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The professional voice of the
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Safer Building in Wales

The National Fire Chiefs Council (NFCC) is pleased to respond to this consultation on the proposed Welsh Government Building Safety White Paper released on 12 January 2021.

The NFCC is the professional voice of the UK fire and rescue services and is comprised of a council of UK Chief Fire Officers. This submission was put together by NFCC's Protection Policy and Reform Unit (PPRU).

This response was drafted in consultation with the Fire and Rescue Services (FRS) in Wales and developed through workshops with our members reflecting their views and expertise as well as the wider expertise of our full membership across the UK.

General Comments

We welcome an opportunity to share our views on the issues relating to this consultation and the wider building safety white paper. In the wake of the fire at Grenfell Tower, it is vital that industry and governments reflect to ensure that the terrible events of 14 June 2017 are never repeated.

Overall, NFCC supports the proposals within this consultation but would highlight that holistic resourcing must be considered in order to achieve its ambitions.

With around 150 high rise buildings in Wales and around 4 or 5 additional high-rise building being built each year there is greater capacity for Welsh Government (compared to similar proposals related to approximately 12,000 buildings in England) to go further to mitigate building safety. As expressed in our response to the pre-white paper position statement, we believe the system has capacity to include a wider range of new builds in the construction process from the outset. However, despite the potential for a wider initial scope, there are some areas of concern for the NFCC.

We would like to see any new measures introduced ensure that the need to protect those most vulnerable within society is embedded as a core priority. NFCC have identified a few circumstances within the proposed building safety regime where we do not believe that vulnerable people are being protected as well as they could be. The main area of concern is in the treatment of buildings in category one and category two. We would like to see a greater recognition of the purpose of the buildings and those who live within them and not just the physicality of the building in classification. NFCC would like a system that incorporates a more holistic understanding of risk factors, including the vulnerability of building occupants, and believe that Specialised Housing and Care Homes, should fall within the scope of Category 1 buildings.

NFCC would also stress the need to ensure that there is proper mitigation for 'gaming' of any new system introduced. Proper clarity and definitions should be embedded into the system. We would also encourage reconsideration of the wording around building heights to remove 'more than' when referring to buildings of six storeys and higher.

There is also opportunity for Welsh Government to utilise regimes and programmes being developed within England emerging from their efforts to implement recommendations from Dame Judith Hackitt's review. NFCC would welcome consistency throughout the UK to allow for transparency of processes and allow for greater widespread cultural change.

On some of the questions NFCC were not able to comprehensively give answers due to the lack of detail provided within the white paper. Given the pressing need for cultural change within industry, clarity within the proposals is key to achieving the step change needed.

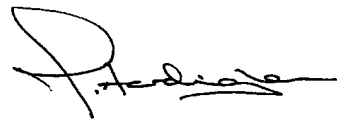
We would welcome opportunity to meet with Welsh Government Ministers and representatives to discuss these issues and others raised within our response below. We trust this response is helpful to ensuring that proposals as they develop can create suitable and effective policies for a safer building industry so that all people can feel safe, no matter their tenure, building type and personal circumstance.

Yours sincerely,



Gavin Tomlinson

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The Professional Voice of the UK Fire and Rescue Service

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1. Do you agree that the Building Safety Regime in Wales should apply to all multi-occupied residential buildings with two or more dwellings? Please support your view.

Yes - NFCC supports a broader scope than one that is limited to high rise residential buildings of 18m or more (or more than six storeys). With only 4 or 5 buildings per year falling within the scope of the proposed Gateways system, we believe the system has capacity to include a wider range of new builds in the construction process from the outset.

A wider scope will help to mitigate the potential for a two-tier system of safety. To limit the scope to 18m or more (or more than six storeys) has the potential to create a two-tier building regulatory system, where a limited set of buildings that are defined as higher risk are required to meet more robust standards than premises where the most vulnerable occupants of society reside.

Widening the scope in this way will ensure more buildings are built correctly to begin with and that vulnerable people are protected. This should include residential care homes, higher risk sleeping accommodation (e.g., hotels, hostels, hospitals, hospices), Specialised Housing' such as Sheltered Housing Flats, Extra Care Sheltered Flats and Supported/Independent Living multi occupied properties, student accommodation, secure residential institutions (e.g., prisons and detention facilities), and educational facilities.

There are different types of HMO with varying standards of conditions and management. The ones that generally cause the most concern are older properties that have been converted into flats in which compartmentation is often poor, raising concerns about fire spread.

There is also a multitude of varying layers of licensing of HMO's from Rent Smart Wales, through to locally implemented and enforced licensing including selective licensing. Licensing schemes vary across different local authorities and therefore the implementation and application of licensing schemes will vary across areas. We would encourage Welsh Government to look at existing regulations and how they can contribute to and assist any new regulations.

Having a building safety regime that encompasses all types of multiple occupied properties will create a level playing field for owners/landlords and a consistent standard and level of safety for occupiers whether they are tenants or owner occupiers.

2. Do you agree that there should be two 'Risk Categories' for the Building Safety Regime? Please your views.

Yes. NFCC supports the proposed two 'risk categories' as it will help mitigate the potential for a two-tier system of safety that is detrimental to the premises where the most vulnerable occupants of society reside. We believe the proposed two 'risk categories' system will incorporate a more holistic understanding of risk factors, including the vulnerability of building occupants. Widening the scope in this way will ensure more buildings are built correctly to begin with and that vulnerable people are protected.

Height is arbitrary and does not reflect modern firefighting equipment and methods and currently there is an anomaly for protection of buildings between 11m and 18m. Front line equipment carried by Fire and Rescue Services (FRS) is primarily fit for external firefighting and rescue up to 11m in floor height. NFCC has repeatedly reiterated that height thresholds lend themselves to gaming and convenient interpretations, including in our response to the Welsh Government consultation on banning the use of combustible materials in 2018.

The proposed 'option B – three risk categories' lends itself to potential of gaming whereas it is anticipated that two 'Risk Categories' should make it more difficult to 'game' the system. Separating the risk categories demonstrates a proportionate approach to the varying needs of the different buildings and the fact that in scope buildings, were there to be a major incident, are going to have a greater impact in terms of the number of people occupying the building. It also demonstrates a pragmatic approach and the different issues that arise between newly built / purpose built in scope buildings and older / converted buildings.

Despite there being 2 risk categories there is a consistency of expectation in terms of ensuring the building is safe, well managed and someone is identified as being accountable.

There is however concern that where there are two or more buildings that fall into both 'risk categories 1 and 2' within a single development under the same accountable person(s), as to whether these buildings will be considered as a single entity within the most appropriate 'risk category' (as per example provided below in Q 3).

3. Do you agree with the proposed scope of Category 1 buildings? Please support your view.

No. NFCC supports the proposed scope of Category 1 buildings in principle, and believes it aligns closely with scope of the building safety regime in England and recognises the fact if a major incident occurs as a result of fire or structural issues, then the impact will be far greater in terms of the number of people potentially at risk and the economic and community impact. NFCC would like to see Specialised Housing and Care Homes also within the Scope of Category 1 buildings and not within Category 2 as further explored within our answer to Q4 below.

We would also like to see the removal of “more than” before the words “six storeys”, having previously expressed the potential for this to miss a number of existing six storey buildings which could deliberately have been constructed to be just under 18m, in order to ‘game’ the system. NFCC strongly advocates changing this to read as 18m and 6 or more storeys.

We are reassured that in the case of the proposed Welsh Building Safety Regime, the potential of these types of buildings being missed is unlikely with the introduction of category 2 buildings. Our only concerns would be to ensure that multiple buildings on a single site are categorised appropriately as a single entity under the highest risk factors, e.g., ‘risk category 1’ buildings.

We would also highlight that the height of the building itself is not the only risk factor and considerations such as the type of occupancy, impact of surroundings of the building and other potential hazards also needs to be considered.

4. Do you agree with the proposed scope of Category 2 buildings? Please support your view.

Yes. We agree with the proposed scope of Category 2 buildings and recognise that although there will be additional burdens on those responsible for these buildings, that these burdens should be proportional to the risks identified within the proposals. However, NFCC is concerned with the practical application of the new regime for some of the buildings that fall within the scope of category 2 buildings such as houses converted into two flats with separate entrances. There is a need for the regulatory requirements to be proportional to size of building and risk associated.

Having a second category and including all HMO’s under 18m creates a consistent safety regime across all buildings whilst at the same time recognising a proportionate approach needs to be adopted. The scope of the category 2 buildings will encompass a significant proportion of residential accommodation and ensure residents of all tenures are protected. We would refer to our answer to question 1 regarding widening the scope to ensure more buildings are built correctly to begin with and that vulnerable people are protected.

As stated in Q3, NFCC would like to see Specialised Housing and Care Homes within the Scope of Category 1 buildings. Within available risk data, such as Government’s Integrated Risk Management Planning (IRMP) Guidance, buildings such as hospitals and care homes do score amongst the highest risk buildings and are deemed higher risk than purpose-built blocks of flats (though we are mindful this guidance does need to be updated). Older people, especially those aged 65 and over, are at greater risk of dying in a fire; according to Office for National Statistics population projections, those aged 80 and over made up five per cent of the population but accounted for 20 per cent of all fire related fatalities in 2016/17.

New higher risk workplaces such as residential care homes, higher risk sleeping accommodation (e.g., hotels, hostels, hospitals, hospices), secure residential institutions (e.g., prisons and detention facilities), student accommodation and educational facilities should be part of the full gateway process.

In existing higher risk workplaces, a strengthened Fire Safety Order (FSO) would suffice for management during occupation. This scope should be regularly reviewed, with the ability for the regulator to expand over time.

5. Do you agree that licensed HMOs should be included within the scope of the Building Safety Regime?

NFCC appreciate the argument for including licensed HMOs within the scope of the Building Safety Regime, however, we also believe that licensed HMOs are already subject to a relatively high degree of regulation. This includes, The Management of Houses in Multiple Occupation (Wales) Regulations 2006, in terms of the licensing conditions, for which fire safety management is a requirement. NFCC, therefore are unsure of what additional benefits would be achieved by including licensed HMOs within the scope of the Building Safety Regime, other than potentially reducing the regulatory burden on the AP, by having HMOs with other residential buildings under one regulatory system.

NFCC believes that stronger collaboration with the respective licensing authorities and a better understanding of their fire safety duties under the licensing conditions could strengthen this.

There are, however, exceptions of where it may be of benefit to include licensed HMOs as set out in questions 4 and 6.

6. Do you agree with the exemptions as set out at Figure 6? Are there any other categories of building that should be included within the scope of the regime during occupation? Please support views.

No – NFCC believes scope should include specialised housing for:

- the full gateway process in construction.
- the safety case and registration schemes, for new builds; and
- the safety case and registration schemes for existing buildings.

However, we do recognise that this could potentially have significant resource implications and may require a staged approach to implementation. We would welcome the opportunity to work with Welsh Government to determine how this could be managed using a risk-based approach.

New higher risk workplaces such as residential care homes, higher risk sleeping accommodation (e.g., hotels, hostels, hospitals, hospices), secure residential institutions (e.g., prisons and detention facilities), student accommodation and educational facilities, should be part of the full gateway process.

In existing higher risk workplaces, a strengthened Fire Safety Order (FSO) would suffice for management during occupation. This scope should be regularly reviewed, with the ability for the regulator to expand over time.

NFCC is uncertain as to why the Welsh Government has opted to not include onsite accommodation provided for staff such as doctors / nurses and carers, within the scope of the new regime. These are residential buildings and should be treated as such.

NFCC is of the view that the acknowledgement that mixed commercial residential buildings need to come into scope to deal with onsite accommodation concerns but understand that there is a lack of clarity on which legislation is best to deal with it, the Regulatory Reform (Fire Safety) Order (FSO) or the new proposed building safety regime.

7. Do you think that any extra measures should be taken as regards single flats above high-risk premises like restaurants and takeaways? Please support your views.

Yes. Single dwellings over high-risk premises should be subject to measures. Article 31 (10) already offers the provision to treat the flat as part of the commercial premises, and by strengthening the FSO it potentially removes the ambiguity and clarifies this to be the case, irrelevant of whether it is the staff of the commercial entity or a member of the public residing in the flat.

However, by including these types of properties within the scope of the new regime, this puts more emphasis on the accountable person (AP) to take account of fire safety risks and makes the AP more accountable for those types of premises, this was supported by the FRSs during our workshop.

The flat above a commercial unit may be linked to the people running the commercial unit below but often this is not the case. The two areas are intrinsically linked in terms of fire and building safety and therefore there should be the ability for one regime to deal with all issues that impact the premises and occupation as a whole.

8. Do you have any other comments on the issues we have raised in this section?

Yes, NFCC would like greater clarity as to what sanctions if any are being considered for APs that fail to register, and how this would be enforced, and by whom.

9. Do you agree that a consistent approach with England to the information set out in the Golden Thread and Key dataset is appropriate? If no, please support your views.

Yes. NFCC would like to see greater consideration given to allowing cost recovery mechanisms for some forms of work. Consideration is also needed to ensure regulators have appropriate Information and Communication Technology (ICT) infrastructure especially given proposals related to digital-by-default building information and Golden Thread requirements.

Clear communication between all duty holders would be needed to ensure that the information in the Golden Thread is accurate and represents the finished building. Clients would need to know of changes as they may affect how the finished building is managed. The requirement for the principal contractor to consult on any changes would also help reduce the possibility of onsite swapping of products occurring, which could lead to a lower standard of safety in the finished building.

A consistent approach and common methodologies of recording, storing and retrieving the golden thread information will reduce costs and make it easier for those organisations who need to use it to work across the English and Welsh borders.

10. Do you agree that it is appropriate for all buildings within scope of the Building Safety Regime to provide information in relation to the key dataset? Please support your views.

Yes. NFCC supports the principle of the Key Data Set. We also see the potential benefits for use of the data to support FRSs in their understanding and regulation of the built environment and supporting firefighter safety. The availability of the information should be based on a proportionate approach of transparency and data protection requirements that meets the needs of residents and RPs in a balanced way.

NFCC also believe there should be a key dataset explicitly for the use of operational firefighters, we would welcome the opportunity to work with Welsh Government to help to produce the dataset.

11. Do you agree that the broad duties set out are appropriate?

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

There should be sufficient discussion for all requirements and how Government intends to phase them in to ensure that a lack of capacity does not compromise safety of buildings by creating situations where certain roles cannot be fulfilled. This is not limited to availability of competent persons, but also consideration of how long before the requirements of a safety case and Golden Thread should be demonstrable for existing buildings.

12. Are there any additional duties we should include? Please support your views.

NFCC believes there is not enough detail in the white paper to make any informed assessment regarding additional duties. Based on information provided, the duties will fall in line with those proposed for the English Building Safety Regime, we would urge Welsh Government to consider the additional duties that were recommended in NFCC's response to the [English Building Safety Bill Consultation](#).

It may be useful to include a decision/approvals log from the building safety regulator to account for the rationale behind decisions (e.g., change control decisions) that have been made. Additionally, the scope of the information must be widened to include anything that could assist in firefighting actions from an FRS perspective.

Information that forms the Golden Thread in occupation should not be seen as 'additional information', rather it is the same information that needs to be assured in a different way.

Examples of this include (but are not limited to):

- An assurance of compartmentation standards in the building.
- An assessment of the firefighting access measures and whether these are adequate to ensure safety of residents in the event of a fire; and
- Assessment/validation of smoke control systems.

13. Do you agree that there should be a named individual identified where the duty holder is a legal entity? Please support your views.

Yes. NFCC considers there is lack of accountability where issues are identified and there is a need for an individual to be contactable when issues need to be addressed as a matter of urgency. The practice of individuals hiding behind a corporate entity needs to cease and the naming of an individual will assist all in effective regulation.

14. How effective are the existing arrangements for Local Authorities and Fire and Rescue Authorities to consider issues of availability of water during the preparation of Local Development Plans?

NFCC believes that the current planning system does not consider the provision of adequate water for firefighting sufficiently.

This is an area that requires fundamental revisions to include:

- A requirement for adequate firefighting water provision to be included in Local Plans. It should be necessary for any Local Plans to include a confirmation that an adequate supply of firefighting water exists for any premises. Where this cannot be confirmed, it should be highlighted for any development that this will need to be provided as a matter of urgency in order to not cause issues later on in the regulatory process.

This may increase the resilience of the proposals for a Fire Statement outlined in the English *Building a Safer Future* report as it would ensure adequacy of water supplies for all developments, not just those within the scope of the future Building Safety Regulator.

- An express requirement that all planning approval for buildings, no matter the size or usage, have an adequate water supply for firefighting. This would normally be provided by the provision of hydrant(s) attached to a suitable size main delivering an appropriate flow rate for firefighting but may also be complemented or provided by storage tanks, open water sources, or a combination.
- Better specification of appropriate pressures and flow rates.

In addition, current guidance for the provisions for the supply of water for firefighting is too vague and is deficient in ensuring appropriate supplies of water for firefighting are achieved.

Guidance should be explicit in these provisions as currently they are only outlined in Approved Document B in support of the Building Regulations. Consideration of firefighting water supplies

at the Building Regulations stage is generally too late. As such, NFCC believes that guidance for planning should set out requirements in this area.

15. Should Fire and Rescue Authorities become “specific consultation bodies” as defined by the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005?

There was no consensus in our consultation of Welsh FRS; NFCC and the Welsh FRSs believe this is difficult to answer due to the lack of detail provided in the white paper.

However, we are mindful that Welsh FRS members are considering the benefits and impact of being statutory consultee for major planning applications and recognise that the impact of this will be different across Wales. The Economic impact assessment that supports the white paper proposals does not go far enough to allow for an informed decision.

It is important that the Welsh Government acknowledges and puts measures in place to support the increased workload this would place on the Welsh FRSs. One FRS during the workshop highlighted that becoming statutory consultees for major developments would include 250 consultations; a considerable increase compared to the 3-4 a year they currently do. Being a Statutory Consultee at the planning stage is valuable but at Local Development Plan (LDP) stage in the future it is difficult to determine the impact.

Welsh FRSs believe that preoccupation is missing and being involved at sign off stage would add value. It is important at preoccupation phase to ensure nothing has been missed that has been asked for at gateway 1 or 2.

16. To what extent do you agree with the proposed content of a Fire Statement?

The proposed Fire Statement appears to take a pragmatic approach, though we would refer to our previous answers around considerations within the planning process including:

- availability of firefighting water supplies
- access for fire appliances
- emergency evacuation points

Fire statements (for Category 1 buildings) will also need to address how FRS access routes can be safeguarded from encroachment by inappropriate new development, such as intensive uses next to access routes which would increase obstructive parking.

We would support strengthened measures including robust guidance which would require planning applicants to submit a fire statement, clearly demonstrating appropriate provisions for FRS vehicle access and access to water supplies to LPAs.

More clarity and clarification is needed on whether a fire statement will be required if the area surrounding the building contains features which are critical to its safe operation. If it is not required in all circumstances, then there is a risk it could be subjective and create uncertainty on who makes the decision when a fire statement is required and judged against what criteria.

Given the small number of applications a year predicted we would strongly advocate that a fire statement is always needed for Category 1 developments.

NFCC would also suggest Welsh Government undertake a full technical review of ADB to include a comprehensive review of firefighting access and facilities, particularly for high-rise buildings, to ensure firefighters are offered the highest level of protection and are afforded the best opportunity to preserve life and prevent significant damage to buildings and the environment. In addition, NFCC would seek further clarification with regard to fire hydrant requirements and performance in accordance with relevant British Standards, which should assist developers in assessing this area prior to applying for planning permission.

NFCC would be happy to provide further advice to help develop the requirements of the Fire Statements.

17. Do you agree responsibility for the content of a fire statement should rest with the duty holder?

NFCC agrees that the content of a fire statement should rest with duty holder (Client). If the FRS is intended to review fire statements, they will need to have early engagement for Category 1 buildings.

We believe that the initial applicant in their role as client should be responsible for the fire statement, as this would mean that they are more minded to consider the end result of the building that is subject to the planning application. This would also help to ensure that any initial assumptions about the building are carried through to Gateway 2 (GW2).

NFCC would caution Welsh Government to ensure resilience of the arrangements for passing fire statement from GW1 to GW2 duty holder (Client) has been considered. This includes accounting for instances where planning permission has been sought/agreed to increase value of land – but land sold and another duty holder (Client) builds.

18. Do you agree that Gateway Two should be a ‘hard’ stop point where construction cannot begin without permission to proceed? Please support your views.

Yes. We believe it will encourage early and ongoing engagement with the Building Control Bodies (BCB) for Category 1 buildings as described in paragraph 6.4.18

NFCC agrees that there should be a ‘hard stop’ that prevents construction from beginning. This will drive a cultural shift and act to quality control design work prior to construction commencing. This process will support industry in making sure that the design is correct in the first place and prevent costly and time-consuming delays further down the line.

FRS involvement in advising the regulator would be key to ensuring that operational considerations were accounted for in both the construction and completion phases of the building, and also for approving any design aspects that would eventually be regulated under the FSO.

NFCC also suggest the following requirements to strengthen the regime:

- FRS comments on B1-B5 (especially B5) should have to be considered and can be passed to the national regulator for dispute resolution, either between client and local regulator or between local regulators.
- Any bodies carrying out a building control function should have a duty to reply to FRS comments.
- Any new national body/regulator should be the place for dispute resolution.
- The introduction of a robust building control change mechanism to ensure that any changes are agreed before work commences.
- Developers should not be able to choose their own regulator, for all buildings.

19. Should the Local Authority Building Control Body have discretion to allow a staged approval approach? Please support your views.

Yes, in principle but only if particular conditions are met.

NFCC supports the idea that the building safety regulator should be allowed to exercise discretion in the approach to submitting key information. However, guidance in this area should outline where and for what aspects a staged submission should be appropriate, and where certain information is critical at Gateway 2 in order to commence work. Guidance in this area would also allow for consistency of application across the country.

However, it is important to emphasise that this approach should only be used in exceptional circumstances, rather than it becoming the norm, as this would be the only way to reinforce the culture change of the new approvals process.

In principle, for complex buildings a staged approach on aspects of design may be desirable for reasons set out in the White paper. We would have concerns around any partial occupation through this process. NFCC consider that there is an increased risk to occupants of buildings where partial occupation occurs prior to completion of building works. This is particularly the case where there is a sleeping risk and in relation to vulnerable persons.

20. What is an appropriate timescale for the Local Authority Building Control to respond to Gateway Two applications? Please support your views.

As a representative body we are not placed to give timelines but do agree that the building safety regulator should be required to respond to Gateway 2 submissions within a certain timescale.

Existing timescales for building regulations were developed in the early 1980s with the Building Act, at a time when building design largely followed codified approaches. Buildings are becoming more complex, and the analysis to justify solutions may mean the information provided at gateway two for some buildings will be extensive and highly detailed.

Timescales need to be sufficient enough to be able to adequately assess the information provided, whilst supporting the industry by not delaying construction longer than is necessary. They would also need to consider the administrative arrangements for liaising with other

regulators who would need to be consulted as part of the process. Timescales may need to operate on a stepped scale dependent upon the complexity of what is being submitted.

We would highlight that meeting timelines will require the building safety regulator to invest significant time and resources to appropriately assess the information provided.

21. Should the Local Authority Building Control be allowed to extend these time scales? If so, what would the circumstances be? Please support your views.

Yes. We would like the principal consideration of extensions to be safety which we would not want to be compromised at the expense of current statutory timescales requiring approval of plans.

Timescales should also account for the possibility of the need for further information, and dispute resolution to form part of the process where parties involved in the consultations are not in agreement. The resolution of such disputes may require further evidence, data or reports to be produced and the building safety regulator would need to have the power to extend timescales, where necessary, within reasonable limits.

Timescales may need to operate on a stepped scale dependent upon the complexity of what is being submitted.

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

Yes. NFCC believes that clear communication between all duty holders would be needed to ensure that the information in the Golden Thread is accurate and represents the finished building.

The client would need to know of changes as they may affect how the finished building is managed. The requirement for the principal contractor to consult on any changes would also help reduce the possibility of on-site swapping of products occurring, which could lead to a lower standard of safety in the finished building.

It would allow for continuity of information and competent consideration of effect on what safety of changes need to be considered by relevant competent stakeholders.

NFCC would like further clarification of what Welsh Government classifies as 'changes to plans'.

23. Do you agree the Principal Contractor should be required to notify the Local Authority Building Control of any proposed major changes before carrying out works?

Yes. NFCC supports proposals for Gateway 2, in particular the proposal that, before deviating from the original plans, the principal contractor must notify the regulator of any proposed major changes and submit further details for approval before carrying out the relevant work.

Welsh Government must ensure that 'major changes' is carefully defined so that they do not become open to interpretations or gaming.

24. Do you agree that where major changes are made to the approved plans there should be a “hard” stop and work should not proceed until the revised plans have been approved by the local authority?

Yes. NFCC agrees that there should be a 'hard stop' that prevents construction from beginning. This will drive a cultural shift and act to quality control design work prior to construction commencing. This process will support industry in making sure that the design is correct in the first place, preventing costly and time-consuming delays further down the line.

FRS involvement in advising the regulator would be key to ensuring that operational considerations were accounted for in both the construction and completion phases of the building, and for approving any design aspects that would eventually be regulated under the FSO.

We would reiterate the need for the following requirements which were raised in question 18 to strengthen the regime:

- FRS comments on B1-B5 (especially B5) should have to be considered and can be passed to the national regulator for dispute resolution, either between client and local regulator or between local regulators.
- Any bodies carrying out a building control function should have a duty to reply to FRS comments.
- That any new national body/regulator should be the place for dispute resolution.
- The introduction of a robust building control change mechanism to ensure that any changes are agreed before work commences.
- That developers should not be able to choose their own regulator, for all buildings.

We would also reiterate our concern raised in previous answers that definition is needed on what constitutes 'major changes'.

25. What is an appropriate timescale for the Local Authority Building Control to respond to proposed major changes? Please support your views.

As per our answer to question 20, as a representative body we are not placed to give specific timelines but agree that timescales should be a requirement for the response from the building safety regulator, particularly where building work has already commenced.

Timescales would depend on the nature of the works involved in the major changes and whether further information, data or reports were required to demonstrate that changes achieve an equivalent level of safety to the original design. Where it needs to be consulted on further with relevant local authorities, then timescales would have to take account of administration time and other authorities' workloads.

Timescales for response would also need to account for the possibility of the need for further information, and possible need for dispute resolution to form part of the process where parties involved in the consultations are not in agreement. The resolution of such disputes may require further evidence, data or reports to be produced and the building safety regulator would need to have the power to extend timescales, where necessary, within reasonable limits.

26. Do you agree that for new Category 1 buildings an Accountable Person must be registered before occupation of the building can begin?

Yes. NFCC support the requirement for someone to be responsible and accountable from day 1 of occupation. We believe that this will encourage pre-occupation engagement to ensure management requirements of fire strategy are fully understood, addressed and safety cases are in place from first occupation. This is of particular importance for partial occupation.

This will also assist with the continuity of Golden thread information which should inform the Fire Risk Assessment (FRA), and the safety case.

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

Yes. Although there are points where NFCC have concerns and would welcome clarification.

NFCC believes the declaration would be a useful addition to current procedures; but we do not endorse the declaration replacing the final / completion certificate from the building control body.

Requiring a declaration from the principal contractor and principal designer would reinforce, in accordance with the building regulations, that it is the responsibility of those undertaking the works to comply. This proposal would provide a clear accountability mechanism for those responsible for the building's safe design to demonstrate that the building had been constructed to the required standards. We recommend that, to assist compliance and drive culture change, it also become an offence to make a misleading or even ill-informed confirmation claim of such a nature.

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

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

In conjunction with the proposed declaration, we see benefit in there being a process whereby there is a judgement from a third party, independent of the design team; this could be implemented by retaining final / completion certificates, and additional measures to ensure clients are no longer able to choose their own regulator.

28. Should Local Authority Building Control be required to respond to gateway three submissions within a particular timescale? If so, what is an appropriate timescale?

Yes. NFCC agree that responses to Gateway 3 submissions should be required within a certain timescale.

As per our answer to question 25 buildings are becoming more complex, the information provided at gateway three for some buildings will be extensive and highly detailed requiring the building safety regulator to invest significant time and resources to appropriately assess.

However, the timeline would need to be sufficient enough to be able to adequately evaluate the information provided, whilst supporting the industry by not delaying occupation longer than is necessary. Timescales may need to operate on a stepped scale dependent upon the complexity of what is being submitted.

29. Are there any circumstances where we might need to prescribe local authority Building Control's ability to extend these timescales? If so, please support your view with examples.

Yes. NFCC believe that timescales for responses would need to account for the possibility of the need for dispute resolution to form part of the process where parties involved in the consultations are not in agreement. The resolution of such disputes may require further evidence, data or reports to be produced and the building safety regulator would need to have the power to extend timescales, where necessary, within reasonable limits.

Timescales may also need to be extended where additional information is required, or revisions to information are needed for the building's registration of ongoing management requirements. As per our comments to previous questions, for projects with the highest complexity the building safety regulator should have the ability to extend the timescales.

30. Do you agree that the Client during Gateway Two (if not continuing in the role as Accountable Person) must hand over building safety information about the final, as built building to the Accountable Person before occupation is permitted?

Yes. We would refer to our answer to question 26.

31. Do you agree it is appropriate to allow staged occupation (where previously agreed during Gateway Two) e.g. a mixed-use development? Please support your views.

Yes. NFCC believe that partial occupation could be permitted but only in circumstances where there is a fire strategy/safety case in place that has assessed all of the risks which ongoing building works pose to the occupied areas (similar to a pre-emptive fire risk assessment in accordance with the FSO).

Where partial occupation is to take place as part of a building's financing model, the rationale behind this should be set out at the initial design stage and fire strategies outlined for any stage involving partial occupation. Consideration should also be given to areas such as early commissioning of automatic water suppression systems (AWSS).

Consideration must also be given to whether the infrastructure that supports the development in question is likely to fluctuate or change, e.g., water provision being periodically limited, or construction activity affecting access.

32. Do you agree that Category 1 buildings undergoing major refurbishment should also be subject to the Gateway approach? Please support your views.

Yes. NFCC agree that buildings undergoing significant refurbishment or change of use should be subject to the same degree of regulatory oversight.

We would however highlight that, there remains a fundamental disconnect between the non-worsening conditions of building regulations, and the expectations of continuous improvement through the fire risk assessment process set by the FSO.

NFCC would like to see a requirement that refurbishments and changes of use (for all buildings) should trigger a requirement to comply with current fire safety standards as nearly as is reasonably practicable, as is the case in other similar jurisdictions.

33. Are there any other types of residential building or characteristics of a residential building that should require it to go through the Gateway process? Please support your views.

We would refer to previous answers where we highlighted the needs of specialised housing and onsite accommodation provided for staff such as doctors / nurses and carers, within the scope of the new regime.

Types of accommodation that should be part of the full gateway process include (but are not limited to):

- New higher risk workplaces such as residential care homes,
- higher risk sleeping accommodation (e.g., hotels, hostels, hospitals, hospices),
- secure residential institutions (e.g., prisons and detention facilities),
- student accommodation and educational facilities.

34. We will be undertaking further consultation in this area when we set out regulations. Would you be interested in being added to our stakeholder list in relation to the Design and construction phase? Please provide your details.

Yes. Please add PPRUAdminTeam@nationalfirechiefs.org.uk to your stakeholder list.

35. Do you agree that there should be a single and clearly identified Accountable Person for all premises covered by the Building Safety Regime?

Yes, although NFCC would like to see more clarity on the practical application between the two sets of legislation (FSO & Proposed BSR).

NFCC supports the process of having a named individual who is responsible for building safety. This will help give clarity to residents, regulators, and other relevant persons as to who

is the responsible person (RP) for a building. This would also make accountable and transparent the process of oversight.

At present, regulators often have great difficulty in establishing those with specific duties in relation to a premise, which can lead to significant delays in rectifying matters that affect fire safety. Having named persons with clearly delineated duties and responsibilities would help to create a positive culture where fire safety was at the core of designers' and constructors' thinking.

One of the most significant issues that FRSs have reported to NFCC in enforcing the order is the difficulty experienced in identifying the RP. This is further compounded in complex situations where multiple RPs exist, and legal assistance must be sought in order to review the contractual elements in order to identify the details within the contract in order to clarify the "control".

NFCC encouraged the amendment of Art.22 in our response to the [Home office Fire safety Consultation](#) last year, and further suggest that both the contact details and the extent of the RP's responsibilities should be recorded to enable clear identification. In circumstances where there are multiple RPs, we would recommend that a lead/lead/principal RP is nominated, and a clear handover process is in place and recorded for when there is a change in the lead/lead/principal RP or any of the respective RPs – e.g., a logbook of ownership similar to that of a car where the enforcing authority can see the history of ownership.

Outside of social rented accommodation, our members' experience shows the complex nature of some ownership structures can cause confusion for residents about who is responsible for the safety of their building. The introduction of multiple accountable persons (APs), in addition to multiple RPs, will add further layers of complexity to what is already a significant challenge. This will be more so for residents who themselves will be considered an AP, a RP or both (for example in the role as director of the tenant management organisation).

These challenges can undermine the speed and effectiveness that a complaint can be dealt with. This is especially concerning in mixed use buildings where there is the potential to have multiple RPs under the FSO, and multiple APs under the proposed regime for different parts of the same building, plus the addition of a Building Safety Manager (BSM).

NFCC believes there is an explicit need for a principal AP for a building, who has ultimate responsibility for their building and their Resident Engagement Strategy which mandates the complaints process. This should be supported with clear guidance that sets out the two-way resident engagement process and the responsibilities of the resident, the BSM and the APs.

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

Yes - NFCC supports in principle the proposed approach of identifying the accountable person but notes that more detail is needed to fully support it.

The consultation rightly acknowledges the varying forms of property ownership and management models as well as size and/or number of buildings that a person or entity may

have. As a result of this the scale of responsibility will vary depending on the property model in question.

An accountable person would support the abilities of Authorities having jurisdiction to apply regulations where necessary. At present, there are many methods of building ownership, which can mean identifying the correct person to resolve safety-critical works can be arduous and onerous for FRSs. The accountable person concept would allow effort to be focused on remediating concerns.

Identifying the accountable person based on the duties that they have, as opposed to the job title they hold is a pragmatic approach to take. However, NFCC would staunchly emphasise that for this to be successful it is paramount the person registered understands the duties they are taking on. Including that the organisation that has nominated them to undertake this role (if it is not a freeholder nominating themselves) is satisfied they have the appropriate skills and competencies to undertake the role and the person has the remit and autonomy to carry out the responsibilities required.

This cannot just become a 'tick box' exercise.

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

Yes. Consideration will need to be given to how to best implement these arrangements for ownership models involving overseas ownership, multiple shell companies and charities. The challenges posed by some of these examples are evidence of why the accountable person proposals are so vital to making the system work. Without a clearly identified accountable person, enforcement is significantly challenging.

FRSs have experienced many issues with establishing the correct Responsible Person. This can have wide ranging implications for ongoing building safety, as it can lead to protracted enforcement times due to issues identifying the correct person to serve a notice on, rather than working to resolve issues.

Further issues include:

- There are other persons with responsibilities identified under Article 5(3) and 5(4) of the Fire Safety Order (FSO) which increases the complexity of identification of the correct person to enforce against.
- The management structure of a business can often be a web of directors within a conglomerate, or shell companies which are dissolved when enforcement action begins against them.
- The RP lives abroad and is uncontactable.

- Where a family member is listed as company secretary or CEO but is not involved in the business.
- Multi-use buildings where there are multiple RPs with specific premises over which they are responsible, but they interact with each other, for example the means of escape from flats being shared with the means of escape from the non-domestic premises below it.

Leaseholder arrangements (especially where a premise is sub-let) can lead to ambiguity as to whether an occupant is a Responsible Person, an Article 5(3) person or neither. This includes situations where responsibility is delegated to an employee, who has had no training or experience of managing the risk but is put forward as the RP or manager of the site (e.g., during performance inspections where licensed premises are leased from a pub company).

The main difficulty will come where buildings are not well managed and there is no-one in place who can be found to undertake the role. This is going to be more likely in Category 2 buildings which are likely to have more fragmented ownership structures and property management issues. Including where, it is proposed that the default position should be the freeholder for the building if no accountable person is identified.

However, there are many buildings where the freeholder is absent, or out of the country. Therefore, stating they are the accountable person will have no more practical benefit than the current regimes in place.

We would also refer to our answers to questions 35 and 36.

38. Do you agree that the default position should be that the Accountable Person is the freeholder?

In principle we agree with the default position proposed but are not able to fully support this without greater certainty and accountability for those deemed default AP's but who reside overseas.

It is crucial that structures are in place to enable enforcing authorities to easily identify the AP in situations where the AP lives offshore. The duties to identify and register themselves as an AP should ensure that the registration includes a UK based contact address.

Whilst ultimately there needs to be someone identified as accountable, when they do not identify themselves, this approach will only work if the freeholder can be located and is in the country. Land registry searches can be of limited uses as the name and address of the freeholder is often linked to the property in question, but is not the building they reside in. This makes formal communication impossible unless alternative contact information can be found.

We would also refer to our answer to question 38 and the examples laid out there as to why we cannot take a position on this proposal.

39. For mixed-use buildings there will be a 'Responsible Person' under the FSO for the business premises, and an 'Accountable Person' under the Building Safety Regime for

residential parts. Are there any requirements we should consider about how these responsible parties should work together to support and ensure fire safety of the whole building?

The proposals introduce a system that not only retains the possibility for multiple Responsible Persons, but now also multiple Accountable Persons plus Building Safety Managers in the same building. NFCC remain concerned, particularly in regard to mixed-use buildings, that the Government's policy intent for the management of safety in occupation has not been met.

One of the most significant issues that FRSs have reported to NFCC in enforcing the order is the difficulty experienced in identifying the RP. This is further compounded in complex situations where multiple RPs exist, and legal assistance has to be sought in order to review the contractual elements in order to identify the details within the contract in order to clarify the "control".

FRSs have experienced many issues with regard to coordination between RPs. These include:

- RPs not communicating with each other, which can lead to problems with compliance, for example where an escape route passes through one part of a premises overseen by a different RP.
- There needs to be clear communication around working hours and the availability of the exit route for use.
- Difficulty in implementing new safety features that are common to a number of RPs in a building, due to problems establishing who has the primary role in paying for them.

NFCC believe that buildings of mixed use over 18m that have residential in them should come under a single regime during planning, design and construction. These particular buildings should also be part of the registration scheme as a whole to ensure there is no gaming to avoid the additional safety regime.

Care should be taken in the formulation of this approach to ensure that the interactions between new legislation and the FSO do not create further overlaps. There should be a clear outline of how the FSO applies to commercial aspects in the whole building, and the expectations of how RPs for these areas are to interact with accountable persons for the building.

There is a requirement for cooperation and coordination under Article 22 of the FSO and this should be mirrored as part of the Building Safety Regime. Requirements should include the need to proactively engage and communicate and jointly consider and produce fire risk assessments that consider the building as a whole. This includes the occupancy and activities that are going on in the various parts of the building that may be under each other's control. (including any changes).

A requirement to engage at least once a year regarding a review of fire safety could be considered. This could sit alongside the requirement for the fire risk assessments to be

reviewed annually. A log and notes of discussion and outcome of the meeting could be made a requirement to show ongoing cooperation and coordination as well as assisting to evidence their due diligence in relation to fire safety matters.

Taking a whole building approach will avoid duplication and exploitation of loopholes. The new regulatory framework and an uplifted FSO could be used as enforcement tools in occupation.

40. Do you agree with the proposed duties of the building safety manager for Category 1 buildings? Please support your view.

Yes. NFCC supports the suitability requirements of the building safety manager. Any transition plan would need to be mindful of the current capacity of the sector to fulfil such roles to ensure that there are sufficient competent persons able to assume these duties for the buildings in scope.

The role of the building safety manager should be considered where the risk is deemed to be higher, and as stated previously should not be confined to the risks associated with Category 1 buildings but extended to Category 2 buildings.

We would also encourage Welsh Government to give further consideration and clarity on accountability when things go wrong, given the ultimate responsibility of an AP, and the day to day running of the building by the BSM. There is a risk that a further prescribed role of BSM create greater confusion and ambiguity in terms of accountability, especially if there is a team of people carrying out the function.

41. Do you agree with the proposed division of roles and responsibilities between the Accountable Person and Building Safety Manager?

Yes. NFCC believes that the white paper proposes a general outline for this relationship, although the definitions and lines of accountability would need to be clearly defined in law to ensure that the accountable person is aware that they maintain the ultimate control and responsibility for the building and there is no ambiguity for the regulators.

The division of roles appears clear and does make a distinction between the general day to day management of the building and general issues that will arise being the remit of the BSM, with the AP focusing on the wider and more strategic building safety responsibilities.

42. Is the relationship between the Accountable Person and Building Safety Manager sufficiently clear? Please explain your answer.

Please refer to our answer to question 41.

43. Do you agree that the proposed duties and functions set out in Figure 8 for Accountable Persons for Category 1 buildings are appropriate? Please support your view.

Yes. NFCC Support the proposed duties and functions as set out in Fig. 8 for the AP for Category 1 buildings and believe that the additional functions regarding ensuring 'sufficient

funds' and 'proper financial practices in place' should avoid the unfair and unreasonable financial burdens we are currently seeing placed on leaseholders.

NFCC is pleased to see the emphasis placed on 'structural integrity' as part of the buildings' maintenance regime using the principles of Golden thread and the safety case regime, throughout the lifecycle of the building as it should ensure that where structural integrity for whatever reason is compromised, it can be identified and remedied as the earliest opportunity and therefore reduce the risk to occupants / residents.

NFCC would encourage the Welsh Government to address the principle of non-worsening and consider the objectives of continuous improvement which we highlighted in earlier answers. There remains a fundamental disconnect between the non-worsening conditions of Building Regulations, and the expectations of continuous improvement through the fire risk assessment process set by the FSO.

Section 4(3) of the Building Regulations 2010 states that where the work did not previously comply with Schedule 1 that when the new work is complete it should be no more unsatisfactory in relation to that requirement than before the work was carried out.

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

Non-worsening provisions are resulting in lost opportunities to improve building safety. This requires a practical solution.

44. Do you agree that the proposed duties and functions set out in Figure 8 for Accountable Persons for Category 2 buildings are appropriate? Please support your view.

Yes. NFCC believe the proposed functions and duties set out in Fig. 8 for category 2 buildings are appropriate, and proportional to category 2 buildings and recognise that this may come as an additional but necessary burden to some APs. We support this approach to ensuring that the safety of some of our most vulnerable communities is at the heart of this regime.

However, NFCC would like to see the additional requirement for an AP to acknowledge and respond to complaints from tenants / leaseholders in a timely manner (including recognising the urgency and impact of some disrepair issues) and to investigate and provide a full response to concerns raised.

45. Do you think that the different roles and responsibilities for Category 1 and Category 2 Accountable Persons are sufficiently clear and proportionate?

Yes, the proposed roles and responsibilities as identified in Figure 8 between the two categories are sufficiently clear, however we do not believe they are proportionate.

If we are putting residents at the heart of the safety of buildings, then requirements such as 'Probity' and 'responsible working' should be the same as across both category buildings. NFCC also believe that for some Category 2 buildings, with an AP employing another person to manage buildings on their behalf, the level of skill and competency needs to be proportionate. Transparency is needed to what the differentiation needs to be for the level of risk that is being managed - the scale of management can vary depending on risks specific to buildings.

There is also the need for more clarity and distinction on the roles of the AP - With Category 1 it is clearer cut as they must appoint a building safety manager. Category 2 is less clear cut and the need for a building safety manager in circumstances where the AP does not pass the fit and proper test.

It should be noted that there is a potential overlap between a Category 1 building safety manager and Category 2 managing agent yet more clarity is needed to understand where the responsibility lies. We would encourage Welsh Government to ensure guidance (e.g., approved code of practice/guidance – similar to the PAS BSM in England) is strong enough to support individuals taking on their needed roles.

NFCC supported the proposals in the draft English Building Safety Bill and Fire Safety Bill that there should be some form of statutory guidance to support the legislation and the individuals that take on these roles. We would be happy to work with Welsh Government to determine whether that should be aimed at the AP or everyone but believe something is needed to help them understand what is required of them.

46. Are there any additional duties that should be placed on duty holders? Please support your views.

Please refer to our answer to question 45.

The allocation of additional duties is difficult given the relative descriptions given in the examples and in Table 8. Reference to them requiring the fit and proper person test might be useful here. The need to ensure they cooperate and communicate with other duty holders (as opposed to just those undertaking work) is also important although it is acknowledged that this is something that would fall under the Regulatory Reform (Fire Safety) Order 2005.

NFCC would also support a need to maintain competence.

47. Do you agree with our proposed fire safety outcomes? Please support your views.

Yes. NFCC agree with the principles of the proposed fire safety outcomes. We do have some concerns around the fire prevention mitigation measures and escape requirements.

There are concerns around how some of the measures including prohibiting smoking and using common areas for storage will be enforced and if they are what sanctions will be put into place. We would also seek clarification on how the overlap between these proposals and the requirements under both the FSO and HA, and which regulation will take precedence.

Consideration is also needed in how fire safety outcomes in this regime with align to the fire risk assessment under the FSO, particularly for mixed used buildings.

As NFCC highlighted in response to the draft English Building Safety Bill and the Home Office FSO consultation last year, the major issue with maintenance and identifying breaches in compartmentation particularly within the private dwelling can be enormously difficult for the AP / BSM due to issues around access. Therefore, the emphasis should be during the design and construction phases that buildings are constructed to a high standard.

We would welcome further clarification on whether the Evacuation Alert System is intended to align to the same standard as is proposed for possible inclusion within Approved Document B (BS8629) to avoid unnecessary burdens on landlords who have premises that straddle across the devolved authorities.

We also encourage Welsh Government to consider alignment with the MHCLG / HO work /research and further consultation into (Personal Emergency Evacuation Plans) PEEPs for residents, evacuation and stay put to create certainty and consistency across borders.

We seek further clarification on the provision of important information such as floor plans and in what format they will be required in, including whether further information and guidance will be in secondary legislation or has been omitted. There must be distinction between the roles of the FRS and that of the AP and residents. We would not want to see residents taking on any form or function of a firefighting role.

Resident Awareness and elements of resident engagement should be extended across all 4 proposed fire safety outcomes. We recognise that this has the potential to impact our Prevention (community fire safety) Colleagues within the FRSs, who are more likely to be considered by residents as a trusted voice or turn to for advice by landlords according to the experience of our members.

48. Do you agree with our proposed overall purpose of a fire risk assessment? Please support your views.

Yes, we agree with the principles of the proposed overall purpose / process of the fire risk assessment and the 'new arrangements' to ensure that they are tailored to the building type and occupancy.

However, NFCC would like clarity on how this will be achieved as it is not clear in the white paper how conflicting regulators will be impacted – e.g., Housing Act and FSO.

It is the level of risk/complexity that would define the level of general fire precautions that should be provided. We therefore believe the proposals should focus on ensuring the quality of those Fire Risk Assessments and any supporting guidance.

The quality of the Fire Risk Assessment and advice from the fire risk assessor to the AP about all the risk factors mentioned above is critical within the premises across both category 1 and 2.

The following additional requirements should apply to these to cater for these higher risks:

- A requirement for Fire Risk Assessments for higher risk buildings to be completed by competent, qualified and experienced Fire Risk Assessors only.
- A requirement for the formal PAS 79 methodology to be mandated as the only methodology to be used for all higher risk premises.
- A requirement for the CQC Registration of Care Homes to be subject to the above criteria.
- A requirement for minimum staffing levels for emergency evacuation purposes to be calculated and expressed in fire risk assessments of Care Homes/Hospitals/Supported Housing/Extra Care Sheltered.
- A requirement for an Additional Licencing scheme by Local Authorities for any type of Specialised Housing (Sheltered, Extra Care, Supported Living) to include requirements of 1 & 2 above. This will improve the regulatory oversight of fire safety standards in these property types. This is likely to require additional funding to Local Authorities to support implementation.
- A requirement for Premises Information Boxes in all of the above property types.
- A requirement for automatic fire suppression systems (Sprinklers) in all of the above property types.

49. Do you agree with our proposed risk areas? Please support your views.

Please refer to our answer to Q47

50. Do you agree that a fire risk assessment must be reviewed annually, and whenever premises are subject to major works or alterations for all buildings within scope?

Yes, this would seem reasonable given that the transient nature of residential buildings which will contribute directly or indirectly to the fire safety outcomes and risk areas.

Welsh Government must give a clear outline of how APs should be meeting the risks the fire risk assessment identifies and provides for there to be some accountability as well informing the resident engagement strategy. NFCC recommend that guidance for APs explaining the expectation that annually reviewing the fire risk assessment does not mean that the APs is required to redo the whole assessment but that by reviewing the fire risk assessment, the AP is verifying that the risk and mitigation methods remain valid and where changes have occurred this is reflected in the FR. An annual review gives more clarity and sets expectations.

There is a view that scoping most fire safety of buildings and management is underpinned by FRA. An AP not taking due diligence to appoint someone competent is quite a serious matter.

51. Do you agree that only a suitable qualified and experienced fire risk assessor should undertake fire risk assessments for buildings within scope? Please support your views.

Yes, NFCC strongly supports that in more complex premises, especially those with a sleeping risk, or with vulnerable occupancy, that the Fire Risk Assessment and fire safety arrangements

should be undertaken by a competent registered fire risk assessor and the whole of the fire risk assessment be required to be fully recorded.

This would align with Dame Judith Hackitt's recommendations that the fire risk assessments are undertaken by someone with relevant skills. NFCC recommend a change in terminology to remove any ambiguity and offer consistency across the regulators and the competency framework. The FSO and the proposed English draft BSB refer to a competent person as opposed to a 'suitable qualified and experienced' person.

We would also recommend Welsh Government look at the work being carried out by Competence Steering Group, Working Group 4 which addresses the competence requirements for those undertaking fire risk assessments. This also includes registration of those individuals giving more reassurance for those relying on the assessment.

It is also important that as well as the contact information of the individual being recorded in the fire risk assessment, that their qualifications and 3rd party accreditation is also recorded, in a similar manner to that of a medical practitioner this will enable the FRS & RP to be able to verify the credibility of the 'competent person.'

It needs to be recognised that in some cases this could be burdensome for a small business owner, e.g., who has a ground floor shop as a sole trader. A clear tiered structure needs to be encompassed within guidance.

It must be remembered that within a simple premise, the various CLG guides actually encourage owners/employers/operators to undertake their own Risk Assessment. Any competency requirement will have to be very carefully considered so as not to cause all small businesses to need to incur additional expenditure when it is not necessary.

52. Do you agree that fire risk assessments must be permanently recorded?

Yes, NFCC does recognise and strongly supports that, in more complex premises, especially those with a sleeping risk, or with vulnerable occupancy, that the whole of the fire risk assessment be required to be fully recorded.

It should be noted by Welsh Government that the FSO currently only requires the Responsible person to record the significant findings if the premises meet the set criteria.

53. Do you have any views about whether Accountable Persons or their employees should be precluded from conducting fire risk assessments themselves?

NFCC strongly supports that in more complex premises, especially those with a sleeping risk, or with vulnerable occupancy, that the Fire Risk Assessment and fire safety arrangements should be undertaken by a competent registered fire risk assessor only and recognises this could add additional burdens to some businesses.

Where the APs or their employees in less complex premises are able to demonstrate that they have the competency to conduct their own fire risk assessment themselves, they should not be precluded from doing so. A clear tiered structure needs to be encompassed within

guidance. It must be remembered that within a simple premise, the various CLG guides actually encourage owners/employers/operators to undertake their own Risk Assessment.

Any competency requirement will have to be very carefully considered so as not to cause the smaller premises the need to incur additional expenditure when it is not necessary.

There are examples of tools such as 'keep your business in business' designed to enable APs of smaller less complex businesses and premises that would fall within the scope of the proposed category 2 building, to undertake a suitable and sufficient fire risk assessment that is both proportionate and valid for their premises. It is important that adequate guidance is provided as part of the guidance overhaul for the AP to be able to undertake this duty competently.

54. Do you have any views on enforcement or sanctions for non-compliance with regards to the Accountable Person?

It is unclear in the white paper as to how the regulatory oversight of the proposed BS regime will be managed, it is also unclear as to how enforcement and sanctions will be applied. However, it is important that the level of enforcement and sanction needs to be balanced across the sector to ensure it is suitable for the offence and reflects the seriousness of the breach.

The completion of a FRA is the key part of the process in the AP understanding the fire risks posed by the building and the measures needed to mitigate those risks. Without it, the AP is unable to demonstrate that they have considered these matters or that the actions they are taking are commensurate with any risk. As the FRA is such a fundamental document the enforcement and sanctions for non-compliance by the AP for a failure to carry out any of the proposed requirements around fire risk assessments (reviewing annually / acting on findings etc), should be significant enough and commensurate with the seriousness of this non-compliance. The sanctions should act as a deterrent to non-compliance.

NFCC believe the levels should mirror and be proportional to that of the related regulators such as the FSO, proposed 'Building Safety Regulator (BSR)', Health and Safety Executive (HSE), Environment Health Officers, and Housing Act enforcing authorities. It should be balanced in a way that enables the 'regulator' to carry out their duties in a trusted manner but is not seen as a regulator without teeth.

Any enforcement or sanction regime should not create additional burdens on the regulator(s) to recover the fines, currently the process of recovering a £1,000 fine is not cost effective for a FRS. Any fine needs to serve as a deterrent for not only the RP receiving it, but for other RPs.

55. Do you have any views on enforcement or sanctions for a person undertaking a fire risk assessment without suitable qualifications or experience?

As per response to Q54 above, the level of sanctions needs to be proportionate with the potential consequences of non-compliance. An unqualified or inexperienced assessor is unlikely to be able to suitably recognise the risk in more complex buildings or be able to

provide the necessary advice regarding mitigation measures. The consequences of this could be serious in terms of resident safety.

It is important that, given the range of premises that could be covered by these changes, clear guidance is available to APs to assist them in understanding when a premise will need to be assessed by a fire risk assessor. A lack of clear guidance could result in confusion amongst those being regulated and action being taken against persons unfairly because of a lack of understanding of their duties and how to recognise the extent of their knowledge, skills and experience. Guidance is already being developed in England to address this and consideration should be given to modifying this to fit specific Welsh legislation.

56. Do you agree with our proposal to create duties with regards to compartmentation on Accountable Persons? Please provide information to support your views.

Yes. NFCC supports the idea to create duties with regards to compartmentation in order to support ongoing compliance and have safety at the heart of the management of the building. Appropriate compartmentation is a key element in protecting residents and containing the spread of fire. When any works are done in the building, a requirement to adequately consider and address any matters that affect compartmentation will support its upkeep and integrity.

Placing duties on the AP will ensure this is always factored into any maintenance or refurbishment works. The proposed duties would be a fundamental requirement for the AP to be able to fulfil their obligations of the role and satisfy themselves that the building is safe. Any such duty should complement existing duties stemming from other legislative requirements and greater oversight and sanctions for noncompliance.

57. Do you agree with our proposal to create duties with regards to compartmentation on residents? Please provide information to support your views.

Yes, everyone has a role to play in the safety of those occupying a building. This includes residents themselves with regards to their own health and safety and others they share the building with.

Resident responsibility is a necessary part of the new regime as a means of tying together the three primary features of the engagement strategy: such as the provision of information; resident engagement; and the routes of escalation and redress. This requirement should not be restricted to buildings in scope, with the requirement extended to all residential premises. The provision of information and resident engagement strategy should inform residents on how and why they should cooperate with the accountable person and (where necessary) building safety manager.

Residents' behaviour can have a direct impact on the integrity of compartmentation in a building, whether this is through carelessness or deliberate damage to their flat or common areas, or as a result of lack of knowledge and the consequences of their behaviour (e.g., DIY work / replacing a fire door with a UPVC doors). Placing duties on residents emphasises the role they have to play regarding the safety of the building and that everything cannot be attributed to the AP or freeholder.

Requirements for works that are carried out by or on behalf of residents must meet certain criteria (e.g., satellite television installation), to make sure structural integrity and fire safety measures are maintained and work is carried out in an appropriate and qualified fashion.

Resident responsibility should form part of tenancy/leaseholder agreements, with appropriate sanctions for those who persistently refuse to co-operate, put others at risk or prevent the accountable person from fulfilling their duties. This should be reviewed as part of the resident engagement strategy for all buildings in scope and safety case reviews for Category 1 buildings.

The practical implications of this proposal should be considered with specific regard to communication of residents' responsibilities, pathways for reporting issues to the AP and how the legal interaction between residents and the AP would work in order to undertake enforcement action. Greater detail in this area is required.

58. Do you agree the concept of a Safety Case for Category 1 buildings is an appropriate way to assess and manage the risk of building safety issues?

Yes. This will align with the new regime in England where considerable work is progressing on the provision of the safety case.

This work is evidenced based where the AP must prove a building is safe, which should provide an effective base set of information to manage the premises. We believe the responsibility for the Accountable Person to provide the safety case, will encourage 'ownership' of a premises.

59. What do you believe would be a reasonable timescale for existing Category 1 buildings to create a Safety Case?

NFCC suggest that this question is best answered by those representing the RPs and competent persons, as there is not enough evidence to competently answer this question. Further research needs to be examined.

60. Do you agree there should be a mandatory reporting duty on duty holders in the occupation phase?

Yes. NFCC believe that mandatory reporting supports accountability for where issues that have been reported are not addressed and where issues have not been reported.

Mandatory reporting will also allow for trends to be identified in specific premises, types of premise, place and can assist the regulator in making recommendations, alter guidance as needed and see the potential need for supporting or new legislation.

61. Which incidents/issues do you think should trigger such a duty and why? Please provide examples.

There is a need for more clarity and information in order for NFCC to fully answer this question including the parameters.

Our members' experience is that as FRS, if they are not aware of a significant near miss, if the resident does not get in touch to make them aware, that an AP would not be any more aware of it. There needs to be a duty on residents to inform the AP without fear of sanction of near misses for this to work.

Mandatory reporting is key if there are significant incidences, as it can help inform the operational plan. The AP should have mandatory reporting procedures to FRSs, to help inform operational procedures.

More detail is needed on how this mandatory reporting differs from duties already being undertaken by the AP. If an AP is conscientious enough to report a near miss, they will most likely rectify the problem that caused it, something they are already doing.

An example raised by our members in our workshop for this question was; if a fire lift was off the run, and the FRS would need to increase attendance, would they want that considered in mandatory reporting? FRSs agreed that they would want the information, but equally significant changes should be dealt with through the Fire Risk Assessment.

62. Should there be a requirement for the Accountable Person to register under the building safety regime during the occupation phase?

Yes. NFCC support the requirement for the accountable person to register for a building safety certificate prior to occupation. This would support the process of having a clear accountable person in place, demonstrating competency for the role, making sure safety measures have been addressed, and identifying a point of contact for residents and regulators alike. The accountable person should also ensure that a fire risk assessment has been carried out which should identify what procedures may need to be in place for the ongoing safe management of the building.

NFCC has previously addressed this issue in our response to the English *Building a Safer Future* Consultation in 2019 that it should be an offence for the accountable person to allow a building to be occupied before they are granted a registration for the building; and still strongly believe this to be the case. This would support the safety culture within the whole process, help remove the potential to game the system, and promote the ethos of keeping residents safe where they live.

63. Are the registration process requirements sufficient? Are there any others that should be included? If so, please outline and explain.

Yes, NFCC believe the proposed registration process requirements are sufficient. We would like to see Welsh Government consider the requirement to provide evidence of how, if, and when required fire safety remediations will be carried out without placing undue burdens on leaseholders and residents.

NFCC note that APs for Category 1 buildings have to undergo a 'fit and proper persons test' and believe that the principles of this test should be afforded to those Category 2 buildings that are home to some of our most vulnerable communities, such as sheltered housing schemes, and residential respite care facilities for young people with learning difficulties etc.

Consideration is also needed that as part of the registration process a Photo ID and current UK address is submitted so that there is no ambiguity for the regulator (s) as to who the AP is (similar to a premises licence holder). While ensuring the AP is able to be contacted and held accountable, the legalities of insisting on such requirements should be considered and the limitations it may place on those who are not resident in the UK investing in property.

64. Should there be a requirement for duty holders (both the Accountable Person and the Building Safety Manager) to obtain a building safety licence in the occupation phase? Please explain your answer.

Yes, this would provide some reassurances that the AP, the BSM or the Managing agent, is fully aware of their responsibilities and duties. It also provides reassurance they have the right expertise and competencies to know when they are able to sufficiently fulfil their duties or when they need to seek assistance to help them comply with their duties. It provides further reassurance to residents and regulators that as the AP, they have a basic understanding to ensure that they are able to appoint a suitable and competent BSM, Managing agent, or 3rd party contractor. This would be a similar process to that of a Designated premises licence holder.

NFCC would recommend that the licence is either displayed within the building (as is the case with premises licence holders) or forms part of the resident information pack (GDPR), made available for inspection by relevant regulating authorities (as is currently the case with DPS licence, explosive licence, public indemnity insurance certificates, etc).

65. Are there any other requirements that should form part of the licensing process for Accountable Persons in addition to completion of basic training about the building safety regime and the fit and proper persons test (Category 1 buildings only)?

NFCC believes the requirements set out in the white paper are sufficient yet we would seek reassurance that the AP licensing requirements are refreshed on a regular basis. The white paper does not set out whether the AP or BSM licence would need to be reviewed or renewed to be considered as valid and what duration a licence is valid for.

In the Draft English Building Safety Bill, it is suggested that the building certificate would be valid for 5 years subject to review or change of ownership. We would support a similar process be applied to the Welsh Building Safety Regime. An alternative approach would be a similar process to that of a premises licence / designated premises supervisor (DPS) scheme / Insurance policy for homes / cars – so that either it is renewed annually, or an annual fee is paid by the AP to ensure there is no ‘gaming’ the system and the process is considered important.

The extent of the fit and proper person test should extend to understanding that individual's background including whether they hold other positions or previous relevant activities which may lead the regulator to require the AP to make a case as to their suitability (where there are no serious offences already identified in the proposals). Focus should also be placed on identifying where there may be conflicts of interest so they can be declared to all.

The licensing process and any supporting guidance should state that an AP can appoint people to undertake responsibilities, but they cannot delegate their accountability and making that clear is paramount to making it work.

66. Should there be a competence requirement and/or minimum qualifications for those managing Category 2 buildings? If so, what criteria should those engaging in such services meet?

Yes, this will make people more aware of what the responsibilities are. We would suggest something similar to that of a food hygiene course, ([Online food safety training | Food Standards Agency](#)) to help those who work in the industry meet their regulatory duties depending on the specific job role, with more formal requirements for category 2 buildings that have higher risk / higher vulnerability resident profile.

The duty to ensure safety in the building remains the same regardless of the category. The need to ensure that safety can appear onerous but may sometimes be necessary. The categorisation of premises is not based on any other risk factor apart from height. This means a Category 2 building could represent a significantly higher risk than any given Category 1 building depending on the specific circumstances. Further subdividing premises in Category 2 is possible but seems unnecessarily messy. Consideration to a blanket requirement in a similar vein to Category 1 buildings should be considered although some height specific elements could potentially be removed, reducing the required knowledge for Category 2 and broadening the entry bar.

67. Do you agree that there should be regulation of all residential property management? Please support your views.

Yes, NFCC believes that there should be a process to regulate all residential property management as this would align to Dame Judith's vision of a holistic approach to building and fire safety and ensuring that residents are at the heart of it irrelevant of whether they live in a social housing property or within the private rented sector.

Currently anyone can set themselves up as a managing agent with little regulation regarding the actual standard and quality of the management of the building. This results in often poor service being received from both landlords and tenants. Landlords can often find themselves paying for a poor service and may sometimes believe an agent is managing a building appropriately but only finds out this may not be the case when they receive contact from their local fire authority or housing inspector.

Regulations would not only start to bridge the gap of a tiered system between tenants and leaseholders but highlight that fire safety and building safety is paramount across the entire sector.

It would provide for an opportunity for landlords to ensure that when appointing a management company to act on their behalf, that they are doing so with the confidence that the management company has the same, if not more understanding of what it is, they need to do to comply with regulation and keeping people safe in their homes. FRS experience highlights that sometimes there is ambiguity as to who is responsible for fire and building safety, and a game of 'pass

the buck' between the AP and the managing agent resumes when it comes to enforcement of fire safety breaches.

This provides an opportunity to align the whole of the residential sector under one regulatory system that has 'teeth' bringing together Housing, Building Control, fire safety and existing schemes such as Rent Smart Wales under one regulator.

68. What standards should those carrying out residential management functions meet? Should there be a differentiation between the standards required for those managing Category 2 buildings, and those managing unadopted spaces? Please support your views.

There should be minimum understanding in terms of:

- basic construction of buildings, and the common problems and defects that can occur over time.
- the regulatory regime in which those letting out properties must operate and the housing standards and conditions that must be met. E.g., awareness of hazards as prescribed in HHSRS, management conditions of HMO's, FSO requirements on duty holders.
- customer service / complaints handling

For those managing unadopted spaces there should be minimum standards that reflect the issues commensurate with such spaces, including keeping them clear and free from obstruction and not allowing accumulation of rubbish from both a fire safety and environmental health perspective.

NFCC believes that similar standards as those set out above for the AP and BSM / Managing agents of buildings in scope should be adopted and although there should be no differentiation between the standards required for managing Category 2 buildings and those managing unadopted spaces, where safety is concerned, this should be proportional to the risks identified.

Consideration should also be given to whether the standards should be extended to situations where an individual or a group of persons has some responsibilities towards the management functions of the buildings, for example:

- Leaseholder arrangements (especially where a premise is sub-let) leading to ambiguity as to whether an occupant is an AP / RP, an Article 5(3) person, under the Fire Safety Order.
- Where responsibility is delegated to an employee, who has had no training or experience of managing the risk but is put forward as the RP or manager of the site (e.g., during performance inspections where licensed premises are leased from a pub company).
- Residents who form a tenant management organisation.
- Board members of the organisation.

- Residents who themselves will be considered an AP, a RP or both (for example in the role as director of the tenant management organisation).

69. How could the issues of probity and responsibility be evidenced in such a system? Please support your views.

Having a safe and secure home is fundamental to everyone's health and wellbeing and those involved in the rental, and management of property should be sufficiently qualified and suitably competent to undertake a management role.

An initial demonstration of competence, either through qualifications or previous evidenced experience would be a starting point, as well as a minimum of hours CPD per year covering a range of topical issues.

70. Do you agree that all Accountable Persons should be required to promote building safety (as set out at para 8.2.4)? Please support your views.

Yes. The AP should be required to promote building safety as set out in para. 8.2.4 and emphasis placed on the responsibilities of all in the building, it is important that residents are provided with a sufficient level of relevant information to enable them to better understand what fire safety arrangements are in place to keep them safe.

NFCC supported the proposal in the draft Building Safety Bill for an Approved Code of Practice for resident engagement as a beneficial tool that places necessary emphasis that fire safety is important, and that residents play a clear role in maintaining that safety. It would also clearly set out what the minimum expectations are, removing any ambiguity for the AP as to their responsibilities or the expectations of the residents – giving the same weighting as Provision of Information that the Fire Safety Order places on employees and ensuring it does not get lost and really does reflect that residents are at the heart of the system.

Information should align with the requirements of the Resident Engagement Strategy as set out in para. 8.2.4; to ensure that there is no discrepancy between residents living in category 1 and category 2 buildings. Engagement with the FRSs and the MHCLG BPG (Social Housing Best Practice Group) identified that Provision of information is vital in building trust between residents and landlords, and residents feeling safe in their own homes. They also identified that the way the information is provided is equally important and should be available in an accessible manner (e.g., language, formats, age specific) to all.

Roles and responsibilities of residents should include issues such as not storing items in the common parts outside their flats and the reasons why. This issue is one seen frequently by our members.

71. Do you agree that this information should be provided in a way that is accessible and understandable, and should where relevant reflect the specific needs of residents? Please support your views.

Yes. Information should be provided in a way that is accessible and understandable, and this may mean it being available in different formats including via email or posted to them,

depending on residents' preferred communication method. If they have specified how they would like to be communicated with, this is likely to increase their chances of reading it and engaging with the content. Information must also be easily understandable for someone from a non-fire safety background.

We also understand that there may be some information that cannot be readily circulated for data and security reasons. The regulator should arbitrate where the provision of information is challenged. This should include a mechanism to ensure the information is kept regularly up to date. The management summary and engagement plan should also set out how safeguards for all (residents, building safety manager/accountable persons) will be managed and scrutinised to ensure effectiveness and prevent foul play.

72. Do you agree that a nominated person who is a non-resident would be able to request information on behalf of a resident who lives there? If yes who do believe that nominated person should be? (Relative, carer, person with lasting power of attorney, other)

The nominated person should be able to request information on behalf of the resident and this nominated person should be anyone the resident has identified to the AP as being suitable, or via a lasting power of attorney if this is needed. It should not be limited to a prescribed relationship such as a resident or carer as everyone's support network and arrangements are different.

This should come with the appropriate checks and balances from all interested parties to safeguard the AP, duty holders and the residents alike.

73. Is there any other information that an Accountable Person should be required to provide on request? Please provide information on the two different categories of building if relevant.

NFCC would refer to the safety first and housing documents which are concise and a good start to what this might look like.

Other information we believe should be provided:

- Current Electrical Installation Condition Report (EICR) for the common areas of the building
- Any special arrangements related to evacuation for those that require assistance or have a temporary condition that affects their ability to self-evacuate.
- Who they should be reporting any concerns to regarding the fire safety arrangements, including the route for escalation and redress they can take.
- A clear definition of the term 'resident'.
- Home safety information of how to keep themselves safe such as the infographic posters (MHCLG Social Housing Best Practice Group Pilot).
- Signposting for vulnerabilities – being able to contact their local Community Fire Safety (Prevention) Officer.

- Additional training for residents who are part of the tenant resident association or are board members/directors of the TMO – setting out their roles and responsibilities.
- Where peoples' conditions may have deteriorated and need help evacuating and the need for the AP to share this information with the FRS. Again, when the condition improves, that should be shared. This helps to not put FRS in unnecessary risk.

74. Do you agree that for Category 1 buildings the Accountable Person must provide the information as set out at para 8.2.10? Please support your views.

Yes – the information listed in 8.2.10 is comprehensive but as above how the information is communicated will contribute to its usefulness and success of the resident engagement and building of relationships between all parties. The frequency of communication should also be considered and a recognition that some residents may wish to engage more than others.

It is important that residents are provided with a sufficient level of relevant information to enable them to better understand what fire safety arrangements are in place to keep them safe. The management statement of how resident engagement will be delivered, and the engagement plan should also set out how safeguards for all (residents, building safety manager/accountable persons) will be managed and scrutinised to ensure effectiveness and prevent foul play. This should be supported with clear guidance that sets out the two-way resident engagement process and the responsibilities of the resident, the BSM and the AP(s).

NFCC is pleased to see the recognition of 'intermediary landlords and their need to co-operate in promoting building safety and resident engagement, having identified it as an area of concerns in our response to the Home office Fire Safety Consultation in October 2020, in which we stated that *"the guidance on Provision of Information should make clear the expectations of a duty holder (A.5.3 person) e.g., leaseholders who sub-let. Engagement with the FRSs and the MHCLG BPG (Social Housing best practice group) identified that Provision of information is vital in building trust between residents and landlords, and residents feeling safe in their own homes. They also identified that the way the information is provided is equally important and should be available in an accessible manner (e.g., language, formats, age specific etc) to all."*

75. Is there any other information that you think it would be useful to provide? Please support your views.

There appears to be no information about how residents can raise concerns or report problems regarding their building (e.g., building safety issues relating either to disrepair or other resident / contractor behaviour).

Other information should include, how residents should raise complaints or concerns to the AP, an outline of the basic info required to effectively respond to the complaint.

As well as the many issues raised in the questions above.

76. In what ways could an Accountable Person demonstrate that they have established effective two-way communication?

Effective communication is based on an engagement and cannot be demonstrated by the AP just listing and showing copies of emails / letters they have sent out to residents. Records showing responses from residents to communications and or raising issues and how they have been dealt with should be kept as part of a case management system.

It is recognised that depending on the occupancy, not all residents will want to actively engage and may only want to engage with the AP when there is a problem with an annual report of resident engagement, including what worked and what didn't.

However, an AP should have a process of reviewing the effectiveness of their communication if they are not getting any feedback or response over a period of time. Are they communicating in the most appropriate way? Could they engage better, e.g., through residents' meetings which includes minutes of the meeting. Complaints logs could record actions about how the complaint was dealt with, by whom and what the outcome was including resident's involvement.

All of these could form part of the licence renewal process.

77. Do you agree that there should be a new requirement on all residents of buildings within scope to co-operate with the Accountable Person (and their appointed representative) to allow them to fulfil their duties under the Building Safety Regime? Please support your views.

Yes. There should be a requirement on residents to co-operate with the AP in terms of providing access to the property when needed and also in terms of specific responsibilities they have. Resident responsibility is a necessary part of the new regime.

However, more clarity is needed on what the consequences would be if the resident does not co-operate. What will constitute a lack of cooperation and how many attempts will need to be made by the AP before either access can be obtained or action taken against the resident.

There are current legislative powers that provide access for certain enforcement officers and also powers of landlords to gain access after following the right procedure. However, despite this, it does not always mean it is granted. Therefore, what will this requirement add that is not already in place? Alongside the requirement to cooperate, there should be proportionate but effective consequences for non-cooperation, particularly when the matter of concern may be urgent in nature and/or there is imminent danger.

The white paper does not provide clarity on what 'reasonable notice to residents' to provide access for safety checks constitutes and recognises that the current system for access is not effective. It is not clear therefore how the proposals would be less onerous, and what solutions would be available in respect of residents who actively and repeatedly disregard this new requirement as proposed.

There is also a lack of detail of how this would be managed by the AP / Regulator particularly for those transient residents in Category 2 premises such as a HMO.

The requirement for residents to cooperate emphasises the message that all parties have a role to play in the safety of the building and this includes residents playing their part.

78. Do you think there should be any specific requirements to facilitate this? Please support your views.

There should be a requirement on the AP to provide clear and detailed information about why they would like to gain access, the issue they are trying to resolve and the potential hazard/danger to residents and occupiers of the building if access is not granted. There should be a requirement on the resident to provide a response to any request to gain access, even if that is to register their concerns or objection. This is to allow the AP the ability to engage and communicate further to allay any concerns and try and overcome any issues the resident may have (as far as reasonably practicable).

Ignoring communication without proven good reason such as being away from the property and not receiving communication should be automatically seen as a failure to cooperate.

If access is to conduct works in an individual flat, reasonable notice should be given, and the AP should provide the resident with details of the works to be undertaken and how long it will take. As far as possible, there should be negotiation over the timing of this work and if the resident is unable to reside in the property as a result of the work, then the AP should be in a position to offer alternative accommodation or the cost of it, if necessary.

Specific requirements should consider:

- Vulnerable residents - whether their nominated person has a responsibility to co-operate on behalf of the vulnerable resident.
- Resident responsibility – this should form part of tenancy/leaseholder agreements, with appropriate sanctions for those who persistently refuse to co-operate and put others at risk or prevent the accountable person from fulfilling their duties. This should be reviewed as part of the resident engagement strategy and safety case reviews.
- Requirements for works that are carried out by or on behalf of residents which must meet certain criteria (e.g., satellite television installation), to make sure structural integrity and fire safety measures are maintained and work is carried out in an appropriate and qualified fashion.
- Access to individual flats as part of a planned schedule of works, and short notice access to assist regulators to fulfil their legal duties/accountable persons being able to demonstrate compliance.

79. What safeguards should be put in place to protect residents' rights in relation to this requirement? Please support your views.

NFCC agrees that safeguards should be in place, but these should be in place for both residents and accountable persons, including the building safety manager, to ensure that vulnerabilities are not over-looked and there is no abuse of power.

The requirements should be mindful of keeping the right balance, for example, protecting the rights of one resident over the safety of the other residents and the building.

In order to protect residents' rights, the AP should be able to demonstrate that they have engaged and communicated with the resident about any request made for cooperation, and that as far as reasonable a timeframe has been given to allow them to cooperate and provide the requested access / information.

In terms of the requirement not to knowingly breach the compartmentation, clear information should be provided to them about what compartmentation is and the actions that would constitute a breach of it.

The terms compartmentation and the principles of it are unlikely to be familiar terms and issues to most residents, therefore, to adequately show they have knowingly breached the compartmentation, it would need to be shown that they were aware of what type of activities in their flat would constitute a breach.

The management summary and engagement plan should set out how safeguards for all (residents, building safety manager/accountable persons) will be managed and scrutinised to ensure effectiveness and prevent foul play.

Safeguards could include practices similar to those found in:

- GP surgeries, during patient examination.
- Fire safety docket – a docket is completed by the person carrying out an inspection, signed by both resident and building safety manager/3rd party – one copy left with the resident and one uploaded to digital records as part of the Golden Thread.
- Same safeguarding where fire safety is concerned, irrelevant of tenure type (e.g., assured shorthold tenants, assured tenant, leaseholder or protected occupiers).

Documentation should be recorded for requests, including entry to property, as this would serve as a safeguard and also add to the Golden Thread and safety case evidence that inspections had been carried out and their justifications.

80. Do you agree that there should be a new requirement on all residents of buildings within scope not to knowingly breach compartmentation? Please support your views.

Yes, everyone has a role to play in the safety of the building and this includes residents.

Our members have experienced that often modifications and internal alterations have taken place without the landlord's knowledge and are only discovered by luck or during an inspection by the landlord or regulator, particularly with some of the smaller category 2 buildings such as conversions, and student accommodation.

We would reiterate our recommendation within question 78 that considerations to ensure resident safety from the effects of a fire; is an essential part of the resident's tenancy agreement and its importance and failure to comply is clearly explained and understood as part of the two-way resident communication/ engagement strategy.

NFCC would be keen to highlight that whilst agreeing with this proposal, there will be challenges to monitoring compliance, as determining if a resident knowingly breached compartmentalisation may be subjective.

81. Do you agree that there should be a single process for escalating concerns to the regulator in relation to the Building Safety Regime, regardless of the Category of building or where it is in the building lifecycle? Please support your views.

Yes. A single regime for both categories of building will provide a simple and straightforward process for reporting concerns, irrespective of the type of building in question or stage of the lifecycle and avoid creating a two-tier system.

A single process will mean the regulator can build a history of issues and compliance related matters concerning a particular building, and potentially if the system allows a particular party to be an AP or BSM for multiple buildings. It will provide a more holistic view with regards to a building and the ongoing management of it over time.

Outside of social rented accommodation, our members' experience shows the complex nature of some ownership structures can cause confusion for residents about who is responsible for the safety of their building. The introduction of multiple APs, in addition to multiple RPs, will add further layers of complexity to what is already a significant challenge. This will be more so for residents who themselves will be considered an AP, a RP or both (for example in the role as director of the tenant management organisation).

These challenges can undermine the speed and effectiveness that a complaint can be dealt with. This is especially concerning in mixed use buildings where there is the potential to have multiple RPs under the FSO, and multiple APs under the proposed regime for different parts of the same building, plus the addition of a BSM.

There are some aspects which would benefit from further clarity, including:

- Whether sublet tenants and private rented sector residents can escalate their complaints to the regulator.
- Whether statutory guidance on how the AP should 'operate a complaints procedure' will be a statutory requirement as proposed in the English Draft BSB. Guidance is important to ensure that there is no ambiguity as to the responsibilities of the AP and BSM (and residents)
- How persistent complaints to the regulator against the AP / representative would be handled when the AP / representative has demonstrated due diligence and yet the complainant remains unhappy with the outcome.
- Whether a complaint from a resident received by a local FRS, can be referred up to the regulator in this instance.

82. Should a similar model be established to allow leaseholders to apply for a change/removal of a Building Safety Manager? What would be an appropriate mechanism to do this? Please support your views.

A single model would be appropriate for leaseholders to change or remove the BSM and come with the same benefits as mentioned in question 81.

NFCC believe that an online reporting system should be set up where a resident could check and confirm the BSM is registered and then log a request / complaint against the details recorded. Criteria as to what information needs to be provided and confirmation that concerns have initially been raised directly with the BSM can be set.

NFCC understands the benefits of introducing such a system but would ask the government to be mindful of the unintended consequences of doing so. It is unclear in the white paper proposals whether the process for the leaseholder to change or remove a BSM would be through the regulator or using the existing Leasehold Valuation Tribunal (LVT) process, in place for Private leaseholders as set out in para 8.4.4.

Additional considerations that should be taken into account include:

- Where action is being taken against a building by an enforcing authority, the building safety regulator may need to appoint an interim manager whilst any issues relating to management are resolved.
- Where there is a resident complaint against building management, there may need to be the option for interim management arrangements to be put in place whilst the circumstances are investigated.
- Where the accountable person is unable or unwilling to implement the requirements of the building safety regulator.
- The requirement for the safety case/ key dataset to be reviewed should the accountable person or building safety manager change, although this would not have to be a full-scale review.

The above points need to be carefully considered to ensure there is a sufficient capacity of competent persons within the system who are able to fulfil these roles.

83. What roles and responsibilities are appropriate for Accountable Persons with regards to people who cannot safely self-evacuate? Please support your views.

Consideration of the management of residential buildings with regard to the need for emergency evacuation plans for vulnerable persons is an important element for any building safety regime. NFCC feels that the requirement to ensure the safety of vulnerable occupants should be made explicit. The accountable person must ensure the evacuation strategy is written and suitable for the building (i.e., is the strategy to stay put or is it simultaneous evacuation). There is a need for the AP to ensure each individual building is fundamentally assessed to develop bespoke measures to support the necessary fire safety arrangements.

It is those persons who are unable to self-evacuate that are at highest risk of injury or death in the event of fire. Therefore, a person-centred approach which takes into account residents' lifestyles, decision making capacities and physical agility is critical. Additional control measures can help vulnerable persons in the event of fire, firefighting/evacuation lifts are a

key consideration for premises with mobility impaired persons occupying accommodation above ground floor.

The identification of these types of fire safety measures are integral to successful fire risk assessment for disabled persons. An evacuation is something which takes place before the arrival of the emergency services, and is the responsibility of the RP, as established by the FSO and underlying regulatory framework that those who own the risk should be responsible. Where FRSs need to assist someone to leave the building, this is known as a rescue; it should therefore not be necessary to rely upon the intervention of the Fire and Rescue Service to make evacuation plans work.

Where an employer or a service provider does not make provision for the safe evacuation of disabled people from its premises, this may be viewed as discrimination. It may also constitute a failure to comply with the requirements of fire safety legislation.

Challenges are also presented in regard to how to keep information up to date. Even if information is supplied by the AP there is no guarantee the person or people will be in on the day, which can create risk for the safety of crews. This makes the format for how such information would be stored and shared crucial.

NFCC would be happy to participate in a task and finish group to examine this issue further.

84. Should Accountable Persons be required to collate details of all those who would require assistance?

Accountable Persons should be aware of their resident profile and collate relevant details of those who require assistance as part of their resident engagement strategy. In doing so they should be mindful that they are not compromising GDPR requirements.

NFCC supports the provision of evacuation strategies and the clear communication of these to residents. We also support the inclusion of these in a PIB, and the proposals that these be kept under regular review. In the majority of cases, the evacuation strategy will be straightforward in nature and could be communicated in the same way as it is to the residents.

There are challenges around how to keep the information up to date whilst considering privacy considerations. If somebody has a temporary mobility issue associated with a broken leg, or a vulnerable resident is away on holiday, real challenges would be faced by RPs to ensure information was up to date. As noted in q83, firefighters responding based on information which was out of date could risk their lives or precious time at an incident trying to locate a resident who was not there or is no longer vulnerable.

The consultation proposes that the residents have a right to supply their information to the AP for the purposes of needing assistance in the event of evacuation and for this to be passed to the fire service.

This provides a proportionate and pragmatic approach to evacuation in situations where those unable to evacuate on their own, will not have the benefit of trained personnel to assist them or staff within their residential block to do so.

Consideration needs to be given to how often this information is reviewed and kept up to date. Clarity is also needed on whose responsibility is it to update this information, the occupiers, leaseholder of a rented property or the AP.

85. Should Accountable Persons be required to provide this information immediately to the FRS in the event that an evacuation was necessary?

Yes, the true value of collating the information is if it is going to be utilised in the event of an emergency.

As highlighted in questions 83 and 84, this must be done proportionately and in accordance with GDPR requirements, in terms of storing of personal information, and how it is shared.

This information could be imparted to the FRS on site via the PIB rather than passing that information to the FRS electronically. While it might be the kind of information some FRS would include on their turnout information, there is a risk of overloading some FRSs ability to record and process information; keeping it in a simple format is more likely to be effective to supporting firefighting operations at an incident.

There are concerns on the scope of the information and the timeframe that it would be expected. There is the possibility that the AP may not be contactable at the time of the incident and the processes in place for this occurrence.

Additional information that may be of more specific use in fire service activities could include:

- Notification of routes and multiple assembly points.
- Presence and procedures for on-site staff who may manage the evacuation.
- Methods of communication to residents in stay put situations.
- Specifics of phased evacuation.
- Numbers of residents and staff.
- Locations of vulnerable persons who may need assistance.
- Where there are void (unused) premises.
- Any provision for the emergency evacuation of the building (where a stay put strategy is normally in place).

There may be benefit in some cases for FRS protection departments to be aware of the evacuation plans of a premise where this departs from what would typically be expected in that type of building; this information could be determined during an audit or any other interaction as and when needed. This may have benefits if an RP / AP was moving to a clearly unsuitable evacuation plan (e.g., PHE to simultaneous) which would require further investigations immediately.

86. Should this be the case for all Categories of buildings? Please support your views.

Yes. the need to understand the evacuation plan of a premises is, perhaps most important for the residents, but needs to be proportionate to the building type and occupancy profile, and

therefore would expect to see a variation between differing categories of buildings. It is for the fire risk assessment to determine the best approach.

NFCC recognises that there is the potential for added burden of collating this information in Category 2 buildings where ownership models could be more complex, and freeholders are absent which would exasperate the potential difficulties mentioned in previous answers.

For the most part in a residential building, evacuation plans will be simple and could be expressed in a single phrase. Where more complex evacuation plans are in place, such as Partial Horizontal Evacuation, there would be staff managing it and other fire procedures to support the FRS to understand the evacuation procedures which should already be in progress on their arrival. There are some rule of thumb principles which would be used by FRS such as the knowledge that certain premise types, including premises with vulnerable persons would generally expect a certain evacuation type in those buildings.

87. Do you agree that Welsh Government should pursue a means to protect workers from raising concerns with regards to building safety? Please support your views.

Yes, it is necessary in order to support an open and transparent process and give confidence that reporting will not prejudice the person involved, it would make sense that those raising concerns about persons carrying out unsafe works should be protected by whistleblowing provisions.

88. Are there any actions that could be taken ahead of legislative reform that would support Local Authorities and the Fire and Rescue Authorities to manage multi occupied residential buildings in a more holistic way?

The enhanced requirements with the three levels of communication between existing regulatory bodies as proposed in para. 10.3.4 and section 10.8 should provide sufficient measures ahead of legislative reform.

However, clarity is sought as to the role existing regulators such as FRSs and Local Authority Housing will play once the reforms are in place. The general requirement to work together within the current regulatory landscape will not significantly change across a range of premises types and current regulators should be encouraged to explore how they may interact with an additional regulator in due course. Welsh FRS already work closely with local authority colleagues with the current legislation and strengthening of relationships would be valuable.

We would also encourage APs and RPs to not wait for legislation and to start working to develop safety cases and looking at the external walls of flats now.

89. Do you agree with the list of key functions for the regulator as proposed?

A lack of detail about the form of the proposed national regulator has made it difficult to respond to some questions. NFCC supports proposals for national coordination of a number of the functions proposed but is of the view that this should be supported by local delivery through existing regulators.

NFCC support in principle the 9 core functions that will sit under the 3 broad regulatory objectives to have oversight, compliance and collaboration, however there are some concerns as detailed below regarding the operationalisation and practicality of some of the core functions due to lack of detail within the white paper.

Inspecting buildings

Although we welcome the ‘hands on approach’ proposed for the regulator, there is concern of how this will be met. It is unclear whether these inspections will be undertaken by a core team from the regulator or whether the expectation is to form a multidisciplinary team taking expertise from FRS and Local Authority Housing and Local Authority Building Control to undertake the inspection on behalf of the regulator.

FRSs are already experiencing a stretching of available resources to cover reactive work, such as checking the safety measures in buildings identified as being at risk. This comes at a time when protection departments in many FRS are struggling to maintain existing risk-based inspection programmes.

Ensuring competence

Any additional burdens must be properly resourced, and there needs to be sufficient transitional arrangements to train, recruit and upskill staff.

Setting safety standards and policy direction

This is an important function for the regulator and caution is required to not over burden already stretched authorities. There is a need for expertise to inform Government policy direction and Welsh Government may want to consider a similar approach to that proposed in the English Draft Building Safety Bill for the creation of the three advisory committees covering technical, competence and resident related functions, this will also help meet the core function of working with others.

Working with others

NFCC welcomes that the regulator will be working with others including residents.

Public engagement/ education

NFCC agree that engagement and education are vital in the effectiveness of the regime and pleased to see that it goes beyond the technical guidance to include the wider public, through the sharing of good practice and raising awareness.

Guidance is often used as a ‘maximum’ benchmark for fire safety, with some under the impression a solution is appropriate, simply because the guidance doesn’t explicitly say that it isn’t. It is important this guidance is unambiguous in setting out the responsibilities of the AP and BSM.

We would strongly recommend that the guidance specifically around the responsibilities of the AP, including how the AP should operate a complaints procedure and resident engagement, be statutory in the form of an approved code of practice or similar. It is important that secondary legislation and statutory guidance also support high levels of accountability and sanctions.

The nature of the guidance and education needs to consider the AP, the resident and regulators as the three key audiences.

It is important that the expectations of all parties are clearly outlined. There should also be clear workflows which offer guidance to all parties on their responsibilities. This includes the steps that the AP must go through to determine what information should be given and how resident information should be selected based on their needs; in some cases, the RPs will not have had any previous experience of dealing with residents in this way. Also, what constitutes their legal obligation being fulfilled when they experience difficulties (a simple question like who you should provide the information to in a family to determine the information has been 'passed on' requires careful consideration and includes potential safeguarding issues).

Some consideration should be given to the extent guidance is available to residents and the form it should take. Given that they may be given responsibilities, it is reasonable to expect they be given some guidance just as any other party with responsibilities would do. Clearly, creating guidance suitable for the lay person requires special consideration to ensure it is understood but legally correct.

A concern we have regarding this guidance, considering there may be multiple pieces of legislation in action, is that not enough detail is provided as to who takes the lead, which legislation has primacy, and how the regulators should interact. Clear boundaries should be defined which will allow regulators to act in an efficient way.

We want to see coordinated guidance, with a regular review period that should be no more than five years between reviews.

Following NFCC's recent and extensive consultation exercise with FRSs, we have many specific examples and are willing to offer support and expertise to help determine future guidance.

Dealing with complaints

NFCC expertise shows that the public trust FRS to deal with fire safety matters. If fire safety in these buildings was given to another authority it is likely complaints and enquiries would still come to FRS. Therefore, clarity is needed on the 'No Wrong Door' approach as it is unclear whether a complaint from a resident received by a local FRS, can be referred up to the Building safety Regulator.

We would also reiterate remarks made around education above that there is a need for dedicated guidance for complaints procedures so there is no ambiguity for the regulator(s), the residents, or the Accountable person / their representative.

Investigations and Enforcement

Our concerns regarding Inspecting buildings are appropriate also for this core principle.

Governance considerations

NFCC welcomes the two-fold proposal to be both inward facing and outward facing with accountability. The only concern the NFCC would have is regarding who would hold the BSR to account. Is it assumed that this would be an internal audit by the Welsh Government, we would welcome further clarity on this matter.

90. Are there are additional functions which are not listed that you believe are required in order to achieve our building safety aims?

A lack of detail about the form of the proposed national regulator has made it difficult to respond thoroughly to this question and others regarding the proposed functions.

We have identified the following additional functions which are not listed:

- NFCC support the principle that the building safety regulator could prohibit building work from progressing until non-compliant work is remedied. This would have to be based on the potential risk as part of the overall building safety. This ultimate sanction is needed to drive cultural change and may reduce the cost burden of remediation at a later stage of build.
- NFCC believe there needs to be appropriate dispute resolution processes; we suggest that the new regulator should provide this through an arbitration & determination role.
- Property Protection - The only argument against the inclusion of property protection was that it is matter for owners and their insurers. However, in most multi-occupancy buildings the resident has no control over property protection decisions which are made early in the design stage. For these reasons we believe that the regulator should also have some remit to ensure appropriate measures are in place to minimise property loss.

91. Do you think that some of these functions are more essential than others? Please explain your answer.

No. All are equally important and necessary as they are inter-dependant on making the system work, achieving cultural change and supporting a holistic approach to safety.

92. In your view, do any of the regulatory model options outlined provide a preferred approach to regulating the regime in occupation?

NFCC supports in principle a single regulator, though the number of buildings which are in-scope if the scope of the proposals remains the same within Wales may reduce the efficiencies of scale and generate complexities as technical expertise would still get drawn in. More detail and clarity is sought from the Welsh Government.

The multiple regulator approach with a concurrent strengthened regulatory regime, may provide the most practical and cost-effective approach to regulating the regime in occupation that could regulate both proposed categories of building risk, in an effective and efficient manner.

Better co-operation between the multiple regulators is vital for the success of this option though there already exist close working relationships. There will be challenges with the new duties proposed especially registration and licensing and who takes that on and where these new requirements sit.

NFCC also notes in regard to the proposals for the management of buildings in occupation, that the new Fire Safety Regime would apply to all parts of all residential buildings. This has the potential to create significant additional auditing burdens for Welsh Fire and Rescue Services which would need to be clearly understood, but equally could have some benefits for public and firefighter safety. It is also noted that the legislative separation of residential buildings and commercial buildings provides clarity on the application of the relevant legislation in each case.

93. Are there other regulatory models that are not presented here that we should consider? Please set out any alternatives.

NFCC is not proposing other regulatory models not considered in the white paper.

94. Do you think a local, regional or national approach to regulation would be appropriate? Please explain your answer, highlighting any positives and negatives you identify.

NFCC supports a national approach with the view that this should be supported by local / regional delivery through existing regulators retaining the advantages of local knowledge and ensuring realistic and efficient deployment of resources. This would promote national oversight enabling a consistent approach and avoid regional variations in regulation particularly regarding category 2 buildings, which have some of the highest risk occupants and demand on resources.

It should be noted that to determine the best approach accurately, relies on an understanding of how the regulator would be governed, structured and staffed, which at this stage has not been presented. All approaches consulted on rely on having sufficient resources. We look forward to further work with Government to support policy development of these proposals and discussion on how the work can be resourced in the future.

95. Do you agree that there should be a framework for escalating enforcement and sanctions? Please support your views.

Yes, there should be guidance as to how enforcement mechanisms and sanctions should operate. This guidance needs to be flexible and not too prescriptive to recognise the varying types of situation that officers may be confronted with. This must be supported with clear guidance on who is responsible for enforcement in different areas of the building.

Any proposed enforcement and sanction framework should consider current regulatory and enforcement regimes, so that you do not get a situation where action taken by the regulator produces a result which is not in line, or inconsistent with others regulating issues in the same arena. The framework should also ensure that the regulator has access to a range of sanctions.

The framework should address the interactions between the proposed new legislation and the existing legislation to which other regulators currently operate. NFCC supports the premise that strong sanctions support effective enforcement of the law and that where discrepancies between the two pieces of legislation exists, the higher award should be standardised. The sanctions delivered under the FSO should also reflect the sanctions imposed on buildings in scope to ensure that a two-tier system is not created.

In addition, consideration should be given to specific powers for the new regulator in line with those proposed in England, specifically to take over the duties of the BSM should the failures warrant that.

Consideration should be given to a more detailed look at the sanctions that can be taken during the design and construction phase, especially where the specific use of buildings has not been determined during the shell and core stage. This can leave the fitout stage with a difficult task where the shell does not readily support the final use resulting in compromised fire safety measures. It is difficult at this stage to determine whether a stop notice is appropriate even when, if the shell and fitout were undertaken as a single project, it is clear it would be.

The level of enforcement and sanction needs to be balanced across the sector to ensure they are suitable for the offence and reflect the seriousness of the breach. The FSO levels should mirror and be proportional to that of the BSR, HSE, Environment Health Officers, and Housing Act enforcing authorities, in a balanced way that enables FRSs to carry out their duties in a trusted manner but are not seen as a regulator without teeth. It should not create additional burdens on the FRSs to recover the fines, currently the process of recovering a £1,000 fine is not cost effective for an FRS. Any fine needs to serve as a deterrent for not only the RP receiving it, but for other RPs.

NFCC believe a whole building approach will avoid duplication and exploitation of loopholes. The new regulatory framework and an uplifted FSO could be used as enforcement tools in occupation. Therefore, it is important to ensure that a whole system approach is taken, with sufficient enforcement, sanctions, and competency requirements. Any regime where the onus of compliance is placed upon a duty holder is only as good as the enforcement regime that accompanies it.

96. Do the levels set out at Figure 13 sufficiently reflect these levels? Please support your views.

Yes, the proposed levels broadly set out the enforcement and sanctions regime that is currently applicable to Local Housing Authorities and FRS and therefore this would create a consistency of approach.

It is noted however that consideration should be given to consistent low-level non-compliance which needs to be acted upon. Figure 13 would not allow that to happen as it is focussed on

dealing with a specific issue rather than general management and compliance over time. We would also refer to our answer to question 95 on this issue.

97. What penalties or offences should we consider being created as part of the enforcement and sanctions regime associated with building safety? Please support your views

As per our answer to question 95, NFCC consider that the introduction of civil sanctions with fixed and variable monetary penalties - as an alternative approach to enforcement - would be a positive addition to the enforcing authority's powers. FRS' resources are limited, so the opportunity to resolve compliance issues quickly and effectively whilst reserving criminal sanctions for the worst offenders and repeated non-compliance would be beneficial.

When setting out penalties and offences, it is vital that they are set at a level which has the desired deterrent effect on behaviour. We believe an offence of failing to comply and one for obstruction should also be included.

The penalties for non-compliance should be equal to or higher than the penalties for non – compliance with a notice served. Otherwise, as is the case now, the AP will find themselves in a situation where it is more advantageous to be obstructive than it is to comply.

Consideration should also be given to scalable/increasing penalties directly linked to a time frame for resolution of the issue. Time frames would need to consider whether the appeals process could delay progress towards a resolution. NFCC would, recommend that the monies acquired from civil sanctions should be retained by the individual enforcing authority to support regulation.

98. Do you agree that access rights should also be provided to the Fire and Rescue Authorities, along similar lines to those available to Environment Health Officers in relation to their powers under the HHSRS? Please support your views.

Further clarity from the Welsh Government is sought on the proposals regarding what powers FRAs would be exercising; FRSs have a power to enter if needed e.g. where the risk is severe enough.

There may be advantages in terms of a Fire and Rescue Authority's ability to get a holistic view of a building by entering individual dwellings. However, the administration and notice requirements needed for entering private dwellings, if followed along the same lines as the HHSRS process will create an increased administrative burden which would be recognised. It may also slow down case progression with regards to the impact of inspection outcomes if they fail to gain access.

99. What safeguards should be put in place to protect residents' rights in relation to providing access to their properties? Please support you views.

Safeguards could be similar to that provided under the Fire and Rescue Services Act, S24 or the Housing Act 2004. There is a requirement to give at least 24 hours. There is no forceable right to entry and if it is refused, a case has to be put to the magistrate's court for a warrant.

Any safeguards that are put in place need to be clear as to their purpose, so there is no ambiguity that they are there to protect the resident in the first instance but also to protect FRS and LA staff entering the premises to fulfil their regulatory duty as well as the AP and BSM / Representative. The safeguard should form part of the two-way communication and resident engagement strategy.

100. Do you agree with the proposal to establish a Joint Inspection Team as outlined?

This model has some challenges. Setting up a separate team comprising of personnel outside of the local authority area to inspect and produce reports that are then left with the LHA and FRS to enforce still generates pressure and demand on local enforcing authorities but comes with no guarantee the LHA will act on the recommendations. While providing targeted expert support, it is possible that bringing an outside team in does not promote and facilitate local joined up working.

The proposal is unclear in highlighting how the investment in a JIT would outweigh the benefits of a similar investment in local teams, given that the JIT would have no legal authority and would only act in an advisory capacity.

101. Do you agree that the Joint Inspection Team's scope should be limited to Category 1 buildings initially with potential to expand? Please support your views.

Yes, if a JIT team were to be introduced their expertise would be best focused to the category one buildings.

We would caution a blanket extension to Category 2 building types purely on the scales of economy and whether as per our answer to question 100 whether the investment in a JIT would bring additional benefits which would outweigh investment in local teams. It may be a consideration to call upon a JIT team on a case-by-case basis for the more complex / unusual enforcement situations.

The investment would be better spent funding support at a core level.

102. Do you agree with the proposed composition of the Joint Inspection Team?

Yes. If it were to go ahead, the composition of the team reflects the main authorities that would be potentially involved with a building during the occupation phase. For it to be successful local officers must be an intrinsic part of the team, so they feel part of the process, as opposed to bystanders who watch a national team come in and leave them to deal with the consequences.

Consideration must be given to cost recovery for the FRSs to backfill those roles 'loaned' to a JIT.

103. Are there other functions the Joint Inspection Team could perform in addition to those outlined (i.e., enforcement advice and evidence gathering)?

There is a potential for the multi-disciplinary team to be utilised to educate and engage with Accountable persons and Duty Holders, taking advantage of their expertise and knowledge.

104. Do you agree that Welsh Government should pursue requirements around additional fire alarm systems as outlined above that would apply to all residential dwellings? Please support your views.

Yes, this appears to be a positive proposal extending the requirements around additional fire alarm systems to all homeowners and can only improve safety in the home. However, how this will be regulated and instigated in existing homes is hard to determine. There is an issue with cost and the realistic cost of installing interlinked detectors in many properties may be impractical.