



NFCC
National Fire
Chiefs Council

The professional voice of the
UK Fire & Rescue Service

National Fire Chiefs Council
West Midlands Fire Service
99 Vauxhall Road
Birmingham
B7 4HW

Telephone +44 (0)121 380 7311
Email info@nationalfirechiefs.org.uk

Building Safety Bill Team
Ministry of Housing, Communities and Local Government
4th Floor, Fry Building
2 Marsham Street
London
SW1P 4DF
United Kingdom

Sent via email to: buildingsafetyconsultation@communities.gov.uk

31st July 2019

To the Ministry of Housing, Communities and Local Government,

Please find attached the National Fire Chiefs Council (NFCC) response to the consultation paper '*Building a safer future: proposals for reform of the building safety regulatory system*'.

NFCC is the professional voice of the UK fire and rescue services (FRS) and is comprised of a council of UK Chief Fire Officers. This submission was put together by NFCC's Building Safety Programme (BSP) Team following extensive consultation across UK FRSs and was overseen by the NFCC Protection and Business Safety Committee. Our engagement strategy for developing responses to this consultation (and the Home Office's accompanying Call for Evidence), has followed a three-step process:

1. Early in 2019, NFCC held two workshops in London and Manchester focused on key themes in Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, which were attended by 43 FRS. The feedback gathered at these workshops informed the development of draft positions on key areas of FRS interest.
2. Throughout June and July, the BSP Team circulated draft positions to all FRS. The team discussed these and other themes with FRS at regional Protection Network meetings and many one-on-one engagement sessions with individual FRSs. Position statements and briefings were sent to all NFCC Committees and Chief Fire Officers. The team presented to other NFCC Committees and forums where timeframes allowed, including the NFCC Operations Committee, Sector Resources Committee, and the Fire Engineering Technical Standards (FETS) Group. A

bespoke briefing on the BSP Team's involvement in the review of competency frameworks was also sent to the NFCC Workforce Committee.

3. The feedback collected at these engagement meetings was then used to inform final draft answers, which were then made available for all FRS to comment on.

Through this process, NFCC has engaged all FRSs in England and Wales, except for self-governing crown dependencies. Specific engagement took place with the Scottish FRS to share learning and ideas. Colleagues from Northern Ireland FRS were invited to speak with the team and are engaged as part of the NFCC Protection and Business Safety Committee. The team has also met with the Ministry of Defence FRS, and the Crown Premises Fire Safety Inspectorate as part of the consultation process, and as part of the working group set up to review NFCC's Competency framework for Business Fire Safety Regulators.

FRS have raised concerns with us about the eight-week window for response. The general view is that, for a consultation of this significance, eight weeks (inclusive of school holidays) is insufficient to allow proper engagement. Some FRS consider that the proposals do not meet HM Government's *Code of Practice on Consultation*¹, with respect not only to the 12 week standard window, but also with regards to the lack of clarity on key aspects and the lack of an impact assessment.

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.

It is crucial, in order to avoid creation of a two-tier standard of safety, that the right incentives are in place to ensure compliance and a focus on safety.

We are concerned the current proposals will be seen as 'job done', responding specifically to the Grenfell tragedy, but not also taking the opportunity to properly address the much wider problems within the broken system.

Key aspects need to apply to the whole built environment to create the right incentives. Central to this is our view that new legislation should allow **any building work** to be scrutinised by the regulator, either through referral or sampling; for example, individual builders or contractors could come under the scrutiny of the regulator if serious concerns were identified. The regulator should have the ability to extend the full regime to other sets of buildings in response to risk and retain independence over this power.

Limiting the scope to residential high-rise buildings overlooks the core of the problems, such as the perverse incentives which were created as a result of being able to choose your own building control body. On this point - **the ability for clients to choose their own building control body should be removed across the entire built environment.**

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf

In line with previous responses, we would like a system that is able to incorporate a more holistic understanding of risk factors, including the **vulnerability of building occupants**. A wider range of buildings should be brought into scope of the planning, construction and design side of the new regime to ensure these buildings are built correctly to begin with. This should include Care Homes, Specialised Housing, Hospitals and Prisons.

There is significant scope for 'gaming' hard parameters such as trigger heights, and aspects such as how buildings are measured. Currently, there is an anomaly for protection of buildings between 11m and 18m. Front line equipment carried by FRS is primarily fit for external firefighting and rescue up to 11m in floor height.

If a height threshold must be used, then we suggest 11m may be more appropriate than 18m. This is covered in more detail in our full response.

The review of Approved Document B (ADB) is being relied upon to address the safety of residential buildings below 18m. Within a broken system, simply improving guidance will not achieve compliance. **The full technical review of ADB needs to result in significant changes.** Key areas where we consider ADB requires fundamental review and/or improvements include the use of sprinklers, provisions for firefighting access and facilities, and consideration of the needs of vulnerable persons, especially in specialised housing.

With regards to the interaction of the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 (FSO), it is not clear what the Government's vision is for the role of the FRS, particularly with regards to low-rise residential buildings. We would welcome further discussions in this regard.

HMICFRS are reporting that protection work was under-resourced in many of the FRSs inspected and that budget reductions have disproportionately fallen on protection teams.² Any additional burdens must be properly resourced, and there needs to be sufficient transitional arrangements to train, recruit and upskill staff.

There are concerns a national regulator would strip FRS of specialist staff who are already difficult to recruit and retain, and take a long time to train. NFCC recommend that this risk can be mitigated by the regulator considering establishing a small central team utilising secondment agreements to transition and upskill staff.

² <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/fire-and-rescue-service-inspections-2018-19.pdf>
<https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/fire-and-rescue-service-inspections-2018-19-tranche-2.pdf>

We trust the attached submission is helpful and welcome further discussions following the outcome of the consultation.

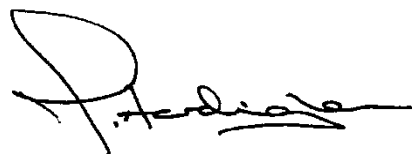
Yours sincerely,

Roy Wilsher

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines.

Chair, National Fire Chiefs Council

Mark Hardingham

A handwritten signature in black ink, featuring a large, prominent initial 'M' followed by a series of connected, flowing lines.

**NFCC Protection and Business Safety
Committee Chair**

Executive summary

A lack of detail within the proposals has made it difficult to respond to some questions. Accordingly, we have had to make several assumptions to answer some aspects. More detail on these assumptions is contained in our answer to Q1.3.

A broken system

Proposals in *Building a Safer Future* are a good start, but there is a lot more to be done to ensure the safety of the built environment. There are several proposals that need to apply to **all buildings** for this to be achieved, and some additional measures that are needed.

Evidence of the risks of performance-based frameworks, when not implemented carefully, is well documented from a range of similar jurisdictions^{3,4,5}. For regulation to work effectively, a whole system approach is needed.

While we understand realistic transitional and implementation provisions must be made, we strongly urge the Government not to consider an initial scope of high-rise residential buildings as ‘job done’.

All the following aspects need to be incorporated if the system is to be fixed:

- Strong competency requirements for key professions and trades.
- Independence of regulators, particularly building control.
- Scrutiny and whistle-blowing levers for any building work.
- A clearer, more transparent and effective specification and testing regime and market surveillance regime with national oversight of construction product safety.

Dame Judith Hackitt recommended some her proposals should apply more widely, such as:

- The Digital Record, the Fire & Emergency file, Full Plans and Construction Control Plan.
- Change control processes.
- Gateways 2 and 3.
- Removing the ability for clients to choose their own building control body.
- The sanctions and enforcement regime, including ‘Stop Notices’.
- Clear powers for building control to require changes to work that fail to meet the Building Regulations.
- That fire risk assessments are undertaken by someone with relevant skills.

We note the consultation does not deal with the procurement proposals in the Independent Review, including recommendations to ensure safety is prioritised within

³ <https://www.stepupgroup.co.nz/wp-content/uploads/2011/09/32682.pdf>

⁴ <https://www.parliament.nsw.gov.au/ladocs/inquiries/1855/Report%20upon%20the%20Quality%20of%20Buildings%20V2.pdf>

⁵ https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf

construction contracts, and tenders set out how solutions will produce safe building outcomes.

Culture change and ethics

Conflicts of interest – choosing your own building control body

As outlined in our original response⁶, NFCC do not believe clients should be able to ‘shop around’ to choose their own building control body.

While there is ample evidence that private sector participation in building control can bring efficiencies, if not implemented correctly such a delegation of regulatory mandate can come with significant unintended consequences.

A 2018 report by the World Bank⁷ into construction regulation across 190 economies noted that integration of private sector entities should be accompanied by appropriate safeguards that favour the public interest over private profits; for such an arrangement to work as intended, the public sector should regulate private third-party professionals and firms.

The report also found that in 76% of economies that make use of third-party inspectors, regulations explicitly require the independence of third-party inspectors; they should have no financial interests in the project and should not be related to the investor or builder.

NFCC believe that the ability for clients to choose their own building control body should be removed across the entire built environment; this change should apply to all building work.

Whistle blowing provisions should apply to all building work.

Gaming and unintended consequences: compliance by stealth and convenient interpretations

In the experience of FRSs, there is significant scope for ‘gaming’ hard parameters, such as trigger heights and aspects such as how buildings are measured.

FRS report that designers often employ ‘convenient interpretations’, where they seek to justify clearly inappropriate solutions. 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.

One example is those arguing about the terms ‘filler’ and ‘insulation’ to justify category 3 ACM. We cannot understand an interpretation that the guidance condoned the use

⁶https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Submission_review_building_regs_fin_al.pdf

⁷<https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB18-Chapters/DB18-Construction-permits.pdf>

of highly combustible ACM, whilst this clearly does not meet the functional requirements.

Some design just below thresholds to avoid certain measures. Designers can be very open about this, giving justifications such as ‘we have reduced the floor to ceiling height of several floors to bring it below 30m so we can avoid the cost of sprinklers’.

Interpretation within industry is often that ‘compliance’ with the guidance is all that needs to be demonstrated without reference back to the functional requirements. Supporting guidance should set minimum benchmarks, not maximum goals, and should only be relied upon for more common building situations.

Without additional measures to create the right incentives, a hard threshold will have the unintended consequence of clustering poor and unsafe build quality into the bottom end of the housing market.

Legislation should allow **any building work** to be scrutinised by the regulator, such as through referral or sampling.

Competency

NFCC supports the proposals for the oversight of competence by the new national regulator and believe this process will help to drive improved competency standards.

However, we would like the changes to be more ambitious. Robust oversight is needed for all those involved in the procurement, design, delivery, commissioning, management and maintenance of all buildings throughout their lifecycle including new build, refurbishment, retrofitting and maintenance work.

Government should mandate all key disciplines working on buildings in scope to adopt appropriate competency frameworks, and that assessing organisations be accredited or licenced by a third-party independent body. The assessing organisations should also maintain registers of competent persons.

The proposed committee needs sufficient powers to drive culture change and improve competency standards.

NFCC considers that the committee function could also include:

- Driving the development of publicly recognised governing or regulatory bodies where none exist for certain disciplines.
- Driving cultural and behavioural change in the industry.
- Undertaking market surveillance, flagging risks and promoting learning across the sector.
- Driving the development of learning materials on basic fire safety principles.
- Establishing common principles for continuing professional development.
- Assisting in developing common definitions of roles and technical terms that could be used in law.
- Engaging with the Education sector to promote the quality of provision and ensure the pipeline of necessary skills is monitored and skills shortages addressed.

- Consumer education and awareness on the requirements to use suitably competent persons, and how to identify competent persons.

Proposals should relate to the oversight of all building work, and for a wider range of disciplines. We accept implementation challenges may mean this becomes a future ambition.

We urge Government to commit to a timeframe when progress will be reviewed to assess if the system is improving the competency of relevant disciplines.

Scope

Height does not equal risk

We would like to see consideration given to the vulnerability of building occupants. NFCC is unconvinced by the risk analysis that has been relied upon to determine the proposed threshold for residential buildings 18m and above.

We are unclear why consideration has not incorporated other available risk information, such as the Government's Fire Service Emergency Cover (FSEC) Toolkit, produced to support Risk Based Inspection Programmes⁸. This incorporates census Output Areas, local historical incident data and socio-demographic factors, and multi-variate analysis to enable geographic targeting of Community Fire Safety. It also considers historical incident data, plus the intervention activities, to establish the total dwelling fire risk level after intervention has been considered.

The Toolkit calculates a risk level for each output area, which is directly comparable between FRSs and consistent across Great Britain. NFCC notes that within FSEC, buildings such as Hospitals and Care Homes score much more highly than purpose-built blocks of flats, as shown below in Table 1.

Whilst 18m aligns with some areas of current guidance (ADB and British Standards) such as firefighting facilities, it is a historical height which does not reflect modern firefighting equipment and practices. 18m could be considered at best out of date, but perhaps more appropriately, an arbitrary threshold.

Currently, there is an anomaly for protection of buildings between 11m and 18m. Front line equipment carried by FRS is primarily fit for external firefighting and rescue up to 11m in floor height. NFCC has highlighted that trigger heights and thresholds are reviewed within supporting guidance with consideration as to how they interact, particularly:

- The height at which firefighting facilities are required, which we suggest should begin at 11m or 3 floors for some of the provisions in ADB.

⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7636/940448.pdf

- Compartment sizes, access to perimeters, hose length distances, and maximum suppression sizes (particularly for warehouses and factories).
- Above 11m, internal protection should be strengthened, whether this is achieved through ventilation and passive measures, or through increased use of suppression. For instance, use of sprinklers at 18m may lessen the need for other measures at this height.

If the intention of the proposals was to align the new regime to firefighting equipment and response, then it may be more appropriate to adopt a threshold of 11m which aligns with current operational equipment carried on front line fire appliances.

Our suggestions for the scope of the regime are as follows:

- Include a wider range of new buildings for the full gateway process in construction, including residential 11m and above, and specialised housing.
- That new higher risk workplaces such as care homes, hospitals and prisons should be part of the full gateway process.
- For new residential buildings 11m and above, and specialised housing, these should continue into the safety case and registration schemes.
- In the case of existing residential buildings 11m and above, and specialised housing, these should be picked up with the safety case and registration schemes. NFCC understand this has resource implications and may require a staged approach to implementation. We would like to offer our help to determine how this could be managed using a risk based approach.
- In existing higher risk workplaces, we believe that a strengthened FSO as outlined by the Call for Evidence would suffice for management during occupation.

This scope should be regularly reviewed, with the ability for the regulator to expand over time.

Table 1: FSEC Societal Life Risk Fire Frequencies and Relative Risk Scores– June 2008, Department for Communities and Local Government

Occupancy Type	Average FSEC Societal life risk fire rate per 1,000,000 Buildings per year	Relative Risk Bands				
		Very High	High	Medium	Low	Very low
		FSEC Life Risk Score				
		10+	9 to 3	+2 to -2	-3 to -9	-10+
Hospitals and Prisons (A) <i>See note 3 below</i>	676	>6.83	6.78-6.31	6.13- 5.53	5.35-4.88	<4.83
Hostels (E)	167	>6.22	6.18-5.70	5.52- 4.92	4.74-4.27	<4.22
Care homes (B)	128	>6.11	6.06-5.59	5.41- 4.81	4.63-4.15	<4.11
HMO's (C)	106	>6.03	5.98-5.50	5.33- 4.73	4.55-4.07	<4.03
Houses converted to flats (G)	106	>6.03	5.98-5.50	5.33- 4.73	4.55-4.07	<4.03
Purpose built Flats (D)	106	>6.03	5.98-5.50	5.33- 4.73	4.55-4.07	<4.03
Hotels (F)	77	>5.89	5.84-5.36	5.19- 4.59	4.41-3.93	<3.89
Shops (N)	63	>5.80	5.75-5.27	5.10- 4.49	4.32-3.84	<3.80
Other sleeping accommodation (H) <i>See note 3 below</i>	21	>5.31	5.27-4.79	4.62- 4.01	3.84-3.36	<3.31
Schools (M)	11	>5.05	5.00-4.52	4.35- 3.74	3.57-3.09	<3.05
Further Education (J)	11	>5.05	5.00-4.52	4.35- 3.74	3.57-3.09	<3.05
Public Buildings (K)	11	>5.05	5.00-4.52	4.35- 3.74	3.57-3.09	<3.05
Other buildings open to the public (P)	11	>5.05	5.00-4.52	4.35- 3.74	3.57-3.09	<3.05
Licensed Premises (L)	10	>5.02	4.97-4.49	4.32- 3.72	3.54-3.06	<3.02
Factories/Warehouses (R)	4	>4.62	4.57-4.10	3.92- 3.32	3.14-2.67	<2.62
Other Workplaces (T)	4	>4.62	4.57-4.10	3.92- 3.32	3.14-2.67	<2.62
Offices (S)	3	>4.47	4.42-3.95	3.77- 3.17	2.99-2.51	<2.47

Note: The societal life risk fire rates in this table differ from those used in the FSEC toolkit:

1. In FSEC, the societal life risk fire rates quoted in the risk definitions are rounded values so are slightly different to those above.
2. The societal life risk fire rates quoted in this table for some occupancy types (shops, offices etc) are double those used in FSEC - this is because FSEC divides the fire frequency by 2 for buildings only occupied during the day
3. Prisons were previously included in "Other sleeping accommodation" but are now included in the "Hospitals" category as the fire frequency in prisons is more similar to that of hospitals. The figures for these two categories have therefore changed. Youth Offending Institutes and Immigration Detention Centres should also be included in this category.
4. The gaps in the relative risk scores between risk levels (eg for Hospitals, the relative risk score ranges from 6.78 to 6.31 for high risk and 6.13 to 5.53 in medium risk – there is an apparent gap here with no risk level for relative risk scores between 6.31 and 6.13) is a consequence of the way in which these relative risk scores are calculated and is not an error. Correct calculation of relative risk, with whole (integer) numbers for the FSEC life risk score will not produce results outside of the ranges given above.
5. The societal life risk scores achievable by a property in FSEC ranges from +12 to -34.

A holistic vision for fire safety?

There are two aspects to the proposals where a lack of detail has presented significant challenges to understanding the proposals in the round, and respond to certain questions:

1. The interface between the Housing Act and the FSO
2. The proposed national regulator

Interface of the Housing Act 2004 and Regulatory Reform (Fire Safety) Order 2005

The proposals in *Building a Safer Future*, together with the Home Office's Call for Evidence on the FSO, are unclear on how the fire safety of low-rise blocks of flats would be regulated in future.

No vision is presented on how the Housing Act and FSO would be amended to improve the interface of the legislation; a key issue highlighted in the past by the Coroner following the Lakanal House fire in 2009, and again by Dame Judith Hackitt.

The proposals suggest that for buildings below 18m, safety will be addressed through the review of the Housing Health and Safety Rating System (HHSRS) and the full technical review of ADB, which are running to different timescales.

The consultation is not clear on the future role of FRSs in blocks of flats below 6 storeys. FRSs have identified significant risks associated with being potentially removed from low-rise residential buildings (listed in our response to Q12 of the Home Office Call for Evidence). These include: fewer opportunities for FRS to undertake prevention work; a gap between operational intelligence and information on the built environment; funding pressures resulting in a race to the bottom; and conflicts of interest for other potential regulators.

Mixed-use over 18m

The consultation is unclear on how these will be dealt with. NFCC believe that if a height threshold is used then there should be a single regime for mixed buildings. This would avoid people 'gaming' the system by designing commercial use as well as residential in a building to avoid the stricter Gateway process for one over the other.

Proposed national regulator

Many of the proposals in *Building a Safer Future* rely on an assumption that the proposed national regulator would integrate people with the right building control, fire safety skills and knowledge, at the right points in the process. This relies on an understanding of how the regulator would be governed, structured and staffed, which at this stage has not been presented.

Regarding the above points, NFCC has found it a significant challenge to understand the vision for the new regime and 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.

Regulating the built environment

Life safety vs property protection

Whilst NFCC appreciate the current intention of the regime is primarily life safety, further emphasis on environmental impacts and property protection could have significant additional benefits, particularly for communities and the safety of firefighters.

We recommend that government consider whether there are opportunities within the full technical review of supporting design guidance to improve property protection, particularly for key community assets such as schools and heritage buildings.

Non-worsening provisions versus continuous improvement

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.

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

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. A good case study of this is the total refurbishment of Lakanal House following a multiple fatal fire, which overlooked opportunities to improve the fire safety for the building, despite significant investment in the refurbishment works.

Article 38 of the FSO, provides that fire authorities can require firefighting facilities to be maintained, but have no powers to require them to be installed where they have not been included in the first instance. If FRS requirements are missed during construction, fire authorities have no ability to require improvements to address this.

NFCC recommend the Government:

- ***Introduce trigger provisions to require improvements to fire safety standards to comply ‘as nearly as is reasonably practicable’ with current***

building guidance when major refurbishments are undertaken. Examples exist in other jurisdictions⁹.

- ***Provide powers for FRSs to seek improvements in FRS access and facilities throughout the life of a building.***

Guidance for responsible persons for the FSO should emphasise the requirement to look to improve safety to comply ‘as nearly as is reasonably practicable’ with current standards within an existing building when carrying out building work.

Supporting guidance requires a coordinated approach and a regular review period

Due to the lack of regular review, guidance often lags behind common practice and developing construction methods, and contains solutions which may be out of date.

Additionally, the lack of coordination has meant over time various sector led guidance has fallen out of sync. A good example of this is the current review of British Standard 8414. NFCC supports the changes that are proposed, however, we are concerned that the methodology for performance criteria and classification methodology is still contained within separate independent guidance, such as *BR135: Fire Performance of External Thermal Insulation for Walls of Multi-Storey Buildings*. This guidance has not been reviewed in conjunction with the current revision of BS8414, as this is not within the remit of the British Standards Institute.

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

Resourcing

The lack of detail on the proposed regulation of residential buildings under 18m and the form of the regulator makes it difficult to ascertain resource implications. However, we expect there will be a larger role for FRSs in the future as a result of the new regime.

An acute issue remains the skills shortages in fire safety skills and knowledge, particularly in specialist roles such as fire engineering where practitioners require a long time to train and become competent in their role. There are concerns a national regulator would strip FRS of key specialist staff who are difficult to recruit and retain, and take a long time to train. NFCC recommend that this risk can be mitigated by the regulator considering establishing a small central team utilising secondment agreements to transition and upskill staff.

Consideration is also needed to ensure regulators have appropriate ICT infrastructure (given proposals related to digital-by-default building information and Golden Thread

⁹ Such as sections 112 and 115 of the New Zealand Building Act 2004. Determinations on how this test is applied can be searched at <https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/>

requirements). NFCC would like to see greater consideration given to allowing cost recovery mechanisms for some forms of work.

FRS are already stretching 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 HMICFRS has found protection departments in many FRS are struggling to maintain existing risk-based inspection programmes. The first two tranches of inspections are reporting that protection work was under-resourced in many of the FRSs inspected and that budget reductions have disproportionately fallen on protection teams.¹⁰

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.

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

Improving the safety of buildings not in scope – Improving the existing building control system including reviewing Approved Document B

If the intention for buildings below 18m is to improve safety primarily through the review of ADB, then we wish to issue a reminder that the issues highlighted by Dame Judith Hackitt were not confined to high-rise residential buildings.

The way in which people live in and use buildings has evolved. Shifting trends may mean that assumptions made when guidance was produced may no longer be fit for purpose. Key areas where we consider ADB requires fundamental review and/or improvements include:

- the use of Automatic Water Suppression Systems (AWSS) in the built environment
- the scope of the guidance, and what it can be used for (e.g. limitations on the depths of basements)
- provisions for firefighting access and facilities
- provisions for water for firefighting
- requirements for residential care homes
- consideration of the needs of vulnerable persons especially in specialised housing
- limiting the applicability by clearly defining the ‘common building types’ that the guidance covers.

At present there is little guidance within ADB which provides specific design recommendations in relation to accommodation such as specialised housing. Clearer definitions are required about what constitutes care within a residential setting.

¹⁰ <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/fire-and-rescue-service-inspections-2018-19.pdf>
<https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/fire-and-rescue-service-inspections-2018-19-tranche-2.pdf>

The Government should consider whether residential care facilities, specialised housing and HMOs require their own specific design guide/volume of ADB, as the current provisions are not fit for purpose.

Design for the Fire Service – B5

Firefighters should be offered the highest level of protection when entering buildings and afforded the best opportunity to save lives. This should consider vehicular access, water provisions, firefighting shafts, and ventilation provisions in basements.

Changes in operational procedures and the equipment carried by fire services over decades have not been accompanied by reviews of design provisions in guidance. Examples where changes are needed include firefighting shafts, curb distances and horizontal access. ADB needs to recognise that firefighters may need to conduct rescues or firefighting activities from anywhere on site.

A full review is required of firefighting access and facilities.

Sprinklers

Sprinklers save lives, protect property, reduce the impact of fire on the environment, and support UK businesses by reducing interruption. Sprinklers can provide benefits for the safety of firefighters; community resilience; property protection; environmental protection; business continuity; and heritage preservation.

NFCC wants to see a greater inclusion of sprinklers in:

- Housing for vulnerable persons and Care facilities.
- Large volume warehousing – due to the way these buildings are now used the threshold to fit sprinklers should be lowered to 4,000 square metres.
- Factories.
- Car parks – current guidance does not take into consideration the fire loading of modern vehicles, electric vehicles, car stackers, LPG vehicles, and the risk of running fuel fires from plastic fuel tanks.
- Schools.
- Balconies – fire can often start on balconies or exacerbate vertical fire spread on the outside of high-rise buildings.
- Waste and recycling facilities; and
- High-rise accommodation, where NFCC recommends that:
 - Sprinklers become a requirement in all new high-rise residential structures above 18m.
 - Student accommodation should be included.
 - Where high-rise residential buildings currently exceed 30m there should be a requirement to retrofit sprinklers when these buildings are scheduled to be refurbished.
 - Sprinklers should be retrofitted where high-rise residential buildings over 30m are served by a single staircase regardless of future refurbishment.
 - High-rise residential buildings over 18m should be retrofitted on a risk assessed basis.

Many requirements in Wales and Scotland now surpass those in England, such as domestic sprinklers in new social housing developments and suppression systems in new homes. Scotland has announced changes to reduce some height related requirements from 18m to 11m and, where possible, extend mandatory installation of sprinklers in flats, regardless of height, and in larger multi-occupancy dwellings and those which provide care. NFCC would like to see improved consistency of public safety standards across the UK.

NFCC wants to see a greater inclusion of Automatic Water Suppression Systems (AWSS) in the built environment.

The NFCC's full response to the Call for Evidence on the Full Technical Review of Approved Document B is available on the consultations page of our website¹¹.

¹¹https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/Technical_review_of_ADB_-_1_March_2019_-_FINAL.pdf

Building a Safer Future

The proposals contained in *Building a Safer Future* lack sufficient detail in a number of areas. To account for this, NFCC have relied on a number of assumptions from the content of the consultation document and the call for evidence about how the system will work in order to answer questions. These assumptions are:

- That there will be one new act of parliament sponsored by MHCLG to create the office of the building safety regulator. That this would set out the role and duties of the regulator both generally for all buildings, and specifically for buildings prescribed as 'in scope' for parts or all of the design, construction, occupation, renovation, demolition life cycle.
- That the MHCLG Bill would provide the mechanism for application of the Golden Thread of passage of information and responsibilities during the process, and provide a mechanism for additional conditions for use to be required (e.g. a safety case). NFCC's view is that this new Act should allow **any building** to be brought into scope by the building safety regulator.
- Existing or revised regimes, such as building regulations, health and safety and general fire safety, would continue to apply and be enforced in the normal way with oversight from the regulator, who would assume responsibility for matters such as arbitration and determination at building regulation and occupation stages.
- Buildings in scope would follow the relevant Gateway paths including ongoing compliance with any additional conditions or requirements under the regulatory oversight of the building safety regulator.
- Proposals arising from the Home Office call for evidence would form one of the ongoing general regimes in an upgraded format from the existing Regulatory Reform (Fire Safety) Order 2005 (as amended), as would the amended Housing Health and Safety Rating System (HHSRS) under the Housing Act 2004, though demarcation between these two regimes would be improved by the revisions.

	Respondent details
Name	Nick Coombe
Position (if applicable)	Building Safety Programme Team Lead, NFCC Protection and Business Safety Committee
Organisation (if applicable)	National Fire Chiefs Council
Address (including postcode)	99 Vauxhall Road, Birmingham, B7 4HW
Email address	nicholas.coombe@nationalfirechiefs.org.uk
Please state whether you are responding on behalf of yourself or the organisation stated above	Responding on behalf of the National Fire Chiefs Council (NFCC)

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

- Agree
 Disagree

Please Support your View

This is two questions which NFCC will answer separately.

- I. We do agree that the new regime should go beyond Dame Judith's recommendations.
- II. We do not agree that this should only apply initially to multi-occupied residential buildings of 18 metres (6 storeys) or more.

NFCC are concerned that limiting the scope to residential high-rise will be seen as 'job done', and miss a once in a generation opportunity to improve the system. While we are pleased the proposals go beyond Dame Judith's initial recommendations, in line with previous responses we believe more flexibility is needed within the regulatory framework to address the problems identified in the system.

We would like a system that is able to incorporate a more holistic understanding of risk factors, such as the vulnerability of building occupants. The NFCC notes that within other available risk data, such as Government's Integrated Risk Management Planning (IRMP) Guidance, buildings such as hospitals and care homes are seen as a higher risk than purpose built blocks of flats. 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.

In the planning, design and construction stage the scope should be much wider to ensure the most vulnerable are protected. NFCC believe that in the planning, design and construction stages, scope of the proposals should be extended to include prisons, hospitals, care homes and specialised housing (references to specialised housing are with regard to the definition given in Table 1. BS9991:2015).

NFCC has stressed in recent consultations, including our response¹² to the consultation on banning the use of combustible materials, that height thresholds lend themselves to gaming, and convenient interpretations.

Whilst an 18m threshold aligns with some areas of current guidance (Approved Document B [ADB] and British Standards) such as firefighting facilities, it is a historical height which does not reflect modern firefighting equipment and practices. 18m could be considered at best out of date, but perhaps more appropriately, an arbitrary threshold.

¹²https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Combustible_materials_consultation_response_-_FINAL_14_Aug_2018.pdf

Currently, there is an anomaly for protection of buildings between 11m and 18m. Front line equipment carried by Fire and Rescue Services (FRSs) is fit for external firefighting and rescue up to 11m in floor height. NFCC has highlighted that trigger heights and thresholds need to be reviewed within supporting guidance, with consideration to how they interact, particularly:

- The height at which firefighting facilities are required, which we suggest should begin at 11m or 3 floors for some of the provisions in ADB.
- Compartment sizes, access to perimeters, hose length distances, and maximum suppression sizes (particularly for warehouses and factories).
- Above 11m, internal protection should be strengthened, whether this is achieved through ventilation and passive measures, or through increased use of suppression. For instance, use of sprinklers at 18m may lessen the need for other measures at this height.

If the intention of the proposals was to align the new regime to firefighting equipment and response, then it may be more appropriate to adopt a threshold of 11m which aligns with current operational equipment carried on front line fire appliances. Above 11m is the point at which FRSs are typically no longer able to rescue persons from the exterior of the building, and are thus reliant on the interior protection measures of the building for escape and firefighting.

NFCC would like to stress that whatever is in scope needs to be clearly defined in order to prevent 'gaming'. In the experience of FRSs, there is significant scope for 'gaming' hard parameters, such as trigger heights and aspects such as how buildings are measured.

FRSs report that designers often employ 'convenient interpretations', where they seek to justify clearly inappropriate solutions. 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.

One example is those arguing about the terms 'filler' and 'insulation' to justify Category 3 ACM. We cannot understand an interpretation that the guidance somehow condoned the use of highly combustible ACM, whilst this clearly does not meet the functional requirements.

Some attempt compliance by stealth, designing just below thresholds to avoid certain measures. Designers can be very open about this, giving justifications such as 'we have reduced the floor to ceiling height of several floors to bring it below 30m so we can avoid the cost of sprinklers'.

Other examples reported to NFCC include residential care homes that have been separated into smaller three person occupancies in order to get past the need to risk assess and provide adequate staffing.

If a height threshold is chosen, this should specify that where trigger heights exist (e.g. 18m) this should include the number of floors, using wording which would require the higher of the specified requirements. For instance, '18m or 6 floors, whichever threshold is reached first'. This would prevent the current practice of

designing a building up to a current threshold without having to put in the additional measures (e.g. designing a block of flats to 29.9m rather than 30m to explicitly avoid the requirement for sprinklers). Additionally, measurement of height should include all habitable floors.

Whilst NFCC appreciate the scope of these proposals are primarily for life safety, further emphasis on environmental impacts, community loss, and property protection could have significant flow-on benefits, particularly for communities and firefighter safety.

As outlined in our original response¹³, rather than seeking to achieve an appropriate level of safety, incentives exist for designs to be 'just good enough'; where the intention is not to protect the structure, but for the building to remain stable long enough for users to evacuate. The 'build to fail' principle is commonly applied where building to a standard to prevent total building failure would be prohibitively expensive to achieve – a good example of where this principle is employed is minimum earthquake standards for structural integrity. We do not believe application of this principle to total building failure in a fire is justifiable, especially to buildings where people sleep.

Such designs are accepting potential significant losses to people, property, community assets, and business continuity. They ignore sustainability and could be seen as a progressive degradation of standards. Enabling innovation must always be balanced against the single most important objective – the safety of end-users and emergency responders.

Q. 1.2. How can we provide clarity in the regulatory framework to ensure fire safety risks are managed holistically in multi-occupied residential buildings?

Please Support your View

FRSs have told us that in workplaces the broad parameters of the FSO work well for the most part. However, within residential buildings, fundamental differences in the way risk is determined between the FSO and the Housing Act framework, including the HHSRS, mean that the two do not interface intuitively.

Under the FSO approach, risk is assessed by first assuming that a fire will happen. Under the HHSRS, Environmental Health Officers (EHOs) are required to consider the likelihood of a fire occurring, which is statistically low.

Within the HHSRS approach each of the 29 hazards is assessed and scored but the assessment of the 29 different factors is highly subjective. The requirement to consider 'likelihood' makes it very difficult in practice for EHOs to classify a fire risk as a Category 1 hazard.

This is in contrast to the direct 'in the event of fire' approach under the FSO. For FRS officers, fire is the only priority, however, FRS jurisdiction applies only to the parts of the building used in common. A coherent fire safety regime is dependent on

¹³https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Submission_review_building_regs_fin_al.pdf

an understanding of what is happening both within flats and within the common parts.

In addition, there are differing definitions and interpretations over what parts of the building constitute common parts, with the Housing Act using a definition of “common parts” and the FSO using a different definition of “parts used in common”.

In 2009, following the fire at Lakanal House, the Coroner¹⁴ made a specific recommendation to Government: “to provide clear guidance on the definition of ‘common parts’ of buildings containing multiple domestic premises.”

In 2017, Dame Judith’s interim report identified that the interface across these two frameworks makes it significantly more challenging for Government to ensure that there is a sufficient holistic focus on the fire safety of all occupied buildings. Dame Judith recommended in her interim report that this issue be clarified.

A whole system approach is needed. Clarity over common parts, stronger training and competency requirements for those involved, and consistent statutory guidance which is kept up to date would all assist. We have made additional comments in our response to the Home Office call for evidence on the FSO.

For buildings in the future, stronger requirements in the underpinning technical guidance is also needed to recognise that trends in the way we live in and use buildings have changed significantly since design guidance was originally written. This includes consideration of factors such as the desire for people to receive care in their own homes, an aging population, and trends such as short-term accommodation letting. More detail can be found within our response¹⁵ to the call for evidence on ADB.

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

Please Support your View

If both regimes were to continue to apply, the following measures would need to be implemented:

- A strong and clarified definition of what “common parts” consists of;
- A statutory duty for enforcing authorities to collaborate in relevant buildings;
- Enforcers being held to account if they do not collaborate; and
- Clear guidance on who is responsible for enforcement in different areas of the building.

Due to the lack of detail on key aspects of the proposals in *Building a Safer Future*, NFCC have made a number of assumptions from the content of the consultation document and the call for evidence about how the system will work in order to answer some questions. These assumptions are:

¹⁴<https://www.lambeth.gov.uk/sites/default/files/ec-letter-to-DCLG-pursuant-to-rule43-28March2013.pdf>

¹⁵https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/Technical_review_of_ADB_-_1_March_2019_-_FINAL.pdf

- That there will be one new act of parliament sponsored by MHCLG to create the office of the building safety regulator. That this would set out the role and duties of the regulator both generally for all buildings, and specifically for buildings prescribed as ‘in scope’ for parts or all of the design, construction, occupation, renovation, demolition life cycle.
- That the MHCLG Bill would provide the mechanism for application of the Golden Thread of passage of information and responsibilities during the process and provide a mechanism for additional conditions for use to be required (e.g. a safety case). NFCC’s view is that this new Act should allow **any building** to be brought into scope by the building safety regulator.
- Existing or revised regimes, such as building regulations, health and safety and general fire safety, would continue to apply and be enforced in the normal way with oversight from the regulator, who would assume responsibility for matters such as arbitration and determination at building regulation and occupation stages.
- Buildings in scope would follow the relevant Gateway paths including ongoing compliance with any additional conditions or requirements under the regulatory oversight of the building safety regulator.
- Proposals arising from the Home Office call for evidence would form one of the ongoing general regimes in an upgraded format from the existing FSO (as amended), as would the amended HHSRS under the Housing Act, though demarcation between these two regimes would be improved by the revisions.

Q. 1.4. What are the key factors that should inform whether some or all non-residential buildings which have higher fire rates should be subject to the new regulatory arrangements during the design and construction phase? Please support your view.

Please Support your View

Key factors must include the vulnerability of people who occupy the building, particularly where people sleep. NFCC have evidence of increases in fires and fire deaths and injuries in specialised housing which is not categorised correctly in the Incident Recording System. Specialised housing is a fast-growing housing environment meeting many other Government aims, however, the current issues with the built environment and the lack of protection for people in their own flats is causing issues for society’s most vulnerable.

NFCC is also not clear on why the analysis used to support the current proposals have not taken account of other available risk information, such as that used in Government’s Fire Service Emergency Cover (FSEC) Toolkit and Integrated Risk Management Planning Guidance Note 4. We recommend that consideration is also given to other available risk information, such as the data within the FSEC Toolkit, produced to support Fire and Rescue Authorities’ Risk Based Inspection

Programmes,¹⁶ which incorporates data such as census output areas, local historical incident data and socio-demographic factors, and multi-variate analysis to enable geographic targeting of community fire safety. This takes into account socio-demographic factors, in addition to the actual historical incident data, plus the intervention activities, to establish the total dwelling fire risk level after intervention has been taken into account.

The FSEC Toolkit calculates a risk level for each output area, which is directly comparable between FRSs and consistent across Great Britain. NFCC notes that within the FSEC Toolkit, buildings such as hospitals and care homes score much more highly than purpose built blocks of flats.

Q. 1.5. Linked to your answer above, which of the ‘higher-risk workplaces’ in paragraph 42 would you consider to be higher-risk during the design and construction phase?

- Prisons
- Hospitals
- Supported/sheltered Housing
- Residential educational buildings
- Other (please specify)

All of the above. NFCC also 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. Such buildings would include registered care homes and other forms of specialised housing such as defined in BS9991.

Q. 1.6. Please support your answer above, including whether there are any particular types of buildings within these broad categories that you are particularly concerned about from a fire and structural perspective?

NFCC have evidence of an increase in fires in specialised housing. There is also Government support towards more people receiving care in their own homes. These homes are being increasingly marketed as catering for different vulnerabilities, however, the buildings have no extra facilities from a fire safety point of view. They are not treated as workplaces despite being staffed, as they are defined as private homes, allowing them to have reduced fire safety measures. This cannot continue to happen.

Care homes are taking more individuals with serious conditions who cannot be evacuated, but are not taking these types of vulnerabilities into account in their risk assessments.

Fire safety issues in hospital and care home stock have been raised a number of times, as summarised by NFCC in a recent advice to the Home Office and MHCLG. For example, themed inspection programmes of care homes in 2017/18 across London and Hertfordshire identified significant issues, including:

- Compromised compartmentation;

¹⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7636/940448.pdf

- Poorly installed or missing cavity barriers;
- Inappropriate construction materials;
- Voids created within cavities due to poorly installed materials; and
- Inadequate fire stopping and fire separation.

In Hertfordshire, out of 243 audited care homes at the time of reporting, approximately two thirds were found to have fire safety deficiencies. The London Fire Brigade (LFB) carried out detailed inspections of 177 care homes in late 2018, 57% of which received a formal notification from LFB to address issues.

NFCC believe that care homes need to be part of the new regime at planning, design and construction phases to ensure these buildings are built correctly to begin with.

Guidance on care homes is also outdated, allowing too many beds in a compartment. Guidance was originally based on assumptions that these buildings would simply provide housing for elderly, rather than (increasingly) those with serious vulnerabilities.

FRSs have also reported serious issues with staff numbers in these premises, especially at night. NFCC will be commenting through the FSO call for evidence on ways for improving care home safety in occupation.

Q. 1.7. On what basis should we determine whether some or all categories of supported/sheltered housing should be subject to the regulatory arrangements that we propose to introduce during the occupation stage? Please support your view.

There are a number of thresholds that could be used to determine risk. An exercise should be undertaken to look at all the different types of specialised housing, including extra care and supported care, to identify if any have unique vulnerabilities that can be categorised to assist with determining risk. However, NFCC feel that any premises that fall under the specialised housing definition in BS9991 should form part of the new planning, design and construction regime.

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

Please Support your View

NFCC believe that buildings of mixed used 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.

High-rise residential buildings are now routinely built with commercial premises at ground floor, and increasingly gyms, restaurants, and communal facilities for residents and guests, as well as viewing platforms. NFCC believe this 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.

A lead Responsible Person (RP) similar to Article 22(2) could be utilised.

Chapter 3 A New Dutyholder Regime - Part A Duties in Design and Construction

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agrees that the basic duties set out in these paragraphs are the right ones for construction of all buildings. The principles of these roles should extend to all actors in the construction industry.

Incorporating responsibility for fire safety and compliance with building regulations in all aspects of design and construction emphasises the importance of safety and compliance. Giving key responsibilities to those with specific duties allows for key lines of accountability to be traced throughout the whole system of design and construction. By building on the principles of the Construction, Design and Management Regulations, the roles of fire safety will be more easily assigned and understood by those with existing duties in the process.

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

NFCC believes that where the consultation states that the dutyholders should “comply with specific regulatory requirements imposed upon them”, the role of RP under the FSO should be clarified. Whereas this is not an additional duty, it is one that is not always understood by those involved in the construction of buildings, and greater emphasis should be placed on the need for the application of the FSO’s requirements for fire risk assessments during the building process to preserve life and protect property. This is of particular importance for buildings which are either part occupied or being refurbished.

We also believe that, to address the culture of minimum compliance, a duty should also be placed upon dutyholders to seek an acceptable level of safety, not just compliance.

Evidence of the need for this is best demonstrated by the debate over combustible cladding. Some in the industry are of the opinion that some combustible cladding combinations may have complied with building regulations at the time of construction of particular buildings by virtue of wording contained in ADB at the time – even if those combinations have since been shown to be clearly unsafe. This reiterates that some in the industry have lost sight of the significant difference between designing for safety and designing for mere compliance.

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

Please Support your View

Yes. 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 RP for a building. This would also make for a more

accountable and transparent process of oversight. At present, regulators often have great difficulty in establishing those with specific duties in relation to a premises, 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.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC believe there should be clear dutyholders during the design and construction stage. We would support an approach to align new dutyholder roles with those existing in CDM Regulations to promote building safety throughout the procurement, design and construction of buildings. Making use of existing roles and adding to their responsibilities should allow for ease of implementation as the industry is already aware of how these roles are designated and their functions.

Under CDM Regulations, the dutyholders have a responsibility to carry out works in a way that does not compromise the health and safety of workers during the process. A similar system should be adopted to monitor work at the varying levels of dutyholders to ensure that the requirements of the building regulations are met. This would particularly be the case for Regulation 7 where some dutyholders already have a responsibility to carry out work correctly. This could be extended to ensure that the 'principal' roles have to be minded of fire safety standards when designing and appointing contractors.

While we are supportive, we would stress that CDM should not be seen as a panacea. Under CDM there is an expectation for a designer to use materials so the building can be used and maintained safely once it is built, and NFCC notes that despite this, a number of buildings appear to still have ended up with unsuitable combinations of combustible cladding, which clearly have not enabled the buildings to be used safely.

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 dutyholder is only as good as the enforcement regime that accompanies it.

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

- Yes

No

Please Support your View

No. NFCC does not support FRSs becoming statutory consultees at Gateway 1. We believe this reflects the majority of views we have heard during our engagement, although FRSs have expressed mixed views.

Firstly, NFCC believe that:

- the thresholds for the Gateway points need to be aligned; and
- the threshold for the Gateways points may be more appropriately set at 11m. Please refer to our answer to Q1.1.

In our response¹⁷ to the Independent Review's original call for evidence, NFCC recommended the review consider this and a range of alternative mechanisms that could address the problem of people not consulting until buildings are near to completion. Suggestions made by NFCC included more robust change control processes and strengthened procedural guidance.

We note that many of these ideas, as well as the new ultimate sanction for a 'hard stop' before building can commence, have now been designed into the proposals for new checks and balances at Gateway 2. At Gateway 2, before construction can begin, the dutyholder will need to show how the building has been designed to be safe and follows building regulations by providing full plans and supporting documents. This will be accompanied by a more robust change control process to ensure that design changes do not adversely affect the fire strategy.

NFCC has now held extensive meetings with FRSs throughout the consultation period. FRSs have told us that they want the same outcomes: to ensure that aspects like FRS access and water provisions for buildings comply with regulations and are appropriate for making buildings safe. However, some FRSs we have spoken to do think that FRSs should become statutory consultees at Gateway 1.

On balance, we believe that the desired outcomes can be achieved without becoming statutory consultees at Gateway 1, and furthermore, that without additional alternative measures, becoming a statutory consultee would not achieve the desired outcome anyway. This is because:

- This change would increase the workload on FRSs, however, being a statutory consultee does not mean that people will have to follow FRS advice.
- The number of buildings FRSs see coming through the system where issues arise in relation to water and access is small, as well as there being a number that never proceed to build phase.
- This may create duplication for what FRSs may need to review during Gateway 2, with a risk of perverse incentives for designers to lean on FRSs for design advice rather than taking due care with their designs.

¹⁷https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Submission_review_building_regs_fin al.pdf

- Enhancements to the process as proposed through Gateway 1 will include the proposed 'Fire Statement'. We suggest this could require detail from design teams which would support LPAs at this point in the planning process such as how the development is expected to comply with the functional requirements within building regulations, including appropriate access for fire appliances, appropriate access and facilities within the building for firefighting, and information about water supplies in accordance with Water UK's national guidance.
- Culture change is likely to be driven more by market forces and incentives to avoid the hard stop, which will exist anyway at Gateway 2, before building is allowed to commence.
- We understand FRS requirements at planning stage may not meet the 'material considerations' test. Were they to meet this test, this may represent a significant shift to the principle of planning and potentially create unnecessary burdens upon developers who are seeking to determine acceptability for a building/development before they instruct designers and third parties; processes that would now sit within proposed Gateway 2.

Therefore, the costs of this proposal may outweigh any benefits. Other measures which could have more impact, in addition to the 'hard stop' at Gateway 2, include:

- Strengthened and robust guidance which would require planning applicants to submit a fire statement to Local Planning Authorities (LPAs), clearly outlining that provisions they have made for FRS vehicle access and access to water supplies will comply with B5.
- Where designs then fall outside B5 or are high risk, the procedural guidance should then encourage LPAs to consult with FRSs.
- That FRSs should have greater powers at Gateway 2, which should assist with access and water supplies issues. NFCC recommend FRS comments on B1-B5 (especially B5) should have to be considered and can be passed to the building safety regulator for dispute resolution, either between client and local regulator or between local regulators.
- NFCC's view is that any bodies carrying out a building control function should have a duty to reply to FRS comments.
- As per our original submission to the Independent Review's call for evidence, NFCC believe there needs to be appropriate dispute resolution processes; we suggest that the new regulator should provide this.

Care should be taken to ensure that the fire statement process is not viewed as a form of certification. The onus should be on the practitioners/designers preparing the statement that they will comply with the building regulations.

For some FRSs, implementing this proposal may be easier than for others. Factors which would result in differing implementation models include the size and number

of buildings in the area, the governance models of the FRS, size and staffing of the FRS, and other arrangements. For example, some FRSs may be able to co-locate with their local building control or have small numbers of likely applications. Arrangements differ across FRSs with some co-located with police or other blue light services. In the case of London, which would have the highest proportion of proposed buildings in scope, the LFB coordinate with 33 different boroughs.

If this proposal is implemented, FRSs would need to be appropriately resourced, and introduce a mechanism that would require FRS advice to be considered.

With appropriately robust procedural guidance, planning departments, assisted by their building control departments should be competent to appropriately assess fire statements.

Case studies of issues at planning stage largely suggest that issues are more the fault of the building regulations themselves, rather than the planning system. Therefore, for all buildings, NFCC suggests guidance on firefighting facilities should be strengthened.

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

Yes

No

i) If you agree, are there other issues that it should cover?

Yes. NFCC 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.

The guidance should encourage LPAs to consult with Fire and Rescue Authorities on those sites which are highest risk, or where FRS access and water supplies do not meet current standards.

Fire Statements could include detail to assist LPAs at this stage, such as (but not limited to):

- How the proposed development is expected to comply with the functional requirements within building regulations for access to the site for the purposes of firefighting (as covered in part B5 of the Building Regulations), in particular it should consider:
 - Appropriate access into and around the site for fire appliances; and
 - Appropriate access and facilities within building(s) provided for firefighting
- Information about water supplied for firefighting in accordance with Water UK's national guidance document.

NFCC will also be seeking for the 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 will seek 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.

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

- Agree
 Disagree - Please Support your View

No. NFCC does not believe Fire and Rescue Authorities should be consulted in relation to applications on developments for buildings in the near-vicinity of buildings in scope. If a building is to be constructed in accordance with the guidance contained in ADB, then it should not be built in such a way that access requirements to existing buildings are restricted or that enables a fire to spread from one building to another.

Q. 2.7 (i) If you agree, should the 'near vicinity' be defined as:

- 50m
 100m
 150m
 Other (please specify)

Q. 2.7 (i) If you disagree, please support your view.

NFCC does not believe that Fire and Rescue Authorities should be consulted in relation to applications on developments for buildings in the near-vicinity of buildings in scope. If a building is to be constructed in accordance with the guidance contained in ADB, then it should not be built in such a way that access requirements to existing buildings are restricted or that enables a fire to spread from one building to another.

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

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

Please Support your View

NFCC would support strengthened guidance which should encourage LPAs to consult with Fire and Rescue Authorities on those developments which are considered to compromise FRS access and water supplies, or where these do not meet current standards.

Q. 2.9. Should the planning applicant be given the status of a Client at gateway one?

- Agree
 Disagree

Please Support your View

Yes. NFCC agrees that the planning applicant should be given the status of client at Gateway 1 for all buildings in scope. This will support the process of information gathering and transfer throughout the design, planning, construction and occupation of the building.

This would also mean that the new building safety regulator would have a consistent point of contact, and could be notified when the applicant passed their client status on to those commissioning the building work.

Q. 2.9 (i) If you answered yes, should they be responsible for the Fire Statement? Please support your view.

NFCC believes 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.

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

- Agree
 Disagree

Please Support your View

NFCC supports the principle of early engagement with the regulator, however, there should be clear guidance as to the requirements of Gateway 2, and as such the accountable person should be able to meet these requirements. Greater understanding of the built environment and the impact to service delivery would support a level of engagement. The outline of Gateway 2 in the proposals states that the Gateway should be seen as a 'dialogue' between the building safety regulator and the client; therefore, guidance for the process should outline that engagement at the earliest opportunity is likely to assist in the approvals process that forms part of the Gateway.

Q. 2.11. Is planning permission the most appropriate mechanism for ensuring developers consider fire and structural risks before they finalise the design of their building?

- Agree
 Disagree

Please Support your View

No. NFCC considers that planning permission is primarily about giving permission for land to be used for a specific purpose. If the fire statements reflect our expectations, then sufficient scrutiny should be applied at the planning stage. The consideration of fire and structural risks as part of the design of a building is the

consideration of the Gateway 2 phase, and as such a finalised design may not be available at Gateway 1.

Q 2.11. (i) If you answered no, are there alternative mechanisms to achieve this objective?

- Agree
 Disagree

Please Support your View

If the fire statements reflect our expectations, then sufficient scrutiny should be applied at the planning stage. Additionally, the proposals for a 'hard stop' at Gateway 2 should account for the requirement for developers to consider fire and structural risks as without sufficient appraisal, the building safety regulator would not approve the design.

Q. 2.12. Do you agree that the information at paragraph 89 is the right information to require as part of gateway two? Please support your view.

- Agree
 Disagree

Please Support your View

NFCC agrees that this is the basic information that would be needed to support the construction of a building that includes fire safety at its core.

In addition, there should be an outline of the management expectation of dutyholders/accountable persons where a building has varied from standard guidance, once it has been occupied. This should include a consideration of contingencies should any aspects of the life safety aspects of the building's design fail. This would particularly be the case if other buildings, such as hospitals and care homes are brought into scope, as the future management would be key to its successful design in term of ability to use things like progressive horizontal evacuation.

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

- Agree
 Disagree

Please Support your View

NFCC believes that the outlined dutyholders would be the appropriate providers of the listed information. If the additional information outlined in the answer to 2.12 was agreed, then the principal designer and client (or future dutyholder where this isn't the client) would be responsible for outlining the management plan. This may also need to be supported by other specialist contractors, such as smoke control contractors and fire engineers. It is important that those specialist contractors are not shielded from responsibility and accountability of their designs by the principal contractors' responsibilities.

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

Yes. NFCC agrees that the client should be required to coordinate the information. This will support the process of information gathering and transfer throughout the design, planning, construction and occupation of the building. This role for the client is already part of the expectations of the CDM Regulations; the coordinating role would fit their existing responsibilities.

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

- Agree
 Disagree

Please Support your View

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, and 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 also for approving any design aspects that would eventually be regulated under the FSO.

NFCC also suggest the following requirements to strengthen the regime:

- NFCC believe 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.
- NFCC’s view is that any bodies carrying out a building control function should have a duty to reply to FRS comments.
- NFCC believe that any new national body/regulator should be the place for dispute resolution.
- NFCC support the introduction of a robust building control change mechanism to ensure that any changes are agreed before work commences.
- NFCC believe that developers should not be able to choose their own regulator, for **all buildings**.

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

- Agree
 Disagree

Please Support your View

Yes, but with conditions. 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.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agrees the regulator should have the power to pull down or remove work to check building regulations compliance. This will drive a cultural shift towards compliance and support industry in making sure that the work is correct in the first place and prevent costly and time consuming delays further down the line. This also supports those that want to do the right thing and challenge those that try to cut corners.

However, there should be sufficient stages and checks in the process as a whole (in terms of clients and principal contractors appointing competent persons to carry out the work) to mean that these powers would not need to be used except in extreme circumstances. The presence of these powers would also act as a deterrent for contractors who may look to cut corners, i.e. they may have to pay to do work twice if they don't do it right the first time.

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

- Agree
 Disagree

Please Support your View

Yes. 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.

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

- No
 Yes – if yes, what is an appropriate timescale?

Yes. NFCC 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. This will require the building safety regulator to invest significant time and resources to appropriately assess the information provided.

Timescales need to be sufficient enough to be able to adequately 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.

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

- No
 Yes – Please provide examples

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

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.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC believes that clear communication between all dutyholders 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.

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

- Agree
 Disagree

Please Support your View

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.

'Major changes' should be carefully defined so that they do not become open to convenient interpretations.

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 are, therefore, also calling for provisions to require 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.

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

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

NFCC believes that all of the listed considerations could be used for defining major and minor changes. Major and minor will always be subjective; there should be a requirement for the principal contractor to seek competent advice when making this assessment. In addition to those listed, there should also be a requirement for notification where 'significant changes to the management strategy are required once occupied'.

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

- No
 Yes – If yes, what is an appropriate timescale?

Please Support your View

Yes. NFCC agrees that particular 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.

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

NFCC believe that timescales for response would 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.

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

- Agree
 Disagree

Please Support your View

Yes.

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

NFCC believes that 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.

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

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.

Therefore, NFCC suggests 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.

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.

Q. 2.27. Should the building safety regulator be required to respond to gateway three submissions within a particular timescale? If so, what is an appropriate timescale?

- Agree
 Disagree

Please Support your View

Yes. NFCC agree that the building safety regulator be required to respond to Gateway 3 submissions within a certain timescale. As per our answer in 2.19, 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. This would need to be sufficient enough to be able to adequately assess 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.

Q. 2.28. Are there any circumstances where we might need to prescribe the building safety regulator's ability to extend these timescales?

- No
 If yes, please support your view with examples.

Please Support your View

Yes. NFCC believe that timescales for response 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 in 2.19 and 2.27, for projects with the highest complexity the building safety regulator should have the ability to extend the timescales.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agree that the accountable person must apply 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.

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

- Yes
 No

Please Support your View

Yes. NFCC agree 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. 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.

Q. 2.31. Do you agree that under certain circumstances partial occupation should be allowed? If yes, please support your view with examples of where you think partial occupation should be permitted

- Agree
 Disagree

Please Support your View

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 should 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.

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

- Agree
 Disagree

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

In addition, 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 are therefore also calling for provisions to require 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.

Q. 2.33. Do you agree with the approach to transitional arrangements for gateways? If not,

- Agree
 If you disagree, please support your view or suggest a better approach?

Yes. NFCC largely support the approach to transitional arrangements, as in cases where a building has been responsibly constructed there should be no issues arising at Gateway 3 that have not been addressed at Gateway 2. There may be some consideration of how all of the issues that may have arisen at Gateway 2 would be accounted for in a building that only came into scope at Gateway 3, and whether any gaps in the system could occur here.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agrees that the safety case should be subject to scrutiny by the building safety regulator in consultation with the local FRS. This scrutiny will help to ensure a system of improving accountability, transparency and making people safer in their homes. Ensuring that dutyholders for buildings within the scope of the new regime have an understanding of the hazards and risks within their building and also of the mitigation measures in place will help to create a culture where their accountability for safety is better understood.

Q. 3.2. Do you agree with our proposed content for safety cases?

- Agree
 If you disagree, what other information should be included in the safety case?

NFCC agrees with the inclusion of all of the proposed contents for safety cases, but we would suggest some additions, including:

- An assessment of other risks for buildings in scope beyond those which are deemed 'life critical', such as those which would impact on property protection (e.g. arson assessments and bin store security);
- A consideration of including contingency plans within the safety case regime; and
- Provisions which recognise that for some buildings, intrusive surveys may be required.

There should be further clarification of the use of the term 'so far as is reasonably practicable' within the new regime to ensure that the concept is applied uniformly across the country. At present this term is not fully understood throughout the fire safety sector, which can often lead to safety measures being omitted solely on the basis of cost.

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

Agree

If you disagree, please support your view or suggest a better approach.

NFCC believes that the approach laid out in the consultation is a reasonable approach, but would recommend that the safety case should also be reviewed in line with the wording of the FSO if:

(a) there is reason to suspect that it is no longer valid; or

(b) there has been a significant change in the matters to which it relates, including when the premises, special, technical and organisational measures, or organisation of the work undergo significant changes, extensions, or conversions.

This would also mean the safety case should be reviewed should the accountable person or building safety manager change, although this would not have to be a full-scale review.

NFCC are also calling for provisions to require 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.

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

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

This should include exploring possible longer-term approaches for managing building works and maintenance in multi-occupied buildings. There may be existing models in other jurisdictions worth researching. For example, the Unit Titles Act 2010 in New Zealand sets out [arrangements](#) for the management of buildings with multiple unit owners; this Act requires the establishment of bodies corporate to operate and manage such buildings, and sets out in primary legislation the requirement for bodies corporate to have long-term maintenance funds and optional contingency funds (see [Subpart 13](#)).

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

Agree

Disagree

Please Support your View

Yes. NFCC supports the proposed approach of identifying the accountable person. A named 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.

Q. 3.6. Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an accountable person?

- No
 Yes - If yes, please provide examples of such arrangements and how these difficulties could be overcome.

Consideration will need to be given to how to best implement these arrangements for ownerships 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. Please also see our answer to Q.15 in the Home Office call for evidence on the FSO.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agree that the accountable person should be implemented for existing buildings in scope, as well as all new builds in scope. This extension would encourage owners of existing buildings to adopt the safety case regime, as failure to do so would mean they incurred liability.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC believes that the transfer of the building safety certificate should be controlled by the building safety regulator in order to ensure that accountability cannot be lost or transferred to those without sufficient knowledge of what is required to run the building. The building safety regulator should be responsible for ensuring that any transfer of a building safety certificate only occurs where the new entity is able to demonstrate a sufficient ability to commit to the ongoing safety of residents.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC supports the proposed duties and functions of the building safety manager. 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 to be discussion for all requirements as to how they will be phased in to ensure that a lack of capacity does not compromise safety of buildings by creating situations where certain roles cannot be fulfilled. This is not limited to availability of competent persons, but also consideration of how long before the requirements of a safety case and Golden Thread should be demonstrable for existing buildings.

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

- Agree
 Disagree

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.

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

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

- Yes
 No

Please Support your View

Yes. NFCC believes that the consultation document 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.

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

- Agree
 Disagree

Please Support your View

Yes. Giving the building safety regulator powers to appoint a building safety manager in the circumstances outlined in paragraph 172 will help to reinforce the culture change for safety to be at the centre of building management. The measures will ensure that there will always be a suitable person in place to look after the ongoing management of buildings in scope.

Q. 3.13. Do you think there are any other circumstances in which the building safety regulator must appoint a building safety manager for a building?

<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – If yes, please support your view with examples.
<p>Additional considerations for circumstances could be:</p> <ul style="list-style-type: none"> • 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. <p>The outlined circumstances 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.</p>

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

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

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

The appointment should be ended when the accountable person has demonstrated that a suitable replacement has been appointed and the safety case reviewed to ensure the building will be managed safely.

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

NFCC is not best placed to answer this question.

Q. 3.17. Do you agree that this registration scheme involving the issue of a building safety certificate is an effective way to provide this assurance and transparency?

- Agree
 Disagree – If you disagree, please support your view and explain what other approach may be more effective.

Please Support your View

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

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agree with the process outlined for applying for and obtaining registration in residential buildings. The process would need to be clearly defined, and suitable guidance provided to persons applying for registration to ensure that the registration requirements are easily understood.

The principles and 'reasonable period' involved should take account of the capacity and costs of the other authorities that may need to be involved in judging that the registration meets the required criteria for ongoing management. The cost recovery element of engagement and checking of documents would need to be clearly defined.

Q. 3.19. Do you agree with the suggested approach in paragraph 183, that the building safety certificate should apply to the whole building? Please support your view.

- Agree
 Disagree

Please Support your View

Yes. The whole building approach is necessary to ensure that safety includes the interactions of risk between individual dwellings in the premises as well as those between commercial and domestic elements. This should include mixed-use buildings. The whole building approach should apply throughout the Gateways system to ensure that commercial risk is considered as part of the building's design (e.g. inclusion of AWSS in commercial elements where required for the domestic parts). The accountable person taking responsibility means that enforcing authorities (FRSs) have a focus for ensuring that all aspects of building safety are accounted for.

Care should be taken in the formulation of this approach to ensure that the interactions between new legislation and the FSO do not create 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.

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

- Agree
 Disagree

Please Support your View

Yes. The mandatory conditions are all in accordance with the desire for culture change as laid out in the *Building a Safer Future* report. A clear expectation in these areas will ensure that the building safety regulator, along with the existing regulators, have a clear understanding of what is required for safety to be maintained within a building in scope. The requirements would represent a minimum standard and set

out the expectations of the information and documents that should be available to those regulating within a building.

Voluntary conditions should be explicitly recorded to ensure that regulators and the accountable persons fully understand the nature of the voluntary condition. This record should also demonstrate an understanding of the implications for safety of not maintaining the conditions.

Q. 3.21. Do you agree with the proposals outlined for the duration of building safety certificates?

- Agree
 Disagree – If you disagree, please support your view.

Yes. NFCC agree with the proposals for the duration of building safety certificates as this represents just one measure by which the certificate could be reviewed. Clearly defined criteria for interim reviews, such as those outlined in the answer to 3.3, would ensure that the certificate should be updated following any significant non-routine occurrences which could affect the management or safety of the building.

Q. 3.22. Do you agree with the proposed circumstances under which the building safety regulator may decide to review the certificate?

- Agree
 Disagree – If you disagree, what evidential threshold should trigger a review?

Please Support your View

Yes. NFCC would support the proposed circumstance for the review of the certificate as long as these were supported by clearly defined published criteria and guidance. Any such review would be carried out under the Regulators Code to demonstrate that it was proportional and justified.

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

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

- Yes
 No – Please support your view

Please Support your View

NFCC believe that digitisation of building information and records should be mandated, and that the principles of the Golden Thread should apply to **all buildings** as this can be scalable according to the complexity and risk of the building (this doesn't specifically need to be BIM). More information should be required, and common data environments should utilise freeware devoid of licensing costs. Shared language should be used so that if there are any different developers, then the software can talk between systems. Increased use of digitisation will carry associated training costs for relevant authorities.

If it is BIM, then any requirements for BIM standards to be introduced should be subject to a standardisation of how modelling is carried out to ensure equal access for Authorities Having Jurisdiction needing to access this information. At present the requirements of BIM mean that regulators may need access to a number of cost prohibitive pieces of software.

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

- Yes
 No – Please support your view

See answer to 4.1 (a).

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

- Yes
 No – Please support your view

Digital surveying for existing buildings could prove to be problematic, in terms of the ability to carry out accurate surveys. Some existing buildings would need to involve in-depth surveying to ensure that a digital survey accurately reflects the reality of the building. This could be very costly with current technology and could be cost prohibitive for areas such as the social housing sector. Further consideration of this area would also need to be carried out should the scope of those buildings regulated be expanded to include areas such as specialised housing and care homes. There would need to be a further consideration around the need for these surveys to be carried out 'as far as is practicable'. There would be a need to define how much destructive surveying should be carried out in order to create a model that accurately represented a building's features.

Further consideration should be given as to the value of accurate modelling in buildings within the extended scope of the new regime, or whether the costs of such work would be better spent on the introduction of active fire safety measures, such as AWSS instead.

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

- No
 Yes – Please support your view

Yes. British Standards are currently developing BS8644 setting out standards for digital information requirements. In setting out the requirements of a management system for a building, it may be useful to base this on the soon to be published BS9997 Fire Risk Management Systems.

Q. 4.3. Are there other areas of information that should be included in the key dataset in order to ensure its purpose is met? Please support your view.

- No
 Yes – Please support your view

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 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 believe there should be a key dataset explicitly for the use of operational firefighters, which we can help to produce.

Q. 4.4. Do you agree that the key dataset for all buildings in scope should be made open and publicly available?

- Agree
 Disagree - please support your view

Yes. NFCC agrees with the principle of openness and transparency in the sharing of the key dataset for buildings. Care should be taken in how the dataset is presented for different audiences and consideration should be given as to what is helping people feel safe, as well as any relevant security considerations.

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

- Agree
 Disagree - please support your view

Yes. The principle of residents being able to access information is good, but careful thought would need to be given as to how this information is presented, to ensure that it is able to be understood by the layperson without causing unnecessary concerns about safety. Safety cases may feature elements of periodic/ongoing improvement plans, which may cause undue concerns to residents.

Part of the key data set must also include the facilities available to assist firefighting operations along with the general information that is gathered to assess operational risk.

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

- No
 Yes - , please provide detail on the additional information you think should be included.

Yes. 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.

Q. 4.7. Are there any specific aspects of handover of digital building information that are currently unclear and that could be facilitated by clearer guidance?

- No
 Yes – Please provide detail on the aspects you think could be clearer

We have not seen enough examples of handover of digital building information to be able to comment further. Please also see our answer to Q 4.1.

Q. 4.8. Is there any additional information that should make up the golden thread in occupation?

- No
 Yes – Please provide detail on the additional information you think should be included

Please Support your View

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.

Q. 4.9. Do you agree that the Client, Principal Designer, Principal Contractor, and accountable person during occupation should have a responsibility to establish reporting systems and report occurrences to the building safety regulator?

- Agree
 Disagree – Please support your view

Yes. A system for mandatory occurrence reporting would be an additional mechanism to support building safety. Such systems would give the building safety regulator the ability to learn from occurrences across the country and identify trends which may need to be supported by additional guidance and safety measures. These systems would also help to remove the potential for key dutyholders to cover up or ignore issues.

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

- Agree
 Disagree – Please support your view

Yes. NFCC agree that there needs to be a ‘just culture’ in place which is supported by Government, regulators and industry. Such a culture would give confidence to those involved that they will not be unduly challenged as to their action unless covered by the criteria for inappropriate actions. Otherwise there will still be pressure to ignore or not report occurrences and valuable learning missed.

Q. 4.10. (i) If you agree, what do you think industry can do to help cultivate a ‘just culture’?

NFCC support an open and transparent culture of reporting in industry that is supported by a clear statement outlining dutyholders’ commitment to the process and support for those reporting action, omissions or decisions taken.

Q. 4.10. (ii) If you agree, what do you think Government can do to help cultivate a 'just culture'?

NFCC would encourage strong oversight of the industry's actions around the reporting processes in place, and making sure that those who engage have the protection and confidence to report building safety critical issues.

Q. 4.11. Do you agree that, where an occurrence has been identified, dutyholders must report this to the building safety regulator within 72 hours?

- Agree
 Disagree - If you disagree, what should the timeframe for reporting to the building safety regulator be? Please Support your View

Yes. The 72-hour timeframe is common to other regulations that already have to be complied with (e.g. Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) which may aid the adoption of new processes.

Q. 4.12. Do you agree that the scope of mandatory occurrence reporting should cover fire and structural safety concerns?

- Agree
 Disagree - If you disagree, are there any other concerns that should be included over the longer-term?

Yes. Occurrence reporting should account for fire and structural safety concerns, but careful consideration should be given as to what such concerns include for example, would a fire door not closing fully onto its rebate be cause for a report?

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

	Agree	Disagree
Occurrences relating to construction products	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Occurrences relating to construction practice and poor workmanship	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Occurrences relating to the maintenance of the building structure or fabric	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Occurrences relating to the operation of construction products	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Occurrences relating to the maintenance of fire protection systems	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Occurrences relating to the operation of the building safety procedures	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Occurrences relating to a major event	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If you disagree with any of these, please support your view		

Q. 4.14. Do you have any suggestions for additional categories?

- No
 Yes – If yes, please provide suggestions

Yes. General instances of antisocial behaviour or arson in the common areas/exterior of buildings.

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

- Yes
 No – please support your view

No. A system of mandatory reporting during the design stage would need to be clearly defined in terms of what an occurrence consists of. The suggestion at Gateway 2 is that design is iterative so aspects of safety at this stage are likely to change. Circumstances where occurrence reporting may need to be reported would be inappropriate designing/specification of products. However, these aspects should really be raised with whichever competence body would be overseeing the relevant person's work sector.

Q. 4.16. Do you agree that the building safety regulator should be made a prescribed person under Public Interest Disclosure Act 1998 (PIDA)?

- Agree
 Disagree - If you disagree, please support your view.

Yes. 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.

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

- Agree
 Disagree

Please Support your View

Yes. In order to achieve consistency across the country and have a benchmark standard, a specific framework would be useful. Standardisation would support competence and allow accountable persons to know that they have the right persons involved.

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

- Yes
 No

Please Support your View

Yes. NFCC would support this objective for the building safety regulator, which should also include working with other Authorities Having Jurisdiction, including FRSS, to promote safety of the building and within private dwellings.

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

Yes

No

Please Support your View

Yes. NFCC supports the idea of a general duty for dutyholders to promote building safety in order to support ongoing compliance and have safety at the heart of the management of the building. Any such duty should complement existing duties stemming from other legislative requirements and greater oversight and sanctions for noncompliance.

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

Yes. NFCC would support the application of dutyholder roles across the wider building sector as detailed. Making those responsible for design and building work accountable for their actions would help to drive a culture change whereby fire safety compliance is taken as a key element of the building process. Such a process would require clear guidance as to how compliance is achieved as well as a defined set of sanctions against those found not to be complying.

Q. 5.1. Do you agree that the list of information in paragraph 253 should be proactively provided to residents?

Agree

Disagree - If you disagree, should different information be provided, or if you have a view on the best format, please provide examples.

Yes. NFCC supports the process of proactive provision of information to residents in all residential building types, even those outside of the scope of the new regime. This should be delivered in an accessible format for all potential users and easily understandable for someone from a non-fire safety background. However, we also understand that there may be some information that cannot be readily circulated for data and security reasons.

Q. 5.2. Do you agree with the approach proposed for the culture of openness and exemptions to the openness of building information to residents?

Agree

Disagree - If not, do you think different information should be provided? Please provide examples.

Yes. NFCC supports the culture of openness in the provision of information to residents. This should be delivered in an accessible format for all potential users and easily understandable for someone from a non-fire safety background.

However, we also understand that there may be some information that cannot be readily circulated for data and security reasons. There should be safeguards in

place to ensure the accountable person/building safety manager can determine for whom and why the information is being requested, and its use to ensure that there is no risk to the other residents or that the information is not being inappropriately used.

Q. 5.3. Should a nominated person who is a non-resident be able to request information on behalf of a vulnerable person who lives there

- Yes
 No

Q. 5.3. (i) If you answered Yes, who should that nominated person be?

- Relative
 Carer
 Person with lasting power of attorney
 Court-appointed deputy
 Other (please specify)

NFCC support the ability for information to be requested by a nominated person. This should come with the appropriate checks and balances from all interested parties to safeguard the RP and the residents alike.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC supports the process of proactive provision of information to residents and agrees with the set of requirements for the management summary. This should be delivered in an accessible format for all potential users and 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.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC supports the process of proactive provision of information to residents and agrees with the set of requirements for the engagement plan.

The engagement plan should also set out how residents will be informed of and held to account for their responsibility to keep themselves and their neighbours safe. This would act as a means of tying together the three primary features of the engagement

strategy: the provision of information; resident engagement; and the routes of escalation and redress. 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.

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

- Yes
 No

Please Support your View

Yes. This is a fundamental requirement for the building safety manager to be able to fulfil their obligations of the role and satisfy themselves that the building is safe. Resident responsibility is a necessary part of the new regime as a means of tying together the three primary features of the engagement strategy: 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 co-operate with the accountable person and building safety manager.

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

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.

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

- No
 Yes – If you answered yes, what do you think these safeguards could include?

Yes. 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.

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, for example entry to flat, 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.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agree that there should be an internal process for raising safety concerns, but this needs to be a fair and balanced approach that enables both parties to present their viewpoint before escalation to an oversight body. The process should be delivered in a transparent fashion with a record of outcomes available to both parties.

Q. 5.10. Do you agree to our proposal for an escalation route for fire and structural safety concerns that accountable persons have not resolved via their internal process?

- Agree
 Disagree If you disagree, how should unresolved concerns be escalated and actioned quickly and effectively?

Please Support your View

Yes. NFCC agree with the proposals for an escalation route, however, further clarity should be provided as to how the system is proposed to work as the consultation outlines two processes:

1. the internal process; and
2. straight up to the building safety regulator with no scope for the local regulator.

However, Para 290 suggests that if a resident does choose to escalate, they can do so to their local enforcing authority, who will take it to the building safety regulator on their behalf.

Escalation should be received by the building safety regulator, who then decides whether it can/should be resolved by the appropriate local enforcing authority or whether regulator needs to take direct action.

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

- Agree
 Disagree

Q. 5.11. (i) If you agree, please provide your views on how it might work.

The duty to cooperate should be made statutory on Authorities Having Jurisdiction.

Q. 5.11. (ii) If you disagree, please let us know what steps would work to make sure that different parts of the system work well together.

Q. 6.1. Should the periodic review of the regulatory system be carried out every five years/less frequently?

- Yes, every five years
 No, less frequently - please provide an alternative time-frame and support your view

Yes. NFCC support a regular review and feel that 5 years is an appropriate timescale, however, there does need to be a formal mechanism for urgent changes/reviews to be held in light of known and emerging specific risks.

Q. 6.2. Do you agree that regulatory and oversight functions at paragraph 315 are the right functions for a new building safety regulator to undertake to enable us to achieve our aim of ensuring buildings are safe?

- Agree
 Disagree - please support your view on what changes should be made

NFCC support the regulatory and oversight functions as outlined in paragraphs 315 and also 316. However, the proposals lack sufficient detail on the shape of the proposed building safety regulator.

Because of this, NFCC have made a number of assumptions from the content of the consultation document and the call for evidence about how the system will work in order to answer questions. These are:

- That there will be one new act of parliament sponsored by MHCLG to create the office of the building safety regulator. That this would set out the role and duties of the regulator both generally for all buildings, and specifically for buildings prescribed as 'in scope' for parts or all of the design, construction, occupation, renovation, demolition life cycle.
- That the MHCLG Bill would provide the mechanism for application of the Golden Thread of passage of information and responsibilities during the process, and provide a mechanism for additional conditions for use to be required (e.g. a safety case). NFCC's view is that this new Act should allow **any building** to be brought into scope by the building safety regulator.
- Existing or revised regimes, such as building regulations, health and safety and general fire safety, would continue to apply and be enforced in the normal way with oversight from the regulator, who would assume responsibility for matters such as arbitration and determination at building regulation and occupation stages.
- Buildings in scope would follow the relevant Gateway paths including ongoing compliance with any additional conditions or requirements under the regulatory oversight of the building safety regulator.
- Proposals arising from the Home Office call for evidence would form one of the ongoing general regimes in an upgraded format from the existing FSO (as amended), as would the amended HHSRS under the Housing Act, though demarcation between these two regimes would be improved by the revisions.

The oversight and provision of guidance proposed in paragraph 315.i.c. should be all fire safety guidance, even for those buildings not in scope, to ensure that there is a consistent response. This is because too many guides are owned by different organisations and Government departments, meaning there is no real collaboration.

However, apart from audit and sample functions, inspection regimes should be the demise of local regulators. The building safety regulator needs to ensure its independence.

NFCC also suggest the following:

- The building safety regulator should work with local regulators with the ability to re-allocate jobs to other local regulators if needed, for example if the local regulators lacked the necessary in-house competence for the application in question, or there was some form of conflict of interest.
- Buildings not in scope are assumed to follow existing routes. NFCC think this should be strengthened by giving local regulators the power to refer other buildings to the building safety regulator for investigation at full plans stage, where appropriate.
- NFCC propose any regulator should be able to sample other buildings not in scope.

- NFCC believe FRS comments on B1-B5 (especially B5) should have to be considered and can be passed to the building safety regulator for dispute resolution, either between client and local regulator or between local regulators.
- NFCC's view is that any bodies carrying out a building control function should have a duty to reply to FRS comments.
- NFCC believe that any new national body/regulator should be the place for dispute resolution.
- NFCC support the introduction of a robust building control change mechanism to ensure that any changes are agreed before work commences.

As outlined in our original response¹⁸ to the call for evidence, NFCC do not believe that developers should be able to shop around to choose their own regulator. While there is ample evidence that private sector participation in building control can bring efficiencies, if not implemented correctly, such a delegation of regulatory mandate can come with significant unintended consequences.

A 2018 report by the World Bank¹⁹ into private sector construction regulation across 190 economies found private sector participation in 93 of these. The report noted that, for such an arrangement to work as intended, the public sector should regulate private third-party professionals and firms, and reported that in 76% of economies that make use of third-party inspectors, regulations explicitly require the independence of third-party inspectors; they should have no financial interests in the project and should not be related to the investor or builder.

The report concluded that private sector participation should be accompanied by appropriate safeguards that favour the public interest over private profits.

NFCC believe that the ability for developers to choose their own regulator should be removed across the entire built environment; this change should apply to all buildings.

Q. 6.3. Do you agree that some or all of the national building safety regulator functions should be delivered ahead of legislation, either by the Joint Regulators Group or by an existing national regulator? Please support your view.

- Agree
 Disagree

Please Support your View

The Joint Regulators Group, if it were to be adequately resourced, could take on shadow monitoring functions of under-performing actors in the system.

¹⁸https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/NFCC_Submission_review_building_regs_fin_al.pdf

¹⁹<https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB18-Chapters/DB18-Construction-permits.pdf>

The mapping of existing legislation will ensure that the same mistakes are not replicated in the new legislation.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC support any process which drives improved competency standards of those involved in the procurement, design, delivery, commissioning, management and maintenance of **all** buildings throughout their lifecycle, including new build, refurbishment, retrofitting and maintenance work.

NFCC agree with the proposals in relation to the overarching competence framework which is formalised as part of a suite of national standards. However, NFCC believe that these competencies should be rolled out over time for all buildings. In addition, there are also some disciplines whose competency has not yet been addressed. These include ad hoc designers, facilities managers, insurance providers, the legal profession, town planners, the Health and Safety Executive and Housing Act regulators. This should be addressed.

The overarching competence framework will also need to create clear definitions of roles and technical terms, possibly within a Publicly Available Specification or British Standard to ensure that there is a common understanding of fundamental elements in relation to competency.

In addition, NFCC consider that Government should mandate all key disciplines working on buildings in scope to adopt appropriate competency frameworks; this should be extended to the whole built environment in the future. The competency frameworks should set out the required skills, knowledge and behaviours and how these should be assessed and periodically re-assessed. Government should also mandate the assessing organisations to be accredited or licenced by a third-party independent body. The assessing organisations will also need to maintain a register of competent persons.

Q. 7.2. Government agrees with the Competence Steering Group's recommendations for establishing an industry-led committee to drive competence. Do you agree with this proposal? Please support your view.

- Agree
 Disagree

Please Support your View

Yes. NFCC agree with recommendations for an industry led committee to drive competence. Challenging the current status quo on competency standards and oversight will be an essential part of the committee's role. We consider that a degree of independence within the committee to improve competency standards is vital.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agree with the functions of the committee, however, highlight that the committee needs to have sufficient powers to ensure that, where improvements in competency are required (and they are not forthcoming), there are robust sanctions to drive culture change and improve competency standards. In addition, NFCC consider that the committee should also be responsible for driving the development of publicly recognised governing or regulatory bodies where none exist for certain disciplines at present, rather than supporting the existing status quo. This will ensure increased consistency across disciplines and closer independent scrutiny and oversight.

NFCC consider that the committee function could also include:

- Driving cultural and behavioural change in the industry;
- Undertaking market surveillance, flagging risks and promoting learning across the sector;
- Driving the development of learning materials on basic fire safety principles;
- Establishing common principles for continuing professional development;
- Assisting in developing common definitions of roles and technical terms that could be used in law; and
- Engaging with the education sector to promote the quality of provision, and ensure the pipeline of necessary skills is monitored and any skills shortages addressed.

The committee should also increase its remit over time to include the oversight of competency of individuals working on any building not just those in scope.

Q. 7.4. Do you agree that there should be an interim committee to take forward this work as described in paragraph 332?

- No
 Yes – If yes, who should establish the committee?

Yes. NFCC agree that there should be an interim committee to continue driving the development of competency standards. NFCC would like to highlight that this work will require sufficient support and resourcing needs to be provided to this committee (in whatever form) to ensure that positive, timely outcomes can be achieved.

Government should ensure any interim committee has sufficient independence mechanisms.

In addition, Government should ensure that any company or individual working on a central Government construction project (whether a building in scope or not) meets the relevant competency frameworks to drive culture change. Consideration should also be given to this being adopted by local authorities and the wider public sector.

Q. 8.1. Do you agree with the approach of an ‘inventory list’ to identify relevant construction products to be captured by the proposed new regulatory regime?

- Yes
 No

Please Support your View

Yes. NFCC support any process that gives greater oversight, transparency and regulation of product design, manufacturing and whole of life suitability. This process would also provide a line of accountability to designers and contractors who would have to account for the products that they specify.

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

- Yes
 No

Please Support your View

Yes. NFCC would support this view, although the inventory list should be mindful of the specific guidance used to design a building (BS9991 or BS9999). Inclusion of products advised in Approved Documents would be a quick way to demonstrate compliance with a minimum standard, although, in order for this system to be effective, the Approved Documents would need to be regularly reviewed and updated.

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

Where Modern Methods of Construction (MMC) are used, the inventory should include specific reference to the test data that has been used in approving the products, particularly with regard to an MMC’s fire performance and intended application.

Q. 8.4. Do you agree with the proposed approach to requirements for construction products caught within the new regulatory regime? Please support your view.

- Agree
 Disagree

Please Support your View

Yes. NFCC support the proposed approach and any process that gives greater oversight, transparency and regulation of product design, manufacturing and whole of life suitability.

Q. 8.5. Are there further requirements you think should be included?

- No
 Yes - Please provide examples.

Yes. A summary of fire test data should be included with construction products along with a statement of quality assurance in the manufacturing process.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC support the proposals for a national regulator and any process that gives greater oversight, transparency and regulation of product design, manufacturing and whole of life suitability.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC support the concept of construction products regulators ensuring standards of manufacture, testing and quality assurance. Having the construction products regulators fulfil this function would act as a further stage of assurance that MMC are fit for purpose. Building control bodies would then have the role of checking that the products that have been approved are being installed correctly.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC support the view that construction products regulators should have a role in ensuring the correct use of MMC, by requiring that sufficient information is available about how the product has been tested (including limits of application) and how it should be installed, along with any competence requirements for those installing them.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agree that where products are deemed unsafe then a national regulator should be able to act in order to prevent these products being sold for as long as they continue to be unsafe. NFCC would support any process that gives greater oversight, transparency and regulation of product design, manufacturing and whole of life suitability.

Q. 8.10. Are there other requirements for the umbrella minimum standard that should be considered?

<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – Please support your view
<p>Yes. In addition to the outlined requirements, consideration should also be given to:</p> <ul style="list-style-type: none"> • a register of reported near misses and dangerous occurrence involving products; • data should be available for products that have been tested and failed; and • an extension of the ‘whistle-blowing’ process into the manufacturing of products should be considered.

Q. 8.11. Do you agree/disagree with the proposed requirements in paragraph 354 for the umbrella minimum standard?		
	Agree	Disagree
Products should be retested at random within a specified period	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Failures and concerns regarding a product must be reported to the relevant regulator(s) immediately	<input checked="" type="checkbox"/>	<input type="checkbox"/>
A consistent format for certification documents that is accessible and useful to building owners and residents	<input checked="" type="checkbox"/>	<input type="checkbox"/>
A statement of the limitations of a product’s certification alongside expectations of how manufacturers advertise independent assurance certification	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compliance of scheme operators to the requirements of BS EN ISO IEC 17065:2012	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pro-active monitoring of products through market surveillance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If you disagree with any of these proposed requirements, what challenges are associated with them?		
NFCC support any process that gives greater oversight, transparency and regulation of product design, manufacturing and whole of life suitability.		

Q. 8.12. Do you agree with the proposal for the recognition of third-party certification schemes in building regulations? Please support your view.
<input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Please Support your View
Yes. NFCC support the principle of third party certification schemes in building regulations. Such schemes will support the accountable person in demonstrating safety and also assist the regulators in their identification of due diligence. This

needs to be supported through the application of minimum standards, and a robust system of regulation, quality checking and oversight that would include regular sampling of products and their installation.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC agree that minimum standards should be included in order to encourage consistency across the industry. These standards would provide a benchmark from which quality assurance could be measured.

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

- No
 Yes - Please support your view

The benefits of third-party schemes having minimum standards include:

- an assurance of consistency;
- a reassurance of quality and performance; and
- they give regulators a standard to measure against; and also a benchmark that manufacturers/installers have to achieve in order to maintain their products approval.

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

- No
 Yes - Please support your view

The challenges for third-party schemes having minimum standards can include:

- The difficulty in providing a robust enough method of regulation and quality checking;
- Sampling the work of installers on site could be difficult, due to the number of building projects that are ongoing; and
- Schemes would need to take account of current competence of those in the industry. A phased introduction may be required otherwise such standards could lead to a shortage of products/installers that can be used on a project.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC support delivery by local regulators of the three-step process to achieving compliance. Whilst the initial focus of these actions should be for buildings in scope, NFCC believe that the new regulator should have the option to use these principles in all buildings in order to address issues of non-compliance.

FRSs already seek to informally engage RPs under the FSO as a first step to achieving compliance. In many cases (ranging from 50 – 75% of cases), this is found to be successful with a significant proportion of current fire safety audits, resulting in advice being given and no further action being required. This supports Government's Better Regulation agenda.

NFCC consider that issues with step 1 may arise where FRS resources are limited, as they will need to prioritise statutory requirements over informal advice.

NFCC support the proposed subsequent steps to compliance. FRSs already have the powers under the FSO to issue statutory notices and prohibition notices, and undertake prosecution proceedings where necessary. FRS Protection officers would therefore be familiar with these enforcement principles.

NFCC consider that issues with steps 2 and 3 may arise where penalties are insufficient to act as a deterrent for poor behaviours. 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.

NFCC would welcome the additional power to issue fixed penalty charges as an alternative approach to enforcement.

**Q. 9.2. Do you agree we should introduce criminal offences for:
(i) an accountable person failing to register a building;**

- Agree
 Disagree

Please Support your View

Yes. NFCC consider that introducing criminal offences for an accountable person failing to register a building in scope would be a positive means of ensuring that they pay due regard to their responsibility for the safety of persons within their building. Parallels can easily be drawn with the licensing of Houses of Multiple Occupation (HMOs) under the Housing Act in relation to failing to register a building under the new regulatory system.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC consider that introducing criminal offences for an accountable person or building safety manager failing to comply with building safety conditions would be a positive means of ensuring that the persons concerned pay due regard to their responsibility for the safety of persons within their building. Parallels can easily be drawn with the licensing of Houses of Multiple Occupation (HMOs) under the Housing Act in relation to failing to register a building under the new regulatory system.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC consider that, if a dutyholder proceeds with construction/occupation despite non-compliance under the new regime (signing off at Gateways), then this could lead to issues with poorly constructed buildings and non-identification of poor workmanship and safety issues in the early stages of a building's life cycle. The "hard stop" at Gateway points must be applied in such instances, highlighting unacceptable practice by the application of a criminal offence, and helping to reinforce the message of "no tolerance" across the sector.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC consider that the regulations should be applied to any product that is key to the fire and structural safety of the building, which would be accounted for in the idea of an 'inventory of products' as outlined in Chapter 5. We would support any process that gives greater oversight, transparency and regulation of product design, manufacturing and whole of life suitability.

Any product that is used in the construction of a building MUST fall under the sanctions regime (as applied under Constructions Products Regulations SI 2013). Product compliance is fundamental to the safety (structural and fire) of a building, with minimum standards applied.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC consider that the introduction of civil sanctions with fixed and variable monetary penalties would be a positive addition to the enforcing authority's powers. This is on the basis that 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. Consideration should be given to scalable/increasing penalties directly linked to a time frame for resolution of the issue. Any time frames would need to consider whether the appeals process could delay progress towards a resolution.

NFCC would, however, suggest that the monies acquired from civil sanctions should be retained by the individual enforcing authority to support regulation.

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

- Agree
 Disagree

Please Support your View

Yes. NFCC consider these improvements are important to improving consumer protection and safety in the built environment, and should be extended to **all buildings**.

Q. 9.6. Do you agree that we should extend the limits in the Building Act 1984 for taking enforcement action (including prosecution)?

- Agree
 Disagree - Please Support your View

Yes. NFCC agree that the time limit in sections 35 and 36 of the Building Act 1984 should be extended for all buildings (not just those in scope), and consider that this limit whereby enforcement actions (including prosecutions) can be taken forward should be at least 10 years. This would bring the approach into line with existing civil law time limits for building warranties. FRSs have experienced major deficiencies in building standards which have been uncovered many years after the building was supposedly satisfactorily completed. Extending the period within which a dutyholder could be held accountable for building defects will drive culture change and assist in supporting residents of defective buildings as there will be a clear route for recourse.

NFCC also consider that section 38 of the Building Act should be commenced to permit a private right of action where a duty imposed by the building regulations causes damage (including the death of, or injury to, any person).

If agree, should the limits be: six or?

- Six years
 Ten years

NFCC suggest that the timeframe should be at least ten years, noting experience from other jurisdictions such as New Zealand, where the leaky buildings crisis has highlighted the types of issues that can arise as a result of building defects which may not manifest themselves for some years.