



CONSULTATION ON IMPLEMENTING THE NEW BUILDING CONTROL REGIME FOR HIGHER-RISK BUILDINGS AND WIDER CHANGES TO THE BUILDING REGULATIONS FOR ALL BUILDINGS

CONSULTATION RESPONSE

PREPARED AND SUBMITTED BY

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INTRODUCTORY COMMENTS

1. We welcome this detailed consultation on the new building safety regime as it applies to the 'building' phase.
2. We have marked our responses in yellow, and where appropriate added written comments.
3. We are responding to the consultation mainly from the perspective of construction clients.
4. Much of the content we agree with and has our support because it will lead to positive change. But there are notable aspects where we disagree or feel that further guidance is required.
5. The greatest concerns we have are over timescales. It is worth remembering that Dame Judith Hackitt's original proposal was for the new building safety regime to be phased in first at a threshold of 30 metres. By bringing that threshold down to 18 metres, it brings far more buildings in scope and means more resource is needed by the Regulator.
6. The timescales for the Regulator to respond seem generous, and slippage will increase project risk, and in the worst cases could make projects unviable. If you add up all the timescales of decisions that sit with the Regulator, it could add 5 to 6 months on a project. That will have a significant impact on some projects, particularly where buildings are being built for rent, and therefore income is not earned during that period. Of most concern is the impact on student accommodation. Late buildings in that sector often mean the deferral of a year's income and significant inconvenience for students.
7. The proposed solution to a non-response – the ability to appeal to the Secretary of State – just adds more delay and risk. The onus should not be on the applicant to appeal, but the Regulator to pursue good case management, prioritise, and act professionally in taking responsibility for delays before they materialise.
8. Another prime area of concern is the proposal to expand the scope of the gateway system beyond the draft regulations published last year and thus bringing refurbishments into scope.
9. We are also fearful that the last section on transitional arrangements will apply to an individual building, not the wider development. This will add significant complexity for large developments.

10. There are various issues on which we think greater guidance is required and we are very willing to input into that.
11. There are some areas where we support the principle, but fear that insurance, particularly PI Insurance will not be available and could stifle some of the obligations and intended objectives.

Notes:

12. This response is made on behalf of the British Property Federation – the trade association for real estate investors.
13. In collating our response, we have drawn on a group of about 40 members who are involved in our Building Safety Sounding Board. We are grateful for their assistance.
14. All our responses are public, and therefore can be published.

1. Dutyholders

We propose that the following duties will apply to all dutyholders during design and construction, they must:

- Plan, manage and monitor their work to ensure the building work complies with building regulations;
- Cooperate with other dutyholders (e.g. share information, have effective routes of communication, and support other dutyholders in achieving compliance with the regulatory requirements imposed by the new regime for higher-risk buildings, including meeting gateway two and three, golden thread and mandatory occurrence reporting requirements); and
- Ensure they and the people they appoint are competent (have the necessary skills, knowledge, experience and behaviours and where organisations are involved, the appropriate organisational capability) to carry out design work and building work they are engaged to do and only undertake work within the limits of that competence.

Question: Do you agree or disagree with the proposed duties that will apply to all dutyholders during design and construction?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

A general point is that the word 'ensure' is often used in the text and that could create conditions, which make it very difficult to insure these dutyholders. We would suggest 'take reasonable steps' or similar wording.

However, we are comfortable with the general approach, which follows CDM regulations.

Clients

The client is the person for whom the building work is done; often the client will be the developer or the building owner. They have a major influence over the way a project is procured, managed and funded. They control the contract, the finances and the time available for the project.

- Make suitable arrangements for planning, managing and monitoring a project, including the allocation of sufficient time and resource, to deliver compliance with building regulations. In practice, this means appointing the right people, with the right competencies (the skills, knowledge, experience and behaviours or organisational capability) for the work and ensuring those they appoint have systems in place to ensure compliance with building regulations;
- Where there are a number of firms working on different aspects of the project, the client will need to appoint a Principal Designer to be in control of design work and a Principal Contractor to be in control of the building work;

- Provide building information to every designer and contractor on the project and have arrangements to ensure information is provided to designers and contractors to make them aware that the project includes any higher-risk building work; and,
- Cooperate and share information with other relevant dutyholders.

Question: Do you agree or disagree with the proposed duties that will apply to the client during design and construction?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Clients have a clear leadership role in projects and again we are comfortable with the general approach. The client, however, can be a relatively nebulous entity in joint ventures and the like, and there should be the facility to elect the client in those circumstances.

Designers

Any person who, in the course or furtherance of a business, carries out any design work, or arranges for or instructs, someone under their control to carry out design work, will be a designer. In addition to the general duties we propose that designers should have the following duties:

- To not start design work unless satisfied that the client is aware of their duties;
- When carrying out design work the designer must ensure that, if built, the building work to which the design relates would be in compliance with all relevant requirements;
- In providing a design, a designer must take all reasonable steps to provide sufficient information about the design, construction and maintenance of the building to assist the client, other designers and contractors to comply with all relevant requirements;
- Where a designer is carrying out only part of the design of the building work which comprises a project, the designer must consider other design work which directly relates to that building work and report any concerns as to compliance with all relevant requirements to the Principal Designer; and,
- If requested to do so, a designer must provide advice to the Principal Designer or the client on whether any work, to which a design it is preparing or modifying relates, is higher-risk building work.

The Principal Designer is a designer appointed to be in control of all of the design work. In addition to the general and the designer duties, we propose that the Principal Designer should have the following duties:

- Plan, manage and monitor the design work during the design phase;
- Co-ordinate matters relating to the design work to ensure that, if built, the building work to which that design relates will comply with building regulations;

- Ensure that they, and all designers working on the project, co-operate, communicate and co-ordinate their work with the client, the Principal Contractor, and other designers;
- Liaise with the Principal Contractor and share information relevant to the building work; and,
- Assist the client in providing information to other designers and contractors.

Question: Do you agree or disagree with the proposed duties that will apply to designers and the Principal Designer during design and construction?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We are strongly supportive of the design communities' greater involvement throughout the construction process. A question as to whether the clarification of the PD role will preclude non-design people from carrying out the role. Considering the role of PD as outlined and the responsibilities carried, is it still justifiable that this role could be a sub-consultancy to the Lead Designer or Main Contractor?

Contractors

Any person who, in the course or furtherance of a business carries out, manages or controls any building work will be a contractor. In addition to the general duties we propose that contractors should have the following duties:

- To not start building work unless satisfied that the client is aware of their duties; and,
- Contractors must provide each worker under their control with appropriate supervision, instructions and information so as to ensure that the building work is in compliance with all relevant requirements.

The Principal Contractor is a contractor appointed to be in control of the whole project during the construction phase. In addition to the general and the contractor duties we propose that the Principal Contractor should have the following duties:

- Plan, manage and monitor all the building work;
- Co-ordinate matters relating to the building work to ensure that it complies with building regulations;
- Ensure that they, and the contractors in the team, co-operate, communicate and co-ordinate their work with the client, the Principal Designer and other contractors;
- Liaise with the Principal Designer and share information relevant to the building work; and,
- Assist the client in providing information to other designers and contractors.

Question: Do you agree or disagree with the proposed duties that will apply to contractors and the Principal Contractor during design and construction?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The work of contractors is integral to the construction process and again we agree with how the role is explained. A reference is needed to designers under the contractor's control (e.g. novated consultants).

Competence requirements

Principal Designer and Principal Contractor

We propose to set out the framework of duties for those who procure, design and undertake building work. In particular, the Principal Designer and Principal Contractor will have the overall responsibility and are pivotal to ensuring compliance with building regulations and building safety during design and construction.

The role of Principal Designer and Principal Contractor can be carried out by individuals or organisations. Those appointed to the role of Principal Designer and Principal Contractor must have the appropriate skills, knowledge, experience and behaviours and, if they are an organisation, the organisational capability, to fulfil their duties under these regulations. They may not accept an appointment unless they fulfil these conditions.

In many cases, the role of Principal Designer and Principal Contractor are normally carried out by an organisation. In these cases, the organisation will be responsible for fulfilling all their duties as the Principal Designer or Principal Contractor. In doing so, they will be relying on their organisational capability, including having in place a robust management system and a team of people with relevant competence. In practice, organisations will usually have individuals, with the relevant competence who lead, oversee and manage the project, supported by a team with a range of expertise. This should enable the organisation to fulfil its duties as the Principal Designer or the Principal Contractor for the design or building work included in the particular project.

We therefore propose that where the role is carried out by an organisation, reasonable steps must be taken to ensure the individual or individuals designated, fulfil the functions of the Principal Designer or the Principal Contractor for a specific project, have the appropriate skills, knowledge, experience and behaviours.

To support individuals designated to manage the functions of the Principal Designers and Principal Contractors, the Department of Levelling Up, Housing and Communities has sponsored the British Standards Institution to work with industry experts and relevant

stakeholders to develop the competence requirements for these roles. Any schemes set up by professional and trade bodies for assessing individuals as meeting these standards should be supported by robust assessment processes and third-party accreditation arrangements.

Question: Do you agree or disagree with the proposal for organisations appointed as the Principal Designer or Principal Contractor to take reasonable steps to ensure that the individual/s designated, to manage the functions of the Principal Designer or Principal Contractor for that specific project have the relevant competence to do so?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

See our earlier comments on using the word 'ensure'.

Ceasing to be competent

We propose that building regulations require that where any person ceases to satisfy the competence requirements:

- If they are the Principal Designer or the Principal Contractor, they must notify the client;
- If they are a designer working on the design, they must notify the Principal Designer (or where the Principal Designer was not appointed, the client) and the person who asked them to carry out the design work;
- If they are a contractor undertaking building work, they must notify the Principal Contractor (or where the Principal Contractor was not appointed, the client) and the person who asked them to carry out the building work; and,
- In any other case, they must notify the person who asked them to carry out the work.

Question: Do you agree or disagree that regulations should include the requirement on individuals or organisations to notify the relevant dutyholders and those who appoint or ask them to carry out the work where they cease to satisfy the competence requirements?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

This sounds perfectly in order, but we think the industry will need examples to explain what it means in practice.

Additional dutyholder requirements for those working on higher-risk buildings

For higher-risk buildings, appointments by the client of the Principal Designer and Principal Contractor must be made before the building control application is made. The dutyholders will need to work together to provide information to the Building Safety Regulator before building work begins via a building control approval application with plans and new prescribed documents which accompany it.

This will include an obligation on the client to ensure that designers and contractors are aware that they are working on a higher-risk building project.

To ensure that that dutyholders remain accountable for the building work they are undertaking we have included obligations to identify and share information about the nature of the higher-risk building project to achieve compliance in particular with the proposed new regulations for higher-risk buildings.

There will also be specific duties on the client responsible for a construction on a higher-risk building to develop and maintain a golden thread of information about the building and its construction and building regulations put in place on reporting processes to support a mandatory occurrence reporting regime. Further information about golden thread and mandatory occurrence reporting in higher-risk buildings can be found later on in this consultation.

Question: Do you agree or disagree with the additional requirements proposed for dutyholders involved in work on higher-risk buildings?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We support the principle, but we do not think that the Government has considered the consequences and discussed those with the industry. The appointment of the Principal Contractor before the building control application implies the imposition of two-stage tendering and the completion of design to RIBA Stage 4. This places undue onerous conditions on the client and prevents management contracting, single stage tendering, as well as front-loading design cost.

The obligation is on Client to identify a higher-risk project, but this obligation should also be placed on designers who are more specifically qualified to make such classifications.

Competence checks on those working on higher-risk buildings

In the interests of public safety, we are proposing that when conducting their assessments on competence (skills, knowledge, experience and behaviours) before appointing a person in relation to proposed higher-risk building work, the dutyholder making that appointment should be required:

- i. To ask any person it appoints whether that person has a serious infraction; and
- ii. To consider whether previous conduct of that person, in particular any serious infraction, might call into question their competence in relation to the work in question.

We propose that “serious infraction” should mean that within the 5 years before the appointment is being considered, the person or organisation in question has been subject to any of:

- i. The issue of a compliance notice in relation to contravention of Part A (structural failure) or B (fire safety) of Schedule 1 to the Building Regulations 2010;
- ii. The issue of a stop notice in relation to a contravention any requirement of, or imposed under, the building regulations;
- iii. The conviction for any offence under the Building Safety Act 2022, Building Act 1984 or the Regulatory Reform (Fire Safety) Order 2005;
- iv. The conviction of an offence under the Health and Safety at Work etc Act 1974 or the Construction (Design and Management) Regulations 2015;
- v. A finding by a formal inquiry of behaviour that directly resulted in loss of life, the deliberate misleading of customers or amounted to the failure to meet regulatory requirements.

In relation to higher-risk building work, in addition to the general requirements on appointing a Principal Designer or Principal Contractor, we propose that the client and other dutyholders making appointments must keep a record of the steps they took to satisfy themselves that the proposed/appointed persons have the relevant competence for the roles. This must include the steps taken to determine whether the person has a serious infraction, and the detailed consideration of their previous conduct, in particular any serious infraction, which might call into question their competence in relation to the work in question, their reasons for appointing them nonetheless and the measures the dutyholder who made the appointment will take to mitigate the effects of the appointment.

When submitting a building control approval application for the creation of new higher-risk buildings, we propose the above information must be provided as part of the competence declaration, signed by the client or someone on their behalf, stating that the client has taken all reasonable steps and is satisfied that the Principal Designer (or sole or lead

designer) and the Principal Contractor (or sole contractor) meet the competence requirements by having the necessary skills, knowledge, experience and behaviours, including consideration of previous conduct. In considering this part of the application, the Building Safety Regulator will have regard to government guidance or recognised industry standards in relation to the competence of the Principal Designer, Principal Contractor or the relevant trades and professions.

Question: Do you agree or disagree with the requirement on the client to record the steps they took to satisfy themselves that the appointed Principal Designer and Principal Contractor have the relevant competence for the role and include it with the competence declaration required with the building control approval application for higher-risk building work?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

It is appropriate for the client to ask the question of other dutyholders as to whether they have faced a serious infraction in the stipulated timescale, but ultimately the regulator is better placed to know what infractions have taken place, and it is the obvious place for the client to check with. The process as described, seems a bit vague and clunky. We would be happy to work with the Regulator to devise a system that is efficient and clear.

Question: Do you agree or disagree that anyone making appointments for building work on a HRB should consider whether a serious infraction might call into question a person's skills, knowledge, experience and behaviours?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We think this is challenging. Dutyholders are not regulators and yet the suggestion seems to suggest they should be using a regulator's judgement as to the scale and degree of any infraction. A better way of dealing with this would be to for the Regulator to police this at the stage of Gateway 2.

Question: Do you agree or disagree with the proposed meaning of serious infraction?

- Agree
- Disagree
- Neither agree nor disagree

- Don't know

Question: Explain answer

The list seems broadly sensible, but we have expressed our concerns with the process in answer to other questions in this section and hence the neutral response.

Question: Do you agree or disagree that the consideration of serious infractions be limited to the last five years?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

As explained in answer to one of the prior questions, we would rather see any time-limited bar assessed by the Regulator at Gateway 2. This would allow the Regulator to take the scale and degree of the infraction into account.

Dutyholder and competence requirements for domestic clients in all buildings and in higher risk buildings

A domestic client is someone for whom a project is carried out, which is not done in connection with a business.

We propose special provisions for domestic clients, similar to the approach taken in the Construction (Design and Management) Regulations 2015. Where the client is a domestic client, there are certain duties that must be carried out by:

- The contractor (where there is only one contractor for a project); or
- The Principal Contractor or the Principal Designer (where there is more than one contractor) if the client and the Principal Designer has agreed this in writing.

If a domestic client fails to make the appointments of the Principal Designer and Principal Contractor, the designer in control of the design phase of the project will be the Principal Designer; and the contractor in control of the construction phase of the project will be the Principal Contractor.

The duties referred to above are to:

- Make suitable arrangements for planning, managing and monitoring a project so as to ensure compliance with all relevant requirements, and maintain and review these arrangements throughout the project;

- Take reasonable steps to satisfy themselves that any person they permit to carry out design or building work have the relevant competence to carry out work in accordance with building regulations and to fulfil their duties under these regulations, except where they are in training and are supervised by a competent person; and,
- Take reasonable steps to satisfy themselves that the Principal Designer and/or the Principal Contractor (where appointed) have the relevant competence to fulfil their duties under these regulations.

Question: Do you agree or disagree that special provisions set out above should be made for domestic clients?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We are not best placed to answer this question.

Dutyholder and competence requirements for non-notifiable work in all buildings and in higher-risk buildings

Building regulations recognise the proportionate regulation of small-scale projects by, for example, providing for certain work to be covered by self-certification requirements through 'competent person schemes' (CPS), and for the type of work prescribed in Schedule 4 to the Building Regulations 2010 which does not need to be notified to a building control body. This type of work is mainly of a minor nature, where there is no significant risk to health, safety, water efficiency or energy-efficiency.

To be consistent with the proportionate approach taken in building regulations, we intend not to apply the dutyholders duties and competence requirements where the work consists only of work described in Schedule 4 to the Building Regulations 2010. Whilst there is no duty to notify either a building control authority or the Building Safety Regulator about these works, the substantive requirements of the building regulations continue to apply.

Question: Do you agree or disagree that the dutyholders and competence regulations should not apply to work prescribed in Schedule 4 of the Building Regulations 2010?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

It seems sensible to take a proportionate approach in such circumstances.

2. Gateways

Government is proposing to specify in regulations that only hospitals, care homes or buildings containing at least two residential units that meet the height threshold will be higher-risk buildings.

Before building work commences

- If proposing to construct or create a higher-risk building (HRB) an applicant must submit a building control approval application to the Building Safety Regulator (BSR) with plans and new prescribed documents.
- Work cannot commence without BSR approval.
- BSR will consult its multi-disciplinary team, including fire and rescue authority and sewerage undertaker and determine the application within 12 weeks.
- If application is approved, the BSR will agree a bespoke inspection schedule with the applicant. The BSR must be notified at these stages for inspection to take place. Building work can then commence (subject to any BSR imposed requirements).

Construction phase

- BSR carries out inspections at agreed stages. Inspections can also be carried out without notice.
- Dutyholders must comply with dutyholder and competence duties; mandatory occurrence reporting requirements; and golden thread requirements.
- If applicant proposes to deviate from the original building control approval application, they must determine whether it constitutes a 'major' or 'notifiable' change.
 - Major: Applicant submits change control application to BSR. BSR has six weeks to determine application. Change cannot be made without BSR approval.
 - Notifiable: Applicant submits change control notification to BSR. The BSR has 10 working days to consider the notification. If the BSR has not intervened, the change can be carried out once the prescribed period has elapsed.

Building work complete

Full completion

- Building work on HRB is complete.
Applicant must submit a completion certificate application to the BSR for approval and golden thread information must be handed over to the accountable person (AP).
- BSR assesses the application and carries out final inspection/s of the building work.
If satisfied that the building work complies with all applicable building regulations, the BSR will issue a completion certificate.
This is the end of the building control process.
- AP can then register the building for occupation. This is separate to the building control process.

Partial completion

- Building work on relevant part of HRB is complete.
Applicant must submit a partial completion certificate application to the BSR for approval and golden thread information must be handed over to the accountable person (AP).
- BSR assesses the application and carries out final inspection/s of the relevant building work.
- If satisfied that the completed part of the HRB including all relevant building work complies with all applicable building regulations, the BSR will issue a partial completion certificate for that specific work.
- AP can then register the building for occupation. Only the part of the building for which there is a completion certificate, can be occupied.
This is separate to the building control process.
 - Building work on other parts of the building continues.
The above completion certificate application process applies each time HRB work is complete on a new part of the building.
 - Fire Safety Order and AP's duty to assess and manage building safety risks apply once occupation commences.
CDM requirements continue to apply.

Gateway 2

As dutyholders will be required to cooperate with each other, coordinate their work, and communicate and provide information to each other, the client can be assisted by other dutyholders such as the Principal Contractor and Principal Designer in preparing the application and may ask one of them to submit it on their behalf.

Prior to submitting a building control approval application, we would encourage dutyholders to engage with the Building Safety Regulator early to discuss the development including draft plans and documentation they intend to submit to the Building Safety Regulator formally. This early engagement would be beneficial to both the dutyholders of the development and the Building Safety Regulator as design approaches can be discussed before the application is formally submitted. We are keen that the new hard stop gateways process should not slow down build plans and so early dialogue between the Building Safety Regulator and the dutyholders is crucial. In addition to early engagement, we would also encourage dutyholders to provide two weeks' advance warning to the regulator before submitting their application. This will ensure that the Building Safety Regulator is expecting the application and is ready to start work on it the moment it is submitted.

Question: Do you agree or disagree that the client, Principal Contractor or Principal Designer should be able to submit the required building control approval application to the Building Safety Regulator for higher-risk building work?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree that any of the named parties in the question should be able to submit the required building control approval application to the Building Safety Regulator for higher-risk building work.

The 'pre-application' two weeks is a helpful suggestion, but only if that is not 'idle time' and is time used by the Regulator, so that when the application is made, the Regulator is ready. The single biggest concern we have with the new system is that it is not resourced sufficiently and that project risk and viability increases, perhaps making some projects unviable.

The new regime should not be introduced until the Regulator can demonstrate that sufficient and appropriately trained resource can be deployed to respond to applications in a timely fashion, and there should be transparency on whether that is the case, in terms of the Regulator's assumptions, projections, and whether these have been met.

Digital system

We propose that all applications for higher-risk buildings, including all plans, documents and information, should be submitted electronically to the Building Safety Regulator, via a digital system. However, we propose that the Building Safety Regulator will have the discretion to accept applications to be submitted in a different way such as through paper copies where applicants cannot submit plans and documents electronically.

Question: Do you agree or disagree with the proposed approach outlined for electronic submission and directions and that it should apply to all forms of building control related correspondence?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We support electronic submission, but it should be end-to-end, and allow all submissions to be submitted electronically and we therefore are assuming that where any submissions 'are being described as 'in writing' they are capable of electronic submission.

A theme we will also want to develop throughout this response is that the Regulator, should dictate what formats it will receive information in. Timeliness in the Regulator's decisions is paramount for the industry and time and resource wasted in the Regulator helps no one. The Regulator should provide some choice of format, but direct what formats it will and will not accept.

Building control approval application ('gateway two application') information requirements for higher-risk buildings

Under the new regime for higher-risk buildings, we propose to require applicants to submit a building control approval application to the Building Safety Regulator with plans and new additional documents.

The proposed list of information to be submitted to the Building Safety Regulator as part of an application for building control approval includes:

- **Contact Information:** The name, address, telephone number and (if available) an email address of the client, principal contractor (or sole contractor) and the principal designer (or sole or lead designer).
- **Statement:** A statement confirming that the application for building control approval is made under the proposed new Higher-Risk Building regulations.
- **Description of an existing building:** Where the higher-risk building work consists of work to an existing building, the applicant must include a description of the existing building. This description should include the details of the current use of the building as well as the current use of each storey, the height of the building and the number of storeys.
- **Description of the proposed building work:** The applicant must provide a description of the proposed higher-risk building work. This should include:
 - The details of the intended use of the higher-risk building and the intended use of each storey;
 - The height of the higher-risk building;
 - The number of storeys in the higher-risk building;
 - The provision to be made for the drainage of the higher-risk building;
 - Any required precautions to be taken in the building over a drain, sewer or disposal main to comply with applicable building regulations; and
 - The steps to be taken to comply with any local enactment that applies.
- **Plan:** We propose the applicant must provide a plan to a scale of not less than 1:1250. The plan must outline the size and position of the building and its relationship to adjoining boundaries, the boundaries of the curtilage of the building, and the size, position and use of every other building or proposed building within the curtilage of the building. The applicant should also provide such other plans as is necessary to show that the higher-risk building work would comply with all applicable requirements of the building regulations.
- **Prescribed Documents:** As part of the building control approval application the applicant will be required to provide the following prescribed documents (further detail on prescribed documents can be found below):
 - A competence declaration confirming that the client is satisfied that their Principal Designer and Principal Contractor are competent to carry out their roles; and written records of the steps the client has taken to be satisfied of their competence;
 - A planning statement setting out the status of planning permission (if required for the development);
 - A design and build approach document setting out the proposed standards to be used;
 - A fire and emergency file setting out fire and structural safety information about the proposal;
 - A construction control plan describing the strategies for managing building work to maintain building regulations compliance;
 - A change control plan setting out how changes during construction will be considered, recorded and when the Building Safety Regulator should be notified or consulted;
 - A description of the mandatory occurrence reporting framework; and,

- A partial completion strategy (where the applicant proposes occupation of part of the building before completion of the higher-risk building work).

Question: Do you agree or disagree with the proposed information requirements for building control approval applications for new higher-risk buildings?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We generally agree that the above is a good list of documents that evidence achieving compliance, but we have marked our response 'disagree, because of a particular circumstance that we do not think is taken account of.

The "design and build" approach document is unclear. The construction control plan cannot be submitted until appointment of the Main Contractor, which may not be prior to plans submission. Ditto the partial completion strategy. The mandatory occurrence reporting framework is the responsibility of the Main Contractor and cannot/should not be supplied by anyone other than the Main Contractor.

Application process

We have gone further than Dame Judith Hackitt's recommendation in terms of the information that dutyholders will need to develop to demonstrate how proposals will comply with building regulations' requirements and are realistic for the building in use.

The proposed requirement for dutyholders to submit a building control approval application with plans and new prescribed documents will support dutyholders to meet their dutyholder duties and carefully consider how the proposed building work will comply with building regulations' requirements. This includes the requirement on dutyholders to demonstrate to the Building Safety Regulator how their proposals are realistic for the building when it is use. A dutyholder will be required to explain their assumptions about the management and maintenance of the building once in use, as well as the behaviours and characteristics of residents or other users, such as whether there are likely to be mobility impaired residents who may have difficulties in escaping a building unescorted in an emergency. This approach should support industry culture change by encouraging dutyholders to move away from seeing building regulations compliance as a 'tick box' exercise, towards an outcomes focused approach.

Competence declaration

We intend to require a signed declaration from the client, or someone on behalf of the client, at the building control approval application stage that they have assessed and are content that the Principal Designer and Principal Contractor has the necessary competence to discharge their responsibilities effectively. The declaration must be accompanied by

documentation setting out the step the client has taken to satisfy themselves of the competence of the Principal Designer and Principal Contractor. This must include the steps taken to determine whether the person has a serious infraction, and the detailed consideration of their previous conduct, in particular any serious infraction, which might call into question their competence in relation to the work in question, their reasons for appointing them nonetheless and the measures the dutyholder who made the appointment will take to mitigate the effects of the appointment.

The signed declaration will confirm that the client is content that the Principal Designer (or sole or lead designer) and Principal Contractor (or sole contractor) fulfils the dutyholder requirements.

In the interests of public safety, we propose that in assessing an application for building control approval for higher-risk building work the Building Safety Regulator should consider carefully whether the client has taken all reasonable steps to determine whether the Principal Designer or the Principal Contractor is a person who has a serious infraction or previous conduct which might call into question their competence in relation to the work in question.

As outlined in later sections of this consultation, the Building Safety Regulator will be able to approve building control approval applications subject to specific requirements placed on dutyholders; require that dutyholder do not cover up certain work for a period of time during the construction phase so it can carry out a bespoke and targeted inspection regime. The Building Safety Regulator will also be able to carry out inspections without warning, where deemed necessary, and require access to information such as change control logs maintained by dutyholders. These proposed powers will enable the Building Safety Regulator to increase their scrutiny on higher-risk building work where the competence of an appointed individual has been called into question.

In addition, during the construction phase, where the Building Safety Regulator finds building work not to be in compliance with relevant building regulations, the Building Safety Regulator should check that there are suitable arrangements in place for assessing the competence of the person, including whether the person who designed or carried out the work has a serious infraction.

Question: Do you agree or disagree with the proposed information that must be contained within a competence declaration?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We support the proposal for the Competence Declaration, however, we have concerns about the "serious infraction" proposal.

Question: Do you agree or disagree that when assessing an application for building control approval the Building Safety Regulator should consider the steps taken to determine whether a person has a serious infraction, and the detailed consideration of their previous conduct?

- Agree
- **Disagree**
- Neither agree nor disagree
- Don't know

Question: Explain answer

As we have described elsewhere in this consultation response, we have significant concerns about the industry using their judgement to determine whether the scale and degree of a serious infraction should bar an organisation from a contract. At the very least this should be a consultative process with the Regulator, and not subject to a declaration for something we do not think the industry is best placed to judge or confirm.

Planning statement

The purpose of the proposed planning statement is to ensure the Building Safety Regulator is aware of the planning status (if any) of the proposed building work. We propose it should either:

- a. Confirm that planning permission is not required,
- b. Confirm that planning permission has been granted and specify if any optional requirement applies to the work, and if so, which, or
- c. Confirm that planning permission has not yet been granted, and that the relevant information will be supplied within 28 days after the date on which planning permission is granted.

Where a building control approval application is accompanied by a planning statement in accordance with scenario (c) as above, a supplementary statement in the terms required by scenario (b) must be provided to the Building Safety Regulator within 28 days after the date on which planning permission is granted, and the statement must state that it is made under this paragraph and is supplementary to the planning statement.

The Building Safety Regulator will not, however, make a determination about the planning status of the proposed building work as the planning permission regime focuses on land use matters, rather than compliance with building regulations' requirements and is an entirely separate legislative regime. The planning statement is for the Building Safety Regulator's information only and applicants will need to ensure that the proposed building work complies with both planning and building regulations' requirements.

Question: Do you agree or disagree with the proposed list of information that must be contained within a planning statement?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We have marked this with a neutral response, because we are not clear what purpose the planning statement is serving? Fire-safety-related planning compliance will have been determined at Gateway 1. Appropriate planning permission will have been obtained, where needed, from the local planning authority.

Given the quantum of information the new regime requires, and our previous comments on resource, the Regulator should not be collecting any more information than is necessary.

That said, we are not against responding 'agree' if the Government better explains why this information is needed?

Design and build approach document

The purpose of the proposed design and build approach document is to encourage dutyholders to carefully consider how compliance will be achieved for each applicable building regulation requirement before construction starts. As part of the design and build approach document, they will be required to set out whether they intend to follow any guidance to meet the building regulations requirements (e.g. Approved Documents, British Standards, Design Codes, etc.).

We consider this vital as following Approved Documents is a common means to try to ensure building work complies with building regulations and whilst this approach may be entirely appropriate for typical building work scenarios, it does not guarantee compliance, as the Approved Documents are not relevant to all situations. It is therefore important that dutyholders carefully consider their approach to complying with building regulations and whether it is appropriate for their specific project.

The design and build approach document will also enable the Building Safety Regulator to determine a building control approval application more easily by clearly demonstrating the proposed approach to compliance with building regulations, including where alternative approaches are being taken, and whether they are suitable for the proposed building.

We propose that a design and build approach document must set out the approach taken in designing the higher-risk building and the building standards to be applied, in particular:

- The approach taken in relation to each element of the building to ensure compliance with all applicable requirements of the building regulations and why it is appropriate; and,

- Where compliance is not intended to be achieved by following an approach specified in an approved document, the reasons for adopting an alternative approach to compliance together with an explanation of why the alternative approach is appropriate for the building and how it ensures compliance with all applicable requirements of the building regulations.

Question: Do you agree or disagree with the proposed list of information that must be contained within a design and build approach document?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The above requires detailed design work, often on the part of specialist subcontractors who are not appointed until some way through the build period. It also rules out tendering on Stage 3 and finalisation of Stage 4 during the build phase. These impositions remove tendering flexibility and client choice. Partial approval may be a better approach with "reserved matters" to be discharged prior to work commencement.

Fire and emergency file

The purpose of the proposed fire and emergency file is to ensure that building safety risks are appropriately considered before construction starts and that assumptions behind the designs and how the building will be used are realistic and carefully considered, with a clear rationale behind those assumptions. Dutyholders will need to set out fire and structural safety information about the proposal and provide assurance that occupants would be safe in the event of an emergency, and that they could be safely evacuated.

We propose that a fire and emergency file must explain:

- The matters that were considered when assessing how the building safety risks identified during design and construction could impact the proposed building when in use;
- The proposals adopted and approach taken in relation to designing the proposed building to ensure compliance with the applicable requirements of the building regulations relating to the building safety risks and why it is appropriate;
- The measures, strategies and policies it is proposed the building owner should adopt in order to manage and maintain the proposed building once in use to ensure residents and users can be safely evacuated in an emergency. This should include any assumptions made as to the intended occupiers of the building and their likely characteristics and behaviours; and,
- The proposed fire strategy demonstrating compliance with functional requirements A3 and B1 to B5 of Schedule 1 to the Building Regulations 2010.

Question: Do you agree or disagree with the proposed list of information that must be contained within a fire and emergency file?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree that the fire and emergency strategy should be contained in a document and evolve the Gateway 1 Fire Statement.

Construction control plan

The purpose of the proposed construction control plan to be submitted as part of a building control approval application is to ensure that, before construction even starts,, dutyholders have clear strategies in place to ensure compliance with all applicable building regulations will be maintained during building work. This includes setting out how compliance with building regulations will be evidenced by dutyholders, which will in turn support them to meet their design and construction golden thread information requirements.

We propose that the strategies within the construction control plan should focus on cooperation, coordination, communication and competence and that a construction control plan must set out:

- The strategies, policies and procedures the client has adopted for planning, managing and monitoring the higher-risk building work so as to ensure compliance with:
 - The applicable requirements of the building regulations and to record evidence of that compliance; and,
 - Which dutyholder is responsible for meeting the dutyholder duties.
- The strategies, policies and procedures the client has adopted to identify, assess and keep under review the competence of the persons carrying out the higher-risk building work or involved in the design of the higher-risk building. This must include the steps taken to determine whether the person has a serious infraction, and the detailed consideration of their previous conduct, in particular any serious infraction, which might call into question their competence in relation to the work in question, their reasons for appointing them nonetheless, and the measures the dutyholder who made the appointment will take to mitigate the effects of the appointment.
- The strategies, policies and procedures the client has adopted to support co-operation between designers, contractors and any other persons involved in the higher-risk building work, including the sharing of all necessary information;
- A schedule giving the name of each person who at the date of the application was appointed by the client, the Principal Contractor (or sole contractor), and the Principal Designer (or sole or lead designer) to work on the project and a summary of their responsibilities; and,

- The policies the client has adopted to review the construction control plan.

The construction control plan will set out the strategies and arrangements the client will put in place to ensure building regulations compliance and to record evidence of that compliance. We propose that this requirement will include the need to maintain and manage the golden thread information.

Question: Do you agree or disagree with the proposed list of information that must be contained within a construction control plan?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

We would 'agree', however, as long as preparatory work on site can commence prior to the CCP, e.g. demolition, and the CCP can be submitted after the Building Control application but before start on site.

Question: Do you agree or disagree that the Construction Control Plan should set out plans for how the client will maintain and manage the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The Construction Control Plan should contain details for how the relevant dutyholders will update and maintain the Golden Thread, but it cannot be 'Planned for' in the Construction Control Plan it should already exist to inform the Construction Control Plan.

Change control plan

There should be a clearer change control process during construction to ensure there is an accurate record of changes; that the impact of changes is carefully considered and

discussed with other parties as required; and those changes are subject to appropriate regulatory oversight.

The purpose of the proposed change control plan is, therefore, to ensure that dutyholders carefully consider the implications of changes from their original building control approval plan before they are made, and that all controlled changes are recorded to ensure that plans and prescribed documents are updated to reflect the building work 'as built' rather than 'as-designed'. Maintaining accurate records during construction will also be vital to ensuring that the golden thread contains up-to-date information about the building work, which will be particularly important when it is handed over to the Principal Accountable Person on completion of the building work and/or the Responsible Person for non-residential higher-risk building or non-residential parts of higher-risk buildings.

We propose that the change control plan should include:

- The strategies, policies and procedures the client has adopted to ensure any controlled change takes place in accordance with change control requirements, and to log each controlled change in accordance with record-keeping requirements. This must explain:
 - How proposed changes will be identified and to whom they must be reported;
 - How the impacts of proposed changes are identified and considered;
 - In relation to proposed changes, the decision-making procedures adopted for agreeing a change including whose advice is to be sought;
 - How changes are recorded and by when;
 - The procedure to identify which changes require notification to the Building Safety Regulator and which changes require a change control application to the Building Safety Regulator before the change can occur; and,
 - How the effectiveness of the change control strategy will be reviewed by dutyholders.

We also propose that the change control plan should include a change control log. The change control log will include the following information:

- The name of the individual recording the change;
- A description of the proposed change;
- An explanation of the reason why the change has been proposed;
- Whether the change is a notifiable change or a major change (further information on this can be found in the section on change control);
- A list of the name and occupation of each person, if any, whose advice was sought in relation to the proposed change and a brief summary of any advice provided;
- An assessment of which agreed document is affected by the proposed change and confirmation that a revised version has been produced; and,
- An explanation, in relation to the proposed change, of how— (i) the higher-risk building work will, after the proposed change is carried out, meet all applicable building regulations, and (ii) the strategies, policies and procedures in relation to the higher-risk building work (including in relation to controlled changes, mandatory occurrence reporting, competence of persons or sharing of information and co-operation) will, after the proposed change is carried out, meet relevant requirements.

Question: Do you agree or disagree with the proposed list of information that must be contained within the change control plan, including the information requirements in the proposed change control log?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We strongly agree with this proposal. It is a huge step in the right direction in preventing some of the issues our members see on existing buildings. It will require good guidance, however, on what constitutes a change?

Mandatory occurrence reporting system

Dutyholders will need to establish and operate an effective mandatory occurrence reporting system to enable those on the site or in the building to report safety occurrences to the dutyholders; and report safety occurrences to the Building Safety Regulator in a required manner. Dutyholders will be required to provide a statement describing their mandatory occurrence reporting system as part of a building control approval application to ensure they have arrangements in place before construction starts.

Question: Do you agree or disagree that a statement describing their mandatory occurrence reporting system should be required as part of a building control approval application?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No comment.

Question: Is there any information set out in the prescribed documents that would not be possible to provide before building work commences.

- Yes
- No
- Don't know

Question: Explain answer

No comment.

Staged information supply

We propose that the Building Safety Regulator will be able to allow a 'staged approach' to building control approval for construction, where it is satisfied that all the information cannot be provided upfront but that the proposed building work will comply with all applicable building regulations' requirements.

Where a staged approach is proposed, dutyholders must still provide a comprehensive building control approval application with plans and all prescribed documents, as well as a staged work statement providing a detailed description of the proposed stages of the work, including an estimate of the time when each stage of the work will commence. This will enable the Building Safety Regulator to assess the building work holistically when determining the application.

The difference with the staged approach, is that the plans included in the building control approval application would need to show how the work up to the specified stage would comply with all applicable building regulations requirements. The design and build approach document would need to set out the design principles and building standards to be applied to the work up to that specified stage. The detailed plans and design and build approach document covering work up to the specified stage must, however, be accompanied by outline plans for the whole building. This is to ensure that dutyholders take a holistic approach to building work and consider how compliance with building regulations' requirements will be achieved. It will also ensure that the Building Safety Regulator does not have to consider each stage of building work in isolation.

A staged approach will still represent a 'hard stop' but will be managed through 'hard stops in stages' which are bespoke to the specific higher-risk building project. Building control approval will be strictly limited to the approved detailed plans and stages of work the Building Safety Regulator has approved. It will be an offence to proceed with building work beyond a specified stage and the Building Safety Regulator will have enforcement powers to deal with such a breach.

In order to approve an application where a staged approach is proposed, we envisage the Building Safety Regulator will approve the building control application subject to requirements such as that the work does not proceed beyond a certain stage until it has approved a particular plan, such as plans covering the next stage of work, or other prescribed documents such as the updated design and build approach document. If such requirements cannot be agreed with the developer, the application may be rejected by the Building Safety Regulator. In a staged approach, to move onto the next stage of construction, the Building Safety Regulator would need to have inspected any agreed building work and the dutyholder would need to have submitted plans and a design and build approach document for the next stage/s of work and obtained approval from the Building Safety Regulator to commence work on those stages.

Question: Do you agree or disagree that the specific requirements for an applicant proposing to build a higher-risk building in stages are sufficient for ensuring dutyholders demonstrate how they will comply with all applicable building regulations requirements?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Aligns with U.S. Building Code inspection requirements, which are entirely practicable.

Question: Should there be any additional modifications (beyond those proposed for plans and the design and build approach document) to the prescribed documents where the applicant has provided a “staged work” statement?

- Yes
- No
- Don't know

Question: Explain answer

See above re Contractor supplied documents.

Question: Do you agree or disagree with the additional notification requirements imposed on dutyholders constructing a new higher-risk building in stages?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Agree, as long as the regulator has defined timescales to respond, or approval can be assumed by default if the regulator does not respond in a timely manner

Partial completion

We propose that where a dutyholder intends to occupy a higher-risk building in phases, a partial completion strategy is provided at the building control approval stage before building work commences to compel dutyholders to think ahead to the safety of residents in the occupied building right from the design stage. We propose that a Partial Completion Strategy must explain the following:

- The proposals adopted in designing for occupation of each part of the proposed building to be completed to ensure compliance with the applicable requirements of the building regulations;
- The measures, strategies and policies it is proposed the building owner should adopt in order to manage and maintain each such part of the proposed building; and,
- Any assumptions made in those measures, strategies and proposals as to the intended occupiers of each such part of the proposed building and their likely characteristics and behaviours, and the intended management or maintenance of each such part of the proposed building.

Question: Do you agree or disagree with the proposed list of information that should be contained within a partial completion strategy?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We broadly support the proposed approach. It is important there is sufficient flexibility in the system. Changes to the partial completion strategy will be quite commonplace. It is important the regulator is responsive to changes and approvals are done in a timely manner.

Consultation with relevant enforcing authorities – Fire and Rescue

For higher-risk buildings we propose that the Building Safety Regulator must consult with the relevant fire and rescue authority before making its decision on an application for building control approval. In line with the current building regulations fire safety procedural guidance, we propose that the Building Safety Regulator must not determine an application for building control approval before 15 working days after the date on which the plans were provided to the fire and rescue authority has passed, or until the fire and rescue authority has provided its response (if sooner than the 15 working days).

Question: Do you agree or disagree that the Building Safety Regulator should consult the fire and rescue authority on compliance with the Fire Safety Order on building control approval applications, change control applications and completion certificate applications?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

It is essential that statutory consultees have the resource to fulfil their duties.

We have had reports from members on the London Fire Brigade, which has been struggling to deal with consultations for some time now with hugely excessive response times. This is in no way a criticism of the LFB team, but an industry call for adequate resourcing of the service.

Question: Do you agree or disagree that a building control approval application must not be determined before 15 working days after the date on which the plans are given to the fire and rescue authority?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

A deemed consent regime is not ideal, and far rather statutory consultees had the resource to respond in the stipulated time. However, in the absence of any service guarantees, deemed consent is pragmatic.

Sewerage undertaker

15 working day consultation, increase from 15 days.

Question: Do you agree or disagree that the Building Safety Regulator should consult the sewerage undertaker on Part H of Schedule 1 of the Building Regulations?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No comment.

Question: Do you agree or disagree that an application must not be determined until at least 15 working days after the date on which the plans are given to the Sewerage Undertaker?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree to this change on the grounds of consistency.

Building Safety Regulator decisions

Following consultation with relevant enforcing authorities, we propose the Building Safety Regulator will be able to approve a building control approval application (with or without requirements – see below) or reject it. The Building Safety Regulator also has the power in sections 8 to 10 of the Building Act 1984 (as amended by the Building Safety Act 2022) to dispense with or relax specific building regulations requirements, following an application, if it considers the operation of a requirement would be unreasonable in relation to a specific development.

Where a building control approval application is successful the proposed effect is that from the date of the Building Safety Regulator's notice confirming that the application has been approved, the building control approval for the building work is granted and the application, including the plans and prescribed documents are approved.

We also propose that the Building Safety Regulator should be able to approve an application subject to specific requirements. For example:

- A requirement to provide the Building Safety Regulator with a particular document, or revised version of a particular document by a certain date. For example, if some relatively minor details were missing from the building control approval application, the Building Safety Regulator will have the option to approve the application on the basis that the additional information is provided by a certain date.
- A requirement that building work does not proceed beyond a specified stage until a particular document, or revised version of a particular document has been approved by the Building Safety Regulator. For example, if a dutyholder has opted for the staged approach, the Building Safety Regulator may require that building work does not proceed beyond a specified stage such as laying the foundations until the dutyholder has provided detailed plans and a design and build approach document covering the superstructure.

This power will ensure that the Building Safety Regulator does not have to automatically reject building control approval applications where relatively minor details are missing. In these situations, the Building Safety Regulator could first request information and identify requirements that enable an application to be approved, rather than reject the application straightaway. The Building Safety Regulator will act in accordance with the Regulator's Code of Practice including by ensuring that they are acting in a way that is proportionate and consistent.

Question: Do you agree or disagree with the proposed types of requirements which can be imposed by the Building Safety Regulator when approving an application?

- **Agree**
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We welcome the proposition that the Regulator should have some flexibility to dispense with minor details, and that this power should be exercised in accordance with the Regulator's Code of Practice.

Where an application for building control approval has been granted subject to a requirement that a particular document must be revised and provided to the Building Safety Regulator by a certain date, we propose that the effect would be that the original plan or document is not approved. The plan or document would not be considered approved until it has been updated and formally accepted by the Building Safety Regulator in accordance with the requirement. Furthermore, the client must ensure that building work does not commence until the revised document is provided to the Building Safety Regulator.

Question: Do you agree or disagree with the proposal to enable the Building Safety Regulator to prohibit building work from commencing until a requirement of a type described above have been met by the applicant?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Again, we support such flexibility.

BSR rejecting an application

The Building Safety Regulator will be able to reject applications where necessary. We propose the following grounds for rejection:

- An application does not comply with the requirements for submitting the application or prescribed documents;
- An application is not sufficiently detailed to enable the Building Safety Regulator to determine whether the proposed building work would contravene any applicable building regulations requirements;
- An application shows that the building work would contravene any applicable building regulations requirements; or,
- An application shows the strategies, policies and procedures in relation to the building work (including in relation to controlled changes, mandatory occurrence reporting, competence of persons or sharing of information and co-operation) would contravene or would be likely to contravene relevant building regulations.

Question: Do you agree or disagree with the proposed grounds for rejecting a building control approval application?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We generally agree, but believe there should be some proportionality, and for example, the applicant should be able to rectify minor errors, for example, a missing form, without it leading to an instant rejection of their application.

Time limit for Building Safety Regulator decisions

In line with existing practice, the Building Safety Regulator will have to decide an application for building control approval within a statutory time-limit. We propose a prescribed timescale of 12 weeks to provide sufficient time for the Building Safety Regulator to carefully consider building control approval applications for higher-risk buildings, including the new prescribed documents we are proposing, whilst avoiding unduly delaying projects. We propose that the 12-week time limit should also apply to building control approval applications made under the 'staged' approach.

Under the proposed regime, the Building Safety Regulator and applicant will be able to agree an extension to the prescribed timescale, providing flexibility where needed such as for complex proposals or where the Building Safety Regulator requires further information from the applicant before being able to determine the application. If an extension is not agreed, and the Building Safety Regulator has not decided an application within the prescribed timescale, the applicant can opt to use the non-determinations procedure under section 30A of the Building Act 1984 to secure a decision.

Where the Building Safety Regulator has not reached a decision within the prescribed timescale and the applicant has not taken action – either by agreeing to an extension or submitting their application to the Secretary of State under the section 30A non-determinations procedure, we propose to provide in the regulations that the application will be deemed refused. This represents a significant shift from the current regime and will ensure that proposals that have not been subject to appropriate regulatory oversight are not approved by default and that the 'hard stop' before building work commences intended by Dame Judith Hackitt is always implemented.

Question: Do you agree or disagree that 12 weeks is an appropriate timeframe to require the Building Safety Regulator to determine a building control approval application?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: explain answer

We suggest that the Government further consults on this section. Applicants will be paying for service and there should be no circumstances where the Regulator simply does not respond in the prescribed time.

We think there should be some backstop period to determinations. Many in our membership would argue that 12 weeks is a long period in the lifecycle of a project, however, and they would request a shorter period.

The suggested referral to the Secretary of State could take some time and just add to what is perceived as an already long period.

On the other hand, it is not ideal to have a deemed consent if a determination is running up against the proposed period for assessment.

Ultimately, the onus in any delay should be on the Regulator to act professionally in prioritising its work and wherever possible meeting the deadline set. Where it is not able to meet the deadline, it should be the Regulator (not the applicant) that is seeking to explain why the deadline cannot be met to the Secretary of State, in good time before the end of the deadline. Such an exchange should be made public and therefore be transparent. Any application to extend should be made in good time to the Secretary of State, during the period of determination. If no application is made for an extension by the Regulator, then it should be the subject of deemed consent.

The new system places a number of new responsibilities on various parties, that should include the Regulator, which should have good case-management systems in place, and pro-actively manage its responsibilities.

Use of competent person schemes in HRRBs

For higher-risk buildings we are proposing that the competent person scheme and third-party certifier work to be included in the building control approval application. This would encourage dutyholders to consider building work projects holistically, rather than consider individual elements in isolation, and this in turn would give the Building Safety Regulator oversight of all building work to be carried out. We envisage that the process would be as follows:

- **Before building work commences** – the applicant would submit a building control approval application to the Building Safety Regulator which would cover all the building work including the work to be carried out under self-certification. For example, the plans would include the gas boilers to be fitted by a competent person scheme or third-party certified installer, and electrical work to be carried out by another such installer. The Building Safety Regulator would consider the work proposed to be carried out by installers as part of its assessment of the overall building control approval application. The Building Safety Regulator and applicant will also agree an inspection schedule bespoke to the project. As part of this, the Building Safety Regulator will decide whether

to inspect the work to be carried out by competent person scheme and third-party certified installers or omit such work from the planned inspection schedule as it will be subject to self-certification (although it will be able to carry out inspections without warning when deemed appropriate). The Building Safety Regulator's decision to inspect may be based upon different matters such as mandatory occurrence reports, previous non-compliance from an installer, or emerging concerns about a particular type of building work. The Building Safety Regulator will have enforcement powers where breaches of the building regulations are identified, including where work has been carried out by a competent person scheme or third-party certified installer.

- **During construction** - all dutyholders including designers and contractors will need to work together to plan, manage and monitor the design work and the building work, ensure they cooperate and communicate with each other, coordinate their work and have systems in place to ensure that building work, including design work, complies with all relevant building regulations. Dutyholders will also need to have the right skills, knowledge, experience and behaviours to undertake work and ensure that those they appoint (including competent person scheme and third-party certified installers) are also competent. The building work will also be subject to the statutory change control process, an inspection schedule and mandatory occurrence reporting requirements.
- **On completion of all the building work or stages of building work** - the applicant must submit a completion certificate application to the Building Safety Regulator which reflects the as-built, rather than as-designed building work. The Building Safety Regulator must assess the application, carry out a final inspection of the building work and if satisfied, issue a completion certificate. The Building Safety Regulator will need to decide whether to inspect any work carried out under a competent person scheme or third-party certifier as part of its final inspection. The installer would equally issue a notice/certificate to the Building Safety Regulator (rather than local authority) as building control authority for higher-risk buildings within 30 days of completing the work and the Building Safety Regulator would not issue a completion certificate for the whole building work until all such notices/certificates had been received.

Question: Do you agree or disagree that competent person scheme work should be reflected in building control approval applications where such work forms part of a wider higher-risk building work project?

- **Agree**
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No comment.

Commencement notices

Question: Do you agree or disagree that where building control approval for higher-risk building work is granted, the client, or someone on their behalf, must give notice to the Building Safety

Regulator at least five working days before the day they intend to commence higher-risk building work?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No comment.

Inspections

While an inspection schedule during construction will be project-specific, the government proposes to require the Building Safety Regulator to arrange the final inspection or inspections of the completed higher-risk building work before determining a completion certificate application. The purpose of the final inspection is to assess whether the building work complies with all applicable requirements of the building regulations, not just fire and structural aspects, and reflects the information contained in the completion certificate application before the Building Safety Regulator (if satisfied) issues a completion certificate.

Question: Do you agree or disagree with the proposed approach to site inspections of higher-risk building work, including the requirement for the Building Safety Regulator to inspect completed higher-risk building work before determining a completion certificate application?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree, but the consideration the Regulator should be making is whether they are satisfied that the dutyholders have complied with all their procedural requirements and duties, including design and delivery, sufficient to satisfy the issuing of a completion certificate. Previous language that the building complied with building regulations should not be used going forward.

Question: Should typical stages of inspection of building work be set out in guidance to help provide industry with more certainty?

- Yes
- No
- Don't know

Question: Explain answer

No comment.

Completion notices

Under the proposed regime, we intend to require dutyholders to submit a completion notice on completion of higher-risk building work. We propose that after the higher-risk building work is completed, and before or at the same time as the completion certificate application for the work is submitted, the client, or someone on their behalf must notify the Building Safety Regulator in writing that the higher-risk building work has been completed. The requirement for a completion notice is in keeping with the approach to building control oversight across the whole built environment and therefore, should be provided for within the new more stringent regime.

Question: Do you agree or disagree with the proposed requirement that the client, or someone on behalf of the client, must notify the regulator in writing that the higher-risk building work has been completed in addition to making a completion certificate application?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

This all sounds sensible.

We propose that the client, or someone on their behalf, such as the Principal Contractor and Principal Designer, submits the application to the Building Safety Regulator after building work is complete. We understand the importance of the timing of this application for the developer. It is our intention for the completion notice and completion certificate application to be made once all the building work has been completed. However, we know that after building work has completed there are sometimes elements that need to be redone (snagging). We therefore consider that the application should be made either after all notifiable work is completed or when all work including snagging is completed and would welcome views on which approach is most appropriate and why.

Question: At what point should a dutyholder be able to submit a completion certificate application?

- When all notifiable building work has been completed
- When all work (including snagging etc.) is completed
- Other
- Don't know

Question: Explain answer

We have answered “when all notifiable building work has been completed, but we think this needs more consideration and discussion between Government and the industry.”

Snagging can take some time and often has nothing to do with the structural integrity of the building.

If the new regime is working properly then most checks should be happening as the new procedures take effect and most structural issues should have been agreed as compliant long before “practical completion”.

Information requirements for completion certificate applications for new higher-risk buildings

We propose that the client must make a completion certificate application in writing, signed by the client, or someone on their behalf. As part of the application, we intend for the client to submit key information and prescribed documents to the Building Safety Regulator, which builds upon the building control approval application they submitted before commencing building work. The proposed list of key information to be submitted to the Building Safety Regulator includes:

- **Contact Information:** The name, address, telephone number and (if available) an email address of the client, principal contractor (or sole contractor) and the principal designer (or sole or lead designer);
- **Statement:** A statement confirming that the completion certificate application is made under the new regulations;
- **Description of the higher-risk building work:** The applicant must provide a description of the higher-risk building work. This should include:
 - The location of the higher-risk building created by the higher-risk building work;
 - The details of the intended use of the higher-risk building and the intended use of each storey;
 - The height of the higher-risk building;
 - The number of storeys in the higher-risk building;
 - The provision to be made for the drainage of the higher-risk building;
 - Any required precautions taken in the building over a drain, sewer or disposal main to comply with applicable building regulations; and,
 - The steps taken to comply with any local enactment that applies.
- **Compliance with building regulations statement:** A statement, signed by the client or someone on their behalf, confirming that to the best of the client's knowledge the higher-risk building, as built, complies with all applicable requirements of the building regulations.
- **Golden thread statement:** A statement, signed by both the client, or someone on their behalf, and the relevant person, confirming that a copy of the golden thread information

was appropriately provided to the relevant person and the relevant person has received them.

- **Plan:** The applicant must provide a plan to a scale of not less than 1:1250. The plan must outline the size and position of the building and its relationship to adjoining boundaries; the boundaries of the curtilage of the building, and the size, position and use of every other building or proposed building within the curtilage of the building; and the width and position of any street on or within the boundaries of the curtilage of the building. The applicant should also provide such other plans as is necessary to show that the higher-risk building work would comply with all applicable requirements of the building regulations.
- **Prescribed Documents:** As part of the completion certificate application the applicant will be required to provide updated prescribed documents reflecting the building 'as-built' as well as compliance declarations from the client, Principal Designer and Principal Contractor, and a list of all the written mandatory occurrence reports submitted to the Building Safety Regulator (please see further details below).

Prescribed documents for completion certificate applications

To ensure that completed building work complies with all applicable building regulations' requirements, the completion certificate application must include updated plans, prescribed documents and information on the final, as-built (rather than as-planned) building. This is to reflect any changes that occurred during construction as all changes must be recorded in change control logs and the prescribed documents submitted in the building control approval application must be updated if affected by a change to ensure they remain accurate and up to date. The completion certificate application will therefore largely build upon the original building control approval application submitted before building work commenced.

The following prescribed documents should be included in a completion certificate application alongside plans of the completed building work:

- Construction control plan and confirmation it has been followed;
- Change control plan and confirmation it has been followed;
- Design and build approach document and confirmation it has been followed;
- fire and emergency file; and,
- Compliance declarations (please see further details below).

Compliance declarations

In addition to including updated versions of the prescribed documents from the original building control approval application, the Completion Certificate Application must also include individual compliance declarations from the client, Principal Designer and Principal Contractor. We have proposed this new requirement to promote industry culture change and strengthen dutyholder accountability by reinforcing that responsibility for ensuring compliance with building regulations' requirements rests entirely with the people carrying out the work.

In its response to the Building a Safer Future consultation, the government indicated its intention to require the client, Principal Designer and Principal Contractor to co-sign a final declaration confirming that to the best of their knowledge, the building complies with building regulations' requirements.

However, in reflecting on views from stakeholders, we now propose that each of these dutyholders should be required to sign individual declarations of compliance to further strengthen accountability and avoid causing professional indemnity insurance and contractual liability issues. We propose that the following must be included in a completion certificate application for a higher-risk building:

- A statement, signed by the client or someone on their behalf such as the company's director, confirming that to the best of the client's knowledge the higher-risk building, as built, complies with all applicable requirements of the building regulation. The client will not be able to delegate responsibility for signing the statement to an external organisation such as the Principal Designer or Principal Contractor;
- A compliance declaration signed by each Principal Designer involved in the project at any stage with their contact details; dates of appointment; and a statement confirming that they took all reasonable steps to fulfil their duties as a Principal Designer under the proposals set out in the previous section on dutyholders; and,
- A compliance declaration signed by each Principal Contractor involved in the project at any stage with their contact details; dates of appointment; and a statement confirming that they took all reasonable steps to fulfil their duties as a Principal Contractor under the proposals set out in the previous section on dutyholders.

Where a Principal Contractor or Principal Designer is unable to make a compliance declaration, the completion certificate application must be accompanied by a statement explaining why a compliance declaration for that person has not been provided – for example, because they have died or become incapacitated. The expectation is not that a dutyholder can avoid accountability by refusing to provide a signed compliance declaration without a legitimate reason.

Question: Do you agree or disagree that the prescribed information and documents outlined above should be required in a completion certificate application?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The Client is not able to sign whether the building complies with all applicable requirements of the building regulation. They can procure people to do it, but it is rarely in their skills set. The Principal Designer should be able to confirm that the design is compliant, and the Principal Contractor should be able to confirm that delivery was carried out in accordance with the design. All the Client can confirm is whether they appointed competent people and followed the correct procedures.

All of these requirements also need to be viewed through the lens of PI cover and the extent to which it will be available to underpin any declarations.

It is also not clear what happens if the declarations made by the Client, PC and PD are in conflict?

Question Is there any additional information or documentation that may be necessary for a completion certificate application?

- Yes
- No
- Don't know

Question: Explain answer

Note that other jurisdictions require the Architect and important engineers (e.g. Structural) also produce certificates of compliance. These work well in, for instance, Germany.

Completion certificate – Building safety order

Question: Do you agree or disagree that the Building Safety Regulator should consult fire and rescue authorities on compliance with the requirements of the Fire Safety Order?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Completion certificate – Sewerage undertakers

In line with existing practice, we propose that the Building Safety Regulator will also be required to consult with the sewerage undertaker where building work affects a drain, sewer or disposal main under regulation 15 of the Building Regulations 2010. In these cases, the Building Safety Regulator will need to consult the sewerage undertaker by providing sufficient plans to show whether the higher-risk building, as built, complies with the requirements of paragraph H4 of Schedule 1 to the Building Regulations 2010.

Question: Do you agree or disagree that the Building Safety Regulator should consult the sewerage undertaker on Part H of Schedule 1 of the building regulations?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Completion certificates – time

In line with the approach taken for building control approval applications, we propose that the Building Safety Regulator must not determine the completion certificate application before 15 working days after the date on which the plans were provided to the fire and rescue authority and sewerage undertaker has passed, or until both parties have provided a response (if soon than the 15 working days). We expect both fire and rescue authorities and sewerage undertakers to respond quicker than 15 working days in most cases.

Question: Do you agree or disagree that an application must not be determined until at least 15 working days after the date on which the plans are given to consultees unless they have both responded before the 15 working days deadline?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

As rehearsed elsewhere in this response, ideally statutory consultees would respond within the 15 working day deadline, but if issues such as resource prevent them from doing so, then we agree with a deemed consent approach.

We note that the wording allows for determination before 15 working days where there have been responses from all statutory undertakers.

We would stress that it is not just the BSR that needs to consult at Gateway stages, but also the ability for the Project Teams to consult during the design process to ensure there are no surprises and consequent re-design delays at Gateway Stage.

Completion certificates - decisions

Under the proposed regime, following consultation, the Building Safety Regulator will carry out final inspections of the building work and assess whether the completion certificate application meets the following requirements:

- The higher-risk building work is complete and complies with all applicable building regulations;
- The required information and prescribed documents submitted as part of the completion certificate application are complete and accurate; and,
- The golden thread information required to be handed over to the relevant person is complete and has been provided.

If the Building Safety Regulator is satisfied, after taking all reasonable steps, that these requirements are met, we propose it would approve the application and issue a completion certificate. If it is not satisfied that these requirements have been met, we propose that it must reject the application. This would mean that a completion certificate is not issued to the applicant and therefore, the building cannot be legally occupied.

As we propose should be the case with building control approval applications and change control applications, the Building Safety Regulator will be able to agree an extension with the applicant to provide time for them to correct errors and/or provide additional information, rather than reject an application straight away. Where an application is rejected, the Building Safety Regulator must inform the applicant in writing and explain the reason for rejection. The Building Safety Regulator's approach will be proportionate in accordance with section 3 of the Building Safety Act 2022 and the Regulator's Code.

Question: Do you agree or disagree with the proposed reasons for which a completion certificate application should be rejected?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree, but as rehearsed elsewhere in this response, we urge caution with how the certificate is phrased in terms of compliance with the process.

Timescale for issuing a completion certificate

Question: Do you agree or disagree that 12 weeks is an appropriate timescale to require the Building Safety Regulator to determine a completion certificate application?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The suggested 12 weeks seems a very long period for what is a dynamic compliance process. We would have thought checks could have been taking place in the run up to completion and a completion certificate issued within 15 working days. We are happy to work with the Regulator to play our part in making that achievable. It is important also that the Regulator is suitably resourced.

With a longer period, of say 12 weeks, there will be several practical concerns to take account of:

- i. The impact on scheme viability.

- ii. Who would be responsible for the building during this period?
- iii. How aligned is the proposal with JCT/NEC contracts?
- iv. When would Practical Completion be certified?

Certain asset uses will be of particular concern; in particular, schools, **purpose-built accommodation** and hospitals. Note the academic year commencing in September which would place a great deal of risk to occupation. We'd strongly suggest this is carefully considered as the impacts are severe on project viability and delivery.

An identified/agreed 'phased submission of information' to alleviate/reduce the 12-week BSR review periods would be beneficial as few projects can afford to 'stand still' for 12 weeks awaiting a BSR decision.

Partial completion

Additional information required for partial completion certificate applications

Occupation date: The applicant must provide the date when the proposed occupation of the part of the building to which the application relates will begin.

Additional plans: The applicant must provide a plan showing the part of the building that is to be occupied indicating the intended use of that part and the location of dwellings (if any) to be occupied.

Description of the proposed building work at occupation date: As with completion certificate applications, the applicant must provide a description of the higher-risk building work including the details of the intended use of the higher-risk building and the intended use of each storey, the height of the higher-risk building and the number of storeys in the higher-risk building. However, for partial completion certificate applications the description must only cover the higher-risk building work as completed at the occupation date.

Compliance with building regulations statement: As with completion certificate applications, the applicant must provide a statement, signed by the client or someone on their behalf, confirming that to the best of the client's knowledge the part of the higher-risk building work completed, complies with all applicable requirements of the building regulations. However, for partial completion certificate applications this statement must only cover the completed part of the higher-risk building work.

Golden thread statement: As with completion certificate applications, the applicant must provide a statement, signed by both the client or someone on their behalf and the relevant person, confirming that a copy of the golden thread information was appropriately provided to the relevant person and the relevant person has received them. However, for partial completion certificate applications this statement must only cover the handover of golden thread information collected as at the occupation date.

Partial completion strategy: As set out earlier in this consultation, the applicant will be required to submit a partial completion strategy as part of the building control approval application before building work commences to demonstrate how partial completion can be managed safely. The applicant will also be required to submit an updated partial completion strategy at the partial completion certificate application stage. This strategy will set out the proposals adopted in designing for occupation of each part of the proposed building to be completed to ensure compliance with building regulations. It will also set out the measures, strategies, and policies it is proposed the building owner should adopt in order to manage and maintain the proposed building to ensure residents can be safely evacuated in an emergency when the building is in use. Furthermore, the strategy will outline any assumptions in those measures, strategies and proposals to ensure they are realistic based on the intended occupiers and intended management of the proposed building when in use.

Question: Do you agree or disagree that the proposed requirements and prescribed documents for partial completion certificate applications are sufficient to ensure building work complies with building regulations?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain Answer

No further comment.

Question: Is there any further information that should be required as part of a partial completion certificate application?

- Yes
- No
- Don't know

Question: Explain Answer

No further comment.

Assessment of partial completion certificate application

As with full completion certificate applications, before determining a partial completion application, we propose that the Building Safety Regulator must consult the relevant fire and rescue authority and the sewerage undertaker. The Building Safety Regulator must assess the partial completion application and carry out a final inspection of the completed part of the higher-risk building work.

Question: Do you agree or disagree with the proposed consultation requirements for partial completion certificate applications?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

Partial completion - inspections

We propose the Building Safety Regulator will carry out final inspections of the building work and assess whether the partial completion certificate application meets the following requirements:

- The completed part of the higher-risk building including all relevant building work complies with all applicable building regulations;
- The required information and prescribed documents submitted as part of the partial completion certificate application are complete and accurate; and.
- The golden thread information required to be handed over to the relevant person is complete and provided.

If the Building Safety Regulator is satisfied, after taking all reasonable steps, that these requirements are met for the work in question, we propose they will approve the application and issue a partial completion certificate. If the Building Safety Regulator is not satisfied that the above requirements have been met, we propose it must reject the application.

The Building Safety Regulator will also be able to agree an extension with the applicant to provide time to correct errors and/or provide additional information, rather than reject an application straight away. Where an application is rejected, the Building Safety Regulator must inform the applicant in writing and explain the reason for rejection. We propose that the decision notice is provided electronically, but there will be discretion for notices to be provided in different ways, such as through paper copies, to ensure information is accessible and meets the needs of all users.

Question: Do you agree or disagree with the proposed approach to inspections for partial completion certificate applications?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Subject to the same comments as our response to full completion certificates.

Question: Do you agree or disagree with the proposed reasons for which a partial completion certificate application should be rejected?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Subject to our comments on full completion certificates.

Question: Do you agree or disagree with the proposed approach outlined for the Building Safety Regulator to provide notice of their decision to applicants?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Agree with the approach.

Time limit for partial completion certificate applications

Question: Do you agree or disagree that 12 weeks is an appropriate timescale to require the building safety regulator to determine a partial completion certificate application?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Disagree for the same reasons as with full completion certificates, and specifically the timescales being too long.

3. Regulator's notices

Section 32 of the Building Safety Act 2022 provides that where an applicant intends to carry out building work, they can with the Building Safety Regulator's agreement, issue a joint notice (regulator's notice) to the relevant local authority, so that the Building Safety Regulator acts as building control authority for building work on a building that is not a higher-risk building.

Question: Do you agree or disagree with the proposed information that must be included in a regulator's notice?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The proposed approach is helpful.

Question: Do you agree or disagree with the proposed grounds on which a local authority could refuse a regulator's notice?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

This seems sensible too.

Question: Do you agree or disagree that the rejection of a regulator's notice must be issued within five working days?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

4. Building work carried out in existing higher-risk buildings (refurbishments)

We are introducing a new, more stringent building control regime for building work in existing higher-risk buildings (refurbishment) to ensure such work is subject to appropriate regulatory oversight.

Building work in existing buildings follows different building control routes depending on the work that is being carried out. Many refurbishment building works are carried out either by a person certified under a third-party certification scheme or under a competent person scheme. These works are carried out by a certified person and the local authority is notified of the work; notifiable building work that is carried out under these two routes is sent to a building control body for approval. We propose to take a similar approach for higher-risk buildings.

In line with existing practice, third-party certification schemes will also be permitted in higher-risk buildings in relation to building work specified in Schedule 3A of the Building Regulations 2010 such as domestic electrical work, and that those certifying the work should continue to be subject to Conditions of Authorisation. Where such schemes are used, it will not be necessary for individuals to submit a building notice or initial notice, or deposit full plans for the work. Under the new regime for higher-risk buildings, we propose the scheme operator would need to notify the work to the Building Safety Regulator, rather than the relevant local authority.

Question: Do you agree or disagree that notification of building work in Schedule 3A should go to the Building Safety Regulator?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

This is a significant extension of the remit of the Building Safety Regulator.

Whilst we can see some sense in having the same Regulator cover 'build', 'refurbishment', and 'occupation', we are concerned about the claim that this additional work refurbishment remit will have on scarce resource within the Regulator, and we would advise not extending the scheme to refurbishment work at this stage, until the system is well bedded in.

We are also concerned that applying the Regulator-led regime to refurbishment projects will make them extremely complex.

It is important that refurbishment is well defined. At present, it is felt by members to be too woolly. We are happy to work with the Department to define it with greater clarity.

The government considers the use of competent person schemes in higher-risk buildings to be a proportionate approach to specified types of building work because the incidence of risk is considered low whilst the high volume of work carried out under competent

person schemes means that mandating building control involvement would potentially divert building control resource from areas of high risk.

Unlike for new builds, where we are seeking views on including the competent person schemes under the building control approval application, to ensure proportionality and to align with the existing approach to competent person schemes, we propose that it will not be a requirement to submit a building control application seeking permission to carry out such building work in a higher-risk building in advance. We propose to build on existing practice and require that where building work is carried out under a competent person scheme in a higher-risk building, the installer must issue a certificate to the occupier, and separately notify or provide a copy of the certificate to the Building Safety Regulator as building control authority for higher-risk buildings, rather than the local authority, within 30 days of completion of the building work. Given the requirements in relation to dutyholders and competence we expect that the competent person should be aware that they are working on a higher-risk building. The person requesting the work – either the accountable person or a resident – should also make them aware.

The Building Safety Regulator will then be able to decide whether to inspect the building work as it will have enforcement powers if the work contravenes the building regulations. We are also considering whether it is necessary for a notification to be sent to the local authority for reasons outside of providing a building control function – for example, for conveyancing purposes.

Under the new regime, the Conditions of Authorisation, currently set by the Department for Levelling Up, Housing and Communities, will continue to apply to installers operating under a competent person scheme when carrying out building work in a higher-risk building. Scheme applicants cannot be certified until they have been assessed against these requirements. Applicants will need to demonstrate that they meet the relevant minimum technical competence (MTC) requirements.

Under the new regime, an installer operating under an approved competent person scheme will also have duties to plan, manage and monitor the building work they undertake to ensure compliance with all relevant aspects of the building regulations. They must also have the right competence for the work to be undertaken and cooperate with the client, other contractors and designers (including the Principal Designer and the Principal Contractor) to the extent necessary to ensure the work is in compliance with all relevant requirements.

Question: Do you agree or disagree that competent person scheme certification notices should be sent to the Building Safety Regulator when work is carried out in a higher-risk building?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

This makes sense.

Question: Should the notification also be sent to the local authority for reasons outside of providing a building control function?

- Yes
- No
- Don't know

Question: Explain answer

We can't see for what purpose?

For work carried out under competent person schemes we propose that it will be for the principal accountable person or accountable persons to consider whether the building work changes their assessment of building safety risks and how they manage those risks. We propose that the principal accountable person or the accountable persons will be able to request further information from the person who has commissioned the building work and to store this information in the golden thread. The level of information requested will depend on the nature of the building work. For example, if a resident has commissioned building work through a competent person scheme, the principal accountable person or the relevant accountable person will decide whether to request a copy of the certificate issued by the competent person scheme installer on completion of the building work and store this in the golden thread.

Question: Do you agree or disagree with the proposals on the information about building work through competent person schemes to be stored in the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No comment.

Building control approval applications for refurbishment building work

Please see the proposed hierarchy of building work below and mandatory information requirements for each category:

Proposed hierarchy of categories of building work

Category A building work

Change in vertical dimensions to the overall building including change in number of storeys (including adding or removing a gallery floor and/or underground storeys).

Change in number of residential units (flats as defined in regulation 2 of the Building Regulations 2010).

Change in the number and/or the location/positioning and/or widths of corridors and/or staircases (including exit passageways) as escape routes.

Certain (to be defined) building work on the external wall (as defined in regulation 2 of the Building Regulations 2010) of the building including installation of cladding, insulation, and fire breaks.

Certain (to be defined) changes in layout and/or horizontal dimensions to the overall building, or its common parts such as extending the building sideways.

Minimum prescribed documents required in building control approval application

Plans

Competence Declaration

Construction Control Plan

Design and Build Approach Document

Fire and Emergency File

Partial Completion Strategy (if applicable)

Planning Statement

Category B building work

Building work affecting passive fire safety systems and compartmentation (compartment floor, ceilings, compartment walls, roof, rooflights and fire doors)

Building work affecting active fire safety systems (i.e sprinklers, fire and smoke dampers, fire alarm systems, smoke ventilation in escape routes)

Building work affecting common areas (including work on lifts, openings in compartment walls or floors for pipes, ducts and cables etc, change in roofing coverings, change of location and/or positioning of fire mains and hydrants and change in fire-fighting shafts).

This does not apply to building work listed in Schedule 3 of the Building Regulations 2010.

Minimum prescribed documents required in building control approval application

Plans

Competence Declaration

Design and Build Approach Document

Fire and Emergency File.

Question: Do you agree or disagree with the proposed categories of building work and the proposed information requirements for each proposed category?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We think the categories need to be defined in more detail and the industry is willing to work with Government to that end. The consultation document elsewhere makes points about trying to avoid a lack of clarity allowing people to 'game the system', and this is an area where gaming could take place if clarity is not there.

There are also some of categories of work that should not be captured, for example routine replacement work of redundant parts.

Question: Do you agree or disagree with the prescribed period of eight weeks for the Building Safety Regulator to determine building control approval applications?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: explain answer

A five-week period, extendable to eight, is the current period via the building control route. No additional comment.

Question: We intend to establish these categories and non-exhaustive list of what might be in each category in guidance to accompany the relations so that it can be updated over time quickly. Do you agree or disagree that this should be in guidance?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

This seems eminently sensible, and we are happy to participate in the preparation of guidance.

5. A stronger change control process for higher-risk buildings

We propose to introduce a robust statutory change control process for higher-risk building work that dutyholders must follow if they intend to deviate from their original building control approval application. This new statutory change control process will apply when building work requiring a building control approval application to the Building Safety Regulator is carried out in existing higher-risk buildings as well as when building work is carried out to create a new higher-risk building through the gateways process. All changes during construction, such as a change to cladding material, will have to be recorded, evaluated and evidenced to show that they comply with all applicable building regulations' requirements.

Record-keeping

To make sure there is robust record keeping during higher-risk building work, we propose that the client or someone on their behalf must ensure there is a record of all the controlled changes that have been made. All changes from the original building control approval application must be recorded in a change control log or logs. We propose that the following information should be included in the change control log or logs:

- The name of the individual recording the change;
- A description of the proposed change;
- An explanation of the reason why the change has been proposed;
- Whether the change is a notifiable change or a major change;
- A list of the name and occupation of each person, if any, whose advice was sought in relation to the proposed change and a brief summary of any advice provided;
- An assessment of which agreed document is affected by the proposed change and confirmation that a revised version has been produced;
- An explanation, in relation to the proposed change, of how the building work will, after the proposed change is carried out, meet all applicable building regulations; and,
- A revised version of any agreed document affected by the change.

Question: Do you agree or disagree with the contents of the change control log?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

This is a vital part of the new regime and has our support.

Types of changes to building control approval applications

Major changes listed in para. 6.6.

Question: Do you agree or disagree with the list of major changes?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We are largely in agreement with the list in 6.6, but would not categorise some of the changes surrounding commercial property as being major changes, for example, the inclusion of more commercial units.

Question: Do you agree or disagree that categories and a list is the clearest way to display the major changes?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

Question: What types of horizontal changes to the overall building would you consider should be major?

Question: Are there some types of horizontal changes that you consider would be notifiable, if so, why?

Question: What building work on the external wall of the building work you consider should be major?

Question: Are there certain types of building work on the external wall of the building that you consider to be notifiable, if so, why?

Timescales for BSR to respond to changes

Where a change is major, the applicant will need to submit a change control application to the Building Safety Regulator and the change cannot be made without its approval. We propose that the Building Safety Regulator will need to decide the application within six weeks, or within a longer period if agreed with the applicant. The Building Safety Regulator will consult its multi-disciplinary team as needed when determining the application and where no decision has been given by the Building Safety Regulator and no further action

has been taken by the applicant in the relevant time period, the application will be deemed refused.

Question: Do you agree or disagree with the prescribed period of six weeks for the Building Safety Regulator to determine change control applications for major changes?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Notifiable changes

Where a change is 'notifiable', we propose that the applicant must submit a notification to the Building Safety Regulator so that it is aware of the proposed change and can intervene where it deems this necessary. It will not be possible for applicants to carry out notifiable changes before a certain period has passed to ensure the Building Safety Regulator has had the opportunity to assess the notification. We propose that the following changes will be categorised as notifiable:

- Change/s of dutyholder as will be defined in regulations and dutyholders on industry competence Change/s to Construction Control Plan including:
 - 'Change control strategy' including changes to the strategies, policies and procedures the client has adopted to ensure any controlled change takes place in accordance with change control requirements;
 - Change/s to schedule outlining each person appointed to work on the project and a summary of their responsibilities;
 - Change/s to the strategies, policies and procedures the client has adopted to identify, assess and keep under review the competence of the persons carrying out the higher-risk building work or involved in the design of the higher-risk building; and,
 - Change/s to the strategies, policies and procedures the client has adopted for managing the higher-risk building work so as to ensure compliance with the applicable requirements of the building regulations and to record evidence of that compliance; and their Competence and Dutyholder duties.
- Change/s to stages in which plans for building work will be submitted for approval where a staged approach to building control approval has been agreed by the Building Safety Regulator;
- Change/s to layout and/or dimensions within an individual flat (as defined in regulation 2 of the building regulations 2010) that does not impact the dimensions of the common parts;
- Substituting a 'like for like' product where the new product has the same specification/performance classification as the original specified in the original building control approval application; and

- Change/s to partial completion strategy submitted at building control approval where the applicant proposes to change the number of stages in which the building is occupied.

Question: Do you agree or disagree with the list of notifiable changes?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Proposed period for notifiable changes

Suggesting 10 days - This will provide the Building Safety Regulator with the opportunity to assess the proposed change and there are different scenarios as to how this might work:

- The Building Safety Regulator does not have concerns with the proposed change. It is not required to take any action and the applicant can make the change once the prescribed period of 10 working days has passed;
- The Building Safety Regulator does not have sufficient information upon which to determine the proposed change so requests further information from the applicant, (the 10-working day period will start again from when the information is provided); and,
- The Building Safety Regulator considers the proposed change to be major in this circumstance. It advises the applicant that a change control application is needed. The proposed change cannot then be made without approval from the Building Safety Regulator.

Question: Do you agree or disagree with the prescribed period of 10 working days for notifiable changes before the change can be made?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Change of client

We propose that the Building Safety Regulator must be notified of a change of client responsible for a higher- risk building project as the dutyholder for whom the building work is carried out.

Where there is a change of client due to death, we propose that either the administrator of the estate or the person/entity who has inherited the higher-risk building asset must notify

the Building Safety Regulator no later than 28 days after the date when they become the client, or as part of their next formal engagement with the Building Safety Regulator (e.g. submitting a building control application), whichever is sooner, that they are the new client for the higher-risk building work.

Where a client is entering into administration, liquidation, bankruptcy, or a receiver has been appointed under the Law of Property Act, we propose that the person in 'control' of the higher-risk building at this point (office holder or law of property act receiver depending on the circumstances), must notify the Building Safety Regulator as soon as is reasonably practicable of this fact. This is to ensure the Building Safety Regulator is aware from a building control perspective that the client is in financial trouble and that the higher-risk building work they have commissioned may be paused, handed over to a new client, or stopped entirely.

We propose that the notification to the Building Safety Regulator must:

- Confirm that the necessary documentation (prescribed documents; documentation regarding suitable arrangements for compliance; and declaration that design/building work complies with building regulations' requirements) has been received from the original client;
- Confirm that this information has or will be handed over to any new client;
- Confirm that the new client will honour anything that has already been approved by the Building Safety Regulator or that the new client will follow the statutory change control process if they wish to deviate from the original building control approval application;
- Include a signed declaration from the outgoing client that to the best of their knowledge, the building work at point of handover complies with all applicable building regulations' requirements.

We recognise that there may however be circumstances where the insolvency practitioner or law of property act receiver is unable to provide this information, for example, if they have been unable to obtain it from the client. In these scenarios, we propose that they explain why it has not been possible to provide the information listed above as part of their notification to the Building Safety Regulator.

Question: Do you agree or disagree that a notification with the information set out above must be made to the Building Safety Regulator where there is a change of client?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We support this proposal.

Time limit for notifying of change of client or principal contractor or principal designer

28 days

Question: Do you agree or disagree that a notification with the information outlined above must be made to the Building Safety Regulator where there is a change of Principal Designer or Principal Contractor for a higher-risk building project?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We support this proposal.

Question: If you answered agree to the question above, do you consider 28 days to be a reasonable timeframe for this notification?

- Yes
- No
- Don't know

Question: Explain answer

We propose to introduce a robust statutory change control process for higher-risk building work that dutyholders must follow if they intend to deviate from their original building control approval application. This new statutory change control process will apply when building work requiring a building control approval application to the Building Safety Regulator is carried out in existing higher-risk buildings as well as when building work is carried out to create a new higher-risk building through the gateways process. All changes during construction, such as a change to cladding material, will have to be recorded, evaluated and evidenced to show that they comply with all applicable building regulations' requirements.

Record-keeping

To make sure there is robust record keeping during higher-risk building work, we propose that the client or someone on their behalf must ensure there is a record of all the controlled changes that have been made. All changes from the original building control approval application must be recorded in a change control log or logs. We propose that the following information should be included in the change control log or logs:

- The name of the individual recording the change;
- A description of the proposed change;
- An explanation of the reason why the change has been proposed;

- Whether the change is a notifiable change or a major change;
- A list of the name and occupation of each person, if any, whose advice was sought in relation to the proposed change and a brief summary of any advice provided;
- An assessment of which agreed document is affected by the proposed change and confirmation that a revised version has been produced;
- An explanation, in relation to the proposed change, of how the building work will, after the proposed change is carried out, meet all applicable building regulations; and,
- A revised version of any agreed document affected by the change.

Question: Do you agree or disagree with the contents of the change control log?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

Types of changes to building control approval applications

We agree with Dame Judith's recommendation that there needs to be appropriate regulatory oversight of changes to the original building control approval application approved and that the approach should be proportionate to the expected impact of an individual change. We consider that this will enable the Building Safety Regulator to focus on changes that have the greatest impact on compliance with all applicable building regulations' requirements (not just structure and fire safety).

We therefore propose to introduce two categories of work requiring oversight from the Building Safety Regulator - 'major' and 'notifiable' changes. Where a change is deemed 'major', applicants will need to submit a change control application to the Building Safety Regulator and the change cannot be made without approval (hard stop). Major changes could have an impact on compliance with all applicable building regulations' requirements to a great extent.

'Major changes'

We propose that the following changes should be categorised as major:

- Change in proposed use of the higher-risk building, including:
- Change involving the inclusion of a commercial unit or units, where the original plans did not include commercial unit/s;
- Change in proposed number of commercial units (in the case of a mixed-use higher-risk building) where the original proposal did include a commercial unit or units, but the number of proposed commercial units has changed; and,

- Change in proposed use of a commercial unit or units.
- Change in vertical dimensions to the overall building (that affects the approved design element or principle such that the design approach is affected), which may include changes in proposed number of storeys (including adding or removing a gallery and/or underground storey or storeys including car parks);
- Certain changes in layout and/or horizontal dimensions to the overall building, or its common parts such as extending the building sideways, that affects the structural design or fire safety provision. This does not include changes in layout within individual flats provided that those changes could not potentially result in a breach in compartmentation with the common parts;
- Change in the number of proposed fire compartments in the building, either by changing the number of residential units (flats as defined in regulation 2 of the Building Regulations 2010) or by making changes to the layout of the common parts;
- Change in the number and/or the location/positioning and/or widths of evacuation routes, including staircases;
- Certain (to be defined) building work on the external wall (as defined in regulation 2 of the Building Regulations 2010) of the building including installation of cladding, insulation, and fire breaks;
- Changes in the proposed fire strategy within the fire and emergency file for the building. This is not an exhaustive list, but this could be due to changes:
 - To the active fire safety systems - i.e. sprinklers, fire and smoke dampers, fire alarm systems, smoke ventilation in escape routes, lifts and lift shafts (including evacuation lifts and firefighting lifts) and a change of location and/or positioning of fire mains and hydrants;
 - To the passive fire systems in the building – compartment floor, ceilings, compartment walls, roof (including opening for pipes, ducts etc.) rooflights, roofing coverings, fire-fighting shafts, fire doors and protected shafts; and,
 - Intended management or maintenance of the building (including training and maintenance programs about fire protection approach, maintaining compliance with fire risk assessments; maintenance and testing of internal systems; implementing in house fire door checks and arranging planned preventative maintenance (PPM) schedules for the fire protection systems and any other relevant services).
- Change in product where the proposed replacement product has a lower fire performance classification or specification than the previous product that was used– e.g. substituting a product classified as A1 under BS EN 13501-1 in terms of reaction to fire with a product classified as F;
- Change or changes from the method of complying with regulations or functional requirements from the method set out in the Design and Build Approach Document. This includes a change in the method to follow alternative guidance or installation standards;
- Change where partial completion is proposed when it was not proposed in the original building control approval application;
- Changes to the structural design and/or loads of the proposed building work including the foundations, load-bearing walls/beams etc.; and,
- Changes to introduce large panel systems.

Question: Do you agree or disagree with the list of major changes?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

It is difficult to see how the use of a commercial unit can be predicted at Gateway 2 and many different commercial activities have no implications for fire safety etc. This doesn't seem to us to be a major change.

Question: Do you agree or disagree that categories and a list is the clearest way to display the major changes?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: explain answer

We agree, but some of the categories in the list may need finessing.

Where a change is major, the applicant will need to submit a change control application to the Building Safety Regulator and the change cannot be made without its approval. We propose that the Building Safety Regulator will need to decide the application within six weeks, or within a longer period if agreed with the applicant. The Building Safety Regulator will consult its multi-disciplinary team as needed when determining the application and where no decision has been given by the Building Safety Regulator and no further action has been taken by the applicant in the relevant time period, the application will be deemed refused.

Question: Do you agree or disagree with the prescribed period of six weeks for the Building Safety Regulator to determine change control applications for major changes?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

‘Notifiable changes’

In addition, we also propose that there should be a category of ‘notifiable’ changes where such changes could have an impact on compliance with all applicable building regulations’ requirements, but to a lesser extent than ‘major’ changes. The level of regulatory oversight will therefore be proportionate to the types of change reflected in this category.

Where a change is ‘notifiable’, we propose that the applicant must submit a notification to the Building Safety Regulator so that it is aware of the proposed change and can intervene where it deems this necessary. It will not be possible for applicants to carry out notifiable changes before a certain period has passed to ensure the Building Safety Regulator has had the opportunity to assess the notification. We propose that the following changes will be categorised as notifiable:

- Change/s of dutyholder as will be defined in regulations and dutyholders on industry competence Change/s to Construction Control Plan including:
 - ‘Change control strategy’ including changes to the strategies, policies and procedures the client has adopted to ensure any controlled change takes place in accordance with change control requirements;
 - Change/s to schedule outlining each person appointed to work on the project and a summary of their responsibilities;
 - Change/s to the strategies, policies and procedures the client has adopted to identify, assess and keep under review the competence of the persons carrying out the higher-risk building work or involved in the design of the higher-risk building; and,
 - Change/s to the strategies, policies and procedures the client has adopted for managing the higher-risk building work so as to ensure compliance with the applicable requirements of the building regulations and to record evidence of that compliance; and their Competence and Dutyholder duties.
- Change/s to stages in which plans for building work will be submitted for approval where a staged approach to building control approval has been agreed by the Building Safety Regulator;
- Change/s to layout and/or dimensions within an individual flat (as defined in regulation 2 of the building regulations 2010) that does not impact the dimensions of the common parts;
- Substituting a ‘like for like’ product where the new product has the same specification/performance classification as the original specified in the original building control approval application; and
- Change/s to partial completion strategy submitted at building control approval where the applicant proposes to change the number of stages in which the building is occupied.

Question: Do you agree or disagree with the list of notifiable changes?

- **Agree**
- Disagree
- Neither agree nor disagree
- Don’t know

Question: Explain answer

This broadly seems sensible.

We propose that the notification period where a change cannot be made should be 10 working days^[footnote 3], or within a longer period if an extension is agreed with the notification. This will provide the Building Safety Regulator with the opportunity to assess the proposed change and there are different scenarios as to how this might work:

- The Building Safety Regulator does not have concerns with the proposed change. It is not required to take any action and the applicant can make the change once the prescribed period of 10 working days has passed;
- The Building Safety Regulator does not have sufficient information upon which to determine the proposed change so requests further information from the applicant, (the 10-working day period will start again from when the information is provided); and,
- The Building Safety Regulator considers the proposed change to be major in this circumstance. It advises the applicant that a change control application is needed. The proposed change cannot then be made without approval from the Building Safety Regulator.

Question: Do you agree or disagree with the prescribed period of 10 working days for notifiable changes before the change can be made?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We support this.

Change of client**New client: notification**

A change in client could arise for several reasons including that the original client has died or become incapacitated, the company has been sold or restructured, or the company has gone into administration, bankruptcy or liquidation. We propose that where a change of client occurs after building control approval for a higher-risk building has been granted:

- The Building Safety Regulator must be notified so that it is aware that the project will be overseen by a new client; and,
- The golden thread about the higher-risk building work must be handed over to the new client.

Notification to the Building Safety Regulator

We propose that the Building Safety Regulator must be notified of a change of client responsible for a higher-risk building project as the dutyholder for whom the building work is carried out.

Where there is a change of client due to death, we propose that either the administrator of the estate or the person/entity who has inherited the higher-risk building asset must notify the Building Safety Regulator no later than 28 days after the date when they become the client, or as part of their next formal engagement with the Building Safety Regulator (e.g. submitting a building control application), whichever is sooner, that they are the new client for the higher-risk building work.

Where a client is entering into administration, liquidation, bankruptcy, or a receiver has been appointed under the Law of Property Act, we propose that the person in 'control' of the higher-risk building at this point (office holder or law of property act receiver depending on the circumstances), must notify the Building Safety Regulator as soon as is reasonably practicable of this fact. This is to ensure the Building Safety Regulator is aware from a building control perspective that the client is in financial trouble and that the higher-risk building work they have commissioned may be paused, handed over to a new client, or stopped entirely.

We propose that the notification to the Building Safety Regulator must:

- Confirm that the necessary documentation (prescribed documents; documentation regarding suitable arrangements for compliance; and declaration that design/building work complies with building regulations' requirements) has been received from the original client;
- Confirm that this information has or will be handed over to any new client;
- Confirm that the new client will honour anything that has already been approved by the Building Safety Regulator or that the new client will follow the statutory change control process if they wish to deviate from the original building control approval application;
- Include a signed declaration from the outgoing client that to the best of their knowledge, the building work at point of handover complies with all applicable building regulations' requirements.

We recognise that there may however be circumstances where the insolvency practitioner or law of property act receiver is unable to provide this information, for example, if they have been unable to obtain it from the client. In these scenarios, we propose that they explain why it has not been possible to provide the information listed above as part of their notification to the Building Safety Regulator.

Question: Do you agree or disagree that a notification with the information set out above must be made to the Building Safety Regulator where there is a change of client?

- **Agree**
- Disagree
- Neither agree nor disagree

- Don't know

Question: Please explain

This has our support

Time limit for notifications

We propose that the new client (or appropriate office holder in the event of a client entering into administration, liquidation, bankruptcy or a receiver has been appointed under the Law of Property Act as set out above - 'the person in control') must then notify the Building Safety Regulator no later than 28 calendar days after the date when they become the client, or as part of their next formal engagement with the Building Safety Regulator (e.g. submitting a change control application), whichever is sooner, that they are the new client for the higher-risk building work.

The Building Safety Regulator could then request that the new client (or the person in control) shares with it, the prescribed documents; documentation regarding suitable arrangements for compliance; and declaration that design/building work to date complies with building regulations' requirements provided by the previous client if necessary. As above, if the new client (or the person in control) has been unable to obtain this information from the original client, we propose that they explain why it has not been possible to provide this information as part of their notification to the Building Safety Regulator.

Upon taking on responsibility for the higher-risk building project, the new client (or the person in control) will need to meet the building control requirements for higher-risk buildings, including developing and maintaining a golden thread about the building work.

New principal contractor or principal designer etc: notification

We also propose that if a client appoints a new Principal Contractor or Principal Designer for higher-risk building work, the client must notify the Building Safety Regulator so that it is aware from a building control perspective. We propose that this notification should be made within 28 calendar days of the appointment and include:

- The name, address, telephone number and (if available) an email address of the person appointed;
- A statement that the client is satisfied that the principal contractor or principal designer has the necessary competence;
- A record of the steps the client took to satisfy itself with the competence of the principal designer or principal contractor; and,
- A compliance declaration that they have complied with their dutyholder duties signed by the person who previously was the principal contractor or principal designer, and where that person is unable to give a compliance declaration to the client, a statement explaining why a compliance declaration for that person has not been provided, for example, because they have died or are incapacitated.

Question: Do you agree or disagree that a notification with the information outlined above must be made to the Building Safety Regulator where there is a change of Principal Designer or Principal Contractor for a higher-risk building project?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

Question: If you answered agree to the question above, do you consider 28 days to be a reasonable timeframe for this notification?

- Yes
- No
- Don't know

Question: Explain answer

No further comment.

6. Regularisation of building work

Government proposes to permit developers to apply to the Building Safety Regulator for a regularisation certificate for building work in higher-risk buildings to allow for scenarios where building work was not notified when it should have been. There could be various examples of where building work has not been notified:

- Work undertaken without regulatory approval before the new regulatory framework comes into force. A principal accountable person/ relevant accountable person may identify unauthorised building work in an existing higher-risk building when carrying out their safety case review;
- Work under the new framework is undertaken without appropriate approval. For example, minor work carried out in a resident's home, which they did not realise was notifiable and was not subject to building control oversight, a competent person scheme or third-party certification scheme;
- Work is mistakenly not carried out in accordance with the new more stringent regulations for higher-risk buildings once they come into effect.

The government intends to apply the current regularisation procedure to higher-risk buildings but with the Building Safety Regulator as the building control authority, rather than the local authority. We propose that the Building Safety Regulator will have the discretion to determine whether to permit regularisation and / or take enforcement action, acknowledging that the two are not mutually exclusive. The government would not expect the Building Safety Regulator to allow regularisation for larger projects or significant works such as creating a new higher-risk building after the new more stringent regime comes into force as the design and construction dutyholders such as a client, Principal Designer and Principal Contractor should be aware of the requirement to notify the work or to seek building control approval. Regularisation should not be a means for dutyholders to game the building control system.

We intend for the Building Safety Regulator to have the power to refuse a regularisation application, for example where it does not consider the building work to comply with the building regulations' requirements in force at the time the work was carried out. In these situations, the Building Safety Regulator will have the power under section 36 of the Building Act 1984 to require the applicant alters or removes the work so that it complies with the standards at that time. Once non-compliant work is removed a refurbishment building control approval application will need to be made to the Building Safety Regulator in respect of the building work needed to bring the work up to the correct standard.

Question: Do you agree with the proposal to apply the current regularisation procedure to higher-risk buildings but with the Building Safety Regulator as the building control authority, rather than the local authority?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree this is a sensible approach.

7. Golden thread of information

Client responsibilities

With the golden thread we propose the client will be responsible for:

- Ensuring the Principal Designer and the Principal Contractor's arrangements for managing the golden thread are maintained;
- Accepting on completion of construction (completion certificate or partial completion application stage) the finalised golden thread from the Principal Contractor;
- Handing over, (completion certificate or partial completion application handover stage) the golden thread to the relevant person;^[footnote 4] and,
- Ensuring if they cease to be the client, there are arrangements in place for the handover of the golden thread to the new client.

Question: Do you agree or disagree with the proposed duties on the client in relation to the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The Golden Thread is one of the central pillars of the new regime and we support the client responsibilities, as the party best placed to deliver an accurate Golden Thread through the design and construction phases of a building.

We fear, however, that some of the responsibilities may not be insurable.

When building work is carried out in an existing higher-risk building, the client may be the same person as the principal accountable person or an accountable person(s). However, they may also be different people. We propose that the client would have the same responsibilities as above (in relation to the golden thread), but they would also be responsible for:

- Deciding with the principal accountable person or the relevant accountable person whether to use the existing golden thread information management system for the current building or whether to use a different separate information management system specifically for the building work. This decision is likely to be driven by the scale of the building work and the systems used by all parties. If they use a different system, they will need to ensure that they (and the Principal Designer and the Principal Contractor) have

access to the relevant parts of the existing golden thread for the current building (as necessary); and,

- Ensuring they share information with the principal accountable person and the relevant accountable person so that the principal accountable person and the relevant accountable person can continue to meet their broader duties to ensure the building is safe.

Question: Do you agree or disagree with the proposed duties on the client in regard to building work in an existing, occupied, higher-risk building in relation to the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

This all makes logical sense.

Principal designer and principal contractor

The Principal Designer who will manage the golden thread on a day-to-day basis through the design phase of the project, and the Principal Contractor who will manage it through the building phase.

It is expected that the design and construction phases will overlap and influence each other, rather than run consecutively. The Principal Designer should be responsible for updating and managing the golden thread during the design phase. We propose that they will be specifically responsible for:

- Creating and developing the golden thread (although initial information about the building may be provided by the client) and managing and updating this throughout the design phase;
- Finalising the golden thread and handing it over to the Principal Contractor on completion of the design phase;
- Collaborating with the Principal Contractor to ensure any design work done during the construction phase is captured in the golden thread;
- Ensuring that the golden thread meets the required standards/principles; and,
- Cooperating and sharing information with the Principal Contractor as necessary.

The Principal Contractor is responsible for managing the golden thread in the construction phase of the project and will be specifically responsible for:

- Managing and updating the golden thread throughout the construction phase;
- Finalising the golden thread and handing it over to the client at building completion;
- Ensuring that the golden thread meets the required standards/principles; and,

- Cooperating, collaborating and sharing information with the Principal Designer as necessary

As outlined above, the client is responsible for ensuring there are suitable arrangements in place for the creation, maintenance and management of the golden thread, including ensuring the Principal Designer and the Principal Contractor's arrangements for managing the golden thread are maintained.

More information on proposed golden thread requirements is set out in later in this consultation on the contents of the golden thread and how the golden thread should be stored and managed.

Question: Do you agree or disagree with the proposed duties on the Principal Designer and Principal Contractor in relation to the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree, but our members expressed some concerns that 'Designer' covers a multitude of different parties and those having the competence to fulfil the Principal Designer role will be a small subset. Add in the challenges for them in obtaining PI Insurance and there could be an initial shortage of PDs able to take on the role.

Do you agree or disagree with the proposal that through the design and construction process there should be a duty on all dutyholders to review the information within the golden thread to ensure it remains relevant and proportionate and supports compliance with building regulations?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The Golden Thread will only fulfil the role it is meant to if all parties are keeping it up to date.

Works on existing buildings

When building work is carried out in an existing higher-risk building, we propose that the Principal Designer and Principal Contractor would have the same responsibilities as above (in relation to the golden thread) but they would also be responsible for:

- Obtaining information about the existing building
- Ensure they meet the duty to cooperate and share information with the principal accountable person and the relevant accountable person so that the principal accountable person and the relevant accountable person can continue to meet their broader duties to ensure the building is safe.

Question: Do you agree or disagree with the proposed duties on the Principal Designer and Principal Contractor regarding building work in an existing, occupied, higher-risk building in relation to the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The proposed approach is consistent with the regime as previously described.

Other dutyholders will be required to provide information and be responsible for updating information when necessary. They may not interact directly with the golden thread IT/digital system - they may instead provide information to be inputted into the system by the Principal Designer or the Principal Contractor.

Question: Do you agree or disagree with the proposed duties on other dutyholders in relation to the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

There will be other important parties in the construction supply chain who will hold essential information that should be recorded in the Golden Thread.

The new more stringent building control process and the golden thread

We propose that all the information that the applicant has to submit as part of the building control approval application should be stored in the golden thread. This information is needed by the client, Principal Designer, Principal Contractor and any other relevant dutyholders in order to ensure that they are complying with building regulations and to demonstrate this compliance to the Building Safety Regulator. Having accurate and accessible information about a building is essential to understand a building and ensure that it is safe.

Question: Do you agree or disagree with the proposal that all the information to be submitted in a building control approval application should be stored in the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Agree, but industry-wide format needs to be set, e.g. BIM level, protocols, conventions etc.

Dutyholders will be required to submit an application for building control approval to the Building Safety Regulator with plans and new prescribed documents before building work commences. This information must be stored in the golden thread.

We consider this information should be stored in the golden thread as it is the information that is needed by the client, Principal Designer, Principal Contractor and any other relevant dutyholders in order to ensure that they are complying with building regulations and to demonstrate this compliance to the Regulator. Having accurate and accessible information about a building is essential to understand a building and ensure that it is safe.

Question: Do you agree or disagree with the proposal that all the information to be submitted in a building control approval application should be stored in the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree, but our support is caveated by our previous remarks that we have concerns about the capability of the market to deliver sufficient principal designers with the competence and PI cover.

Information handover on building completion

For both buildings in scope of the new regime to which part four of the Act will apply, and for buildings that are only in scope of the design and construction regime, we propose that the client hands over to the relevant person:

- The information required to be submitted to the Building Safety Regulator in a completion certificate application (the prescribed documents);
- The relevant information/evidence required to support the prescribed documents;
- Completion certificate issued by the Building Safety Regulator under the building regulations; and,
- Any further information that is relevant to the ongoing safety of the building and is not covered by the material above – this could include documents/information required to be submitted to the Building Safety Regulator at building control approval stage, and information required through the statutory change control process during the

construction phase. We would expect that most information would be covered in the bullets above.

For buildings that are only in scope of the design and construction regime we also propose that the client extracts the fire safety information and also hands that over to the Responsible Person as standalone information.

We also propose that the client and relevant person must co-sign a statement confirming that a copy of the design and construction golden thread information was provided to the relevant person, and the relevant person has received that information. Although high-rise hospitals and care homes are not proposed to be in scope of the occupation regime, we consider it is important that the golden thread is handed over to the Responsible Person as it provides them with useful information for managing fire safety in their building. However, as the Responsible Person will only have ongoing requirements regarding fire safety (under the Fire Safety Order) we considered it would be sensible for the fire safety information to also be extracted from the golden thread so that it could be more easily utilised and accessed.

Question: Do you agree or disagree that with the proposals for the golden thread information that should be handed over to the relevant person?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

Question: Do you agree or disagree that as part of the building completion certificate application, the client and the relevant person should co-sign a statement confirming that the client has handed over the golden thread to the relevant person, and that the relevant person has received the golden thread?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

We propose that the golden thread should be handed over to the relevant person no later than the date of completion.

Question: Do you agree or disagree with the proposal that golden thread should be provided to the relevant person for the higher-risk buildings no later than the date of completion?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

It is not possible to produce final as-built information to satisfy this need – it usually follows some weeks later.

Golden thread and partial completion

Question: Do you agree or disagree with the proposal for information sharing and access to the golden thread between the client, the principal accountable person and accountable person(s) when a building goes through partial completion?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

Question: Do you agree or disagree with the need for an ongoing duty to co-operate on the Client the principal accountable person and the accountable person(s) through the process of partial completion?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: explain answer

No further comment.

Regulations 38, 39 and 40 of the Building Regulations 2010

Currently Regulations 38, 39 and 40 of the Building Regulations 2010 apply on completion of building work on a building to which the Fire Safety Order 2005 applies or will apply after the completion of building work. Under these regulations, the person carrying out the work is responsible for handing over fire safety information to the Responsible Person (under the Fire Safety Order), and is responsible for handing over information about ventilation and the use of fuel and power to the owner of the building.

We propose to disapply Regulations 38, 39 and 40 for higher-risk buildings because we consider the handover of information will already be covered by the requirement for the client dutyholder to hand over the golden thread.

Question: Do you agree or disagree with the proposal that the golden thread requirements will be sufficient and regulation 38, 39, 40 cannot apply to buildings in scope of the more stringent regime?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

Golden thread principles

Must be digital

Question: Do you agree or disagree with the proposal to not define digital in regulations?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We strongly support the Golden Thread approach and the principles it underpins. There is going to be a huge amount of information passing between parties and the Regulator. One of our members that has done a mock golden thread has accumulated 14 tera bytes of data.

We think there is merit in trying to have some standard formats that will make that volume of information clearer.

We think guidance will also be needed and are happy to work with the Regulator on it.

Accurate and up to date

We expect the golden thread to comprise:

- Accurate and up to date information/documents about the building at the present moment in time;
- Information/documents that accurately reflect the building at points in the lifecycle of the building (a 'snapshot'); and,
- As set out in consultation section on change control and managing the golden thread throughout design and construction it is important that all information in the golden

thread should only be retained if it is relevant to ensuring either complying with applicable building regulations or managing the safety of the building.

Question: Do you agree or disagree with the proposal that not all the information in the golden thread needs to be updated but may still be relevant to enable someone to have a clear understanding of the building at the present moment in time and support compliance with building regulations?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree, but we do worry that those managing the Golden Thread will just load it with information for fear of getting it wrong, and hence our call for some guidance.

Single source of truth and shareable

We, want to require that the following elements are in place:

- All information management process – which should set out the process or steps that enables all those who need to provide, access, modify information to do so;
- All relevant persons (i.e., people who need to use the information) understand these processes and their responsibilities around information and documents (i.e. what they are responsible for creating, commenting on, contributing to, clearing, verifying, archiving); and,
- A digital solution that enables the information management process to work.

We also propose that the client(s) is responsible for setting out a transfer plan which sets out how information and documents will be transferred throughout the building lifecycle. This is because the digital solutions used for designing a building will not usually be the same as those used when managing a building. Also, often when a management company changes, there may be a change in software providers.

It would not be reasonable to mandate that people use the same systems throughout the building lifecycle – as people are likely to have already invested in software systems, and certain systems are more appropriate for different phases. Instead, we consider there needs to be a clearly understood process in place for how information will be transferred. We consider that the transfer plan should set out clearly how the client(s) are meeting the requirements to ensure that golden thread information can be transferred. We propose that transfer plan should set out how they plan to ensure:

- That the data/information in the golden thread retain its structured format (i.e. the information should retain fidelity with its original format – its shouldn't be changed or lose anything by being transferred); and,
- That the data and/or information remains accessible and any files containing data/information can be opened and are still accessible and useable following transfer:
 - The client will need to keep the transfer plan updated.

- We will work with the Building Safety Regulator to support them in developing guidance. From early discussions, the intention is that it sets out the different types of exchange solution in guidance and not in regulations. This is because it would be too prescriptive and likely to become quickly out of date (as new exchange solutions/software is developed). We consider the regulations should focus on the outcome (i.e. that information is transferred) and not how the outcome is delivered.
- Although we do not want to regulate a particular technical or software solution, the Building Safety Regulator intends to provide guidance on how people might meet these requirements.

Question: Do you agree or disagree with the proposed approach for the golden thread operating as a single point of truth and ensuring the information kept within it is one that allows for transfer of information and interoperability as described?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree, but again we think this requires further guidance, which we are happy to get involved in and support.

Question: Do you agree or disagree with proposals around ensuring that information is able to be transferred?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comments.

Secure

We intend to regulate that the client has to do 'as much as is reasonably practicable to ensure the golden thread is secure'.

Question: Do you agree or disagree with proposed approach to ensure the golden thread is secure?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree with the principle but think this is an area that requires further guidance.

Accessible

We consider setting the high-level requirement in regulations will deliver the outcome of an accessible golden thread whilst enabling people to have the flexibility to determine how the golden thread should work for their organisation/building. The government intends to set out more details on how to ensure systems are accessible in guidance.

Question: Do you agree or disagree with proposed approach to ensure the golden thread is accessible?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree and welcome the commitment to further guidance.

Understandable and consistent

We do not want to mandate in detail any specific data dictionaries or data standards – as we consider that would be too prescription and burdensome.

Question: Do you agree or disagree with the proposed approach to ensuring the language/information in the golden thread is consistent for the building and that the language in the golden thread should be consistent and appropriate for the people who need to use it?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We support some standardisation of formats within a list of options. Given the response times the Regulator is under, and aspirations of the sector to see those further reduced, we think that it makes sense to dictate some data formats, but also offer limited choice.

Question: Do you agree or disagree with the approach not to mandate that the golden thread needs to comply with a particular British standard or International standard or data dictionary?

- Agree
- Disagree
- Neither agree nor disagree

- Don't know

Question: Explain answer

We agree that the approach should not be to mandate one format, but several.

Accountability

We propose that the client will have to ensure the following:

- That there is a record in the golden thread of who inputs information/documents into the golden thread (for instance this could be done automatically as the system records when documents are uploaded), or that the information management strategy should make clear who is responsible for inputting information into the golden thread. To note, it may not be that the information management strategy names a particular person it could specify a role(s) or team(s) who are responsible for inputting information to the golden thread;
- That the golden thread should record when information/documents are changed/updated, or the information management strategy should set out how this will be recorded. To note, it may not be appropriate to record every change to a document, it may just be that major changes are recorded. The information management strategy should make this clear; and,
- That the information management strategy sets out responsibilities for approving when changes are made (not just the person who makes the change in a document).

Question: Do you agree or disagree with the approach for ensuring accountability?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree but think that a better form of wording would be 'reasonable endeavours' rather than 'ensure'.

8. Mandatory occurrence reporting

We propose the mandatory occurrence reporting regime during the design and construction (or refurbishment) of higher-risk buildings will place duties on the Principal Designer and the Principal Contractor after the building control approval application stage:

- To establish and operate an effective mandatory occurrence reporting system to enable those undertaking design work or building work to report safety occurrences to the dutyholder(s); and,
- To report safety occurrences to the Building Safety Regulator in a required manner.

We intend to place a duty on the client to ensure they take all reasonable steps to satisfy themselves that the Principal Contractor and Principal Designer appointed is able to fulfil the mandatory occurrence reporting requirements and have a mandatory occurrence reporting system in place. However, in our proposal the client will have no responsibility themselves for establishing, maintaining or operating the system(s).

We further propose that the principal dutyholders take reasonable steps to ensure each reporting person is provided with adequate instruction and information on the system established and the incidents or situations that must be reported by the reporting person throughout the system. In addition, we intend to require that the Principal Contractor and Principal Designer must ensure that an appropriate frequency of inspections of higher-risk building work for safety occurrences throughout the construction phase.

We do not intend to be overly prescriptive (beyond the duties set out above) in terms of how a reporting system should be implemented nor how it is operated or maintained. However, we propose that the principles of an effective reporting system should be:

- Be known to, understood by, and accessible to dutyholders;
- Form an ongoing, integral, and regular part of the design and construction safety management process;
- Maintain an approach which facilitates urgent reporting of occurrences
- Identify and capture mandatory occurrences; and,
- Allow mandatory occurrences to be formally reported to the regulator as soon as is practicably possible and within the mandated time.

Where the dutyholder becomes aware of a safety occurrence, we intend to require that they notify the regulator of the safety occurrence without undue delay and provide the regulator with a written report containing required information within 10 calendar days of becoming aware of the occurrence.

If a dutyholder contravenes this requirement, we propose that they will have a defence if they believe another dutyholder has already notified the Building Safety Regulator, or they have already provided the Regulator with a written report.

Question: Do you agree or disagree that, when a dutyholder has become aware of an occurrence they must report the occurrence to the Building Safety Regulator without undue delay and provide a written report within 10 calendar days?

- Agree

- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We have no objection to the timescale in principle, but consideration should be given to the seriousness of occurrences and approach taken by the Regulator. Occurrences that are resolved before they become serious are good learning opportunities and should have a light-touch approach.

Guidance

The Building Safety Regulator will produce guidance detailing the circumstances of safety occurrences which should be reported^[footnote 51] to the Building Safety Regulator during the design and construction process. However, this will not be a definitive list and the dutyholder will need to use its own judgement to determine whether the incident meets the definition as detailed below.

Under the proposed regime, a safety occurrence is defined as:

- In relation to a design, an aspect of the design relating to the structural integrity or fire safety of a higher-risk building that would, if built, meet the risk condition;
- Otherwise, an incident or situation relating to the structural integrity or fire safety of a higher-risk building that meets the risk condition.

In our proposed definition of “safety occurrence”, the proposed definition of the “risk condition” is that use of the building in question without the incident or situation being remedied would be likely to present a risk of a significant number of deaths, or serious injury to a significant number of people.

We understand that the current definition leaves some room for interpretation, and this is intentional. The intention of mandatory occurrence reporting is to drive a proactive safety and reporting culture and to capture serious incidences which may be indicative of a larger systemic issue across fire and structural building safety.

Question: Do you agree or disagree with the proposed definitions of safety occurrence and risk condition?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree with the broad thrust, but given there is a compliance requirement, we believe the description is not specific enough, and at the very least, further guidance is required.

Reporting

- The date and time of the safety occurrence;
- The address of the site at which the occurrence happened; and
- Name and contact details of the principal dutyholder making the report; and,
- The details of the occurrence, including the nature of the risk.

Question: Do you agree or disagree that the proposed information required when reporting a safety occurrence is appropriate?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

The list seems sensible.

9. More rigorous enforcement powers

Compliance notices should contain the following information:

- The date the notice is issued on to set out the period of appeal;
- Name or description of the recipient;
- A statement setting out the consequences of failing to comply with the notice;
- A statement that it is a compliance notice under section 35B of the Building Act 1984;
- A description of the work where the breach has occurred;
- The provision of building regulations which has been contravened;
- Details of the contravention; and,
- Details of the route of appeal to the First-tier Tribunal

A compliance notice must only be issued against one contravention of building regulations or one requirement imposed under building regulations. This means that where there are multiple contraventions of building regulations, a compliance notice must be served for each contravention of a building regulation or requirement imposed under regulations.

Stop notices

Stop notices should contain the following information:

- The date the notice is issued on to set out the period of appeal;
- Name or description of the recipient;
- A statement setting out the consequences of failing to comply with the notice;
- A statement that it is a stop notice under section 35C of the Building Act 1984;
- Make clear whether the stop notice is being issued under s35C(1)(a), (b) or (c) i.e., against a contravention of specific building regulations, breach of a compliance notice or a contravention of building regulations which has led to or will lead to serious harm;
- Details of the contravention and, where relevant, a description of the serious harm that is anticipated; and,
- Details of the route of appeal to the First-tier Tribunal and how to apply to the Tribunal to suspend the notice so it has no effect during appeal proceedings.

As mentioned above, new section 35C of the Building Act 1984 states that a stop notice can only be issued against a) a contravention of specific building regulations; b) a contravention of a compliance notice or c) a contravention of building regulations which can cause serious harm (this means that there is a risk of serious harm to people in or around a building if the contravention is not corrected).

Under section 35C(1)(a), contravention of specific building regulations, we are proposing that stop notices can only be issued against the contravention of the following building regulations:

- Starting work on a new higher-risk building before the Building Safety Regulator has approved a building control application with plans for the building;
- Starting certain^[footnote 6] building work on an existing higher-risk building before the Building Safety Regulator has approved a building control application with plans for the building work, and
- Carrying out a 'major' change before a change control application is granted – both in relation to creating a new higher-risk building or when carrying out building work in an existing higher-risk building (refurbishment).

Under section 35C(1)(b) or (c), building control authorities will be able to issue stop notices in relation to any building regulation, not just the ones mentioned in the paragraph above.

Compliance and stop notices must be served in accordance with section 94 of the Building Act 1984.

Notices may include directions on how to remedy the breach, however this will be at the discretion of the building control authority. It will not be a requirement; they could just state in general terms that the contravention must be remedied.

Question: Do you agree or disagree with the contents of compliance and stop notices detailed above? Is it fit for purpose?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree. There was feedback from some members, however, that it wasn't clear what role approved inspectors would have, and that their powers should be limited to supporting the regime and not involved in enforcement.

Who is notified?

For the purposes of section 35D(3), we propose the following persons/bodies should be notified after a compliance or stop notice is issued:

- The client, Principal Contractor and Principal Designer, as they have an active interest in the building's construction and should be aware of an act of non-compliance on the premises;
- The relevant fire safety enforcing authority for the area in question where the contravention specified in the notice relates to Part B (fire safety) of Schedule 1 of Building Regulations 2010, to make sure that fire and rescue authorities are aware of fire safety breaches in their capacity as the regulator for fire safety; and,
- The Building Safety Regulator where the contravention specified in the notice relates to Part B (fire safety) of Schedule 1 of Building Regulations 2010 and the building to which

the notice relates is over 11m (or will be when completed), as we want to make sure the most significant breaches are alerted to the Building Safety Regulator in its role as having oversight over building control authorities and the buildings they regulate.

Question: Do you agree or disagree that the persons/bodies mentioned above should be notified after a compliance or stop notice is issued?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

Enforcement: withdrawal, extension & amendment of notices

We want building control authorities to be able to withdraw compliance or stop notices at any time, even where an appeal is pending. The ability to withdraw notices at any time will simplify legal proceedings for the building control authority, recipient and First-tier Tribunal.

We also want building control authorities to be able to amend notices, including extending the compliance period for notices, at any time, except where an appeal is pending.

The reason for this difference during appeal proceedings is because we want to avoid notices being amended or extended whilst tribunal proceedings are in progress. If the building control authority wants to amend or extend notices during an appeal, they can withdraw and issue a new notice.

The final decision to issue, amend, extend or withdraw a notice will remain with the building control authority. We do not want to prescribe any further requirements on requests for the amendment/extension/withdrawal of notices. This is to allow for flexibility within the approach and not tie building control authorities and recipients to legal procedural timings.

Question: Would you like to provide any comments on our proposed approach for amending, extending and withdrawing compliance and stop notices?

We agree this is sensible.

Dutyholder and competence requirements – Enforcement

We propose that breach of the dutyholder's duties and the competence requirements will be a criminal offence, contrary to section 35 of the Building Act 1984.

For higher-risk building work, and work under a Regulator's Notice such as mixed development of higher-risk buildings and non higher-risk buildings, enforcement of these duties will be by the Building Safety Regulator as the building control authority for such buildings.

For non higher-risk building work that is not overseen by the Building Safety Regulator, we expect the local authority building control teams and the registered building control approvers to take a risk-based approach, in a way that is proportionate to the nature and scale of the project, and the level of risks involved. The Building Safety Regulator will outline requirements of building control teams and registered building control approvers on regulatory approaches that will support proportionate, consistent, transparent, accountable and targeted regulation.

Our intention is that both private and public sector inspectors/approvers should play a crucial part in the enforcement of these regulations. We expect that the enforcement of these duties will occur through a reactive approach to regulations, which includes observations made during site inspections undertaken by building control, the collation of evidence, referrals, reversions, complaints from within a local authority by their Trading Standards colleagues etc. Where it is clear that the dutyholder cannot demonstrate that they are meeting the dutyholder or competence requirements, local authorities can use a range of enforcement tools, from giving verbal advice, serving of a compliance notice, or ultimately prosecution under section 35 of the Building Act 1984.

Where building control supervision is done by registered building control approvers, we expect them to hold dutyholders to account with regard to their duties and the competence requirements. Breaches of the dutyholders and competence requirements should be dealt with in the same way as other breaches of the building regulations, through the route laid out in section 52(1)(c) and section 52(2) of the Building Act 1984, and regulation 18 of the Building (Approved Inspectors etc.) Regulations 2010. The registered building control approvers will be expected to give notice of contraventions to the person carrying out the work that they intend to cancel the initial notice for the building work unless the contravention of the requirement is remedied within the time provided in the notice. If contraventions are not remedied, registered building control approvers will have the method of cancelling the initial notice, and the work will revert back to the local authority building control for enforcement, who will have the enforcement mechanisms previously mentioned available to them.

Regulation 18 of the Building (Approved Inspectors etc.) Regulations 2010 refers to work which has been carried out in contravention of requirements of the building regulations. However, it is not clear that this could apply to breaches of the dutyholder or competence requirements. We therefore propose to amend regulation 18 of the Building (Approved Inspectors etc.) Regulations 2010 so it also refers to a breach of the dutyholder's duties or the competence requirements. This will enable a notice of contravention to be given requiring remedial action to rectify the breach. Currently, the period within which the person carrying out the work is to remedy the contravention is three months, beginning with the day on which the notice is given. However, we consider that it may be more appropriate that breaches of the dutyholder duties and competence requirements are remedied as soon as reasonably practicable and are considering whether the period within which these breaches to be remedied should be shorter than three months. We would be interested to hear your views on what an appropriate timescale would be.

Question: Do you agree or disagree with the enforcement approaches proposed for non higher-risk buildings, similar to other contraventions under Regulation 18?

- Agree
- Disagree

- Neither agree nor disagree
- Don't know

Question: Explain answer

As per our previous concerns, the above implies that Approved Inspectors become responsible for enforcing criminal law – this is not practicable or possible.

Question: Should the period for remedying the breaches of the dutyholders' duties and competence requirements be similar to other contraventions under Regulation 18 (three months) or shorter?

- Yes
- No
- Don't know

Question: Explain answer

We suggest 6 months.

Appeals

We are setting up a specialist unit within the First-tier Tribunal. This will deal only with building safety matters.

For building control decisions on higher-risk buildings (and other buildings in relation to which the Building Safety Regulator is the building control authority), the Building Safety Act 2022 envisages appeal routes will follow a two-stage process. First, an internal review by the Building Safety Regulator. This appeal route will be available where the Building Safety Regulator makes a decision in relation to building control matters including an application for building control approval, change control, and completion certificates. Where parties are still unhappy with the outcome of the Building Safety Regulator's review, the Tribunal will handle escalated appeals.

For building control decisions by local authorities, the Building Safety Act 2022 transfers the route of appeal under the Building Act 1984 from the magistrates' court to the Tribunal. There is no internal review process by the Building Safety Regulator for non higher-risk buildings; applicants unhappy with a building control decision will appeal directly to the Tribunal.

When making these provisions, the government intends that, in general, those affected by the decision can appeal. The grounds we propose are that the decision was erroneous in fact, wrong in law, unreasonable, or procedurally flawed. In terms of timing, the appeal should be made within 21 days of the original decision. When ruling, the tribunal may confirm, vary, or quash the decision.

The exception to this is non higher-risk buildings appeals about use of materials, relaxation of Building Regulations, and refusal to give a plans certificate. The Building Safety Act 2022 provides this local authority decision will be appealed to the Building Safety Regulator, with a further option to escalate to the Tribunal. This is because the Building Safety Regulator has overall oversight of building control in England.

In terms of the detailed proposals for these appeals, we propose to make provision that any appeal must be made on the grounds that it was erroneous in fact, wrong in law, unreasonable, or procedurally flawed. On timescales, the appeal must be lodged within 21 days of the original

decision. Finally, on deciding on the outcome of the appeal, the tribunal may confirm, vary, or quash the decision.

Question: Do you agree or disagree with the government's approach to appeals?

- Agree
- **Disagree**
- Neither agree nor disagree
- Don't know

Question: Explain answer

We have significant concerns that appeals are not forthcoming because the time it takes is a big disincentive. The First-Tier Tribunal is having other additional responsibilities placed on it, for example via the Fairer Renting White Paper, but there is no indication of additional funding and resource. There should be other appeals mechanisms that are independent, but stop short of going to the Tribunal, for example through expert determination or peer review.

Review of decisions

The government proposes to introduce regulations which set out which decisions are eligible for internal review by the Building Safety Regulator. The government also proposes to make regulations about procedural and administrative matters for further appeals to the tribunal. By tribunal we mean, the First-tier Tribunal (Property Chamber).

In setting up the new building safety regime, we are establishing a specialist unit within the First-tier Tribunal. This will deal exclusively with building matters. We want to align the appeals procedure for all building control decisions in England to sit ultimately with the Tribunal, and to accommodate the Building Safety Regulator's position as a new building control authority and with oversight of building control authority in England.

We are proposing that the following decisions are in scope for an internal review by the Building Safety Regulator:

- decision to refuse—
 - a building control approval application
 - a change control application
 - a completion certificate application
 - a partial completion certificate application
 - a decision to refuse a regularisation certificate.
- a refusal by the Building Safety Regulator to vary a requirement in a building control approval application.

Question: Do you agree or disagree with making the decisions outlined above eligible for an internal review by the Building Safety Regulator prior to being appealed to the tribunal?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We agree, but the suggested 13-week period seems a long time for an internal review, and will dissuade some applicants with legitimate concerns from applying.

Review process

In terms of procedural arrangements, the government is also proposing:

- That only the affected person or person carrying out the work can seek an internal review by the Building Safety Regulator
- That any notice seeking an internal review must be lodged within 21 days of the original decision by the Building Safety Regulator
- That there is a statutory time limit of 13 weeks ("review period"), in which the Building Safety Regulator must respond to any request for a review of a decision. Section 25(8) of the Building Safety Act 2022 provides that if the review period ends without the regulator notifying the outcome of the review then the original decision is treated as upheld.

Question: Do you agree or disagree with the reviews process outlined above?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

As per our previous comments, the suggested timeframe needs to be quicker.

Reviewing decisions

There is a further opportunity to challenge the Building Safety Regulator's ruling at the tribunal (either the original decision, if upheld at review or the decision as varied at the review). The government therefore also proposes to make regulations that, where there the applicant is not happy with the Building Safety Regulator's decision following internal review:

- The appeal must be lodged to the tribunal within 21 days of the review decision (or within 21 days of the end of the review period referred to above).
- Appeals to be made on the grounds that the Building Safety Regulator's decision was erroneous in fact, wrong in law, unreasonable, or procedurally flawed
- On determining the appeal, the tribunal may confirm, vary, or quash the decision.

Question: Do you agree or disagree with the appeals process outlined above relation to reviewed decisions?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We think this is reasonable.

BSR failure to make deadlines

If the Building Safety Regulator does not reach a decision within the statutory timescales, and an extension has not been agreed, applicants will be eligible to make a non-determinations application to the Secretary of State under section 30A of the Building Act 1984. We propose that this option will be available for all applications which fall under the following prescribed applications (whether in relation to gateways or refurbishment applications):

- Building control approval applications
- Change control applications
- Completion certificate applications
- Partial completion certificate applications

Section 30A applications: procedure

We propose that a section 30A application must be made electronically to the Secretary of State by the person who made the original application. This must be done within six weeks (starting the day after the expiry of the period for determining the application), or a longer period if agreed in writing between the Secretary of State and applicant.

We propose the application must be made on a form published by the Secretary of State, together with the following documents:

- A copy of the original application given to the Building Safety Regulator (including all documentation that accompanied the application)
- All information provided to the Building Safety Regulator in relation to the original application by the applicant
- All correspondence between the applicant and the Building Safety Regulator in relation to that application
- A copy of the notice sent to the Building Safety Regulator as described below.

We propose that at least two working days before submitting the section 30A application, the applicant must give notice to the Building Safety Regulator of their intention to do so. This will ensure that resources of the Building Safety Regulator are not unnecessarily spent on continuing to determine the application and to allow the Building Safety Regulator to prepare to provide documents to the Secretary of State. Further, we propose that this notice to the Building Safety Regulator must not be given before the expiry of the period for determining the original prescribed application.

Question: Do you agree or disagree with the proposed procedure for applications made under section 30A of the 1984 Act?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

As we have set out elsewhere the new regime is requiring a change of culture and greater level of professionalism across the sector, and that should apply to the Regulator too. The Regulator should be proactive in their case management, and the onus should be on them, not the applicant to seek to remedy any predicted delay. There should be no question of them simply letting time lapse. If they have serious concerns they should be applying to the Secretary of State well in advance of the deadline for an extension. If it is simply a lack of resource, then the applicant should get deemed consent when the initial period lapses.

A long-protracted process of the applicant appealing to the Secretary of State is just adding more delay and cost and therefore project risk.

Question: Do you agree or disagree that an application made under section 30A of the 1984 Act must be made in writing to the Secretary of State within six weeks (starting with the day after the expiry of the period for determining the relevant application)?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We disagree for the reasons set out in the previous answer.

Question: Do you agree or disagree with the proposed document requirements outlined in Regulation 40(3) for section 30A applications?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Notwithstanding our disagreement with the process, we agree this is reasonable.

Question: Do you agree or disagree that an applicant should notify the Building Safety Regulator of their intention to make a section 30A application at least two working days before doing so?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Notwithstanding our disagreement with the process, we agree this is reasonable.

For the prescribed applications relevant to section 30A applications, if the period of six weeks in which an applicant can apply to the Secretary of State has transpired without a section 30A non-determinations application being made, the original application will be deemed refused by the Building Safety Regulator. This will also be the case if the Building Safety Regulator does not determine the original application before the expiry of this six-week period.

Question: Do you agree or disagree that the original application should be treated as refused by the Building Safety Regulator in the proposed circumstances outlined above?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We disagree, there should be deemed approval where the Regulator has not been proactive at remedying a deadline missed.

10. Wider changes to building regulations

Seeks to align aspects of the old regime with the new one.

Any application for building control approval made after new regulations come into force, will have three years to start building work from the date the application was made (provided the application was approved by the relevant building control body). If building work has not commenced by the end of three years from that date, the amendments to section 32 have the effect of automatically treating that building control approval as lapsed. Should a developer wish to commence the building work after the building control approval has lapsed, they will need to re-apply for building control approval and the building regulations which have effect at the date of that new application will apply to the building work.

The government's intention has always been that building control approvals should lapse where work has not commenced within three years. Principally, because over time building regulations requirements are updated, for example, the 2021 uplift to energy efficiency standards, improved ventilation and new overheating requirement. Under the current building control regime, approval does not however lapse automatically, instead after three years, the local authority has the power to issue a notice if the work has not commenced but in the absence of proactive action from the local authority to issue such a notice, the approval would continue indefinitely.

This new provision remedies this and will ensure that building control approvals, initial notices, plans certificates, and public body's notices and plans certificates, will lapse automatically rather than requiring a local authority to take proactive action to declare that approval has no effect, or to cancel the notice.

In addition, under the current regime, if work starts on one building in a multi-building development, all the buildings in the development can benefit from the transitional arrangements. This enables other buildings within that same project to be built to old regulatory standards, even where work has not commenced on those buildings.

In response to emerging evidence around gaming of the system, when introducing higher energy efficiency, overheating and ventilation standards in 2021 in England, government therefore strengthened the transitional arrangements in Circular guidance to specify that commencement was related to each individual building or building work, not at a site level, by adding the following to the guidance:

"in some cases, applications will be in respect of a number of buildings on a site, for example a number of houses. In such cases, it is only those individual buildings for which work is commenced which can take advantage of the transitional provisions".

We are now going further and making it clear in law that such arrangements apply only to individual buildings within a multi-building development. Section 36 of the Building Safety Act 2022 provides that where the work relates to more than one building, and the work relating to one or more of the buildings has not commenced within the three-year time-limit, that the building control approval for those specific buildings will automatically lapse, even if work on the remainder of the site has commenced. This approach will again be supported by stronger, clearer definitions of 'commencement' of work.

What is commencement?

Doesn't like existing approach which is defined in circulars.

We propose that either of the following two definitions for commencing work on new buildings (both higher-risk and non higher-risk) should apply depending on the construction method:

- i. Completion of the sub-structure of a building up to and including the foundations and any basement levels the construction of walls up to damp proof course level, the laying of foul and surface water drainage (within the footprint of the building) and the installation of the ground floor structure; or
- ii. Completion of the sub-structure of a building up to and including the foundations and any basement levels, the laying of foul and surface water drainage (within the footprint of the building) and the installation of the ground level supporting structure.

Government considers this approach to all buildings to be suitable as it is reasonable to expect at least this level of commencement work to have started within three years.

Question: Do you agree or disagree with the proposed definition of commencement of work in relation to new building work?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We are concerned at the disconnect this will create between planning and building regs.

We can understand the rationale to crack down on developers 'gaming' the system, where a three-year lapsed intent is changed to an entirely new layout. However, on large projects where there may be complex basement works to be done over say tube or rail networks, what is proposed could be quite unwieldy on a project that has clearly started in common perception. We would urge more flexibility and clarity on how Early Works Contracts would dovetail with the Gateway system would be useful.

Defining commencement of work in relation to work to existing buildings

Three scenarios

Extending an existing building

We propose to define commencement of work in relation to a horizontal extension in an existing building (regulation 3(1)(a) of the Building Regulations 2010) as "the completion of the sub-structure of the building up to and including the foundations and any basement levels, the laying of foul and

surface water drainage (within the footprint of the building) and the installation of the ground level supporting structure”.

Question: Do you agree or disagree with the proposed definition of commencement of work in relation to extending existing buildings? Is it reasonable?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Please explain.

We do not think this is a proportionate response.

Replacing a cladding system

We propose that either of the following two definitions should apply to defining commencement of work in relation to replacing an external wall system:

- Work undertaken to install a new external wall system up to one complete floor level including the following as applicable: brickwork, cladding, windows, cavity barriers/fire breaks, insulation material, balconies and curtain walling; or
- Work undertaken to remove all components of the existing wall system up to one complete floor level including the following as applicable: brickwork, cladding, windows, cavity barriers/fire breaks, insulation material, balconies and curtain walling.

Question: Do you agree or disagree with the proposed definition of commencement of work in relation to replacing an external wall system? Is it reasonable?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We do not think this is workable for some cladding systems.

Material change of use

In recognising the variability of material changes of use (as defined in regulation 5) to existing buildings and the extent to which ‘commencing’ work might differ, we propose that for the work to be deemed as commenced, at least one of the following conditions must be met, as applicable:

- Removal of the heating or ventilation system throughout the area to undergo the change of use;
- Removal of at least 25% of the façade of the building;
- Removal of the internal fit out, including partitions, ceilings and suspended floors from at least 25% of the area to undergo the change of use;
- Completion of work to an entire floor of the building.

Question: Do you agree or disagree with the proposed definition of commencement of work in relation to a material change of use? Is it reasonable?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Please explain

We think this is reasonable.

Question: Are there other types of building work in existing buildings that we should define commencement in relation to?

- Yes
- No
- Don't know

Question: Explain answer

New procedures for building control approval applications for buildings that are not higher-risk buildings

We propose that in line with existing practice, the local authority must provide a substantive assessment of the building control approval application and give a notice to the applicant as to whether the application is approved or rejected within five weeks. We propose that where necessary, for example for complex developments, the local authority and applicant should be able to agree an extension to this five-week period, and that this agreement must be set out in writing.

11.28 We do not intend to prescribe a timeframe for extensions in legislation to give local authorities and applicants the flexibility to determine the approach that is most suitable for both parties on a case by case basis. A building control approval application is not to be considered as either approved or rejected until the local authority has given its notice to the applicant. This means that it should not be deemed as automatically granted should the local authority not issue its decision within five weeks. We however want to ensure that the timeframe for determining applications is not unnecessarily lengthy so would welcome views as to whether there should be a route of appeal for dutyholders if they do not consider the timescale for determining their application to be reasonable.

11.29 Where an applicant commences work without approval, the work will be deemed 'at risk', as is currently the case, and those proceeding on this basis should be aware that the local authority could require them to uncover their work and/or carry out remedial work if it has concerns that the building work does not, or will not on completion, comply with all applicable building regulations' requirements. Applicants are therefore strongly encouraged to await building control approval before commencing work.

Question: Do you agree or disagree that there should be a route of appeal for dutyholders who consider that the timeframe for determining their application has been extended beyond what they consider to be reasonable?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Please explain

We support the proposal.

Withdrawn exemptions

We propose that in line with existing practice, the local authority must provide a substantive assessment of the building control approval application and give a notice to the applicant as to whether the application is approved or rejected within five weeks. We propose that where necessary, for example for complex developments, the local authority and applicant should be able to agree an extension to this five-week period, and that this agreement must be set out in writing.

We do not intend to prescribe a timeframe for extensions in legislation to give local authorities and applicants the flexibility to determine the approach that is most suitable for both parties on a case by case basis. A building control approval application is not to be considered as either approved or rejected until the local authority has given its notice to the applicant. This means that it should not be deemed as automatically granted should the local authority not issue its decision within five weeks. We however want to ensure that the timeframe for determining applications is not unnecessarily lengthy so would welcome views as to whether there should be a route of appeal for dutyholders if they do not consider the timescale for determining their application to be reasonable.

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Question: Do you agree or disagree that there should be a route of appeal for dutyholders who consider that the timeframe for determining their application has been extended beyond what they consider to be reasonable?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

No further comment.

We intend to amend regulation 9 of the Building Regulations 2010 (exempt buildings and work) in its application to higher-risk buildings specifically to clarify that the following is not exempt in relation to higher-risk buildings – such as any building work closely connected to the higher-risk building for

example the, ducting work, external lighting, bin storage area, provision of services to the building such as water, gas, electricity, broadband, secondary power supplies, hydrants, solar power, combined heat and power energy systems, attenuation tanks, accessible parking.

We also propose to amend regulation 9 to preclude extensions (class 7) as defined under Schedule 2 of the Building Regulations 2010 from being added to higher-risk buildings without approval from the Building Safety Regulator as building control authority for higher-risk buildings. Where such extensions are to be built at the same time as a new higher-risk building is created, we propose that they should be captured by the gateways building control approval process. While if they are to be added to an existing higher-risk building, they should be captured by the refurbishment building control approval process.

Question: Do you agree or disagree with our proposed amendments to Regulation 9 of the Building Regulations 2010 in terms of its application to higher-risk buildings?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We support this.

11. Transitional provisions for higher-risk buildings

The government is becoming increasingly aware of evidence that the current approach to transitional arrangements and the related definition of the commencement of work developers must comply with receive transitional protections is open to gaming. In line with the government's intention to improve the focus on building safety during design and construction, we want to ensure the transitional provisions are sufficiently robust and prevent developers from using them to avoid the more stringent requirements of the new regime. Through previous consultations and the passage of the Building Safety Act 2022 the government has communicated to the industry its intentions to put in place a robust building control regime, including a gateways process for new higher-risk buildings during design and construction. Therefore, we strongly believe industry has had sufficient time to prepare themselves to meet new building control requirements.

The government intends to apply the proposed definition of the commencement of work for new buildings and building work to existing buildings for the purposes of the transitional provisions for higher-risk buildings. We strongly believe this more prescriptive approach will tighten the definition of commencement of work, reduce the opportunities for the transitional arrangements to be gamed by developers and will support greater consistency across the built environment.

Question: Do you agree or disagree we should apply the same definition of commencement to the transitional arrangements for regulations covering higher risk buildings?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We repeat our concern about whether this is appropriate for very large buildings.

Applying transitional provisions to individual buildings

Through the Building Safety Act 2022, changes are being made to transitional provisions so that in future where there is a multi-site project, work must have started on an individual building for that specific building to benefit from the transitional arrangements. This will prevent dutyholders from being able to start work on one building on a multi-building site and then claim the benefit of transitional provision for all buildings on the site.

In keeping with the Building Safety Act 2022 and recent transitional arrangements for building regulation changes, such as the transitional provisions for the Building Regulations etc. (Amendment) (England) Regulations 2021, we propose that the transitional provisions to introduce the new regime should only apply to individual buildings in scope of the new regime when work has commenced within a reasonable period from when the new regime comes into force.

Question: Do you agree or disagree with the proposal for transitional provisions to only apply to individual buildings as opposed to multi-site projects?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

We think this aspect of the proposals needs further work. It will not be clear at the start of a project who will be providing building approval, and which regulation will be applying from month to month. Procurement of multi-site projects in full would be prevented by this measure, increasing costs and timescales unnecessarily.

Proposed transitional provisions

We propose that the below transitional provisions to be included in the building regulations for higher-risk buildings. These transitional provisions will apply for the construction of a new building in scope of the new regime and for building work in an existing building in scope of the new regime.

For transitional arrangements to apply to an individual building, developers would need to both:

- Submit an initial notice or deposit full plans by the day the new regime comes into force.
- Commence work in line with the proposed new definition of commencement on the individual building within six months from the day the new regime comes into force.

Developers that fail to give an initial notice or deposit full plans before the new regime comes into force will be subject to the new, more stringent building control regime for higher-risk buildings immediately.

Where work has commenced on a specific building covered by an initial notice or full plans within six months from the day the new regime comes into force the particular building would not be subject to the requirements of the new more stringent building control regime for higher-risk buildings. The work would instead continue to be supervised by the existing building control body and follow the building regulation requirements in place at the time of the submission of their initial notice or full plans application.

While the building would not be subject to the new more stringent regime in design and construction, the building will be subject to all requirements under part four of the Building Safety Act 2022 in relation to its occupation, which will include requiring the building to be registered and the accountable persons managing the building safety risks and keeping residents safe. On registration the principal accountable person will be required to provide a certificate issued under the existing building control regime before the building is registered. This would be a completion certificate issued by a local authority or a final certificate issued by an Approved Inspector. The proposals for registration can be found in the consultation on the new safety regime for occupied higher-risk buildings.

We anticipate that an appropriate period within which work must be commenced is six months from when the regulations come into force. A six month transitional period would reflect the length of time developers will have had notice of the new building control regime and the importance of transitioning to the new regime in a prompt and effective way, while ensuring the transitional period is viable for developers and regulators to comply with. The principles underpinning the new regime were laid out in the Building a Safer Future consultation published June 2019 and draft regulations were published during the passage of the Building Safety Bill. Furthermore, there will be further time for developers to prepare between the regulations being laid in Parliament and the regime coming into force.

Where an initial notice has been submitted or full plans have been deposited before the new regime comes into force, but work is not commenced within six months from the day the new regime comes into force, we propose to provide in regulations that the building would be transferred to the jurisdiction of the Building Safety Regulator at the end of the transitional period.

We propose that the transfer to the Building Safety Regulator takes place under the following process:

- The person carrying out the work would be required to send to the regulator the initial notice (including accompanying plans and documents) or the original deposited full plans. This must be submitted to the regulator within 12 weeks of the end of the transitional period. The government expects local authorities and approved inspectors (registered building control approvers) to inform the Building Safety Regulator when work has not commenced, in line with the definition proposed earlier in the consultation, within six months from the day the new regime comes into force. We are considering how best to ensure that the Building Safety Regulator is aware of higher-risk buildings that have failed to commence work before the end of the transitional period. A potential option would be to require, in the regulations, local authorities and approved inspectors (registered building control approvers) to notify the Building Safety Regulator when work has not commenced after the transitional period has ended. We are seeking views on the potential challenges of making this requirement in the regulations.
- The Building Safety Regulator will not reassess these projects which transfer to it but it will be given the power to require additional information pertaining to their role as the building control body for the higher-risk building. For these higher-risk buildings, the Building Safety Regulator can require, by written notice, further information in relation to any of the higher-risk building work. Where a written notice has been issued by the Building Safety Regulator to the person carrying out the work, if the higher-risk building work has started it must be paused for 10 days to enable this information to be collected and considered by the Building Safety Regulator. It will be a criminal offence under building regulations not to comply with this requirement. The requirement will support the Building Safety Regulator in their role and will help to prepare the new higher-risk building for meeting the new building control requirements during and on completion of construction.
- We further intend to give the Building Safety Regulator the power to require, by written notice, the person carrying out the higher-risk building work to carry out tests on work which has been built. Section 33 of the Building Act 1984 will be commenced to provide this power to the Building Safety Regulator and other building control authorities.
- The Building Safety Regulator will have enforcement powers in relation to such developments, even where they are works to which an initial notice applies (this is due to the fact that s48(1) of the Building Act 1984 was not amended to refer to the regulator). Section 35 of the Building Act 1984 (as amended by the Building Safety Act 2022) enables the building control authority to issue compliance or stop notices where there is or is likely to be a contravention of building regulations. It provides for it to be criminal offence to contravene the building regulations. A conviction could result in up to two years imprisonment and / or an unlimited fine.

While the Building Safety Regulator would be considered the building control authority for the building, the transfer process would not represent a new application for building

control approval as the existing initial notice or deposited plans would remain in force as per section 36 of the Building Safety Act 2022. Furthermore, the Building Safety Regulator would not be able to reject or refuse the plans or information provided by the developer.

However, should the Building Safety Regulator have concerns that the plans do not meet the relevant requirements set out in Building regulations and the additional proposed requirements for higher-risk buildings, the Building Safety Regulator can either request further information from the dutyholder to demonstrate compliance or take enforcement action against the dutyholder as appropriate.

Following the provision of requested information to the Building Safety Regulator and the commencement of work, the building work would follow all of the requirements of the new more stringent building control regime for higher-risk buildings. Section 36 of the Building Safety Act 2022 will still apply and therefore, work would still need to commence within three years of the original plans being made. If work has not commenced within three years, building control approval would lapse and the developer would need to submit a new application to the Building Safety Regulator before work could commence. The building would be subject to the new, more stringent building control regime.

The proposed requirements of the new building control regime for higher-risk buildings that would be imposed include:

- The relevant functional requirements of the Building regulations
- Commencement notices
- Dutyholder and competence regulations
- Compliance with inspection regime
- New statutory change control process
- Regulations related to a new client / Principal Contractor / Principal Designer
- Mandatory occurrence reporting requirements
- Golden thread information requirements to manage and store information relevant to the building work
- Completion certificate applications / Partial completion certificate applications
- Reviews, appeals and section 30A procedures
- Enforcement powers applicable to higher-risk building work.

Dutyholders would need to fulfil all of the above requirements during the construction phase and on completion of the higher-risk building work.

The Building Safety Regulator must issue a completion certificate where they are satisfied the building work complies with all applicable building regulation requirements; the documents and information required part of a completion certificate are complete and accurate' and the golden thread information is complete and has been provided to the 'relevant person'.

If the Building Safety Regulator considers that the higher-risk building built to the original plans has produced a building which does not comply with all Building regulations' requirements it could lawfully refuse to issue a completion certificate.

Section 76 of the Building Safety Act 2022 (Requirement for completion certificate before occupation) would apply and it creates an offence for an accountable person to allow occupation of a single residential unit or more in part of a higher-risk building without a relevant completion certificate. Therefore, a principal accountable person or a relevant accountable person would not, therefore, legally be able to allow occupation of a higher-risk building if the building work does not have a completion certificate.

The relevant building work will be subject to part four requirements once the building is occupied. Therefore, the principal accountable person/ relevant accountable person will have a duty to assess and manage building safety risks from 'day one' of occupation. If they are the client during construction, this should incentivise them to ensure that the building work will not undermine the ability to meet their safety case duties in occupation. Alternatively, if the client intends to hand over the building on completion, the future principal accountable person/ relevant accountable person will want reassurance that the building work complies with all applicable building regulations' requirements and will not undermine their ability to carry out their occupation duties.

Question: Do you agree or disagree with the proposed transitional provisions?

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

Question: Explain answer

Agree, as long as the transitional period commencement and end align with proper and correct resourcing of the Regulator to ensure no delays to projects ensue. This is likely to push dates out by some years.

Question: Do you consider there to be any potential challenges with requiring local authorities and approved inspectors (registered building control approvers) to notify the Building Safety Regulator when building work has not commenced after the transitional period lapses?

- Yes
- No
- Don't know

Question: Explain answer