduce an Accountable Person for existing multi-occupancy residential buildings of 18m and above from ground level. Without this requirement, there would be no duty to make these buildings as safe as possible, as the functions of this role would not be delivered by any other dutyholder.</p>
<p>Question 3.8 Do you agree that only the building safety regulator should be able to transfer the building safety certificate from one person/entity to another? Please support your view.</p>
<p>Yes, The RIBA agrees that only the Building Safety Regulator should be able to transfer the Building Safety Certificate from one person/entity to another. This would provide the necessary control mechanism for the Building Safety Regulator to manage this process, and for them to ensure that the new Accountable Person meets the requirements of registration and can demonstrate that they can manage the building safely. The Building Safety Regulator will also be able to keep an up to date record of the named persons and their interest in the building, ensuring that there is one point of contact and to provide clear accountability for residents and authorities.</p>
<p>Question 3.9 Do you agree with the proposed duties and functions of the building safety manager? Please support your view.</p>
<p>Yes. The RIBA agrees that the functions proposed for the role of a Building Safety Manager appear to be reasonable, and that they should have the necessary skills, knowledge and experience.</p>
<p>Question 3.10 Do you agree with the suitability requirements of the building safety manager? Please support your view</p>
<p>No comment.</p>

<p>Question 3.11 Is the proposed relationship between the accountable person and the building safety manager sufficiently clear? Please support your view.</p>
<p>No comment.</p>
<p>Question 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</p>
<p>The RIBA acknowledges the importance of a Building Safety Manager, to maintain information, ensure risks to the building and residents are mitigated, and to engage with residents. However, the Accountable Person should be given the opportunity to select a Building Safety Manager (be it through their own search or using any approved list of Building Safety Managers – if one is created, maintained and updated accordingly).</p> <p>The proposal where by the Building Safety Regulator selects a Building Safety Manager should not be permitted unless the Accountable Person fails to appoint a new Building Safety Manager, should the current one cease to carry out the function, within a specific timeframe. The timeframe will require further research, to ensure that it provides sufficient time to source and register a Building Safety Manager, to ensure the safety of the building and its residents.</p> <p>If the proposed route is maintained, then there needs to be systems in place to ensure that fees are not extortionate, as this may be a direct cost passed onto leaseholders. The RIBA suggests that a specific consultation is undertaken with industry, landlords, residents' groups and leaseholder groups, to ensure that the most appropriate solution is proposed and delivered.</p>
<p>Question 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.</p>
<p>No comment.</p>
<p>Question 3.14 Under those circumstances, how long do you think a building safety manager should be appointed for?</p>
<p>No comment.</p>
<p>Question 3.15 Under what circumstances should the appointment be ended?</p>
<p>No comment.</p>
<p>Question 3.16 Under those circumstances, how do you think the costs of the building safety manager should be met? Please support your view.</p>
<p>The RIBA suggests that a specific consultation is undertaken with industry, landlords, residents' groups and leaseholder groups, to ensure that the most appropriate solution is proposed and delivered.</p>

<p>Question 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</p>
<p>The RIBA supports the process of a registration scheme, to manage and interrogate the knowledge, skills and experience of the individuals responsible for managing and maintaining multi-occupancy residential buildings.</p> <p>This formal process will also provide assurance to residents that those in a controlling position of managing the building, are competent to discharge their duties, with the comfort that the regulator involved for the life of the building.</p>
<p>Question 3.18 Do you agree with the principles set out in paragraphs 180 and 181 for the process of applying for and obtaining registration?</p>
<p>No comment.</p>
<p>Question 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</p>
<p>Yes. The RIBA agrees that a ‘whole building’ approach is appropriate, and the obligations of the Accountable Person under the Building Safety Certificate should extend to all parts of the building. This should include all aspects set out in the fire and structural strategy that was developed and should also take into account neighbouring buildings and sites, which may have an adverse impact on the safety of the building (See RIBA response to Question 2.6).</p> <p>There should be a clear line between the obligations placed on the Accountable Person and those placed on the Responsible Person under the Fire Safety Order. The RIBA recommends that fire safety issues are best placed under the Fire Safety Order and that cooperation between regulators will be necessary.</p>
<p>Question 3.20 Do you agree with the types of conditions that could be attached to the building safety certificate? Please support your view.</p>
<p>Yes. The RIBA agrees that the types of conditions listed (mandatory, voluntary, special) are reasonable, and should be sufficient to impose conditions regarding building safety risks with an appropriate level of severity.</p>
<p>Question 3.21 Do you agree with the proposals outlined for the duration of building safety certificates? If not, please support your view.</p>
<p>Yes. The RIBA supports the proposal that the duration of the Building Safety Certificate matches the duration of the Building Safety Case review process, at a maximum of five years.</p>
<p>Question 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?</p>
<p>Yes. The RIBA supports the proposal that the Building Safety Regulator can review the Building Safety Certificate at any time, to ensure that the building is being managed</p>

effectively and that the Accountable Person and Building Safety Manager are discharging their duties.

Question 4.1

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

- a) New buildings in the design and construction stage, please support your view.
- b) New buildings in the occupation stage, please support your view.
- c) Existing buildings in the occupation stage, please support your view.

No. The RIBA does not agree that the Government should mandate the use of Building Information Modelling (BIM) standards, but the RIBA supports the use of BIM as good practice.

The RIBA recommends that any processes or information required by the Regulator should be for safety purposes only. During the project, the client may wish to have additional information or data to assist them in running their building and the use of BIM may be appropriate for this.

Further research into how this digital information would be used, not only within the design and construction stage, but within the occupation stage, should be considered. For example, the use of BIM in the design and construction stages of new buildings would be advantageous, to enable information management and co-ordination across the various disciplines. However, Information in this form is not widely used for construction purposes and is still rarely sufficiently developed for use in occupation. As there are no duties to keep this information updated during the occupation phase, model information will become out of date quickly beyond construction.

Question 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

Yes. The RIBA recommends that use of the industry wide process map, the RIBA Plan of Work provides a base level of guidance on how design information progresses in each stage and information in strategies is passed on with design information (e.g. fire, sustainability, health and safety, inclusive design, cost, digital).

The RIBA recommends that the Golden Thread as described in the consultation document should be considered as a concept that includes various forms of useful information, only some of which is required in the Gateway submissions.

The RIBA understands the Golden Thread as being made of the following information already required by regulators:

- Fire Statement,
- Building Safety Case,
- Key Dataset,
- Fire and Emergency File (as required under Regulation 38 of the Building Regulations 2010),
- Pre- Construction Information (as required under CDM 2015),
- Health and Safety File (as required under CDM 2015),

and the following information that is developed under instruction from the client, or main contractor, to run effective and efficient projects including:

- Project Strategies (reasons for design decisions relating to e.g. fire, sustainability, inclusive design, cost, construction technology, digital)

- Risk and opportunity registers
- Operation and Maintenance manuals

Any information not required by the regulator should not be identified in the proposed regulatory system and therefore the Golden Thread should only be a term used in guidance and not a term used in legislation. Dutyholders should only have duties to produce, coordinate, contribute to or submit information that is required by regulators or others in the project team to carry out their duties. Any additional information that may be part of a Golden Thread should be a decision for the project team to enable more effective working practices.

Any guidance on the concept of the Golden Thread should be compatible with the processes of Soft Landings (Usable Buildings Trust and BSRIA), which includes bringing facilities management thinking into the briefing and design stages. Information provided using this framework is rarely included on any construction documentation but is invaluable in ensuring that the intention of the design is not lost and would benefit those using or managing the building, including any future works.

The construction industry should be given the opportunity to develop its own guidance on managing a golden thread of information, not just for building safety, and this should not be regulated in a prescribed process or format so that the industry is free to continue to innovate in this important area.

Question 4.3

Are there other areas of information that should be included in the key dataset in order to ensure its purpose is met? Please support your view.

Yes. The RIBA recommends that in addition to quantity and location, under the ‘minimal information on safety-related features’, should also include maintenance safety information (these could be links to manufacturers information). In addition to fire doors and sprinkler systems, the RIBA recommends that other ‘safety features’ may also include ventilation systems, fire stopping, fire alarms and fire emergency lighting, lifts and stairs, risers and control panels.

Question 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. The RIBA agrees that a key dataset should be available for all buildings in scope. This should not contain information that would compromise the safety of buildings and their residents, privacy of residents, or any intellectual property rights.

Question 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. The RIBA does not agree that the Golden Thread should be a term in the legislation but agrees that residents should be entitled to obtain detailed information about the safety measures in their building, subject to security considerations.

Question 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

The RIBA recommends that the concept of the Golden Thread is only covered in guidance and not used in legislation (See RIBA response to Question 4.2.).

Question 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.

Yes. The RIBA recommends that any information produced, is only such information that is required for safety purposes. During the project, the client may wish to have additional information or data to assist them in running their building, and caution should therefore be applied to ensure that such information is not confused with relevant safety information.

The RIBA recommends that any requirements should have accompanying guidance notes, to ensure that relevant and critical information is produced. Guidance may also suggest a base level of detail and format, to meet a common standard, but should not limit dutyholders in producing information in more innovative ways.

Question 4.8

Is there any additional information that should make up the golden thread in occupation? If yes, please provide detail on the additional information you think should be included

No. The RIBA recommends that the concept of the Golden Thread is only covered in guidance and not used in legislation. The Building Safety Case and Fire and Emergency File are sufficient information during the occupation of the building.

Question 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. The RIBA supports the proposal that dutyholders (Client, Principal Designer, Principal Contractor, and Accountable Person during occupation) should have a responsibility to confidentially report occurrences. However, the RIBA acknowledges that the scope outlined should be widened to include all dutyholders (Designers and Contractors), and that there should be a responsibility on each dutyholder to establish a reporting system.

The RIBA supports the use of the Confidential Reporting on Structural Safety (CROSS) scheme, which should be extended and strengthened, as the reporting system. However, the RIBA recommends that the MHCLG should consider the wider application of CROSS, for other regulatory issues and apply this to all buildings, both above and below 18m in height (See RIBA response to Question 4.12).

The RIBA supports the proposals from Structural Safety:

1. The existing voluntary CROSS reporting system for structural safety issues will be enhanced by the addition of reporting for fire safety issues to improve public safety.
2. The introduction of mandatory reporting will also improve public safety and should be for occurrences where the level of risk for affecting life safety is high in buildings above 18m in height.
3. Voluntary reporting through CROSS should be applied across all buildings, both above and below 18m in height.

<p>Question 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.</p>
<p>Yes. The RIBA believes that the proposal to introduce, widen and strengthen CROSS, to be utilised as the reporting system is necessary to instil a change in culture, alongside other reforms as described in this consultation.</p> <p>The RIBA supports the response from Structural Safety in that CROSS has been successful in influencing changes in safety culture, which informs without attributing blame for the public good and to share lessons learned with industry to help to prevent future failures. The RIBA believes that these lessons can be expanded by including other regulatory requirements across all building types (See RIBA response to Question 4.12).</p>
<p>Question 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?</p>
<p>Yes. The RIBA supports the view that where an occurrence has been identified, dutyholders must report this to the Building Safety Regulator within 72 hours.</p>
<p>Question 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?</p>
<p>Yes. The RIBA agrees that the scope of mandatory occurrence reporting should cover fire and structural safety concerns, but as a minimum.</p> <p>The RIBA recommends that the MHCLG should consider the wider application of CROSS, so other regulatory issues that may arise can also be reported. This would also provide evidence and any trends regarding other regulatory requirements across all building types, regardless of height, which could then be shared with industry to help to prevent future failures.</p>
<p>Question 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.</p>
<p>Yes. The RIBA agrees that that mandatory occurrence reporting should be based on the categories of fire and structural safety concern reports identified in the prescriptive list (paragraph 222). Further to the RIBA response in Question 4.12, further consideration should be given to widening the overarching categories, beyond that of fire and structural safety reporting.</p> <p>Given the wide scope, the RIBA recommends that the categories of fire and structural safety concern would be best written into guidance, which we expect will be reviewed more frequently than legislation.</p>
<p>Question 4.14 Do you have any suggestions for additional categories? Please list and support your view.</p>
<p>No. The RIBA have no further comments for additional categories in relation to fire and structural safety. However, as per the RIBA response to Question 4.12 and 4.13, the RIBA</p>

<p>suggest that the MHCLG consider how other regulatory issues that may arise can also be reported.</p>
<p>Question 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.</p>
<p>The RIBA would support voluntary occurrence reporting during the design stage of a building to CROSS only, where issues are identified, but are designed out as part of the process through iterative design.</p> <p>The RIBA recommends that in cases where such issues are not resolved during the design stage, these should be reported to CROSS to enable learning, and it should be a mandatory requirement to report this to the regulator.</p>
<p>Question 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.</p>
<p>Yes. The RIBA supports the proposal that the Building Safety Regulator should be made a prescribed person under Public Interest Disclosure Act 1998 (PIDA), to provide protections from detrimental treatment or victimisation from their employer to workers making disclosures in the public interest.</p>
<p>Question 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.</p>
<p>Yes. The RIBA supports the proposal to develop an overarching competence framework for buildings in scope. The ARB as the statutory regulator for architects, rather than UKAS or the Engineering Council, should be responsible for the accreditation/licensing of qualifying bodies for architects, including the RIBA, who will hold registers of competent architects (Designers) for buildings in scope. The RIBA are also prepared to support the delivery of a Principal Designer accreditation scheme for architects.</p>
<p>Question 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</p>
<p>Yes. The RIBA supports the proposal of the of the Building Safety Regulator’s statutory objectives to ‘promote building safety and the safety of persons in and around the building’. This can disseminated as guidance for learning, developed directly through gathering evidence through their duties when imposing requirements on, or in taking enforcement action against dutyholders.</p>
<p>Question 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</p>
<p>Yes. The RIBA recommends that all dutyholders should have a general duty to promote building safety and the safety of persons in and around the building, throughout the building life cycle. This overarching duty would promote good practice and ensure that dutyholders</p>

take a proactive approach to managing the safety of their buildings, rather than a reactive approach.

Question 4.20

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

Yes. The RIBA recommends that CDM 2015 is extended to include new duties on Clients, Designers, Contractors, Principal Designers and Principal Contractors on all projects, although some duties will only apply to dutyholders if the building falls under the proposed regulatory system. If the Ministry is unable to enable the extend CDM then new parallel legislation should be created that does not allow two different Principal Designers on a project.

Extending CDM 2015 will ensure the deepest possible change in culture in the industry as proven by CDM and would leave no construction project without these necessary duties. The RIBA believes that such an approach would place the appropriate accountability on each dutyholder for building safety and compliance with building regulations (See RIBA response to Question 2.1).

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

<p>Question 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</p>
<p>Yes. The RIBA would support the information requirements outlined in the consultation, as the core information that should be provided for use by residents. The RIBA suggests that a specific consultation is undertaken with landlords, residents' groups and leaseholder groups, to ensure that their views are also taken into account, prior to finalising this information set.</p> <p>The RIBA believes that the regulator could provide best practice examples from past cases, as part of the guidance provided, to help structure and present information in a clear, consistent and accessible format for all users.</p>
<p>Question 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.</p>
<p>Yes. The RIBA supports the list of examples of information a Responsible Person must make available to residents on request, and within a specific timescale. The RIBA suggests that a specific consultation is undertaken with landlords, residents' groups and leaseholder groups, to ensure that their views are also taken into account, prior to finalising this information set and timescales for providing such information upon request.</p>
<p>Question 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?</p> <ul style="list-style-type: none"> • Relative, • Carer, • Person with Lasting Power of Attorney, • Court-appointed Deputy, • Other (please specify).
<p>Yes. The RIBA agree that a nominated person who is a non-resident be able to request information on behalf of a vulnerable person who lives there, to ensure that those residents maintain access to building information as described in Question 5.2.</p> <p>The MHCLG should consider how this will operate, including procedures to check any necessary documentation to verify the relationship to the resident.</p>
<p>Question 5.4 Do you agree with the proposed set of requirements for the management summary? Please support your view.</p>
<p>The RIBA suggests that a specific consultation is undertaken with landlords, residents' groups and leaseholder groups, to ensure that the most appropriate solution is proposed and delivered.</p>

<p>Question 5.5 Do you agree with the proposed set of requirements for the engagement plan? Please support your view.</p>
<p>The RIBA suggests that a specific consultation is undertaken with landlords, residents' groups and leaseholder groups, to ensure that the most appropriate solution is proposed and delivered.</p>
<p>Question 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.</p>
<p>Yes. The RIBA supports the introduction of a new requirement on residents of buildings to co-operate with the Accountable Person and the Building Safety Manager to allow them to fulfil their duties. Residents play a crucial role in ensuring that they, their neighbours and their building remain safe, as they are in control of issues that relate to the internal parts of their properties and how they use the building.</p>
<p>Question 5.7 What specific requirements, if any, do you think would be appropriate? Please support your view</p>
<p>The RIBA suggests that the requirements on residents of buildings to co-operate with the Accountable Person and the Building Safety Manager to allow them to fulfil their duties, as a minimum, should include the requirement to:</p> <ul style="list-style-type: none"> • provide reasonable access (reasonable notice should be given, and access should be granted in a reasonable time, in relation to the severity of the issue (if known) and risk to the occupants, or in order to comply with any requirements) • enable inspections • provide information about any works (this could also have an exemptions list, so general tasks like painting do not need to be reported) • comply with orders from the Accountable Person / Building Safety Manager, where such identified issues could jeopardise the safety to all persons with in the building (directly or indirectly affecting the fire strategy). <p>The RIBA suggests that a specific consultation is undertaken with landlords, residents' groups and leaseholder groups, to ensure that the most appropriate scope of requirements is proposed and delivered.</p>
<p>Question 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?</p>
<p>Yes. The RIBA agrees that adequate safeguards are required to ensure that residents' rights are protected, should the new requirement on residents to co-operate with the Accountable Person and the Building Safety Manager is implemented. This would ensure that residents can undertake work of which they are permitted to (i.e. leaseholders who have ownership of their flats, within permission from the landlord where required as per the terms of their agreement), unless this is detriment to the safety of the building.</p>

<p>Question 5.9 Do you agree with the proposed requirements for the accountable person's internal process for raising safety concerns? Please support your view.</p>
<p>Yes. The RIBA believes that the proposed requirements for the Accountable Person's internal process for raising safety concerns listed in the consultation, appears to be reasonable. However, the RIBA suggests that a specific consultation is undertaken with landlords, residents' groups and leaseholder groups, to ensure that the most appropriate processes, standards, conditions and topics of concern are proposed and delivered.</p>
<p>Question 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?</p>
<p>The RIBA suggests that a specific consultation is undertaken with landlords, residents' groups and leaseholder groups, to ensure that the most appropriate processes, standards and conditions are proposed and delivered.</p>
<p>Question 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.</p>
<p>The RIBA believes that the duty to cooperate, applied to a range of interested parties such as those managing existing redress schemes and other new regulatory bodies, to support the system of escalation and redress, appears to be reasonable. The RIBA suggests that a specific consultation is undertaken with the regulators, relevant industry bodies, landlords, residents' groups and leaseholder groups, to ensure that the most appropriate processes, standards and conditions are proposed and delivered.</p>

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

Question 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.

The RIBA supports the principle of an independent periodic review of the system, including the work of the proposed new body and the implementation of any changes, every 5 years.

Given the radical change to the regulatory system and its processes, the review process should capture any issues, unintended consequences and safety concerns, and enable these to be addressed without compounding the severity of the issue to a much larger proportion of buildings, if this timeframe was any longer.

Question 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. The RIBA agrees that the regulatory and oversight functions listed (paragraph 315) are the right functions for a new Building Safety Regulator to undertake to contribute to the aim of ensuring buildings are safe.

The RIBA supports the responsibility given to the Building Safety Regulator to oversee the building safety and wider regulatory system as a whole. However, the RIBA recommends that further detail should be provided in appropriate technical guidance (paragraph 315, item iii c), including parameters, limits and prescriptive requirements, to provide clarity. The RIBA have outlined the need for baseline prescriptive requirements in Approved Document B, including non-combustible cladding, sprinklers and means of warning and escape (See supporting evidence: RIBA consultation response to the technical review of approved document B of the building regulations - a call for evidence).

The RIBA recommends that the proposed Building Safety Regulator should ensure that technical guidance given to industry is reviewed holistically, including key relevant British Standards. This must also include reviews of BS 9999: 2017 (Fire safety in the design, management and use of buildings. Code of practice), BS 9991: 2015 (Fire safety in the design, management and use of residential buildings. Code of practice) and BS 7974:2019 (Application of fire safety engineering principles to the design of buildings. Code of practice) where limits for risk-based fire engineering design should be considered, such as maximum travel distances.

Supporting Evidence

RIBA consultation response to the technical review of approved document B of the building regulations - a call for evidence <https://www.architecture.com/-/media/files/press-release/riba-response-technical-review-adb-010319.pdf> [Submitted to MHCLG, 19/03/01]

Question 6.3

Do you agree that some or all of the national building safety regulator functions should be delivered ahead of legislation, either by the Joint Regulators Group or by an existing national regulator? Please support your view.

No. The RIBA acknowledges the significance of the reforms to ensure building safety, and the key emphasis of this is the roles and responsibilities of the dutyholders. However, this

cannot be implemented without legislation, as there will be no statutory duties on the dutyholders within the framework to undertake work within the umbrella of the new regime.

The RIBA recommends that in the interim, the Early Adopters Scheme should be extended as much as possible, including to other bodies, to build on the evidence and accuracy of information obtained to date, test different working procedures and implementation methods of the proposals. This would assist Government when developing policy and guidance and provide an evidence base of good practice processes, which would be fundamental in guiding the trajectory of that work.

Question 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

Competence of Architects

The consultation document recognises that the proposed regulatory system will rely on the competence of all those working on buildings in scope, and includes proposals for a new competence regime. (Height is not the sole factor in determining the risk of large-scale loss of life in building fires, and the RIBA believes that a wider range of building types should be included in the scope of the proposed regulatory system. It is recognised in the consultation document that the reforms could be applied to a wider range of buildings.)

The Architects Act 1997 establishes architects as a regulated profession, with the Architects Registration Board (ARB) designated as the competent authority in the United Kingdom for the purposes of EU Directive 2005/36/EC on the recognition of professional qualifications. (The professions whose recognition falls under the directive are nurses, midwives, doctors, dental practitioners, pharmacists, architects and veterinary surgeons.) The knowledge and skills required of recognised architects are set out in Article 46 of the Directive. Section 9 of the Architects Act 1997 requires that the ARB only admits to the Register architects that it is satisfied are competent to practice. Whilst work on higher-risk buildings may require additional levels of knowledge, skills and experience, it is important that all architects have a baseline level of awareness and expertise in the life safety aspects of building design. Indeed, with this in mind, the RIBA is currently developing a mandatory health and life safety CPD curriculum for its UK chartered members.

The RIBA supports the proposal to develop an overarching competence framework for buildings in scope. The ARB as the statutory regulator for architects, rather than UKAS or the Engineering Council, should be responsible for the accreditation/licensing of qualifying bodies for architects, including the RIBA, who will hold registers of competent architects (Designers) for buildings in scope. The RIBA are also prepared to support the delivery of a Principal Designer accreditation scheme for architects.

In order to satisfy the market demand for architects in the UK, it is highly likely that architects from other countries will continue to move to the UK to take up employment. In the changing political and economic landscape following the EU referendum a greater proportion of these architects may come from countries outside the EU. As the profession is only covered by 'protection of title' rather than 'protection of function' it is perfectly possible for any individual to provide architectural services. However, this also means that they are out of the scope of the regulator and the RIBA. The complications and cost of applying as an architect qualified in a third country, combined with the lack of 'protection of function' acts as incentive against coming under the regulation of the ARB. In order to avoid excessive and costly utilisation of the somewhat cumbersome ARB Prescribed Examination for individual candidates, the ARB as regulator should be granted the powers to negotiate Mutual Recognition Agreements

(MRAs) with third countries and via such arrangements ensure the competence of those registering in the UK on the basis of recognised international qualifications. The RIBA wants to ensure that these agreements uphold standards within UK architecture sector, including in relation to building safety, and therefore recommends that in the first instance these should be explored in countries with equivalent standards of professional education as found in the UK. Such MRAs would also be beneficial to future trade agreements and export of UK architectural services. Such powers would help to ensure the required minimum standard of competence in building safety, and have the added benefit of supporting future trade deals and the effective engagement of the UK architect profession in the international market for architectural services.

Question 7.2

Government agrees with the Competence Steering Group's recommendations for establishing an industry-led committee to drive competence. Do you agree with this proposal? Please support your view.

Yes. The RIBA supports the Competence Steering Group's recommendations for establishing an industry-led committee to drive competence.

Question 7.3

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

The RIBA, with regards to the formation of an industry committee, comprising relevant industry bodies, independent experts, building owners and residents to drive competence by providing oversight and assurance, have the following comments;

- The RIBA supports the proposal for the committee to work with and challenge relevant professional and trade bodies to drive gap filling, peer review and agree individual competence frameworks for all disciplines working on buildings in scope.
- The RIBA does not support the proposal for the committee to issue guidance on how to ensure competent people are deployed at each stage, and should work with professional bodies to develop this guidance.
- The RIBA supports the proposal for the committee to provide a space for which professional and trade bodies can continue to work collaboratively to monitor and review individual competence frameworks, and to drive competence more widely.
- The RIBA does not support the proposal for the committee to provide guidance and signposting applicable legislation and standards relevant to buildings in scope. The RIBA recommends that professional and trade bodies should undertake this function, discussing them in the space provided by the committee.

Question 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.

No. The RIBA appreciates the importance of the work on competence is continued, however an interim committee should not be formed until a more rigorous competency framework is agreed.

<p>Question 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.</p>
<p>Yes. The RIBA would support the approach of an 'inventory list', which would provide clarity and confidence for those specifying materials for buildings in scope. However, as noted in the consultation, the 'inventory list' should be not only be amended by the relevant authorities to include further construction product standards when established and/or identified, but to be updated to reflect new applicable products, to ensure that product innovation and development is not stifled. It should be a live document to be updated to suit the needs of the industry and Building Safety Regulatory.</p>
<p>Question 8.2 Do you agree that an 'inventory list' should begin with including those constructions products with standards advised in Approved Documents? Please support your view.</p>
<p>Yes. The RIBA agrees that the approach to list products in the 'inventory list' should begin with including those constructions products with standards advised in Approved Documents.</p>
<p>Question 8.3 Are there any other specific construction products that should be included in the 'inventory list'? Please list.</p>
<p>Yes. The RIBA recommends that any products referenced in BS 9991:2015 (Fire safety in the design, management and use of residential buildings. Code of practice) and BS 9999:2017 (Fire safety in the design, management and use of buildings. Code of practice) should be included in the 'inventory list'.</p>
<p>Question 8.4 Do you agree with the proposed approach to requirements for construction products caught within the new regulatory regime? Please support your view.</p>
<p>Yes. The RIBA supports the proposal to extend and also strengthen several of the requirements placed on construction products with an EU harmonised standard across construction products caught within this new regime, as this would provide clarity for specifiers and the regulator. The RIBA supports the specific areas identified, which includes:</p> <ul style="list-style-type: none"> • clear labelling including a unique identifier • a declaration of performance • having in place systems to ensure that the products they manufacture consistently meet the claimed performance standard
<p>Question 8.5 Are there further requirements you think should be included? If yes, please provide examples</p>
<p>No comment.</p>
<p>Question 8.6 Do you agree with the proposed functions of a national regulator for construction products? Please support your view.</p>
<p>Yes. The RIBA supports the proposed functions of a national regulator for construction products, to ensure that there is a robust and effective enforcement, complaint investigation and surveillance regime to provide greater assurance that products deliver as expected.</p>

<p>Question 8.7 Do you agree construction product regulators have a role in ensuring modern methods of construction meet required standards? Please support your view</p>
<p>Yes. The RIBA agrees that construction product regulators should have a role in ensuring modern methods of construction meet required standards, and work with other regulators to make sure they are installed and used in a safe way, to achieve a joined-up approach in the process. These parties should have a duty to cooperate with each other and have the necessary skills and knowledge to undertake their role.</p>
<p>Question 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.</p>
<p>No. The RIBA believe that construction product regulators should ensure that all manufacturers of construction products provide adequate product information in an accessible and logical format. Designers and contactors, where sufficient information has been provided, should be responsible for ensuring modern methods of construction are used safely.</p>
<p>Question 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.</p>
<p>Yes. The RIBA supports the proposed powers and duties set out for the national regulator to act should manufacturers break the law or products be determined as unsafe, and to include a duty on all actors in the industry to share information with the products regulator if there is a public safety concern or if the regulator requests it.</p> <p>The regulator requires sufficient powers to instil change, to act as a deterrent, and take further action where manufacturers break the law.</p>
<p>Question 8.10 Are there other requirements for the umbrella minimum standard that should be considered? If yes, please support your view.</p>
<p>No comment.</p>
<p>Question 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?</p>
<p>Yes. The RIBA supports the proposed minimum standards set out for independent assurance schemes.</p>
<p>Question 8.12 Do you agree with the proposal for the recognition of third-party certification schemes in building regulations? Please support your view.</p>
<p>Yes. The RIBA supports the proposal for recognition of third-party certification schemes, which can be used to demonstrate compliance with the building regulations, including Regulation 7 (materials and workmanship).</p> <p>Independent third-party certification schemes provide greater certainty for designers and specifiers regarding the use and performance of materials, products and systems in use.</p>

Question 8.13

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

Yes. The RIBA supports minimum standards set out for independent assurance schemes, to provide a clear benchmark for the performance of materials, products or systems and simplifying the review and approval processes.

Question 8.14

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

Yes. The RIBA supports minimum standards set out for independent assurance schemes, to provide a clear benchmark for the performance of materials, products or systems and simplifying the review and approval processes.

Question 8.15

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

Yes. The RIBA believes that there could be challenges with minimum standards, but our key concern can be easily mitigated. It will be important that 'materials' which fall under the European Council Decision which lists products that are deemed to satisfy A2-s1, d0 or A1 classification without further testing (EU Commission Decision 96/603/EC Amended), are still be permitted to be used without independent third-party certification. If materials cannot rely on the European Council Decision this will place undue burdens on industry to undertake unnecessary testing.

Chapter 6: Enforcement, compliance and sanctions

<p>Question 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?</p>
<p>Yes. The RIBA supports the principles set out in the three-step process, whereby the Building Safety Regulator will provide effective incentives at each stage to promote high standards of safety by dutyholders/Accountable Persons, or address non-compliance with the necessary enforcement powers. This progressive staged approach sets out a clear escalation process to deliver compliance.</p>
<p>Question 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?</p>
<p>The RIBA generally agrees with the principal to introduce criminal offences to those who have not complied with their duties. The RIBA believe that it should be a criminal offence if;</p> <ul style="list-style-type: none"> i. an Accountable Person fails to register a building ii. an Accountable Person or Building Safety Manager fails to comply with building safety conditions iii. dutyholders carry out work without the necessary gateway permission <p>The RIBA urges that further consultation and clarity is provided for Item 3, to ensure that dutyholders are not held accountable for continuing work in-between Gateways 1 and 2. For example, a client(s) may wish to continue design work at risk while their Gateway 1 submission is under review - this should not be a penalty.</p> <p>Further consideration should also be given to the process of phased submissions at Gateway 2, where agreed at the outset, to ensure that there is a clear distinction to how approvals are given for each stage of the works and how this will be managed, both on submissions and onsite compliance.</p>
<p>Question 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.</p>
<p>Yes. The RIBA agrees that the sanctions regime under Constructions Products Regulations SI 2013 should be applied to a broader range of products.</p>
<p>Question 9.4 Do you agree that an enhanced civil penalty regime should be available under the new building safety regulatory framework to address non-compliance with building safety requirements as a potential alternative to criminal prosecution? Please support your view.</p>
<p>Yes. The RIBA agree that the proposed enhanced civil penalty regime is a practical and proportionate alternative to criminal sanctions. As such it is more likely to be used and therefore the sanctions are more likely to be considered as a credible and realistic risk that in turn will influence the behaviour of dutyholders.</p>

Question 9.5

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

No. The RIBA recommend that the time limit for enforcement action should commence upon completion of the non-compliant work.

Question 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. The RIBA beleievs that extending the time limits under sections 35 and 36 in the Building Act 1984 for taking enforcement action (including prosecution), to 6 years, is reasonable. This would fall in line with current civil profession indemnity insurance provisions in contracts.