



**NFCC**  
National Fire  
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The professional voice of the  
UK Fire & Rescue Service

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## **Building Safety Regulator Operational Standards Rules Consultation Response**

NFCC welcome the opportunity to respond to the Building Safety Regulatory (BSR) Operational Standards Rules (OSR) consultation. While we support the majority of principles in this consultation, there are several areas we hold significant concerns about. These areas include:

- The status given to comments made by fire and rescue services (FRSs) as a statutory consultee
- Competency
- Independence within building control bodies (BCBs)
- Proportionality in regard to compliance with building regulations

It is encouraging that there will be one set of rules across building types for consistency of regulatory approach, however, it remains unclear how the BSR itself will be held accountable for maintaining the OSR it will also be subject to. As the BSR itself will be the BCB for buildings in scope of the new regime, this must be clarified.

It is necessary to ensure staff who are employed by the BSR to perform related functions as part of the Gateways regime also meet appropriate standards of competency. Currently, this appears to be an oversight, and NFCC call upon Government to address this to ensure staff from all regulators meet appropriate competency standards. BCBs will expect dutyholders to provide explanations for the appropriateness of the guidance they have used for compliance with the functional requirements of the regulations. However, it is not clear what competence the BSR and BSR staff currently have to assess this detail.

NFCC welcome rules 1.4 and 3.8, however, we recommend that the need to reach consensus is strengthened significantly. While we note the expectation is to seek the views of statutory consultees and the recommendation to seek consensus, the views expressed by FRSs as a statutory consultee are often ignored or dismissed. This may possibly be influenced by concern from a BCB that being too robust may detrimentally affect future business with the same client or design team.

While BCBs are currently asked to have due regard to FRS observations, there is no requirement on the applicant or the BCB to satisfy FRS comments or respond to them, and this can lead to buildings that may have an unrealistic expectation to ensure safety when occupied. We have previously provided multiple examples of occasions when FRS comments have been disregarded, and outcomes have included issues in occupation such as:

- Issuing of Prohibition Notices
- Implementation of waking watches
- Increased pre-determined levels of FRS attendance to buildings
- Increased regulatory activity

On multiple occasions, FRSs and NFCC have raised concerns relating to BCB conflicts of interest, whereby building design strategies are drawn up by a BCB design arm which is then approved through the same BCB's regulatory arm. There needs to be strong non-compliance penalties to ensure BCBs adhere to the proposed controls within this consultation. In regard to buildings in scope of the Gateways regime, NFCC believe that the views provided by FRS personnel when acting on behalf of a multi-disciplinary team should be treated as comments made by the building control authority itself. Any comments made by the FRS member of the team should have to be addressed and cannot be ignored as is the case presently. We also consider that Building Regulations Fire Safety Procedural Guidance should be made mandatory to clearly define the consultation process between FRSs and BCBs.

NFCC note that a number of the concepts being consulted on are intended to be read alongside HSE's Enforcement Policy Statement, which is yet to be published. This has, therefore, significantly impacted our ability to be able to comment.

### **Proportionality in delivering a building control function**

NFCC have significant concerns about paragraphs 27-30 of the consultation, which relate to proportionality for interventions and enforcement at building regulations stage. This states that interventions and enforcement should be "proportionate to the risk posed by non-compliance with the act and building regulations. They must consider the potential and actual harm those risks could bring about, and the seriousness of any breach of the law." This seems to be in direct contradiction to the statement made in paragraph 26, which outlines that dutyholders have to ensure building work is compliant. This also directly flies in the face of the principles of creating a hard stop (for buildings in scope of the Gateways regime) until building regulation compliance can be demonstrated.

NFCC challenge the legitimacy of this approach as it is not in line with the core public policy intent of the building safety reforms or, in fact, the current regime, which states that buildings must comply with the building regulations. The entire design of the regulatory approach to occupied buildings after they are built is underpinned by a reliance that they have been built correctly and in accordance with building regulations from the outset. A risk-based approach to enforcement post-occupation cannot work if the same model of risk is also applied during construction, which increases the risk of incorrect assumptions being compounded in the regulation of buildings. This introduces an intolerable degree of risk, akin to trying to stop a flood with a single sandbag.

### **Consumer protection for homebuyers**

NFCC are at a loss to understand how this resolves the consumer protection issues currently plaguing the housing market, with leaseholders unable to sell their flats due to the

vast number of defects now pervasive in the built environment. There appears to be no potential for redress to the developer who has the ultimate responsibility for compliance.

### **Design and approval**

Currently there is no restriction or control over BCBs undertaking their building control function within the same company structure as design teams, such as fire engineers for the same project. Consequently, those designing and approving buildings can be within the same overall company, which in some instances appears to be undertaken without the required building control impartiality. While some companies operate this model independently and objectively, others do not. Our members have noted numerous occasions where, in our opinion, such a model has resulted in insufficient assessment or scrutiny being undertaken on the design. In some such cases, we believe the BCB has appeared minded to approve unsafe designs within such a company design/approval model.

We look forward to working further with colleagues in HSE to resolve these issues and ensure the new BSR is fit for purpose.

Yours sincerely,



**Nick Coombe**

Head of Protection Policy and Reform Unit  
National Fire Chiefs Council

## Organisational Information

**Are you responding on behalf of an organisation?**

Yes

**What is your name?**

Nick Coombe

**What is your email address?**

[PPRUAdminTeam@nationalfirechiefs.org.uk](mailto:PPRUAdminTeam@nationalfirechiefs.org.uk)

**What is the name of the organisation that you represent?**

National Fire Chiefs Council (NFCC)

**Which category best describes you or the organisation you represent?**

Trade Association

**Approximately how many people work in your organisation?**

50-249

**Which country does your business operate in?**

Other – NFCC is the professional voice of fire and rescue services in England, Scotland, Wales and Northern Ireland

**Please indicate if you do not wish for the details of your response to be available to the public.**

Not applicable

**As part of this consultation HSE may want to contact you again to clarify or get further information on the responses you provide. Are you happy for HSE to contact you?**

Yes

## Systems and controls

### 1. How confident are you, that you / your building control body can fulfil the rules outlined in Systems and Controls?

- Very confident
- Somewhat confident
- Not at all confident

#### If not at all confident, please tell us which rule(s) you are concerned about and why (150 word limit)

NFCC welcome rule 1.4. While BCBs are currently asked to have due regard to FRS observations, there is no requirement on the applicant or the BCB to satisfy FRS comments or respond to them. We have previously provided multiple examples of occasions when FRS comments have been disregarded and outcomes have included issues in occupation such as:

- Issuing of Prohibition Notices
- Implementation of waking watches
- Increased pre-determined levels of FRS attendance to buildings
- Increased regulatory activity

NFCC believe there needs to be strong non-compliance penalties to ensure that BCBs adhere to the proposed controls within this consultation. We also consider that the Building Regulations Fire Safety Procedural Guidance should be made mandatory to clearly define the consultation process between FRSs and BCBs.

Ideally 1.6 should include the ability to transfer information between partner regulators and other interested parties as required while maintaining data security and benefits of electronic data storage.

### 2. Thinking about rule 1.13, are there types of conflicts of interest unique to the building control industry?

- Yes
- No
- N/A

#### If yes, please give us your building control example(s) and explain your reasons (150 word limit)

NFCC are pleased to note rule 1.13. On multiple occasions, FRSs and NFCC have raised concerns relating to BCB conflicts of interest, whereby building design strategies are drawn up by a BCB design arm which is then approved through the same BCB's regulatory arm.

There may be projects which are part of the wider organisation, especially in a local authority, where works may be carried out by others, effectively on their behalf. These would come under a conflict of interest. It is important for organisations to understand where the boundaries of any conflict of interest lie.

NFCC believe that there needs to be strong non-compliance penalties to ensure that BCBs adhere to the proposed controls. We also consider that Building Regulations Fire Safety Procedural Guidance should be made mandatory to define the consultation process between FRSs and BCBs.

## Persons

### 3. How confident are you, that you / your building control body can fulfil the rules outlined in Persons?

- Very confident
- Somewhat confident
- Not at all confident

#### If not at all confident, please tell us which rule(s) you are concerned about and why (150 word limit)

Competence should be clearly defined as it is a critical term and could be misconstrued. Reference should be made to compliance with the competence framework for building inspectors and building control approvers, which is currently in development, within the OSR.

NFCC agree that only competent persons should be delivering the building control function , however, there will be individuals on development who need to build experience on projects to achieve competence. This should be considered in the OSR by permitting this if persons on development are closely supervised and all work is peer reviewed by a competent person.

NFCC note that different codes of conduct are referenced for building control approvers and building inspectors. If the ambition is to provide consistency across the sector, it would seem appropriate for them to work to the same code of conduct.

Identifying or dealing with poor performance could be linked to rule 2.3.

## Building control functions

### 4. How confident are you, that you / your building control body can fulfil the rules outlined in Building control functions?

- Very confident
- Somewhat confident
- Not at all confident

#### If not at all confident, please tell us which rule(s) you are concerned about and why (150 word limit)

NFCC welcome the requirement for the BCB to consult with statutory consultees, and that any observations that are not accepted need to be supported by a registered building inspector **and provided in writing**. We have previously provided multiple examples of occasions when FRS comments have been disregarded and outcomes have included issues in occupation such as:

- Issuing of Prohibition Notices
- Implementation of waking watches
- Increased pre-determined levels of FRS attendance to buildings
- Increased regulatory activity

The requirement to respond to statutory consultees and to justify the lack of adoption of any comments is also a positive OSR to raise standards across the industry.

3.1 describes a process that happens in most circumstances where the BCB has significant interaction with the client/designers/contractors. Regardless of intention, there is normally interaction which could lead the BCB to be considered a designer. To avoid this will require a significant cultural change in BCBs.

**5. Thinking about rule 3.13, how confident are you / your building control body that inspection reports are received within two working days?**

- Very confident
- Somewhat confident
- **Not at all confident**

**If not at all confident, please tell us what an achievable time frame would be.**

NFCC consider that this is a very short time frame for any organisation to work to. It is proposed that five working days would be a more reasonable time frame, or there should be the ability for the BCB to negotiate to extend this time frame where additional detail is to be supplied to the BCB, or the building is complex in nature. Otherwise poor quality reports may be provided that fail to capture salient information.

- Three working days
- Four working days
- **Five working days**

**6. Thinking about rule 3.14, how confident are you that you / your building control body can inform other regulators of changes or concerns prior to occupation or the risk occurring?**

- Very confident
- Somewhat confident
- **Not at all confident**

**If not at all confident, please tell us why this information could not be provided (150 word limit)**

Rule 3.14 is not clear in its intent. Currently, it reads that changes to a project can be notified to interested parties just before occupation of the building, as the phrase “prior to the potential of non-compliance occurring during building work” is unclear and could potentially be used to reduce the frequency of notifiable changes or other areas of concern to other parties.

It might be useful to phrase this as “notifications should occur as soon as reasonably practicable and, in any event, prior to the potential etc...”

## **Enforcement and intervention**

**7. How confident are you, that you / your building control body can fulfil the rules outlined in Enforcement and intervention?**

- Very confident
- Somewhat confident
- **Not at all confident**



**If not at all confident, please tell us which rule(s) you are concerned about and why (150 word limit)**

NFCC consider that a limit on the length of time a contravention is not resolved before reversion of projects to the relevant local authority is appropriate. This will ensure that issues are resolved in a timely manner rather than the local authority being called in at the last minute prior to occupation.

The practical meaning of 4.1 is not clear – to what degree is ‘full effect’ and how should that be demonstrated? If this refers to the use of all of the available powers in a proportionate and effective way in order to achieve positive resolutions, then it should state it more explicitly.

**8. Thinking about rule 4.2, how confident are you / your building control body in being able to update records within two working days?**

- Very confident
- Somewhat confident
- **Not at all confident**

**If not at all confident, please tell us what an achievable time frame would be.**

- Three working days
- Four working days
- **Five working days**

## **Annex A – BSR monitoring arrangements including reportable data and key performance indicators (KPI)**

**9. HSE is planning to conduct a data collection and KPI pilot ahead of becoming mandatory in April 2023. Would you like to participate in this pilot?**

- Yes
- No
- **N/A**

**If yes, please tell us your email address**

Not applicable.

### **KPI 1 – competence (knowledge and expertise)**

**10. Thinking about KPI 1, how much of the data proposed are you already collecting?**

- Most or all
- Some
- Few or none

**If few or none or some, please tell us which specific data elements are not collected and why (150 word limit)**

Not applicable.



**11. Thinking about KPI 1, are there any KPIs you recommend we consider further? If any, please provide details and reasons why**

**Add comment (150 word limit)**

Competence needs to be defined as this is a key term. This should be linked to the Competence Framework for Building Inspectors, which is currently in development, and the different competence standards that are described within that document for different types of premises.

## **KPI 2 – systems and controls**

**12. Thinking about KPI 2, how much of the data proposed are you already collecting?**

- Most or all
- **Some**
- Few or none

**If few or none or some, please tell us which specific data elements are not collected and why (150 word limit)**

Not applicable.

**13. Thinking about KPI 2, are there any KPIs you recommend we consider further?**

**If any, please provide details and reasons why (150 word limit)**

No further comment.

## **KPI 3 – complaints handling and appeals**

**14. Thinking about KPI 3, how much of the data proposed are you already collecting?**

- Most or all
- Some
- Few or none

**If few or none or some please tell us which specific data elements are not collected and why (150 word limit)**

Not applicable.

**15. Thinking about KPI 3, are there any KPIs you recommend we consider further?**

**If any, please provide details and reasons why (150 word limit)**

No further comment.

## **KPI 4 – building control functions**

**16. Thinking about KPI 4, how much of the data proposed are you already collecting?**

- Most or all
- **Some**
- Few or none

**If few or none or some, please tell us which specific data elements are not collected and why (150 word limit)**

Not applicable.

**17. Thinking about KPI 4, are there any KPIs you recommend we consider further?**

**If any, please provide details and reasons why (150 word limit)**

NFCC welcome the recording of the number of projects subject to the Regulatory Reform (Fire Safety) Order 2005 (the FSO), plus the number and details of projects that advice given under the FSO is not acted upon. This may drive culture change in conjunction with the full adoption of the Building Regulations Fire Safety Procedural Guidance to clearly specify the consultation process between FRSs and BCBs.

### **KPI 5 – enforcement and interventions**

**18. Thinking about KPI 5, how much of the data proposed are you already collecting?**

- Most or all
- Some
- Few or none

**If few or none or some, please tell us which specific data elements are not collected and why (150 word limit)**

Not applicable.

**19. Thinking about KPI 5, are there any KPIs you recommend we consider further?**

**If any, please provide details and reasons why (150 word limit)**

No further comment.

### **KPI 6 – risk management**

**20. Thinking about KPI 6, how much of the data proposed are you already collecting?**

- Most or all
- Some
- Few or none

**If few or none or some, please tell us which specific data elements are not collected and why (150 word limit)**

Not applicable.

**21. Thinking about KPI 6, are there any KPIs you recommend we consider further?**

**If any, please provide details and reasons why (150 word limit)**

NFCC consider that the term 'non-standard' needs to be clearly defined as, if this is left open to interpretation, there may be different responses by different BCBs. Similarly, 'serious non-compliance' issues should also be defined. This should help to drive consistency across BCBs.

**22. Do you have any views on the reporting frequency of KPIs 1 to 6?**

- Yes
- No
- Don't know / no opinion

**If yes, please provide details and reasons (150 word limit)**

No further comment.

## **Annex B – Strategic context to building control oversight**

**23. Thinking about annex B, do you / your building control body understand what is required of you?**

- Yes
- No
- Not sure

Not applicable.

**24. Thinking about annex B, how confident are you, that you / your building control body can meet the requirements outlined in it?**

- Very confident
- Somewhat confident
- Not at all confident

**If not at all confident, please tell us which paragraphs concern you and why**

Not applicable.

**25. If you have any additional comments on the draft OSRs, strategic context, reportable data or KPIs, please tell us in the box provided**

**Add comment**

NFCC believe that any improvement in the oversight of BCBs is a positive step and a consistent approach to this oversight even more so. NFCC have further comments to make as outlined below:

1. Sharing HSE's Enforcement Policy Statement would have helped in providing a full response to this consultation. As a result, we have not been able to make all potential comments.
2. The BSR will need equivalent or greater competence standards to scrutinise BCB technical responses. There is no commentary on the competence of BSR staff overseeing BCBs.
3. Similar to FRSs, consistency of approach will be challenging for BCBs due to varying risk appetites and local built environments. This will be particularly so due to the high number of local authority areas. In addition, where building control approvers are sole traders, it is currently unclear how they will achieve peer review over project responses.

4. Many FRSs are deterred from taking enforcement action forward due to limited personnel and finances, as many enforcement activities are highly time consuming and costly. Unless the building inspector sector is properly resourced, it is likely that this will be an ongoing issue for them.
5. We would like clarification on Annex B – Targeting, item 25, which relates to the targeting of activities. We would like clarification that this is to target BCB resource as opposed to FRS resource, as FRSs have their own risk based inspection programmes and targeted priorities.
6. NFCC note that under Annex B – Regulators, item 15, FRSs are not mentioned as a regulator. This item should be amended to reflect the role of FRSs as a regulator under the FSO and other related legislation.
7. NFCC believe that a further KPI should include the financial and trading performance of BCBs given that this was one of the reasons why there was, and potentially still will be, a 'race to the bottom' in this sector given that building developers can still choose their BCB other than for higher risk buildings.