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Welsh Government

Welsh Government

Consultation Document

Safer Buildings in Wales: A Consultation

A Building Safety White Paper

This White Paper sets out proposals for comprehensive reform of legislation that contributes to building safety in Wales. It focuses on legislative change across the lifecycle of buildings as well as setting out aspirations for culture change in the way buildings are designed, constructed and managed.

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

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Safer Buildings in Wales: A Consultation

Overview	This White Paper sets out proposals for comprehensive reform of legislation that contributes to building safety in Wales. It focuses on legislative change across the lifecycle of buildings as well as setting out aspirations for culture change in the way buildings are designed, constructed and managed.
How to respond	Responses to this consultation should be e-mailed/posted to the address below by 12 April 2021 at the latest
Further information and related documents	Large print, Braille and alternative language versions of this document are available on request. https://gov.wales/safer-buildings-wales
Contact details	For further information: Building Safety Team Welsh Government Cathays Park Cardiff CF10 3NQ email: BuildingSafety@gov.wales
Also available in Welsh at:	https://llyw.cymru/adeiladau-mwy-diogel-yng-nghymru

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Wilmslow
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SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

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1. Ministerial Foreword

This year will mark the fourth anniversary of the tragic fire at Grenfell Tower. The passage of time has done nothing to mitigate the enduring imprint the events of that night left on us all. Nor should it. The Grenfell tragedy must serve as a constant reminder of the utmost importance of access to a safe and secure home. Securing the safety of residents must be a guiding principle of government, the housing sector and wider industry to ensure an event like this can never occur again.

The ongoing Grenfell Inquiry continues to serve as a stark reminder of the importance of the devastating consequences that can result when build quality and resident safety are not prioritised. Whilst Wales has a good record on fire safety, we know that many of the same issues and wider systemic failures highlighted by Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety are equally applicable here.

The lessons learned from these reviews and inquiries and the work of our own Building Safety Expert Group have forged a clear path and identified what must be done to improve our approach to building safety. It is now time to act.

We are proposing a new Building Safety Regime for Wales. Not only would this present a significant overhaul to the existing system, it would also result in the most expansive building safety regime in the UK. The proposed changes we outline will see improvements made to every stage of the lifecycle of multi-occupied buildings, from design through construction and on into occupation, so that these buildings are safe for each and every resident.

We know that the risks identified are not limited to high rise buildings alone and so we propose to go further and include other types of residential building where we recognise there is a risk from fire or structural safety that has the potential to impact upon significant numbers of people. If safety is to be our guiding principle then we must apply that principle to all buildings within the scope of the proposed Building Safety Regime, regardless of building type or tenure, for the benefit of residents across Wales.

The proposed new regime will establish clear lines of accountability by creating new roles and responsibilities for those that own and manage relevant buildings, meaning that there can be no doubt about where the responsibility lies. Our proposals seek to drive up standards by improving industry competence, making sure that safety features are designed into the very fabric of the building, their use is properly understood and they are installed correctly by people with the right expertise. We intend to establish a stronger and more coherent regulatory system which would hold those responsible to account, with serious consequences for attempts to cut costs at the expense of safety and placing residents at risk.

Critically, our proposed reforms will empower residents by putting their lived experience, safety and wellbeing at its heart, with enhanced rights and a stronger voice in matters that affect their homes.

We recognise that reform on this scale is complex and will take time to develop and embed, but it is clear that maintaining the status quo is not an option.

We cannot achieve our vision alone. This must be a collective endeavour if we are to get to where we all agree we need to be. This is why we seeking your views, insight, experience and expertise to ensure the changes we make are clear and effective.

We are currently in the midst of extraordinary times and as a Government are responding to unprecedented challenges, but I am clear that this will not detract from this critical work. Indeed, Welsh Government can point to many examples where we are already demonstrating our commitment to quality housing, whether it be the energy efficient homes of the future built under our Innovative Housing Programme, adopting pioneering approaches to construction under our Modern Methods of Construction strategy, or our ongoing commitment to improving quality standards in our recent review of housing development quality requirements. Our Building Safety Regime is another significant contribution to achieving our wider housing ambition that everyone in Wales should be able to live and thrive in a home that meets their needs.

Public confidence has been understandably shaken as a result of building safety issues that have been exposed across the UK. It is a priority of this Government to set the foundations and expectations to restore that trust and confidence.

I thank you in advance for responding to this consultation and working with us to shape the future of building safety in Wales.



Julie James MS

Minister for Housing and Local Government

2. Executive Summary

2.1. *Introduction*

- 2.1.1. The Grenfell fire was a tragic event and fortunately one that is very rare. The fire was devastating; many people lost their lives, their families, their friends and their homes. We must work to ensure that lives are not lost like this again. The fire prompted extensive inquiries, research and debate to inform what steps must be taken to minimise the risk of such a tragedy happening again.
- 2.1.2. The data tell us that the Grenfell fire was a heart-breaking anomaly. The likelihood of a fire in a high-rise block of flats is statistically relatively small, however the impact, as was seen at Grenfell, can be devastating, with a high loss of life. The data (para 5.2.2) also shows us that statistically the likelihood of fire is more likely in houses in multiple occupation (HMOs) or a property converted for residential use; whilst such fires can result in injury or even unfortunately death, the number of people potentially hurt is significantly lower.
- 2.1.3. The risk and impacts of fire will vary depending on many factors including the complexity of the building that people live in, the materials it is made from, fire safety features in the building, how well the property is maintained, the number of occupants and their behaviour. It is only appropriate to legislate for some of these factors, promoting good upkeep of buildings and safe behaviours are other ways to reduce risks. This White Paper sets out plans to legislate in those areas where it is appropriate to do so.
- 2.1.4. This document sets out the policy goals our programme of work is intended to deliver. These are in response to the problems found by the [Hackitt Review](#)¹, the [Grenfell Inquiries](#)², and our own [Building Safety Expert Group](#)³. Whilst the problems are very similar in England and Wales, the scale of the problems is very different; in England there are over 12,000 high rise residential buildings, in Wales we have approximately 148.

2.2. *Making Change Happen*

- 2.2.1. Some proposals, particularly those relating to the occupation phase, will need primary legislation to be taken through the Senedd. The changes we propose in this area are detailed in sections 7 & 8. However, the publication of the [draft Building Safety Bill](#) by the UK Government, has presented an opportunity to take earlier action in our efforts to respond to the need to modernise both the building control system and the way the construction

¹ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

² <https://www.grenfelltowerinquiry.org.uk/>

³ https://gov.wales/sites/default/files/publications/2019-04/building-safety-expert-group-road-map_0.pdf

industry discharges its responsibilities⁴. Therefore we have made the decision to ask the UK Government to make a number of changes to the [Building Act 1984](#) on our behalf⁵. These are in relation to dutyholders during design and construction, powers to allow the introduction of Gateways for residential buildings 18m or more in height or more than 6 storeys; and resolving conflicts of interest, for example where a Local Authority are developing a Category 1 building in their area, but are also acting as the building control body, more information can be found at section 4.2.

2.3. *The Scope of the Building Safety Regime*

2.3.1. We propose that the scope of the Building Safety Regime covers all multi-occupied residential buildings. By multi-occupied residential building we mean any building where there are two or more dwellings, regardless of whether there is a shared front door to the building. This means that the scope of the regime would capture a house converted into two flats, a licensed HMO through to a high-rise apartment block. More detail is provided at section 5.

2.3.2. The requirements that are placed on those buildings within scope will differ depending on which category the building falls within. We have considered how best to ensure that there is a balance of requirement versus risk. As such we are proposing that there are two categories of building set out in the Building Safety Regime:

- Category 1 – these buildings would be subject to the most onerous requirements of the Building Safety Regime. These buildings will be 18m or more in height or more than 6 storeys and contain two or more dwellings⁶. For example a 7 storey block of flats used for student accommodation; or an 8 storey block of leasehold properties; or a mixed use 13 storey building with 4 floors of flats.
- Category 2 - these buildings would be subject to numerous requirements of the Building Safety Regime. These buildings will be residential properties with two or more dwellings that are no more than 18m in height. For example this category could range from a house converted into two flats; a licensed HMO; to a 5 storey purpose built block of flats; or a 4 storey office block converted into flats.

2.3.3. We believe such an approach reflects the data. Likelihood of fire is greater in an HMO or a property converted for residential use; but the impact of a fire is

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906737/Draft_Building_Safety_Bill_Web_Accessible.pdf

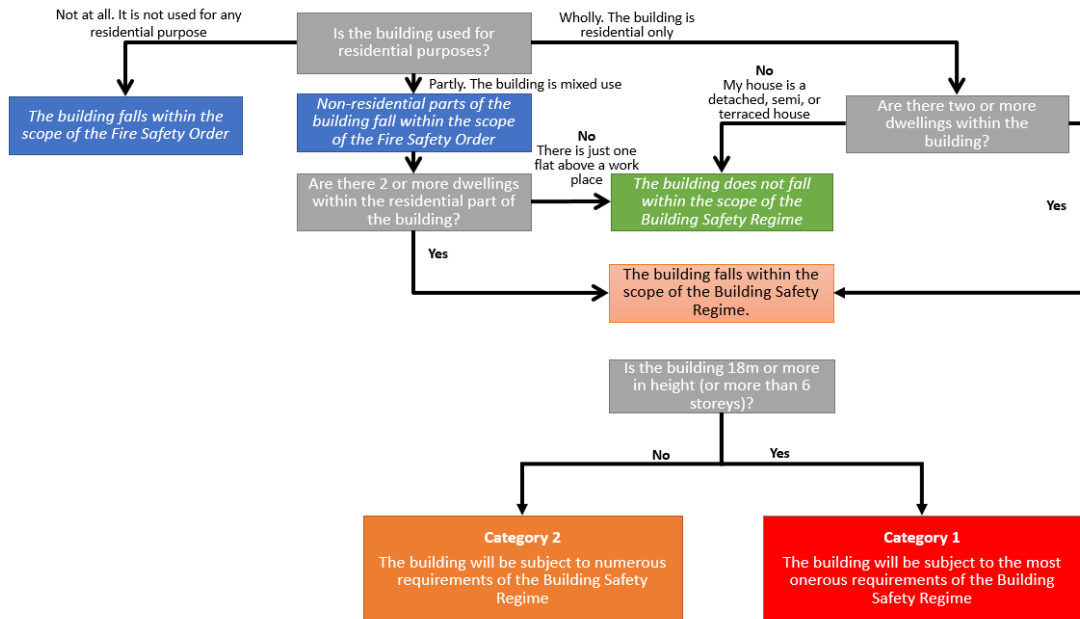
⁵ <https://www.legislation.gov.uk/ukpga/1984/55>

⁶ A 'Category 1 building is measured as a building with a storey (not including roof-top plant areas or any storey consisting exclusively of plant rooms) at least 18 metres above ground level, where height is measured from the lowest ground level adjoining the outside of a building to the top of the floor surface of the highest storey.

more significant in a high rise residential building. To apply a lower standard of regulation to the most at risk properties disregards that evidence. We recognise that the additional burden placed on those responsible for maintaining Category 2 buildings will be significant however we consider that this burden is proportionate and appropriate given the statistical likelihood of risk. We are seeking views on this proposal.

2.3.4. The diagram below helps to identify which category buildings would fall into:

2.3.5. *Figure 1: Building Category*



2.3.6. For Category 2 buildings, the majority of requirements focus on the building during occupation. For Category 1 buildings there are requirements across the lifecycle.

2.4. *During Design and Construction*

2.4.1. The [Hackitt Review](https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review)⁷ and our own [Building Safety Expert Group](https://gov.wales/sites/default/files/publications/2019-04/building-safety-expert-group-road-map_0.pdf)⁸ were clear; for those buildings that are considered to be higher risk there must be more stringent controls in place during their design and construction. This includes clearly identified dutyholder roles and clarity in relation to those responsibilities, as well as an enhanced programme of checks (supported by documentation) to support evidence of compliance with relevant regulations.

2.4.2. The UK Government’s [draft Building Safety Bill](#) will allow the introduction of a system of dutyholders – people involved in the design, construction and management of buildings in scope - who have clear responsibilities at each

⁷ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

⁸ https://gov.wales/sites/default/files/publications/2019-04/building-safety-expert-group-road-map_0.pdf

and every stage of the building's life⁹. It will also facilitate the establishment of three Gateways which will provide 'stop points' in the design and construction process where work cannot continue without evidence that building safety is being appropriately managed. The draft Bill also proposes to remove the element of choice with regards to building control. In Wales, the Local Authority will provide the Building Control for all residential buildings 18m or more in height. The draft Bill also addresses the risk of conflict where the Local Authority is the building control body for its own developments. Where this is the case building control services will have to be provided by another Welsh Local Authority.

2.5. *Dutyholders during Design and Construction*

2.5.1. We are working with the UK Government to ensure consistency with England in a number of areas including dutyholders. The proposals for Wales in the UK Government's [draft Building Safety Bill](#) provide the necessary powers to set dutyholder roles and responsibilities¹⁰. The draft Bill will allow the introduction of five dutyholder roles during the design and construction phase with clear safety responsibilities that are set out in law. These roles are: Client; Principal Designer; Principal Contractor; Designer; and Contractor.

2.6. *Gateways and Building Control Bodies*

2.6.1. The UK Government's [draft Building Safety Bill](#) includes powers to introduce three Gateway points.¹¹ These gateways will ensure that building safety issues are considered as an integral part of the lifecycle process by building in constant reviews at critical stages of a building's development. They will also introduce 'hard' stops in the system, where work cannot continue without evidence that building safety is being appropriately managed.

2.6.2. Gateway One occurs before planning permission is granted, Gateway Two before construction begins and Gateway Three before the building's occupation. The diagram at section 6.4.2 below sets out a high level overview of the process.

2.7. *Golden Thread*

2.7.1. We agree with the recommendations of the [Hackitt Review](#)¹² that information is critical to the ongoing safety of buildings. The 'Golden Thread' of up-to-date information about the design, construction and ongoing maintenance of Category 1 buildings is a key aspect of supporting their long term safety. The

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906737/Draft_Building_Safety_Bill_Web_Accessible.pdf

¹⁰https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906737/Draft_Building_Safety_Bill_Web_Accessible.pdf

¹¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906737/Draft_Building_Safety_Bill_Web_Accessible.pdf

¹²<https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

Golden Thread is a living record of the building, it will support the Gateway process as well as the ongoing management of the building. It will be kept in digital form to ensure that those who need it most are able to access the information quickly and easily.

- 2.7.2. A Golden Thread will be required (either to be produced for existing buildings or created for new ones) for all Category 1 buildings. For Category 2 buildings, we would anticipate a key dataset being the minimum level of information collected as part of the registration process for occupation (para 7.12 refers)¹³.

2.8. *During Occupation*

- 2.8.1. The lessons from Grenfell have exposed the critical importance of ensuring safety is paramount throughout all aspects of the building life cycle. Buildings should be actively managed to ensure that new and changing risks are identified and minimised as far as is practicable. This is the case for all buildings, regardless of whether they are high rise, residential or otherwise. Our new regime includes a number of key proposals that ensure safety considerations are constantly monitored for the benefit of residents during occupation and ensures the ‘safety first’ approach established during design and construction, is carried through on handover into the occupation phase.

2.9. *Dutyholders during Occupation*

- 2.9.1. The [Hackitt Review](#)¹⁴ recognised the need to also have a dutyholder who is responsible for maintaining building safety (including fire safety) during occupation. Not only does this help clearly establish lines of accountability, but it also improves building management by making the roles and responsibilities that go along with it clearer to those with legal duties, oversight bodies and residents.
- 2.9.2. We propose to create a dutyholder role during occupation for all buildings within the scope of the Building Safety Regime; the ‘Accountable Person’. The Accountable Person will have legal responsibility for the safety of the whole building used for residential purposes. For all buildings within scope of the Building Safety Regime, the Accountable Person will be required to identify and register themselves.

¹³ Unique building identifier (as created by the Local authority); Location (address); Size (e.g. height, storeys, footprint, number of dwellings); Building type/purpose ; Years built and refurbished; Minimal information (e.g. quantity and location) on safety-related features (e.g. fire doors, sprinkler systems). For Category 2 buildings this could be basic information on floor layouts and fire doors. For Category 1 buildings this would be information on the physical layers of protection that form part of an integrated safety strategy for the building. In addition, for Category 1 buildings the key dataset will include: Façade and structure information; Dates and outcomes of gateway points and Safety Case reviews; Current and past dutyholders, including accountable persons.

¹⁴ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

- 2.9.3. The role of the accountable person will differ depending on the building Category to ensure a practicable and proportionate approach across building types.
- 2.9.4. We are also proposing the creation of another dutyholder for the Category 1 buildings only: the Building Safety Manager. Where used, the Building Safety Manager will have closer day to day responsibility for management of the building and completing the more practical tasks. They will support the Accountable Person to ensure the building complies with the regime's proposed requirements. It is proposed that the BSM role will apply to Category 1 buildings only due to the additional requirements of the regime for these buildings being more likely to require this type of additional assistance.
- 2.9.5. More detail on these requirements is set out in section 7.
- 2.10. *Duties in Occupation*
- 2.10.1. Once the building is occupied the key responsibility of dutyholders is to practically work to maintain the building and appropriately manage and mitigate any safety risks. We propose the following key ongoing duties during occupation:
- Conduct robust **annual fire risk assessments** by a suitably qualified professional to identify and evaluate the risks of fire in a given building, and determining action which can and should be taken to avoid or mitigate those risks. That basic purpose is sound, and is the same for all buildings
 - Taking steps to maintain adequate **compartmentation** in buildings so that a fire can be contained where it originates for long enough to allow it to be extinguished
 - Creating and maintaining a **Safety Case** which will set out the fire and structural risks identified in the building, how those risks have been dealt with and/or how they are being managed. This will apply to Category 1 buildings only and here the fire risk assessment will form part of this Safety Case.
 - **Mandatory reporting** of any significant incidents or occurrences that would pose a significant risk to life and safety to the regulator.
- 2.10.2. We propose to define fire safety outcomes, which Accountable Persons should be seeking to attain.

Fire safety outcomes

- (i) **Fire prevention.** The risk of fire breaking out in the building should be as low as possible.
- (ii) **Fire protection.** If a fire does break out, it should be contained where it originates, without spreading to other flats, the exterior of the building or a common area.
- (iii) **Escape.** All people who are in immediate danger from fire should be able to leave the premises swiftly and safely.
- (iv) **Firefighting.** Any fire that does break out should be extinguished as quickly and safely as possible.

2.10.3. The purpose of a fire risk assessment would be to determine the extent to which those outcomes were attained, and identify measures or actions that could and should be taken to improve the extent to which the objectives were attained.

2.10.4. A fire risk assessment must reflect current and actual risks of fire in the premises if it is to inform effective action to mitigate those risks. Therefore, the assessment cannot be a static or one-off exercise; it needs to be updated as the circumstances of the building change.

2.11. *Compartmentation*

2.11.1. Compartmentation is the capacity of the structure of a building to contain a fire where it originates for long enough to allow it to be extinguished. It relies on the building being constructed and maintained in ways which resist the spread of fire. Effective compartmentation is critical to fire safety.

2.11.2. Building Regulations 2010 cover requirements relating to compartmentation, guidance is provided within [Approved Document B](#) Volume 1 (Dwellinghouses) and Volume 2 (Buildings other than dwellinghouses).¹⁵ However, they only protect the building at the point that it is completed and handed over for use. During occupation, buildings can deteriorate and/ or be modified in ways which could jeopardise compartmentation. We propose to create a new general duty to maintain compartmentation in all buildings within scope of the Building Safety Regime. The duty would apply to everyone, including residents and contractors, as well as to the Accountable Person.

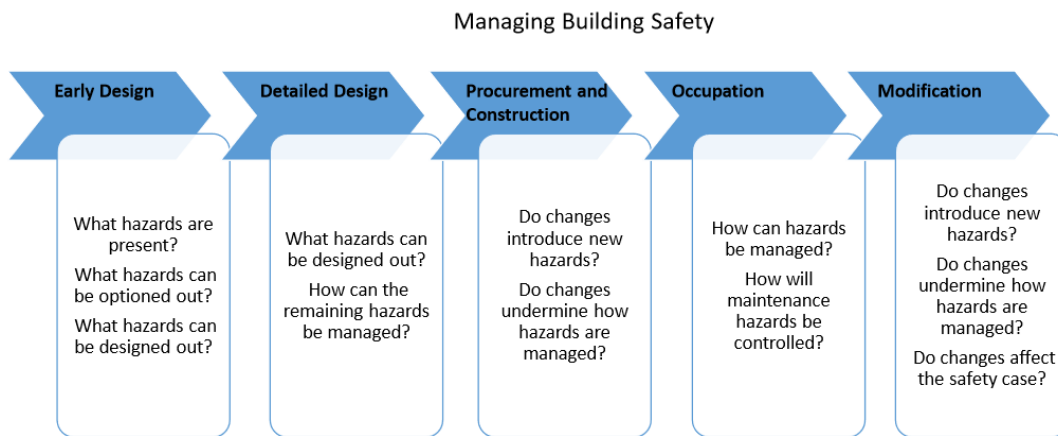
2.12. *Safety Case*

2.12.1. A Safety Case is a structured argument, supported by a body of evidence that provides a compelling, comprehensible, evidenced and valid case as to how the Accountable Person is proactively managing and controlling fire and

¹⁵ <https://gov.wales/building-regulations-guidance-part-b-fire-safety>

structural risks. During occupation, for Category 1 buildings, a Safety Case must be created and maintained.

- 2.12.2. A Safety Case will set out the fire and structural risks identified in the building, how those risks have been dealt with and/or how they are being managed. The fire risk assessment will form part of this Safety Case.
- 2.12.3. The diagram below sets out the high level consideration of how risks should be managed for Category 1 buildings across their lifecycle.
- 2.12.4. *Figure 2: Building safety lifecycle*



2.13. *Registration and Licensing*

- 2.13.1. In order to strengthen oversight and accountability for the new regime, we propose that there will be a legal requirement for the Accountable Person to register the building(s) they are responsible for, regardless of building Category. The Accountable Person must also identify and provide details for the person managing the building on their behalf if they are not undertaking the role themselves (this could be a Managing Agent for Category 2 buildings, or a Building Safety Manager for Category 1 buildings).
- 2.13.2. For Category 1 buildings we propose that there should be a requirement to complete basic training as a prerequisite to obtaining a licence as an Accountable Person, to provide an overview of how the new regime works in practice including gaining a clear understanding of their role, interaction with other key dutyholders and the regulatory framework etc.
- 2.13.3. The Accountable Person for Category 1 buildings would also need to pass a fit and proper person test. This is to demonstrate that they are of sufficient integrity and good character to be involved in the management of the property and that they do not pose a risk to the welfare or safety of persons

occupying the property. If they cannot pass such a test they must appoint a licensed Building Safety Manager¹⁶.

- 2.13.4. The Building Safety Regime includes all buildings containing two or more dwellings. We think it appropriate to consider whether all third parties nominated to manage residential buildings are suitably qualified to do so. Currently anyone can undertake residential property management functions with all the legislative, health and safety and financial issues that management of such properties present. The Minister for Housing and Local Government has previously expressed an interest in developing a regulatory regime to capture those who manage leasehold properties. We are seeking views about whether there should be regulatory oversight of the exercise of these functions.
- 2.14. *Engaging with Residents*
- 2.14.1. Resident safety and wellbeing must be at the heart of these reforms. The tragic events of the Grenfell fire demonstrate how devastating the consequences can be when residents are not listened to. It is not enough to simply provide channels for complaints, dutyholders must be able to demonstrate that resident engagement is proactive, meaningful and collaborative.
- 2.14.2. We would expect that all Accountable Persons provide a minimum level of information to residents to promote safety in their buildings. This information would include; fire safety measures within the building; advice on what to do in the event of a fire; information on the roles and responsibilities of the Accountable Person and information on the roles and responsibilities of residents. The level and detail of information provided to residents should reflect the complexity of the building.
- 2.14.3. For Category 1 buildings there will be additional requirements to develop, and, more importantly, deliver resident engagement. This engagement should be genuine and ongoing. It is not sufficient to merely create a strategy and issue information on a regular basis.
- 2.14.4. For Category 1 buildings there will also be a requirement for the Accountable Person to establish a process for residents to raise building safety concerns, this would include how to make a formal complaint where a resident felt that a concern had not been addressed. Whilst we would not require buildings that fall within Category 2 to have such an extensive system in place for residents to raise concerns or complain, we would expect the Accountable Persons to give due consideration to how residents might raise concerns with them.

¹⁶ A Building Safety Manager will look after the day-to-day management of fire and structural safety in Category 1 buildings and establish a clear point of contact for residents for fire and safety related issues.

2.15. *Roles and Responsibilities of Residents*

2.15.1. In all buildings within the scope of the Building Safety Regime we believe that additional responsibilities for residents should be introduced in order to support the safety of the building for all. These would include a requirement on residents to cooperate with the Accountable Person (and those undertaking works on their behalf) and a requirement on residents not to breach the compartmentation of their property.

2.16. *Regulating the Building Safety Regime in occupation*

2.16.1. The key to ensuring the new regime is successful will be its effective regulation. The changes we are proposing amount to a complete overhaul of the existing system. This is not just about procedural and process changes, it also requires a significant cultural and behavioural shift from all involved in the design, construction and management of buildings across Wales. This White Paper sets out the key role, functions and potential options for a regulatory model.

2.16.2. The key aim of the regulator will be to ensure the safety of residents and others in and around buildings by holding dutyholders to account in performance of their duties under the regime. In meeting this overarching aim, we propose that regulators will have 3 broad regulatory objectives:

- **Oversight** – inspecting buildings; ensuring competence; setting safety standards and informing policy direction. The Regulator will monitor the effective operation of the regime.
- **Collaboration** - Working with others; Public engagement/ education; and Public accountability. The Regulator will work across sectors and stakeholder groups to effectively promote building safety.
- **Compliance** - Dealing with complaints; Investigations and Enforcement; and Governance considerations. During Occupation the Regulator would provide registration and licensing functions and will hold a register of dutyholders assigned to buildings under the regime. The Regulator will ensure adherence to regime requirements.

2.16.3. The agreed model for the new Building Safety Regulator, where it will sit, how it will be structured and funded, and the sourcing of necessary capacity and expertise is still to be determined. This is a critical area for consultation, ensuring that all of our key partners and stakeholders have the opportunity to understand current options and thinking in this area, and share their experience and expertise to help us shape the right solution for Wales.

2.16.4. In June 2020 we published our building safety Position Statement which posed two potential options for regulation of the new regime, a single regulator or multiple regulators.

- 2.16.5. A single regulator could be in the form of a new national building safety regulator; alternatively it could be one lead regulator (one of the existing authorities would become the lead regulator of the new regime). Multiple regulators could be in the form of a concurrent regulatory regime (as currently exists but with additional requirements on authorities); or enhanced by coordination and oversight arrangements (which sit above the concurrent regulatory regime).

3. Progress to date

3.1. *The Case for Change*

- 3.1.1. The Grenfell fire has prompted extensive inquiries, research and debate about the steps that are needed to minimise the risk of such a tragedy happening again. Much of that has concentrated on the fabric and construction of high-rise residential buildings, as the materials and techniques used in constructing and renovating Grenfell Tower have been implicated in allowing the fire to spread so rapidly. That in turn will mean changes to the system of building control, which regulates how and with which materials buildings must be constructed. However, the ways in which blocks of flats are managed and maintained once they are occupied has also come under scrutiny.
- 3.1.2. The Grenfell fire represented one of the greatest losses of life as a result of a dwelling fire since the Second World War. Fortunately such fires are rare; but when they do happen they can be devastating. A fire in a high rise block of flats is akin to a small village setting fire. The potential for tragedy is significant and these issues need to be addressed. However, statistically, the homes with the greatest rate of casualties as a result of fire are Houses of Multiple Occupation (HMO)¹⁷.
- 3.1.3. There is no evidence that fires are more likely to break out in flats than in houses or other dwellings. Nonetheless, in principle, all blocks of flats present particular risks if a fire does break out. If a fire breaks out in a conventional house there will be at least one exit leading directly outside, meaning escape and/or rescue is usually straightforward. In a block of flats there may be a considerable distance between flat and exit to the outside and the route may include stairs and multiple doorways. A fire in a block of flats could also endanger the residents of all the other flats if the fire is not contained and rapidly extinguished.
- 3.1.4. The events at Grenfell Tower were exacerbated by the height of the building and the design which included only one stairwell. Reflecting the increased risks with high rise buildings, building regulations have long required additional considerations where a height of 18 meters (roughly equivalent to 7 storeys) is exceeded. However, our Building Safety expert panel asserted that a broader consideration of risk should be taken into account which incorporated height, occupation density and other risk factors.
- 3.1.5. That is why in proposing reforms in Wales we are seeking to set in place changes that will go far wider than purpose built blocks of flats over 18m. Some of our proposed reforms will focus on this type of building, in relation to

¹⁷ HMO is a term that is used to define accommodation that is owned by a landlord and shared among a number of people. As a general rule, where there are three or more occupiers of a property who make up more than one household with shared toilet, bathroom or kitchen facilities

reforms to the building control process. Other reforms will change the way all multi-occupied residential buildings are managed with regards to fire safety when these buildings are occupied.

- 3.1.6. The reforms we are proposing are bold. They will benefit around 10% of dwellings in Wales. In putting safety first and foremost we recognise that there will be compliance and financial burdens with these reforms. The majority of the additional burdens will fall on those properties where the scale of the risk in terms of potentially endangering many lives is high. There will also be burdens placed on smaller properties where the highest rate of casualties occur (the graph at 5.2.3 provides more detail). We make no apology for this. The public has been clear in its reaction to the Grenfell tragedy; the safety of individuals must come first.
- 3.1.7. We are also seeking views on whether we should bring forward reforms with regards to basic fire safety equipment in all homes in Wales, these are outlined in section 11. We are currently exploring our competence in this area.
- 3.2. *Progress to Date: Changes to Building Control/ Regulations*
- 3.2.1. In recognition of the need for action in advance of the proposals within this white paper and the [draft Building Safety Bill](#) we have taken a number of early steps to improve confidence in building safety during the design and construction of high risk buildings¹⁸.
- 3.2.2. Changes already made and in place:
- 3.2.3. **Combustible materials:** We have consulted on and amended building regulations to require that where work is being carried out in the construction of new buildings or the renovation of existing buildings all materials which become part of an external wall or specified attachment are of limited combustibility according to the European Class A2-s1, d0 or Class A1. For the purposes of clarity alternative classification methods do not apply. These changes apply to any residential building (excluding hostels and hotels) with a storey at least 18m above ground level and includes student accommodation, care homes, sheltered housing, hospitals and dormitories in boarding schools. The requirements also apply to changes of use to these accommodation categories.
- 3.2.4. We have amended the definitions of certain attachments covered by the changes to include for example balconies and solar panels.
- 3.2.5. **Assessments in lieu of tests:** As a consequence of the introduction of ban on combustible materials we have limited the extent to which assessments of

¹⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906737/Draft_Building_Safety_Bill_Web_Accessible.pdf

performance in lieu of specific tests can be used for these materials on specified buildings.

- 3.2.6. **Local Authority capacity, skills and resources:** In response to Dame Judith's report recommendations on building control resources and capacity and our own Building Safety Expert Group's Road Map recommendations we have engaged with Local Authorities and their representative body LABC to devise a comprehensive resource and capacity study.
- 3.2.7. **Fire and Rescue Authorities: statutory consultees:** To improve earlier consideration of fire safety matters as part of the development process we have consulted on making Fire and Rescue Authorities statutory consultees on certain planning applications by amending the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.
- 3.2.8. A revised "[Building Regulations and Fire Safety Procedural Guidance](#)" covering the way in which building control bodies consult with the Fire and Rescue Authorities and the arrangements for the handover of fire safety information has been published by Local Authority Building Control (LABC) with the National Fire Chiefs Council (NFCC) and the Association of Consultant Approved Inspectors (ACAI) in conjunction with the UK Joint Regulators Group¹⁹.
- 3.2.9. The revised guidance clarifies the procedural steps building control bodies should take to ensure effective consultation. Welsh Ministers have recommend here that building control bodies should follow this guidance as good practice.
- 3.2.10. Welsh Ministers also concur with industry opinion that on occasion building control bodies and Fire and Rescue Authorities using this consultation guidance may not initially agree on whether plans deposited demonstrate compliance because they will be reviewing the plans from the perspective of their different roles and legislative requirements.
- 3.2.11. Therefore an independent advisory function to help resolve any differences has been established with representatives of building control body organisations and the National Fire Chiefs Council to provide this advisory role through an independent panel. Welsh Ministers have also endorsed the use of this 'consensus' procedure in Wales.
- 3.3. *Progress to Date: Changes in relation to Fire Safety*
- 3.3.1. Fire safety in blocks of flats is currently governed by the [Regulatory Reform \(Fire Safety\) Order 2005](#) – commonly known as "the FSO"²⁰. This requires the "responsible person" for the building (normally the landlord or managing

¹⁹ <https://gov.wales/building-regulations-and-fire-safety-procedural-guidance>

²⁰ S.I. 2005/1541 <https://www.legislation.gov.uk/ukSI/2005/1541/contents/made>

agent) to conduct and act on a fire risk assessment, and gives Fire and Rescue Authorities (“FRAs”) powers to inspect and enforce compliance.

3.3.2. However, there are fundamental problems with how the FSO applies to residential buildings. It was designed for workplaces and many of its provisions are based on that: they concern staff training, fire drills and other matters that are not relevant to a residential property. In a block of flats, the FSO effectively applies only to the “common parts” – hallways, stairwells, landings, lifts and so on. It does not currently apply to the outside walls of the building, nor does it clearly apply to fire doors separating flats from common areas. Yet these are fundamental to the overall fire integrity of the building and it is very likely that defects in the external walls and internal fire doors contributed significantly to the loss of life in Grenfell Tower.

3.3.3. We have moved to correct the most serious of these failings, by working closely with the Home Office on its Fire Safety Bill²¹. This will extend the coverage of the FSO to include the external walls and all parts of the internal structure, including fire doors. By agreement with the Home Office, the Bill applies to Wales on the same terms as England. We will also work with the Home Office and National Fire Chiefs Council on guidance for responsible persons about the Bill.

3.3.4. The Bill is nearing the end of its passage through Parliament, and the Home Office aims for it to receive Royal Assent in early 2021. We will then decide when and how it is brought into force in Wales.

3.4. *Progress to Date: Position Statement*

3.4.1. In June 2020 Welsh Government published a [position paper](#) to prompt debate on our early thinking on proposed reforms²². A total of 33 responses were received, the majority of which were industry organisations, along with four Local Authorities and all three Fire and Rescue Authorities (FRAs) providing views. A number of representative organisations also provided their views on the position paper, including National House-Building Council, The Association of Residential Managing Agents and Association of British Insurers.

3.4.2. We asked two questions in the Position Statement. The first was about scope of the Building Safety regime, whether there should be a height threshold and what that should be. Responses were clear that a wider range of buildings should be included in the regime and it should not focus solely on high rise buildings only. Many responses also emphasised the need for risk based approach to safety which took other aspects into account such as building use and resident profile.

²¹ <https://services.parliament.uk/bills/2019-21/firesafety.html>.

²² <https://gov.wales/sites/default/files/publications/2020-06/building-safety-position-statement.pdf>

- 3.4.3. The second question was about regulation of the regime. Responses were clear that the new system of regulation needed to reduce the level of complexity and create a strong enforcement model that leaves no room for side stepping compliance. Respondents also highlighted the need for ensuring the system is supported by a focus on competency, capacity and strong networks, regardless of the regulatory model adopted.
- 3.4.4. During the intervening period we have been working with Local Authorities, FRAs and a range of other stakeholders to progress our thinking. This White Paper is the culmination of that policy development to date.
- 3.4.5. We intend to continue this constructive and ongoing dialogue to continue to refine our policy development ahead of legislative reforms. We would like to take this opportunity to thank all those that have contributed to date and look forward to working with colleagues further in the coming months.

3.5. *Wider Issues*

The Housing Health and Safety Rating System

- 3.5.1. [Part 1 of the Housing Act 2004](#) considers housing as a health issue²³. Under the Act, local housing authorities must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken including provision of renewal assistance as well as use of enforcement powers.
- 3.5.2. The [Housing Health and Safety Rating System](#) (HHSRS) is the regulatory tool which enables the Local Authority to use an evidence based system for assessing housing conditions to ensure houses are safe and do not pose a health risk to residents²⁴.
- 3.5.3. The HHSRS is a risk-based approach used to assess 29 possible hazards relating to 4 different requirements; physiological, psychological, protection against infection and protection against accidents. Local housing authorities assess risks to health and safety in the home by looking at the likelihood of particular faults or deficiencies, which could cause injury, ill health or impact on the wellbeing of those living in the dwelling.
- 3.5.4. This is calculated by using a prescribed methodology for calculating the seriousness of hazards (a risk of harm) which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur (including harm to someone's mental health).
- 3.5.5. We are working with the UK Government to consider the role of the HHSRS moving forward. A review into the current process commenced in November 2020 and we are working as part of a project board to consider the existing system and how it links with housing, health, and building safety law. The

²³ <https://www.legislation.gov.uk/ukpga/2004/34/part/1>

²⁴ <https://www.legislation.gov.uk/wsi/2006/1702/made>

review will focus on a number of key aspects including updating the guidance and resources that support professionals using the HHSRS through to exploring the introduction of standards and digital technology, along with reviewing hazards and simplifying HHSRS assessment reporting. Our participation in this review will inform further work ahead of legislative reforms and will help us as we continue to shape our building safety regime, our work on implementing the [Renting Homes \(Wales\) Act 2016](#) and work generally in relation to fitness for human habitation²⁵.

The Fire Safety Order

- 3.5.6. The concept of regulating fire safety in occupied premises first emerged in the 19th and early 20th centuries as part of the law on safety in factories and mines. This was enhanced in 1971 by the Fire Precautions Act, which required some types of premises to have a fire certificate, issued by the Fire and Rescue Authorities, for them to be lawfully used. The 1971 Act was accompanied by extensive codes and guidance setting out the specific steps building owners had to take to secure and retain such certification.
- 3.5.7. The 1971 Act applied to hotels and similar premises, and to business premises with more than 20 employees (or more than 10 if they worked above or below the ground floor). Its coverage was incrementally extended over the following 30 years, but it never applied to blocks of flats.
- 3.5.8. The [Regulatory Reform \(Fire Safety\) Order 2005](#) - the ‘Fire Safety Order’ (FSO), was a radical change to the law on fire safety when it was made²⁶. It repealed the 1971 Act and replaced it with a system which has the following distinctive features:
- It applies to almost all premises other than private dwellings on largely the same terms.²⁷
 - The “Responsible Person” (e.g. owner or employer) for each premises must address the main risks of fire by conducting and acting on a fire risk assessment.
 - There is little detail about the specific safety measures which need to be taken. The FSO stipulates objectives or purposes which must be attained in each premises (e.g. a safe means of escape from fire).
 - The Fire and Rescue Authorities have extensive powers to inspect premises and enforce compliance with the FSO. Ultimately this can mean

²⁵ <https://www.legislation.gov.uk/anaw/2016/1/contents/enacted>

²⁶ S.I. 2005/1541 <https://www.legislation.gov.uk/ukSI/2005/1541/contents/made>

²⁷ It also does not apply to some other locations which are only debatably “premises”, such as oil rigs, ships and mines. See art.6 of the FSO.

prohibiting the use of the premises, or prosecuting the responsible person or those acting on the responsible person's behalf.

3.5.9. Unlike preceding legislation, the FSO applies to parts of a typical block of flats. Private dwellings – i.e. the flats themselves – are expressly excluded by Art.6(1)(a) of the FSO, but the other parts of a block to which all residents and visitors have access – hallways, stairwells, landings, lifts, walkways and so on – are covered. These are widely referred to as “common areas”.

3.5.10. While the FSO regulates fire safety in blocks of flats for the first time, the way it does so is unsatisfactory. Many of the problems stem from the fact that, like the preceding legislation, the FSO was designed to apply to workplaces, not residential buildings. Fire safety in workplaces is of course important, and we believe the FSO remains an effective means of ensuring and regulating it. But we believe a new and different regime is needed to ensure fire safety in residential blocks:

- A fire is much more likely to happen in an occupied flat, where there are ready sources of ignition (like cookers) and much combustible material (like furniture), than in a common area, where there is usually neither. Yet the FSO covers only common areas, not flats.
- This means the FSO does not fully address fire prevention in a block of flats. In practice, it is concerned largely with fire protection only (i.e. protecting people and allowing them to escape safely if a fire breaks out). However, it is far better to prevent fires from happening in the first place.
- The FSO does not clearly establish whether the boundary between a flat and a common area (i.e. the boundary wall and the front door) is covered by the FSO. Yet we know that installing and properly maintaining fire doors in these locations is critical to preventing the spread of fire and allowing a safe escape.
- The FSO does not apply to the external walls and roof of a block of flats, as they are part of the dwellings, not the common areas. The Grenfell Tower tragedy showed that fire can spread rapidly across the exterior of a block of flats, if unsuitable materials and construction techniques are used.
- The FSO defines the responsible person in a workplace simply as the employer. The identity of employers is often obvious. However, in non-workplaces like a block of flats, the definition is much more complex. In practice, it may mean the freeholder, landlord, managing agent, maintenance contractor, leaseholders' association or any combination of them. So identifying who is responsible for fire safety, and ensuring they discharge those responsibilities, is often far from easy.

- The FSO contains specific duties relating to workplace fire hazards like the storage of dangerous chemicals. But it says nothing about particular hazards in blocks of flats, such as breaches of compartmentation²⁸.
- The FSO requires employers to provide training and fire safety information to employees, but it does not require landlords or similar to provide any information to residents, or otherwise to engage with them.

- 3.5.11. Fires in blocks of flats are generally much more dangerous than those in workplaces. This is unsurprising. Many workplaces lack significant sources of a potentially dangerous fire, and have staff available during working hours to raise the alarm and supervise an evacuation. By contrast, people in their own homes may be unable safely to escape from a fire if they have mobility or sensory impairments, if they have substance misuse problems, or most simply if they are asleep when it breaks out.
- 3.5.12. At present, the FSO deals wholly with the risks arising from fire. While that might seem self-evident, far more people are killed or harmed by smoke and other noxious gases emitted by a fire, than by the fire itself; and it is not clear whether the FSO also embraces these risks. We will therefore propose that, for the purposes of the new regime, the term “fire” includes heat generated by a fire, and smoke and other noxious gases emitted by it.
- 3.5.13. The workplace focus of the FSO means we think it is likely that a new Building Safety Regime will need to be designed, separately from the FSO. Meaning the FSO would remain for workplaces, but it would no longer apply to dwellings.

²⁸ Compartmentation is the capacity of a building structure to contain a fire in the room or flat in which it originated, so that it can be extinguished before it can spread. It relies on walls, floors, doors and windows being constructed and maintained to appropriate standards. Effective compartmentation is vital to fire safety in a block of flats, and we explain this more fully in section 2.11.

4. An improved building safety regime – first steps

4.1. *An Overview*

4.1.1. The White Paper sets out the policy goals our programme of work is intended to deliver. The proposals contained within this White Paper respond to the problems found by the [Hackitt Review](#)²⁹. However the scale of the problem is very different; in England there are over 12,000 high rise residential buildings, in Wales we have approximately 148. Some proposals, particularly those relating to the occupation phase, will need primary legislation to be taken through the Senedd. However, the publication of the [draft Building Safety Bill](#) by the UK Government, has presented an opportunity to take earlier action in our efforts to respond to the need to modernise both the building control system and the way the construction industry discharges its responsibilities³⁰.

4.1.2. Devolution of functions relating to Building Regulations (which are made under the [Building Act 1984](#)³¹) was conferred on Welsh Ministers in 2012. Since then changes taken forward in Wales have largely dealt with technical aspects of the regulations e.g. the changes to energy conservation (Part L) and the introduction of residential fire suppression systems, commonly referred to as 'sprinklers'. It remains the case therefore that currently the building control system for England and Wales are still largely the same.

4.2. *Using the UK Government's draft Building Safety Bill*

4.2.1. The proposed changes to the core primary legislation, the [Building Act 1984](#),³² that the UK draft Bill proposes could, with some adjustment, provide the necessary tools with which Welsh Ministers would be able to modernise the regulation of the design and construction process in Wales. We have therefore been developing in conjunction with the Ministry for Housing, Communities and Local Government (MHCLG) the extension of elements of the draft Bill to Wales ahead of its introduction in Parliament.

4.2.2. An overview of the areas being considered for the draft Bill are set out briefly below for information. Further details of the policy objectives we would intend the draft Bill to deliver for Wales are set out in section 6 of this document. Given the devolved nature of the [Building Act 1984](#) and related building regulations, final proposals to extend the draft Bill to Wales means that it would be likely to be the subject of a Legislative Consent Motion which would

²⁹ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

³⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906737/Draft_Building_Safety_Bill_Web_Accessible.pdf

³¹ <https://www.legislation.gov.uk/ukpga/1984/55> <https://www.legislation.gov.uk/ukpga/1984/55>

³² <https://www.legislation.gov.uk/ukpga/1984/55>

be laid before the Senedd following the draft Bill's introduction to Parliament³³.

- 4.2.3. Within the English proposals, the Health and Safety Executive (HSE) will be undertaking the role of regulator for residential buildings over 18m. This will include implementing the more stringent building regulations regulatory regime for these buildings and overseeing the competence and performance of building control bodies. We would not intend to follow this regulatory model. Section 10 sets out our current thinking with regards to the regulatory model for Wales. However in bringing forward changes we would intend to extend the current role of Local Authority building control to cover the additional regulatory regime for higher risk buildings.³⁴ We would intend that Local Authorities will be responsible for building regulations functions under the regime for new, and the refurbishment of, higher risk buildings.
- 4.2.4. The legislative changes we are considering for the UK draft Bill would also seek to resolve situations where there is a conflict of interest, for example where a Local Authority are developing a higher risk building development in their area, but also acting as the building's control body. In these situations, Welsh Ministers would be able to nominate another Local Authority to undertake the building control body work.
- 4.2.5. The Bill as currently drafted also includes provisions for new enforcement powers available to the Local Authorities through extended timescales within which to take enforcement action together with powers to issue compliance and stop notices.
- 4.2.6. The new regulatory regime would seek to introduce new procedures and requirements for higher-risk buildings as they are designed and built, and for building work carried out on them. Higher-risk buildings will go through the Gateway process (section 6.4 refers), and proposals for building work on existing higher-risk buildings will go through the refurbishment process, each of which will be laid out in building regulations
- 4.2.7. We would want the extension of the draft Bill to Wales to allow for the introduction of a dutyholder regime (section 6.3 refers). This is based on the principle that the person or entity that creates a building safety risk should, as far as possible, be responsible for managing that risk. This will enable regulations to be made setting out the appointments required when building regulations apply, and the duties which will be imposed. This will regulate and hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings, including requirements for dutyholders to cooperate and share information and to ensure compliance

³³ <https://www.legislation.gov.uk/ukpga/1984/55>

³⁴ These buildings will be 18m or more in height or more than 6 storeys and contain two or more dwellings.

with building regulations. The aspects of the dutyholder regime will be set out in secondary legislation.

- 4.2.8. We would intend that the draft Bill as applied to Wales would also provide for Welsh Minister's functions in relation to setting operational standards for the performance of Local Authorities and Building Control Approvers (this replaces the current term for Approved Inspectors). This will include collecting relevant data at specified times or intervals relating to their building control function. This will also include, where necessary, being able to impose sanctions where there is evidence of poor performance.
- 4.2.9. We would also aim to introduce requirements to improve competence levels and accountability into the building control sector by creating a unified professional and regulatory structure for building control. These proposals include establishing and maintaining a register of building inspectors (individuals) which will be common across the public and private sector of building control. Welsh Ministers will also cooperate with industry on improving competence within their areas. We will also seek to establish new registration requirements for building control approvers, an application procedure which will include restriction as to the type of work to be registered, conditions and for Welsh Ministers to set in regulations, and the length of registration.
- 4.2.10. The draft Bill as applied to Wales would provide for general improvements to the [Building Act 1984](#) in relation to setting insurance requirements by Welsh Ministers or a body designated by Welsh Ministers, for the giving and acceptance of initial notices, the serving of new initial notices and cancelling initial notices³⁵.

³⁵ <https://www.legislation.gov.uk/ukpga/1984/55>

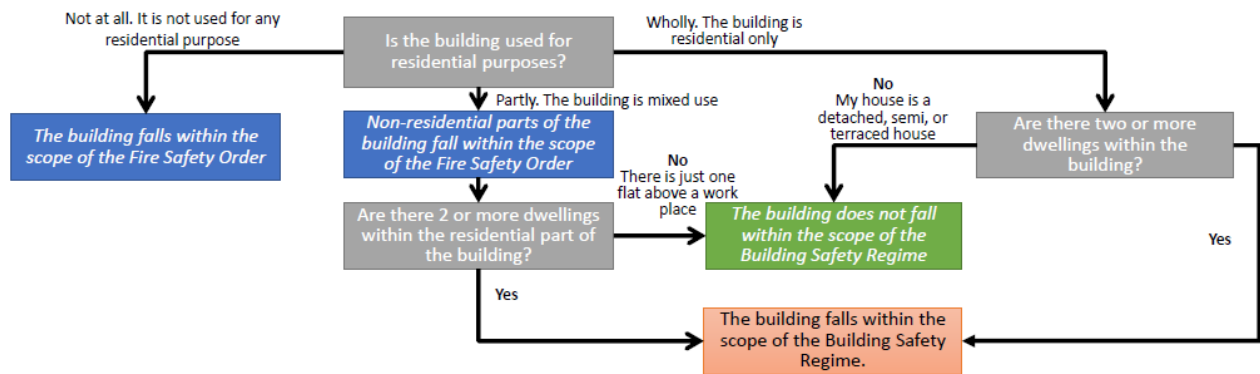
5. Setting out the Scope of the Building Safety Regime

5.1. *Principles of Reform*

- 5.1.1. Our [Position Paper](#) set out our initial thinking on proposed reforms³⁶. Subsequently, following feedback and discussions with stakeholders, we intend to clarify our approach under a single Building Safety Regime that will apply to all buildings where there are two or more dwellings.
- 5.1.2. The principles of the reforms proposed for buildings within scope of this White Paper are consistent:
- There will be clarity with regards to those who are responsible for safety in multi-occupied residential buildings, throughout the lifecycle of the building, from design, through construction and during occupation. They will be required to address the distinctive risks of fire and reduce the risk where possible, making people's homes as safe as is possible.
 - These roles and responsibilities will be robust and readily understood. For those that choose to ignore their obligations there will be robust and timely enforcement action from regulators.
 - Residents have an active role in contributing to building safety. They should be clear about the part they play.
- 5.1.3. We propose that the scope of the Building Safety Regime covers all multi-occupied residential buildings. This is because many of the risks to safety are broadly the same regardless of the size of the building. By multi-occupied residential building we mean any building where there are two or more dwellings, regardless of whether there is a shared front door to the building. This means that the scope of the regime would capture a house converted into two flats, a licensed HMO through to a high-rise apartment block. The flow chart below helps to identify those buildings within the scope of the reforms proposed in this White Paper.

³⁶ <https://gov.wales/sites/default/files/publications/2020-06/building-safety-position-statement.pdf>

5.1.4. *Figure 3: Identifying Buildings within the Scope of the Building Safety Regime*



5.1.5. The requirements that are placed on those buildings within scope will differ depending on which category the building falls within. It is our intention that the legislation would allow for definition of these categories to change should further evidence emerge in relation to risk.

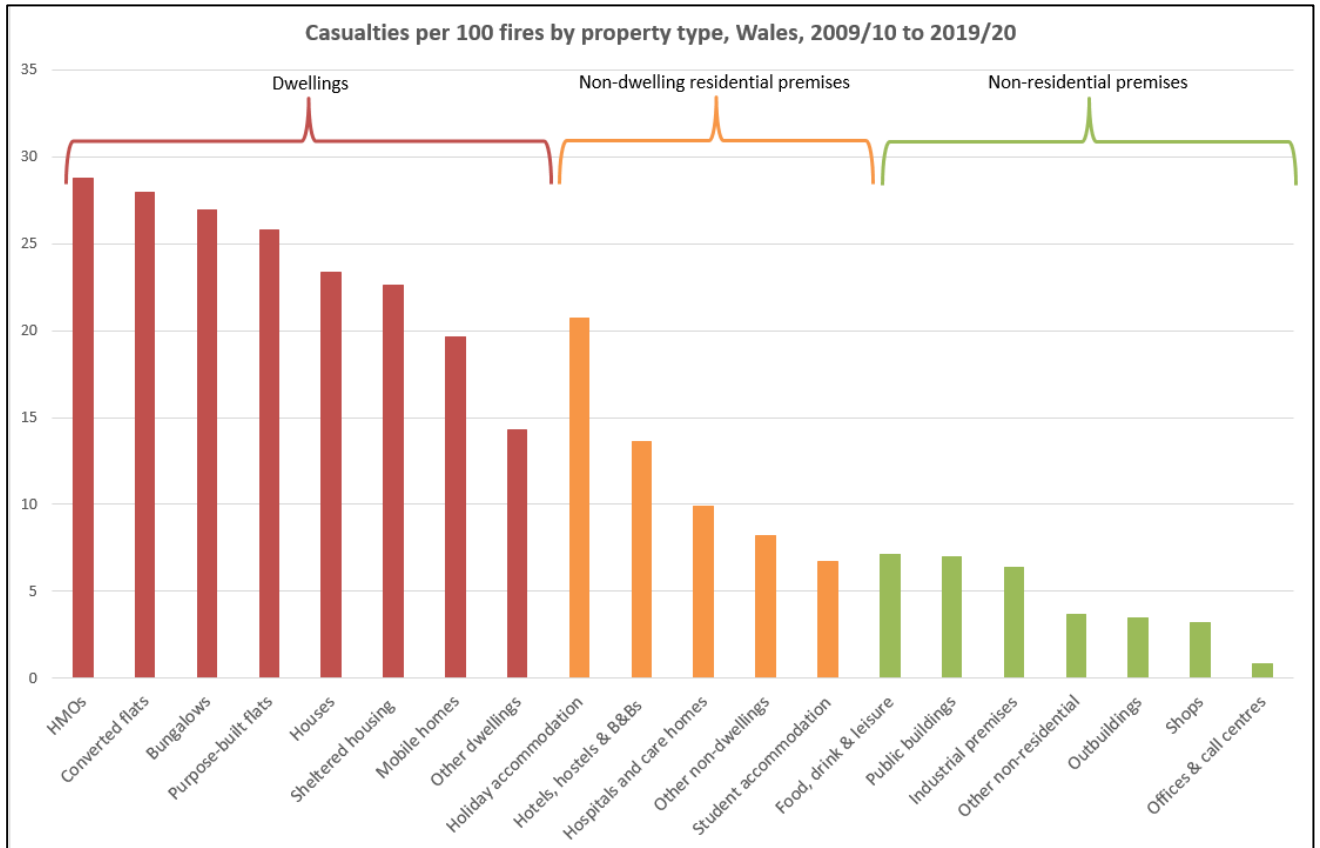
Q 1. *Do you agree that the Building Safety Regime in Wales should apply to all multi-occupied residential buildings with two or more dwellings? Please support your view.*

5.2. *Building Safety Categories*

5.2.1. For those residential properties that fall within the scope of the Building Safety Regime we have considered how best to ensure that there is a balance of requirement versus risk. We know that, statistically, casualties as a result of fires are proportionately more likely to occur in HMOs and buildings converted into flats; but Grenfell demonstrates that where a fire occurs in a high rise block of flats the results can be devastating. Our proposals attempt to reconcile this data.

5.2.2. Fires in the home are generally much more dangerous than those in workplaces. As the graph below shows, over the past 10 years there have been around 29 casualties per 100 fires in HMOs in Wales and 26 per 100 fires in purpose-built blocks of flats, compared to 11 casualties per 100 fires in hospitals and care homes, 6 per 100 fires in industrial premises, and 1 per 100 fires in offices and call centres.

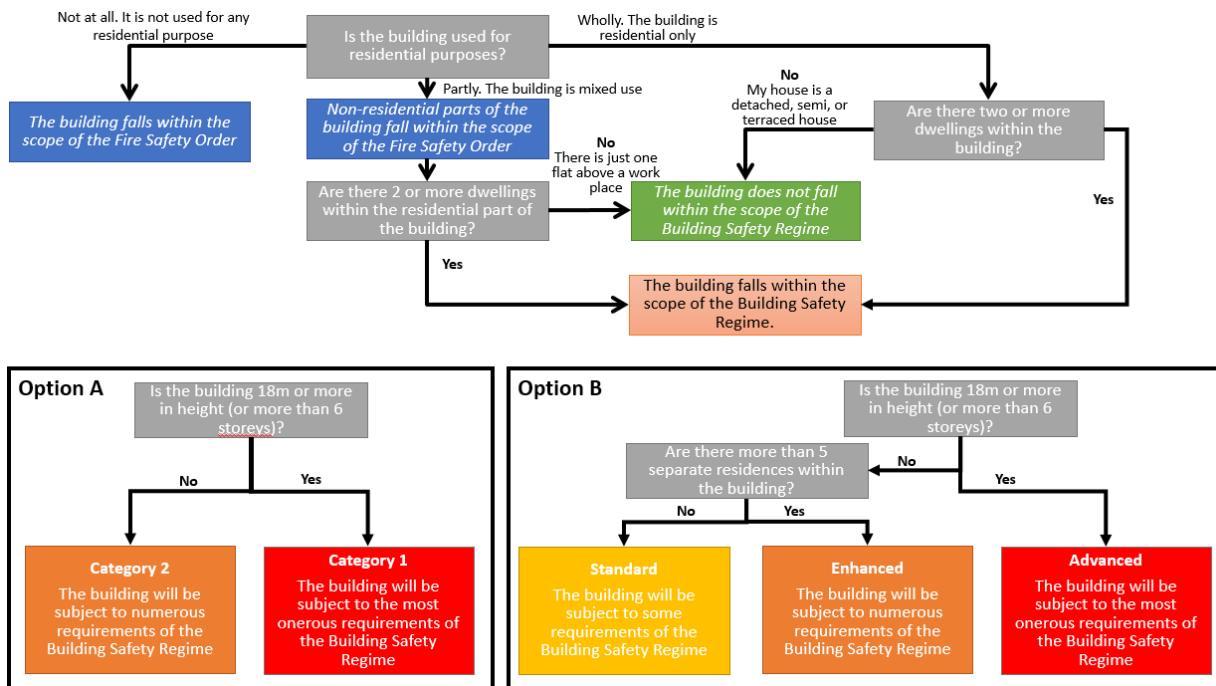
5.2.3. *Figure 4: Fire Casualty Statistics*



5.2.4. This is unsurprising. Many workplaces lack significant sources of a potentially dangerous fire (such as cookers and soft furnishings), and have staff available during working hours to raise the alarm and supervise an evacuation. They are also more likely to be fitted with fire suppression systems such as sprinklers. By contrast, people in their own homes may be unable to safely escape from a fire if they have mobility or sensory impairments, if they have substance misuse problems, or most simply if they are asleep when it breaks out. And as we noted above, fires in blocks of flats present particular challenges of their own.

5.2.5. We have identified two potential options for the scope of these reforms. Option A identifies two categories of risk. Option B identifies three categories. Depending on the category, our reforms propose different levels of requirements.

5.2.6. *Figure 5: Building Safety Regime – Proposed Categories*



5.2.7. Regardless of the number of categories, we propose that all buildings within the scope of the regime would as a minimum:

- have to be registered - a process which would clearly identify the Accountable Person (section 7.12 refers);
- have to have an annual fire risk assessment undertaken by a suitably qualified person; and
- have to record the fire risk assessment and the actions taken in light of it.

5.3. *Option A: Two Categories of Risk*

5.3.1. Below is an indication of the types of buildings that would fall within these categories:

- Category 1 – these building will be subject to the most onerous requirements of the Building Safety Regime. These buildings will be 18m or more in height or more than 6 storeys and contain two or more dwellings³⁷. For example a 7 storey block of flats used for student accommodation; or an 8 storey block of leasehold properties; or a mixed use 13 storey building with 4 floors of flats.

³⁷ A 'Category 1 building is measured as a building with a storey (not including roof-top plant areas or any storey consisting exclusively of plant rooms) at least 18 metres above ground level, where height is measured from the lowest ground level adjoining the outside of a building to the top of the floor surface of the highest storey.

- Category 2 - these buildings will be subject to numerous requirements of the Building Safety Regime. These buildings will be residential properties with two or more dwellings that are no more than 18m in height. For example this category could range from a house converted into two flats; a licensed HMO; to a 5 storey purpose built block of flats; or 4 storey office block converted into flats.

5.4. *Option B: Three Categories of Risk*

5.4.1. Below is an indication of the types of buildings that might fall within these categories:

- Advanced – these buildings will be subject to the most onerous requirements of the Building Safety Regime. These buildings will be 18m or more in height or more than 6 storeys and contain two or more dwellings. For example a 7 storey block of flats used for student accommodation; or an 8 storey block of leasehold properties; or a mixed use 13 storey building with four floors of flats.
- Enhanced - these buildings will be subject to numerous requirements of the Building Safety Regime. These buildings will be properties with four or more dwellings and that is no more than 18m in height. For example this category could range from a house converted into seven flats; a licensed HMO with six bedrooms; a 5 storey purpose built block of flats; or a 4 storey office block converted into flats.
- Standard – these buildings will be subject to the least onerous requirements of the Building Safety Regime. These buildings will be properties with 5 or fewer dwellings within a single property, for example a house that has been converted into two flats, or a licensed HMO with 5 bedrooms.

5.5. *Exceptions*

5.5.1. Regardless of which category a residential building would fall into, there are a number of situations where a property would fall outside of the scope of the Building Safety Regime, for example they are already covered by the [Regulatory Reform \(Fire Safety\) Order 2005](#)³⁸. The list below gives an indication of our current thinking. We are seeking views on whether there should be any other exemptions.

5.5.2. In particular, our proposals would mean that single flats above commercial premises (like shops or pubs) would not be covered, as there is only one dwelling in the premises. However, we know that the risk to residents of these properties can be very high if the commercial premises themselves are high risk, such as restaurants and takeaways. While the proposals we make in this White Paper would generally not be relevant to single flats, we are

³⁸ <https://www.legislation.gov.uk/ukxi/2005/1541/contents/made>

seeking views on whether the FSO should be strengthened in other ways so as to improve fire safety in such premises. It might, for instance, be possible to treat the flat as part of the commercial premises, especially if staff of the latter live there.

5.5.3. *Figure 6: Building Types and Scope*

Building Type	
Buildings with two or more dwellings (flats/ maisonettes) – this would include purpose built student accommodation	In scope
Licensed HMOs	In scope
Individual dwellings (detached, semi-detached, terrace, park homes etc.)	Out of scope
Onsite accommodation provided for employees to fulfil their roles (e.g. for on-call doctors/ nurses/ carers)	Out of scope
Care Homes	Out of scope
Hospitals (includes hospices and other patient accommodation)	Out of scope
Military Barracks (includes other MoD owned accommodation)	Out of scope
Prisons and other custodial facilities	Out of scope
Hotels (includes BnBs, guesthouses, hostels, accommodation at members clubs, self-catering holiday accommodation, serviced apartments, etc)	Out of scope

5.6. *Welsh Government Position*

5.6.1. The Welsh Government believes that “Option A: Two Risk Categories” is the most appropriate response in order to address the issues of fire and building safety. This is because the highest risk of casualties from fire is statically proven to be in what are generally the smallest properties, i.e. HMOs and converted flats.

5.6.2. We recognise that there may be some additional burdens placed on those responsible for maintaining Category 2 buildings. However we consider that this burden is appropriate given the risks to residents and the need to mitigate these risks effectively.

5.6.3. The White Paper has been set out based on the assumption of two categories of risk. However, annex 2 sets out some detail on Option B: Three Risk Categories.

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

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

- Q 4. *Do you agree with the proposed scope of Category 2 buildings? Please support your view.*
- Q 5. *Do you agree that licensed HMOs should be included within the scope of the Building Safety Regime?*
- Q 6. *Do you agree with the exemptions as set out at Figure 6? Are there any other categories of building that should be included within the scope of the regime during occupation? Please support views*
- Q 7. *Do you think that any extra measures should be taken as regards single flats above high-risk premises like restaurants and takeaways? Please support your views.*
- Q 8. *Do you have any other comments on the issues we have raised in this section?*

6. The Building Safety Regime (Design and Construction Phase)

We have been working with the UK Government to consider how parts of the [draft Building Safety Bill](#), in relation to design and construction, will apply in Wales.³⁹ This section sets out the objectives we intend to deliver for Wales as a result of the draft Building Safety Bill where it applies to Wales. Whilst comments are invited, the content of the draft Bill as amended to apply to Wales, has yet to be published. The draft Bill, when introduced, will be subject to the full parliamentary scrutiny process. Much of the detail of the new regulatory regime will be addressed through secondary legislation which will be the subject of public consultation in due course.

6.1. Introduction

- 6.1.1. The [Hackitt Review](#)⁴⁰ and our own [Building Safety Expert Group](#)⁴¹ were clear; for those buildings that are considered to be higher risk there must be more stringent controls in place during their design and construction. This includes clearly identified dutyholder roles and clarity in relation to those responsibilities, as well as an enhanced programme of checks (supported by documentation) to support evidence of compliance with relevant regulations.
- 6.1.2. A clearer focus on accountability over the whole life cycle of buildings in scope is at the heart of the Building Safety Regime. This section focuses on that accountability during the design and construction phase.
- 6.1.3. Currently, the duties under building regulations are vested in the person undertaking building work. However, it can be unclear in practice who fulfils those duties and subsequently accountability is not always clear. To address this, the [Hackitt Review](#)⁴² recommended the creation of a system of dutyholders – people involved in the design, construction and management of buildings in scope, who have clear responsibilities at each and every stage of the building's life. The Review also proposed a number of gateways within the design and construction phase for higher risk buildings where dutyholders would need to satisfy a set of robust criteria to be able to move onto the next stage of construction or occupation. Together, they form a robust and challenging set of responsibilities that will keep people safe by providing a focus on building safety, ensuring that safety is 'built in'. Our Building Safety Expert Group agreed that these recommendations should be taken forward.

³⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906737/Draft_Building_Safety_Bill_Web_Accessible.pdf

⁴⁰ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

⁴¹ https://gov.wales/sites/default/files/publications/2019-04/building-safety-expert-group-road-map_0.pdf

⁴² <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

- 6.1.4. The [Hackitt Review](#)⁴³ identified that there was a conflict of interest with regards to developers choosing their own provider for building control services. It is our intention that for Category 1 buildings, the UK Government's draft Bill as applied to Wales will remove the element of choice of building control provider⁴⁴. The Local Authority would therefore provide the Building Control function for all buildings 18m or more in height or more than 6 storeys and which contain two or more dwellings. Where there are capacity issues within a Local Authority area, that service could be provided by another Welsh Local Authority, this might be done by a neighbouring Authority or consideration could be given to establishing regional arrangements. Alternatively, the Local Authority could subcontract this work to an appropriate Approved Inspector to deliver on behalf of the Local Authority.
- 6.1.5. There is also a conflict where the Local Authority is the building control body for its own developments. Therefore, for Category 1 buildings the UK Government's draft Bill proposes that in circumstances where a Local Authority is a dutyholder, for example where it is developing a site for residential use, then building control function will have to be provided by another Welsh Local Authority.

6.2. *Golden Thread*

- 6.2.1. We agree with the recommendations of the [Hackitt Review](#)⁴⁵ that information is critical to the ongoing safety of buildings. The 'Golden Thread' of up-to-date information about the design, construction and ongoing maintenance of buildings that are classed as Category 1 is a key aspect of supporting their long term safety. The Golden Thread is a living record of the building, it will support the gateway process as well as the ongoing management of the building. It will be kept in digital form to ensure that those who need it most are able to access the information quickly and easily.
- 6.2.2. The principles of the Golden Thread are:
- a) Information is accurate and up-to-date – dutyholders will be required to collect, store and update data and information in a consistent way⁴⁶.
 - b) Allows relevant dutyholders to use this information to inform their decisions, plans and actions.

⁴³ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

⁴⁴ The draft Building Safety Bill uses the term 'higher risk'. This is equivalent to describe in scope buildings (18m+). In Wales, these same buildings will be our proposals for Category 1 buildings. (18m or more in height or more than 6 storeys with two or more dwellings)

⁴⁵ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

⁴⁶ Building Information Modelling (BIM) standards are currently being considered as the preferred method of data capture.

c) Provides reassurance to those with an interest in the building (whether that is residents, those managing the building, regulators or lenders) that information is available to those managing the building to make timely and effective decisions in relation to building safety.

d) Information supports openness and transparency

6.2.3. The Golden Thread will be a comprehensive source of information for those working on and managing buildings. We firmly believe there are benefits in adopting a consistent approach with that proposed for England. We will therefore work with the UK Government Ministry of Housing Communities and Local Government (MHCLG) on the data requirements, format and technology to be adopted in building and maintaining the Golden Thread.

Key Dataset

6.2.4. Whilst it is critical that this Golden Thread of information is shared with dutyholders to support management and decision making, this level of information will not be relevant or necessary for the general public or even residents of Category 1 buildings. We do however recognise that some basic information is helpful as a public record. This information will be defined within the Key Dataset, which is a small subset of the Golden Thread.

6.2.5. A Golden Thread will be required (either to be produced for existing buildings or created for new ones) for all Category 1 buildings, this is not the case for other buildings within the scope of the Building Safety Regime. For Category 2 buildings, we would anticipate the key dataset being a minimum level of information collected as part of the registration process for occupation.

6.2.6. We will work with MHCLG to identify a consistent approach to the key dataset. We anticipate this information being:

- Unique building identifier (as created by the Local Authority)
- Location (address)
- Size (e.g. height, storeys, footprint, number of dwellings);
- Building type/purpose
- Years built and refurbished
- Minimal information (e.g. quantity and location) on safety-related features (e.g. fire doors, sprinkler systems). For Category 2 buildings this could be basic information on floor layouts and fire doors. For Category 1 buildings this would be information on the physical layers of protection that form part of an integrated safety strategy for the building.

6.2.7. In addition, for Category 1 buildings the key dataset will include:

- Façade and structure information
- Dates and outcomes of gateway points and Safety Case reviews

- Current and past dutyholders, including accountable persons.

6.2.8. The key dataset will be open and accessible. It will not contain information that would compromise the safety of buildings and their residents, or the privacy of residents or relevant intellectual property rights. By contrast, the rest of the Golden Thread would not be made publically available, although residents would be able to request more detailed information about safety measures for their building (section 8 sets out more information on residents).

Golden Thread during Design and Construction

6.2.9. In the design and construction stage, the content of the Golden Thread will consist of the information and data collected as the building passes through the gateway points. This includes the Fire Statement, Full Plans, a digital model of the building, a Fire and Emergency File and the Construction Control Plan. This information must be handed over (in a format that is useable) to the Accountable Person when the building is occupied to allow the information to be used to manage the building, this includes the creation of a Safety Case.

Golden Thread during Occupation

6.2.10. For new buildings the majority of this information will be 'handed over' to the Accountable Person as the building is occupied. For existing buildings this will be a more challenging ask as information may be limited. As a minimum we would expect Accountable Persons of existing buildings to develop a digital model of the building, and produce as comprehensive as practicable plans of the building. This, along with information gathered through survey work, fire risk assessments and other works should inform the creation of a Safety Case to allow the building to be managed safely.

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

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

6.3. *Dutyholders during Design and Construction*

6.3.1. We are also working with the UK Government to ensure consistency with the approach to dutyholders. It is our intention that the application to Wales of the

UK Government's [draft Building Safety Bill](#) will provide the necessary powers to set dutyholder roles and responsibilities⁴⁷.

6.3.2. We therefore propose five dutyholder roles for buildings in scope during the design and construction phase with clear safety responsibilities that are set out in law: Client; Principal Designer; Principal Contractor; Designer; and Contractor. The powers will enable key responsibilities for each of these roles to be set, drawing on the approach of the Construction (Design and Management) Regulations 2015 (CDM). The draft Bill will also provide powers to set detailed proposals for the intended three gateway points at which the dutyholder will need to demonstrate that they are managing building safety risks appropriately in order to progress to the next stage of development.

6.3.3. These roles are:

- a) **Client** - Any person for whom a construction project is carried out as part of their business;
- b) **Principal Designer** - A designer appointed by the Client to control, plan, manage, coordinate and monitor the pre-construction phase, when most design work is carried out;
- c) **Principal Contractor** - A contractor appointed by the Client to plan, manage co-ordinate and monitor the construction phase;
- d) **Designer** - Any person who carries on a trade, business or other undertaking in connection with which they:
 - i. prepare or modify a design, or
 - ii. arrange for, or instruct any person under their control (including, where the person is an employer, any employee) to prepare or modify a design;
- e) **Contractor** - Any person who in the course of furtherance of a business carries out, manages or controls construction work (e.g. building, altering, maintaining or demolishing a building or structure). Anyone who manages this work or directly employs or engages construction workers is a contractor.

6.3.4. Dutyholder roles can be fulfilled by either an individual (defined legally as a 'natural person') or a legal entity. Where this is discharged by a legal entity, there must be a single accountable person at board level who can be identified as having responsibility for building safety.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/906737/Draft_Building_Safety_Bill_Web_Accessible.pdf

- 6.3.5. Dutyholder requirements will reflect the complexity of the project. Those buildings classed as Category 1 will require the Client, Principal Designer and Principal Contractor to have a key role in delivering compliance in the design and construction phase including the management of change during the construction process and the development of comprehensive information and documentation through the Golden Thread requirements. Those construction projects that are less complex would have to evidence that they have considered fire and building safety in a 'lighter touch' way. All dutyholders in design and construction of buildings will be given a clear duty to support the development of safer buildings. This will be set out in guidance.
- 6.3.6. We believe that all dutyholders in the design and construction phase should be required to do the following:
- a) Co-operate and share information with the building control body;
 - b) Ensure compliance with building regulations. While this duty already exists within legislation we would make clear that dutyholders are accountable as follows:
 - i. for Clients, making suitable arrangements to ensure that construction work can be carried out, so far as is reasonably practicable, in accordance with the Building Regulations;
 - ii. for Principal Designers, to ensure that, when preparing or modifying a design the designer must take into account the Building Regulations;
 - iii. for Principal Contractors, so far as is reasonably practicable, construction work is carried out in accordance with the Building Regulations;
 - c) Comply with specific regulatory requirements imposed upon them, for example the Category 1 requirements if the building falls within the scope of the Building Safety Regime;
 - d) Ensure they and the people they employ are competent (have the necessary skills, knowledge, expertise and behaviours) and only undertake work they are competent to do.
- 6.3.7. Critical to regulatory process will be a robust and challenging relationship between the dutyholder and the building control body. Dutyholders must demonstrate that they are complying with relevant Building Regulations; that is clear. The building control body must offer constructive and robust challenge, seeking clear and unequivocal evidence that fire and structural safety has been designed into buildings and delivered on site.

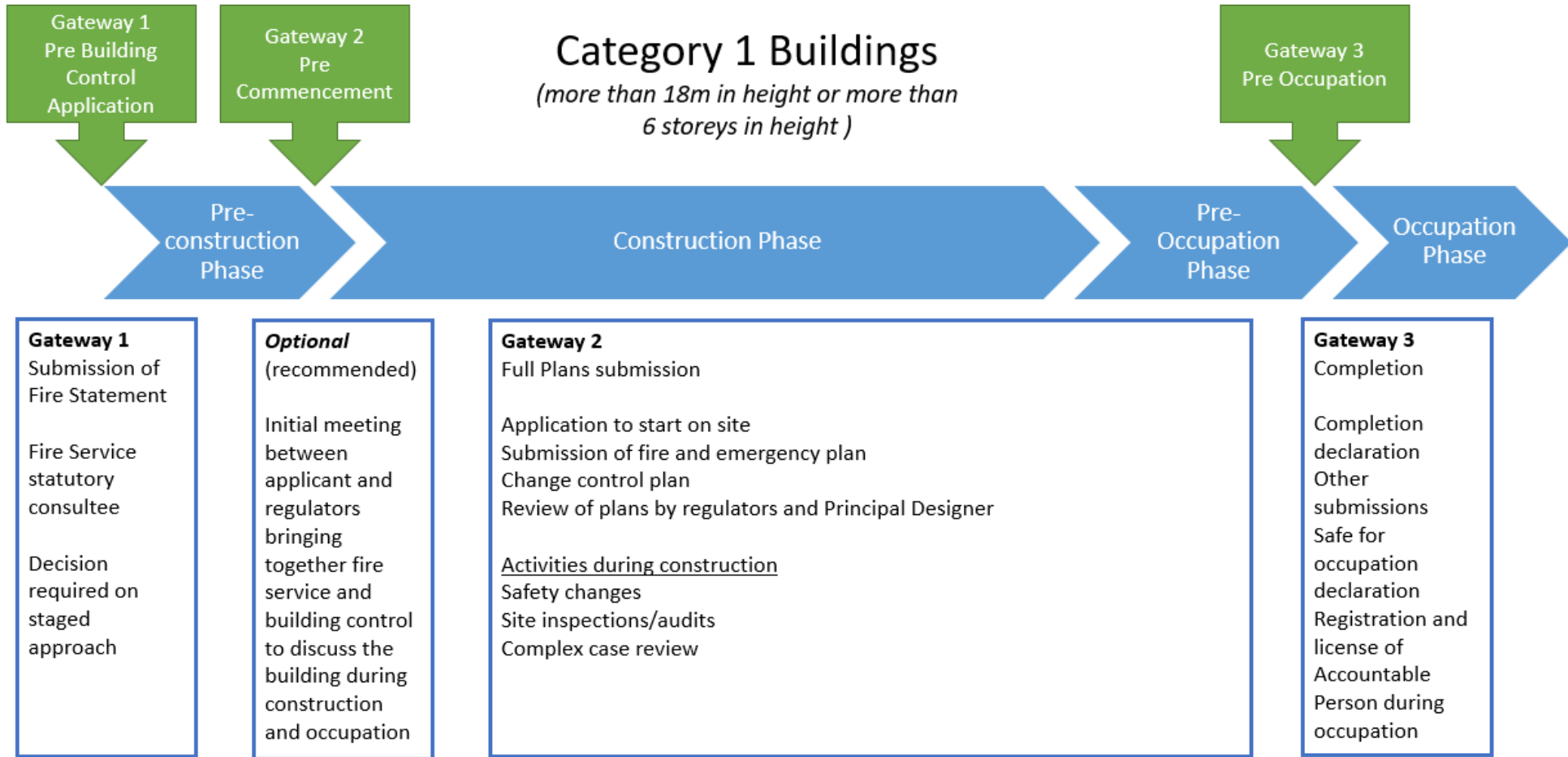
- Q 11. *Do you agree that the broad duties set out are appropriate?*
- Q 12. *Are there any additional duties we should include? Please support your views*
- Q 13. *Do you agree that there should be a named individual identified where the dutyholder is a legal entity? Please support your views.*

6.4. *Gateways and Building Control Bodies*

- 6.4.1. The [Hackitt Review](#)⁴⁸ made clear that there needed to be a greater focus on dutyholders demonstrating they are managing building safety risks appropriately. Our own Expert Group supported this view and were keen to see 'hard' stops in the system where work cannot continue without evidence that building safety is being appropriately managed. Ensuring that building safety issues are considered as an integral part of the lifecycle process is critical to building fire and structural safety into high rise buildings.
- 6.4.2. The UK Government's draft Bill includes powers to introduce three Gateway points in Wales. Gateway One occurs before planning permission is granted, Gateway Two the approval of building control plans before construction begins and Gateway Three before the building's occupation. The diagram below sets out a high level overview of the process.

⁴⁸ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

Figure 7: Overview of Gateways



- 6.4.3. The Hackitt Review identified that there was a conflict of interest as a result of developers choosing their own provider for building control services. For Category 1 buildings the draft Bill proposes to remove the element of choice with regards to building control. The Local Authority will provide the Building Control for all residential buildings 18m or more in height or more than 6 storeys. Where there are capacity issues within a Local Authority area that service could be provided by another Welsh Local Authority; this might be done by a neighbouring Authority or consideration could be given to establishing regional arrangements. Alternatively the Local Authority could utilise the services of an appropriate Approved Inspector in delivering its building control function.
- 6.4.4. There could also be a potential conflict where the Local Authority is the building control body for its own developments. Therefore, for Category 1 buildings the draft Bill proposes that in circumstances where a Local Authority is a dutyholder, for example where it is developing a site for residential use, then building control services will have to be provided by another Welsh Local Authority.

Gateway One– before planning permission is granted

- 6.4.5. The [Hackitt Review](#)⁴⁹ and our own [Building Safety Expert Group](#)⁵⁰ supported the establishment of a gateway as part of the planning permission process. This is the earliest opportunity for fire safety issues to be considered. The key aspects at this early stage in the lifecycle are whether the Fire and Rescue Authority will be able to access the building and whether there are adequate water supplies in the event of a fire.
- 6.4.6. We propose to apply Gateway One to Category 1 residential buildings and estimate that this gateway would apply to an average of four to five buildings per year. We propose that Gateway One focuses on fire and rescue service vehicle access and access to water supplies as the safety issues relevant to land use and the planning process. We propose the following actions are established for Category 1 buildings at Gateway One.

LDP preparation

- 6.4.7. As Wales has a “plan led” planning system, proposals for major residential development are considered during the preparation of the Local Development Plan (LDP). Fire safety issues, in particular, the availability of water is an issue which can significantly affect the location and density of residential developments. Therefore we expect developers promoting

⁴⁹ <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

⁵⁰ https://gov.wales/sites/default/files/publications/2019-04/building-safety-expert-group-road-map_0.pdf

sites which are likely to accommodate Category 1 residential buildings to have engaged with the fire and rescue service, water supplier and local planning authority on their fire water requirements during the preparation of the LDP.

- 6.4.8. Fire and Rescue Authorities should already be consulted during plan preparation as set out in Welsh Government guidance ([Development Plans Manual \(Edition 3\)](#))⁵¹. We are interested, however, in whether these existing arrangements are effective and whether the local planning authority should be required by law to consult the Fire and Rescue Authority to ensure fire safety issues related to land use are considered at the earliest opportunity. This would involve making Fire and Rescue Authorities “specific consultation bodies” as defined by the [Town and Country Planning \(Local Development Plan\) \(Wales\) Regulations 2005](#)⁵².

Development management process

- 6.4.9. We have already consulted on a proposal to make Fire and Rescue Authorities statutory consultees during the development management process for all planning applications which relate to ‘major developments’. That covers a wide range of potential developments, including but not limited to all developments which would provide ten or more houses, flats or rooms providing sleeping accommodation. We aim to legislate to this effect during 2021.
- 6.4.10. As statutory consultees for proposed planning applications, the fire and rescue services will be able to advise local planning authorities on whether availability of water, access for appliances and emergency evacuation points have been successfully incorporated into the design of developments. We anticipate they can do this by considering the application form, accompanying plans and supporting documents.
- 6.4.11. In addition, for Category 1 buildings we are now proposing that a Fire Statement is prepared if the area surrounding the building contains features which are critical to its safe operation. This is intended to clearly set out features, such as access routes of particular dimensions or alignments, which need to be maintained to allow safe occupation of the building. This will help planning authorities and highway authorities to consider the ongoing requirements of the tall building, prompting them to consider how these features can be safeguarded from encroachment by inappropriate new development, such as intensive uses next to access routes which would increase obstructive parking. If the planning application is granted, we propose that the features specified in the Fire Statement would be safeguarded through a consultation process similar to

⁵¹ <https://gov.wales/development-plans-manual-edition-3-march-2020>

⁵² <https://www.legislation.gov.uk/wsi/2005/2839/contents/made>

those around major accident hazards. It therefore enables the ‘sterilising effect’ of safeguarding these features to be considered as part of the planning considerations when determining the planning application for the tall building.

- 6.4.12. It is not intended that a local planning authority is responsible for approving a fire statement as it will not necessarily possess the technical skills to undertake such an appraisal, as in the case of a national park authority which does not hold a Building Regulations function. Responsibility for its content remains with the applicant as dutyholder, although we expect the fire and rescue authority to bring errors and omissions to the attention of the local planning authority when undertaking their statutory consultee role.
- 6.4.13. Fire and Rescue Authorities similarly have a role to advise developers of their preferences when responding to fires. For example authorities will need to decide, in conjunction with the developer’s professional advisor on fire issues, the type and number of appliances that might be needed to respond to a fire in a given building. This design process will need to have been undertaken before the formal planning pre-application consultation begins.
- 6.4.14. We consider the concept of the dutyholder (Client) role begins at Gateway One. Therefore, the Fire Statement must be passed on to the Client at Gateway Two if these are not the same person.

- | | |
|-------|---|
| Q 14. | <i>How effective are the existing arrangements for Local Authorities and Fire and Rescue Authorities to consider issues of availability of water during the preparation of Local Development Plans?</i> |
| Q 15. | <i>Should Fire and Rescue Authorities become “specific consultation bodies” as defined by the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005?</i> |
| Q 16. | <i>To what extent do you agree with the proposed content of a Fire Statement?</i> |
| Q 17. | <i>Do you agree responsibility for the content of a fire statement should rest with the dutyholder?</i> |

Gateway Two – before construction begins

- 6.4.15. Gateway Two, is established at the “full plans building application” stage.
- 6.4.16. For Category 1 buildings there would be an ongoing and detailed dialogue between the dutyholder and the Local Authority to discuss the risks inherent to the build and to demonstrate to the Local Authority how they are managing them. We would advocate that this dialogue begins before Gateway Two is reached. The dutyholder and the Local Authority should

discuss the risks early on before construction is planned to start to prevent any delays at the gateways.

- 6.4.17. At Gateway Two, dutyholders would be required to provide their strategy for how they will comply with Building Regulations as well as set out how they intend to manage and control safety. They will need to evidence this by providing:
- a) **Full Plans** produced by the Principal Designer - detailed plans/specification of building works in respect of fire and structural safety and how these risks are being managed alongside the necessary specification in all other aspects of the building regulations;
 - b) **Digital model of the building** produced by the Principal Designer, covering the building 'as planned' including for example, the products to be used;
 - c) **A Fire and Emergency File** produced by the Principal Designer – which builds upon the Fire Statement produced at Gateway One and sets out the key building safety information. The file will then be updated and ultimately passed across to the Accountable Person during the occupation phase;
 - d) **Construction Control Plan** produced by the Principal Contractor – this describes how building safety and building regulations compliance will be maintained during the construction phase and how change will be controlled and recorded to deliver a safe building at the end of the construction phase. The change control strategy submitted as part of the construction control plan at Gateway Two will need to be updated and maintained throughout the construction phase, to record all changes from the original plans which were approved.
- 6.4.18. These documents, alongside the Fire Statement, will form the basis of the Safety Case for the building during occupation. This information will become part of the Golden Thread of information for the building. These documents are 'live', they should form the basis of ongoing discussions with the Local Authority which will allow them to assess whether they have the necessary systems in place to ensure that the building is safely constructed and safe for use in occupation.
- 6.4.19. Gateway Two is a 'hard' stop point, as advocated by our Expert Group. Construction cannot begin on site before the Local Authority is satisfied that the dutyholder has provided sufficient assurance (before permission is given for construction to start) that they are on course to develop a building that will comply with Building Regulations when built. This includes demonstrating that they understand the risks that may occur during construction that may compromise Building Regulation compliance

and have an impact on the building when it is in use and have a strategy for managing those risks.

- 6.4.20. Gateway Two will be a period of constructive dialogue and challenge between the Local Authority and the dutyholder. The assessment of whether to allow works to proceed will require the dutyholder to demonstrate how they intend to deliver compliance with the building regulations (and any other relevant legislative requirements) in a holistic manner, giving consideration to the whole life-cycle of the building. At Gateway Two an inspection regime will be agreed for the whole build, as will the principles of how the Local Authority and dutyholders will work together to avoid unnecessary delays but without compromising scrutiny or safety.
- 6.4.21. For very complex builds a staged approval approach may be necessary. A staged approval approach allows works to be carried out in phases allowing work to begin on some parts of the project before others. Such an approach would have to be agreed 'up front' to allow for appropriate discussion between the Local Authority and the dutyholder about what information can be provided at different stages. With complex builds all the required information may not be available for the entire site. In such circumstances, requiring too much information upfront may result in a greater degree of avoidable change control during the construction phase. A staged approval approach, where agreed beforehand, can still ensure safety and allow work on complex projects to start in a timely manner.
- 6.4.22. Even for staged developments, Gateway Two would still represent a "hard stop" point, but at specific pre-determined stages (i.e. foundation, superstructure). The Principal Contractor/ Contractors would not be permitted to start work on the next stage of construction until an inspection of the previous stage had been successfully passed and the plan(s) for the subsequent section(s) had also been approved. To allow staged construction to be appropriately managed, the Client would have to provide a wider design strategy alongside the initial plan setting out its intended approach to the stages of the development, so the building can be assessed holistically. This design strategy would also need to include details of where permission for phased occupation is sought and how the dutyholder intends to ensure the building is safe for residents to occupy before it is completed.
- 6.4.23. Regardless of whether full information is provided at Gateway Two, or a staged approach is taken, throughout construction we expect dutyholders to demonstrate to the Local Authority the necessary management procedures, skills, competence, and ability to effectively manage and mitigate the risks inherent in the design. Where this is not the case, we would expect the Local Authority to take swift and assertive action,

sharing any concerns with other relevant enforcement bodies to ensure that appropriate action can be taken in other areas where necessary.

- 6.4.24. As is the case now where a Local Authority has concerns they are able, through relevant enforcement procedures, to direct that work which contravenes requirements be pulled down, or removed, or laid open for inspection if necessary to adequately check compliance with the Building Regulations. Additionally, it is proposed to extend Local Authority powers so that they are able to prohibit building work from progressing unless non-compliant work is remedied.
- 6.4.25. During construction the Principal Contractor should be required to consult the Client and Principal Designer before deviating from original approved plans to ensure safety is not compromised. Any proposed major changes, once approved by the Client and Principal Designer must be notified by the Principal Contractor to the Local Authority⁵³. For example, structural or fire safety related measures, where requested to do so they will need to submit further details for approval before carrying out the relevant work. Major changes, as well as minor changes must be recorded as part of the Construction Control Plan. For consistency we will work with the UK Government on guidance in relation to the definition of 'minor' or 'major' works.

⁵³ Major changes might include: any design change that would impact on the fire strategy or structural design of the building; changes in use, for all or part of the building; changes in the number of storeys, number of units, or number of staircase cores (including provision of fire-fighting lifts); changes to the lines of fire compartmentation (or to the construction used to achieve fire compartmentation); variations from the design standards being used; and changes to the active/ passive fire systems in the building.

- Q 18. *Do you agree that Gateway Two should be a ‘hard’ stop point where construction cannot begin without permission to proceed? Please support your views.*
- Q 19. *Should the Local Authority Building Control Body have discretion to allow a staged approval approach? Please support your views.*
- Q 20. *What is an appropriate timescale for the Local Authority Building Control to respond to Gateway Two applications? Please support your views.*
- Q 21. *Should the Local Authority Building Control be allowed to extend these time scales? If so what would the circumstances be? Please support your views.*
- Q 22. *Do you agree that the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans?*
- Q 23. *Do you agree the Principal Contractor should be required to notify the Local Authority Building Control of any proposed major changes before carrying out works?*
- Q 24. *Do you agree that where major changes are made to the approved plans there should be a “hard” stop and work should not proceed until the revised plans have been approved by the local authority*
- Q 25. *What is an appropriate timescale for the Local Authority Building Control to respond to proposed major changes? Please support your views.*

Gateway Three – before occupation

- 6.4.26. Gateway Three will be introduced at the current completion certification/ final certificate stage. Currently when building work is complete, the building control body undertakes a final inspection before issuing a completion certificate (Local Authority) or final certificate (Approved Inspectors) in order for the building to then be safely occupied. As part of this process, relevant fire safety information should be handed over (as required under regulation 38 of the Building Regulations 2010) to the person who will be responsible for the occupied building. This is intended to ensure that the building owner has critical information about the building design and the assumed fire strategy once the building is occupied. We know that unfortunately this doesn't always happen.
- 6.4.27. For Category 1 buildings we propose that at Gateway Three the dutyholder will be required to hand over building safety information about the final, as built building before occupation is permitted⁵⁴. This information will be part of the golden thread of information that will be

⁵⁴ Original full plans and agreed deviations; Construction Control Plan; digital record of the building 'As Built'; and updated Fire and Emergency File

handed to the Client. This information will provide a basis for the Safety Case in occupation and safe management of the building.

- 6.4.28. Whilst the current system requires those undertaking the works to ensure compliance with building regulations, because building control bodies verify compliance with the regulations through a completion certificate or a final certificate, there is a misconception that it is the building control body that is responsible for ensuring compliance. This is not the case. The building control body will undertake routine inspections of building works to check for compliance with the building regulations. They cannot inspect every aspect of the building.
- 6.4.29. We intend to ensure that dutyholders understand that compliance with Building Regulations rests squarely on their shoulders. We will require that the Principal Contractor produces a final declaration, with the Principal Designer, confirming that the building complies with Building Regulations and that this documentation has been handed back to the Client. The Local Authority's role in ensuring regulatory oversight would be to decide whether to accept the declaration or request further information.
- 6.4.30. For new buildings, before occupation can commence a dutyholder in occupation (the Accountable Person') must register themselves in relation to the building. Where this is not the Client (during design and construction), they must ensure that the golden thread of information built up during design and construction is passed on to the Accountable Person to allow them to appropriately manage the building safely during occupation.
- 6.4.31. Many Category 1 residential buildings are occupied in stages. Where agreed during Gateway Two, we believe that, as long as the Local Authority is satisfied that safety will not be compromised, partial occupation can be agreed. Before a building is occupied in stages they will have to identify who the Accountable Person will be. We are seeking views as to whether this is appropriate.

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| Q 26. | <i>Do you agree that for new Category 1 buildings an Accountable Person must be registered before occupation of the building can begin?</i> |
| Q 27. | <i>Do you agree that a final declaration should be produced by the Principal Contractor with the Principal Designer to confirm that the building complies with building regulations? Please support your view.</i> |
| Q 28. | <i>Should Local Authority Building Control be required to respond to gateway three submissions within a particular timescale? If so, what is an appropriate timescale?</i> |

- Q 29. *Are there any circumstances where we might need to prescribe local authority Building Control's ability to extend these timescales? If so, please support your view with examples.*
- Q 30. *Do you agree that the Client during Gateway Two (if not continuing in the role as Accountable Person) must hand over building safety information about the final, as built building to the Accountable Person before occupation is permitted?*
- Q 31. *Do you agree it is appropriate to allow staged occupation (where previously agreed during Gateway Two) e.g. a mixed use development?? Please support your views*

Major Refurbishments

- 6.4.32. We intend to introduce Gateways for Category 1 buildings that are undergoing a significant refurbishment or a change of use.⁵⁵ Significant refurbishments that require planning permission should start at Gateway One. Where planning permission is not required and building regulations apply to the refurbishment or change of use then Gateway 2 will be the starting point. Key to this will be the process by which the site will be managed if the building will be occupied during works.

- Q 32. *Do you agree that Category 1 buildings undergoing major refurbishment should also be subject to the Gateway approach? Please support your views.*
- Q 33. *Are there any other types of residential building or characteristics of a residential building that should require it to go through the Gateway process? Please support your views.*
- Q 34. *We will be undertaking further consultation in this area when we set out regulations. Would you be interested in being added to our stakeholder list in relation to the Design and construction phase? Please provide your details*

⁵⁵ The refurbishment process and definition of major works will be defined in regulations.

7. The Building Safety Regime (Occupation Phase)

7.1. *Introduction*

- 7.1.1. The lessons from Grenfell have exposed the critical importance of ensuring safety is paramount throughout all aspects of the building life cycle. This is arguably even more pertinent during the occupation phase.
- 7.1.2. When occupied, buildings are likely to go through many changes over the years as for example, buildings degrade over time, and they are repaired, refurbished and improved. A building will also have a shifting resident profile. The numerous ways that residents and others will interact with the building over time will impact on the safety of the building. As such, the risks that buildings and their residents are exposed to over time changes. What was considered safe in the past may be shown to be unsafe in the future (e.g. asbestos). Buildings should be actively managed to ensure that new and changing risks are identified and minimised as far as is practicable. This is the case for all buildings, regardless of whether they are high rise, residential or otherwise.
- 7.1.3. The Hackitt review recognised the need to have a key contact or dutyholder who is responsible for maintaining building safety (including fire safety) during occupation as a key area of reform. Not only does this help clearly establish lines of accountability, which is currently not always easy to do, but it also improves practical building management by making the roles and responsibilities that go along with it clearer to those with legal duties, oversight bodies and residents.
- 7.1.4. There are already a number of regimes that promote the safety of buildings. Local Authorities have responsibility for overseeing housing conditions within individual dwellings and houses in multiple occupation. This duty is conferred on the Local Housing Authority, the work is undertaken by Housing and Environmental Health Officers under both the [Housing Act 2004](#)⁵⁶ and [The Housing Health and Safety Rating System \(Wales\) Regulations 2006](#)⁵⁷ (HHSRS). Environmental Health Officers have the ability to inspect and evaluate potential risks to health and safety from any deficiencies within individual dwellings against a list of 29 hazards (including fire) and oblige building owners to take remedial action.
- 7.1.5. The Fire and Rescue Authorities oversee fire safety of the common parts of a building under [The Regulatory Reform \(Fire Safety\) Order 2005](#)⁵⁸ which places duties on a 'Responsible Person' to maintain the safety of a building and to reduce the risk of fire in relation to the internal common areas of blocks of flats (e.g. carrying out risk assessments). It applies to

⁵⁶ 2003 Ch. 34 <https://www.legislation.gov.uk/ukpga/2004/34/contents>

⁵⁷ S.I. 2006/1072 <https://www.legislation.gov.uk/wsi/2006/1702/contents/made>

⁵⁸ S.I. 2005/1541 <https://www.legislation.gov.uk/uksi/2005/1541/contents/made>

work places and common parts of shared residential properties. As noted in para 3.3.3, the current Fire Safety Bill will expand the scope of the FSO to include the internal and external structure of buildings and front doors of flats.

7.1.6. The purposes of these two regimes are different, but there is some overlap. The Hackitt Review recommended there should be greater clarity with regards to who is responsible for ensuring safety of buildings in occupation. We agree that this is the case and that a dutyholder who is identified as the person accountable for the safety of the building during occupation is an appropriate response. However, we believe this clarity should be extended to all multi-occupied residential buildings.

7.1.7. Maintaining a robust and effective approach to safety remains critical over the course of occupation to safeguard residents. As such we propose a dutyholder role during occupation; the 'Accountable Person'. The Accountable Person will have legal responsibility for the safety of the whole building used for residential purposes.

7.2. *The Accountable Person*

7.2.1. The proposed role of the Accountable Person is predominantly concerned with ensuring that those with ultimate control over buildings comply with all aspects of the Building Safety Regime and create an environment where any third parties connected with discharging these duties are also able to do so. Their identification is as much about establishing clear lines of accountability for buildings under their control as it is about ensuring effective management of the building. Whilst they can engage others to support them, they cannot abandon or transfer their role whilst they remain the controlling authority. The main responsibilities for the position include:

- A duty to register all in-scope buildings under their ownership/control
- Ensuring compliance with the statutory duties in occupation
- Ensuring those employed in the maintenance and management of the building's safety have sufficient skills, knowledge and experience to comply with the regime
- Maintaining proper engagement with others in relation to management of in-scope buildings within their control (i.e. the regulator, other dutyholders and residents)

7.2.2. There is a wide range of different ownership and management models for multi-occupied buildings. As a result, there are a number of possibilities as to who could take on this role. There are also different approaches in the social and private sectors. Rather than specify that a particular body or individual must take on this role, we have instead articulated which

responsibilities we would expect these dutyholders to undertake and acknowledge that exactly who takes this on will vary depending on the model used in each building. In this sense, it avoids the system being too prescriptive (particularly in cases of complex management/ownership) and instead focuses on ensuring that the person registered is duty bound to comply with the same set of duties irrespective of their position. However, where no nomination is provided, the default assumption will be that the Accountable Person is the freeholder. In a large number of cases the Accountable Person is likely to be the freeholder with a nominated person supporting them in carrying out their duties (for example a Managing Agent or Building Safety Manager). However because of the complexity with regards to ownership models this will not always be the case and there are numerous different scenarios.

- 7.2.3. This approach ensures that the system can remain flexible enough to accommodate the wide range of ownership and management models that exist, whilst also ensuring consistency in expectations and establishing accountability by identifying one individual/entity that is duty bound to comply with the requirements. In addition, making responsibilities clear will also encourage more careful consideration about the best management model to be adopted for buildings and avoid problems arising at a later date (e.g. setting up resident management based models where residents are reluctant or unable to properly carry out their functions due to lack of required experience etc.).
- 7.2.4. For all buildings within scope of the Building Safety Regime, the Accountable Person will be required to identify and register themselves.

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| Q 35. | <i>Do you agree that there should be a single and clearly identified Accountable Person for all premises covered by the Building Safety Regime?</i> |
| Q 36. | <i>Do you agree with the proposed approach in identifying the Accountable Person? Please support your view.</i> |
| Q 37. | <i>Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an Accountable Person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.</i> |
| Q 38. | <i>Do you agree that the default position should be that the Accountable Person is the freeholder?</i> |
| Q 39. | <i>For mixed-use buildings there will be a 'Responsible Person' under the FSO for the business premises, and an 'Accountable Person' under the Building Safety Regime for residential parts. Are there any requirements we should consider about how these responsible parties should work together to support and ensure fire safety of the whole building?</i> |

7.3. *Building Safety Manager*

7.3.1. We propose to create an additional dutyholder role for the occupation phase, that of a Building Safety Manager (BSM).

7.3.2. It is proposed that the BSM role will apply to Category 1 buildings only due to the additional requirements of the regime for these buildings being more likely to require this type of additional assistance. Where used, it is anticipated that the BSM will have closer day to day responsibility for management of the building and completing the more practical tasks that ensure the building complies with the regime's proposed requirements.

7.3.3. The Accountable Person may opt not engage a BSM and instead carry out these duties themselves. However, where a BSM is involved in managing a building they will take their instructions from the Accountable Person and the Accountable Person remains ultimately accountable for the safety of the building. Responsibilities for the BSM could include:

- Creating, reviewing and maintaining building information (i.e. Golden Thread and safety case)
- Planning and monitoring any maintenance or improvement works
- Ensuring any third parties engaged to work on the building are suitably competent and qualified to do so
- Cooperating with other dutyholders and enforcement bodies
- Engaging with and informing residents (including proactively promoting building safety)

7.3.4. The nature of these duties will mean that the BSM will need to be suitably competent to meet regime requirements. Work is ongoing to scope and refine competence requirements for the BSM role. More information on this is set out at para 7.12.12.

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

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

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

7.4. *Drawing a Line: Two Categories of Risk*

7.4.1. Blocks of flats vary considerably, from conversions containing only a handful of dwellings to tower blocks containing up to a hundred or more dwellings. However, the types of fire risk in all such premises are broadly similar (e.g. a fire in one flat spreading to others, and/or impeding a safe escape, or a fire in a common area impeding a safe escape), and we

believe it is right for the new regime to protect residents of all blocks of flats, whatever their size.

- 7.4.2. The risk of fire breaking out in any given flat does not vary because of the overall size of the building or the number of flats in it. However, the consequences of a fire happening may do. A fire in a large block places more people at risk if the fire spreads beyond the flat where it started. It may also be harder to escape from the upper floors of such buildings.
- 7.4.3. Most dwelling fires are caused by unsafe behaviour, not unsafe premises. Statistically, we also know that people with certain characteristics such as disability, old age, smoking and substance misuse are more at risk of having a fire and/or of being unable to escape from one. Therefore the risk of fire in a given building depends in large part on the characteristics of the people who live there and their behaviour, rather than on the building itself. Yet these characteristics will change over time and it is not reasonable for the Accountable Person to know about them. As such it is not suitable to use these as a means to categorise buildings.
- 7.4.4. However, the size of a building and the number of dwellings in it is fixed and knowable. It is also a reasonable measure of the number of people at risk if a fire or other serious incident occurred within the building. Therefore it would be practical to use this as a basis for categorisation.
- 7.4.5. A graduated approach to building safety in occupation, under which taller buildings are subject to greater regulatory requirements, would mirror the approach that already exists in the construction phase, where blocks over 18m tall are already subject to more stringent Building Regulations. However, the risk of fire in an occupied building is highly complex and variable and we are mindful that there still needs to be a rigorous regulatory regime in all multi-occupied buildings. Indeed, the risk of fire casualties is greatest in HMOs and houses converted into flats, which tend to be smaller than purpose-built blocks.
- 7.5. *Category 1 Buildings*
- 7.5.1. We are clear that, due to the complex nature of high rise residential buildings, there should be greater requirements on those managing this type of building during occupation. An Accountable Person must be identified for this part of the building's lifecycle, they will be responsible for the safety of the building, ensuring that risks in relation to structural and fire safety are reduced as far is reasonably practical.
- 7.5.2. The Accountable Person must be registered (with a representative in the UK discharging those duties on their behalf). Legal responsibility for delivering the requirements set out in this regime lies with them. As part of the registration process, the Accountable Person must demonstrate probity and responsible working; ensuring robust and transparent record

keeping and undertaking due diligence and having proper financial practices in place.

7.5.3. For Category 1 buildings the Accountable Person will be also be required to:

- Create (where necessary), maintain and update the Golden Thread, key dataset and Safety Case for the building.
- Ensure the risks of failure in structural integrity are reduced so far as is reasonably practicable by planning, monitoring and managing maintenance and improvements in response to the Safety Case. This includes ensuring regular reviews of the Safety Case are undertaken by a suitably qualified person, including the structural integrity of the fabric of the building.
- Appoint, if desired, a competent Building Safety Manager to discharge these roles and responsibilities on their behalf. Liability for these requirements does not transfer.
- Ensure that competent people are employed to undertake works on the building (this should include assessments, investigations and reports such as fire risk assessments and or Safety Case work where these are not undertaken 'in house'). Subsequently the Accountable Person should assure themselves that the works conducted are to an adequate standard to ensure the building's ongoing safety.
- Promote building safety within the building.
- Working with residents – the Accountable Person would be required to have a formal complaints process for residents to raise concerns about the building. They would also be required to develop, deliver and review a resident engagement strategy which would include providing mandatory information on typical hazards (fire, asbestos, legionella, etc), evacuation procedures, complaints procedures and how to contribute to relevant decision making processes.
- Actively manage complaints and concerns – for example analysing complaints to identify any themes or recurring issues which would feed into the Safety Case.

7.5.4. More detail on these requirements is set out in Figure 8, below.

7.6. *Category 2 Buildings*

7.6.1. As we noted earlier, the size of a building alone does not suggest a higher risk of an uncontained fire or a higher chance of casualties. In a high rise building with sound compartmentation and sprinklers throughout, the likelihood of an uncontained fire is very low, regardless of the number of residents. However, the likelihood is much greater in a small house conversion or HMO in which compartmentation is poor and there is no fire

suppression in place. We believe that fire casualties must be minimised in any building, regardless of size.

- 7.6.2. We are therefore proposing that the second classification of risk Category 2 applies to all multi-occupied residential buildings with two or more dwellings, but whose height is less than 18m or 6 storeys. Category 2 would apply to licensed HMOs (including student accommodation in house conversions), as well as blocks of flats lower than 18m in height.
- 7.6.3. In Wales, larger HMOs must be licensed by the relevant Local Authority. This generally applies to all HMOs of three or more storeys which are occupied by five or more people who do not form a single household (e.g. five single people, or two couples and a single person). Local Authorities may also require smaller HMOs to be licensed in specific areas where there are concerns about housing conditions.
- 7.6.4. HMOs have the highest rate of casualties per 100 fires of any building type in Wales. This may be because there is no requirement for compartmentation between rooms in an HMO, meaning fire can spread more easily than in a block of flats. It may also be because HMOs can be relatively crowded – an HMO is often a house that was built for occupation by a single family – and there is often only one escape route (the staircase and front door) for all the occupants. The high risk of fire-related casualties in HMOs means that they should be brought clearly within the Building Safety Regime. We therefore propose that the new regime should apply to all HMOs which are required to be licensed, whether under the general requirements for licensing or any additional requirements which Local Authorities impose.
- 7.6.5. The same should apply to purpose-built student accommodation, whether in the form of a traditional hall of residence or more recent developments which are often more akin to a conventional block of flats. While the risks of fire casualties here are relatively low, we do not think it would be right to exclude such properties simply because students occupy them.
- 7.6.6. The registered Accountable Person for a Category 2 building would be required to:
- Update and maintain the key dataset in relation to the building.
 - Ensure the risks of fire are reduced so far as is reasonably practicable. This includes commissioning an annual fire risk assessment, undertaken by a suitably qualified person, and acting promptly on the findings of it; for example by planning, monitoring and managing maintenance and improvements in response to the fire risk assessment.

- Ensure that competent people are employed to undertake works on the building.
- Promote building safety within the building.

7.6.7. More detail is set out below.

7.7. *Roles and Responsibilities*

7.7.1. The table below gives a summary of the roles and responsibilities for the two building categories.

7.7.2. *Figure 8: Roles and Responsibilities: Two Risk Categories*

CATEGORY 2	CATEGORY 1
<i>Buildings with two or more separate dwellings which are less than 18m in height (or up to and including 6 storeys)</i>	<i>Buildings which are 18m or more in height or more than 6 storeys with two or more dwellings</i>
During Design & Construction:	During Design & Construction:
The building will have to comply with all relevant Building Regulations. There is a choice of Building Control Body to oversee this work.	The building will have to go through the new Gateway Application Process. Dutyholders will have to be identified. The option to choose the Building Control Body to oversee this work will be removed.
During Occupation:	During Occupation:
An Accountable Person will need to be registered against the building who will be required to ensure that they undertake a number of roles and responsibilities including in relation to:	An Accountable Person will need to be registered against the building. The Accountable Person will be required to ensure that they undertake a number of additional roles and responsibilities in addition to those set out under Category 2, including in relation to:
Activities in relation to keeping and using information <ul style="list-style-type: none"> • Undertake annual Fire Risk Assessments and document findings • Act on the findings of the Fire Risk Assessment • Keep any installation/testing certificate • Provide information on the Key Dataset at registration 	Activities in relation to keeping and using information <ul style="list-style-type: none"> • Create, maintain and update the Golden Thread for the building • Create, maintain and update the Safety Case for the building
Activities in relation to building maintenance <ul style="list-style-type: none"> • Ensure that there is appropriate compartmentation in the building's structure and external walls and any common parts • Providing and maintaining relevant (fire) safety equipment • Ensuring the risk of fire within a building is reduced so far as is reasonably practicable. • Ensure annual fire risk assessments of the building are undertaken by a suitably qualified person • Plan, monitor and manage maintenance and improvements in response to fire risk assessments, reducing risk of fire for the building. 	Activities in relation to building maintenance In addition to the requirement in relation to fire: <ul style="list-style-type: none"> • Ensuring the risks of failure in structural integrity are reduced so far as is reasonably practicable. • Ensure regular reviews of the Safety Case are undertaken by a suitably qualified person including the structural integrity of the fabric of the building. • Plan, monitor and manage maintenance and improvements in response to the Safety Case, reducing risk of structural integrity failure for the building. Any works should comply with current building regulations

CATEGORY 2	CATEGORY 1
<p>Working with others</p> <ul style="list-style-type: none"> Working with other RPs under the FSO where appropriate Cooperate with enforcement bodies Provide relevant information to emergency services (and others supporting an emergency response) in the event of an incident 	<p>Working with others</p> <ul style="list-style-type: none"> Provide relevant information to regulators with regards to Building Safety The Accountable Person and Building Safety Manager must work with and support each other.
<p>Probity and responsible working</p> <ul style="list-style-type: none"> The Accountable Person would have to be registered. Where another 'person' was managing the building on behalf of the Accountable Person they would have to be identified. Where a 'person' was discharging roles and responsibilities on behalf of the Accountable Person (for example a Managing Agent or Building Safety Manager) they should be suitably qualified to undertake this role. Where they are not qualified they should procure the relevant services to undertake aspects of the role. Ensure effective communication (meeting any relevant statutory obligations) in terms of communicating effectively about planned maintenance and upgrades (as a result of the fire risk assessment) and the impact of these works on service charges, providing sufficient notice where expenses are likely to be high. 	<p>Probity and responsible working</p> <ul style="list-style-type: none"> Ensure robust and transparent record keeping. Undertake due diligence and have proper financial practices in place The Accountable Person must consider the lifecycle of the building and ensure it is suitably maintained (and upgraded) to ensure the safety of the asset now and for the future. If the Accountable Person is not undertaking the role of Building Safety Manager themselves they will need to appoint a suitably competent person to undertake work on a day to day basis. This person must be suitably qualified and licensed. The Accountable Person must ensure there are sufficient funds available to this person in order for them to effectively undertake these roles and responsibilities on behalf of the Accountable Person.
<p>Supporting and informing residents</p> <ul style="list-style-type: none"> Promoting Building Safety 	<p>Supporting and informing residents</p> <ul style="list-style-type: none"> Develop and deliver a resident engagement strategy Actively manage complaints and concerns of residents

- Q 43. *Do you agree that the proposed duties and functions set out in Figure 8 for Accountable Persons for Category 1 buildings are appropriate? Please support your view.*
- Q 44. *Do you agree that the proposed duties and functions set out in Figure 8 for Accountable Persons for Category 2 buildings are appropriate? Please support your view.*
- Q 45. *Do you think that the different roles and responsibilities for Category 1 and Category 2 Accountable Persons are sufficiently clear and proportionate?*
- Q 46. *Are there any additional duties that should be placed on dutyholders? Please support your views.*

7.7.3. As set out in section 5 Welsh Government believes that Two Risk Categories is the most appropriate response to address the issues of fire and building safety. The highest risk of casualties from fire generally occurs in the smallest properties, i.e. HMOs and converted flats. Our building safety regime extends to all types of multi-occupied buildings in recognition of the fact that the greatest statistical risk sits with Category 2 buildings. Therefore, we have ensured that the essential standards and requirements for fire safety have been implemented for Category 2 buildings to meet this risk, albeit in a proportionate way which recognises that there may be an additional burden placed on those responsible for managing and maintaining buildings within Category 2. Therefore we have given an indication of the roles and responsibilities for an option involving three risk categories option (Annex 12.2).

7.7.4. Whichever option we adopt, we propose that all buildings within the scope of the regime would as a minimum:

- have to be registered - a process which would clearly identify the Accountable Person (7.12 refers);
- have to have an annual fire risk assessment undertaken by a suitably qualified person; and
- have to record the fire risk assessment and act on its findings.

7.8. *Fire Risk Assessments*

7.8.1. A robust fire risk assessment is at the core of the new Building Safety Regime. We propose to put in place new arrangements for fire risk assessments that will ensure both that the system has flexibility to deal with the particular circumstances of each building, and that responsibility for identifying and implementing fire safety measures properly resides with those in control of the building rather than with government or regulators.

7.8.2. At its heart, a fire risk assessment is a means of identifying and evaluating the risks of fire in a given building, and determining action which can and should be taken to avoid or mitigate those risks. That basic purpose is sound, and is the same for all buildings, whether they are a small converted house, a high rise blocks of flats, a retail outlet or anything else. However, the risks and consequences of fire in a residential building are distinctive and often greater than in other buildings. These differing risks are not reflected in the Fire Safety Order, which focuses mostly on risks which are likely to arise in workplaces.

7.8.3. Currently the 'responsible persons' have considerable discretion over the conduct of a fire risk assessment and action taken as a result. To an extent, that is right, and it is part of the flexibility we want to retain. However, in residential buildings, where the risk of injury and/or death as

a result of fire is significantly higher we believe Fire Risk Assessments should be conducted to a suitable standard, with sufficient frequency, be recorded properly, and have regard for the interests of residents.

- 7.8.4. We propose that the new system should address this by setting out how a fire risk assessment should address the particular types of risks which are likely to arise in multi-occupied residential buildings. We propose to replace this with a system which is tailored to these types of buildings, and which is easier for Accountable Persons to understand and apply.

Fire safety outcomes

- 7.8.5. We propose to define fire safety outcomes, which Accountable Persons should be seeking to attain. We are inviting views on the following:

Fire safety outcomes

- (v) **Fire prevention.** The risk of fire breaking out in the building should be as low as possible.
- (vi) **Fire protection.** If a fire does break out, it should be contained where it originates, without spreading to other flats, the exterior of the building or a common area.
- (vii) **Escape.** All people who are in immediate danger from fire should be able to leave the premises swiftly and safely.
- (viii) **Firefighting.** Any fire that does break out should be extinguished as quickly and safely as possible.

- 7.8.6. The purpose of a fire risk assessment would be to:
- determine the extent to which those outcomes were attained, and
 - identify measures or actions that could and should be taken to improve the extent to which the objectives were attained.
- 7.8.7. To assist with that, we propose to prescribe in legislation the specific risks which the fire risk assessment should cover in relation to each of the outcomes above.
- 7.8.8. Many, if not all, fire risk assessments will identify that a risk exists, and that an outcome is therefore not being fully attained. In those cases, the Accountable Person would also have to identify and implement measures to reduce or avoid that risk. The mitigating measures proposed and the timescale for their implementation would then be recorded in the risk assessment. To support this assessment we will set out in guidance the sorts of measures which Accountable Persons could take to mitigate each risk.

- 7.8.9. Where a risk cannot be mitigated quickly, or possibly at all, the Accountable Person would have to record that in the risk assessment, and seek to identify and implement compensatory measures that reduce the overall risk to residents. For instance, structural defects in a building which compromise safety may require major works and investment to put right. In these cases, it would be appropriate to consider temporary enhanced measures for raising the alarm and ensuring a safe evacuation from the building.
- 7.8.10. A proper and legally-compliant fire risk assessment would clearly identify and record:
- the extent to which fire safety outcomes were being attained in the premises;
 - the specific risks which prevented the attainment of each outcome;
 - measures for mitigating and avoiding those risks (including compensatory measures where appropriate); and
 - the timescale for implementing those measures and their actual completion.
- 7.8.11. It would not be lawful for the Accountable Person to:
- fail to conduct a risk assessment at all, or to keep it up to date
 - fail to consider the specific features of the premises concerned (e.g. to “copy and paste” from the risk assessment of superficially similar premises);
 - record only the risks that existed, without any mitigation measures; or
 - fail to implement mitigation measures without good reason.

We propose that any such failure would constitute a criminal offence.

Fire safety outcome: Fire prevention

- 7.8.12. We propose that the fire risk assessment should consider the following risk areas in terms of fire prevention:

Risk area: fire prevention.

- (i) ***Accidental ignition.*** The risk of a fire starting accidentally in common areas.
- (ii) ***Arson:*** The risk of deliberate and malicious fire-setting in and around the premises, by any person.
- (iii) ***Fire loading:*** The risk of fire starting in an accumulation of combustible material, especially where such accumulations exist in proximity to a possible ignition source
- (iv) ***Resident awareness:*** The risk of residents being unaware of, and/or of being unable to reduce, the risks of fires occurring in their homes.

7.8.13. Mitigation measures under this heading comprise actions which reduce the risk of a fire starting. They could, for instance, include:

- Regular inspection and maintenance of electrical and gas installations and appliances in common areas (and, in rented properties, appliances and installations within dwellings that are the landlord's responsibility).
- Ensuring safe systems of work by contractors
- Prohibition of smoking in common areas or on balconies
- Regular cleaning of common areas, in particular to prevent accumulations of refuse and junk mail
- Prohibiting the use of common areas for storage of residents' property, or for charging appliances
- Safe and secure facilities for disposal of waste, and for the storage of cleaning materials, decorating materials, surplus furniture and so on.

7.8.14. While the concept of reducing the risk of fire breaking out in the building is easy to grasp, it is harder to apply. That is because the main risks of fire generally lie within the flats themselves, not the common areas. The Building Safety Regime would not cover individual dwellings, as it would be unreasonable to expect an Accountable Person to mitigate fire risks arising from unsafe domestic appliances or the personal characteristics of residents, for example. However, there would be actions we would expect the Accountable Person to take to raise awareness of the risk of domestic fires, especially if some residents are known to be at particular risk of fire.

Fire safety outcome: Fire protection

- 7.8.15. We propose that the fire risk assessment should consider the following risk areas in terms of fire protection:

Risk area: fire protection

- (i) ***Internal structure.*** The risk of the internal structure of the building (i.e. walls, floors and ceilings) failing to prevent the spread of fire from one residence to another, or to a common area.
- (ii) ***Doors and windows:*** The risk of doors and windows failing to prevent the spread of fire from a residence to a common area, or to or from the outside of the premises.
- (iii) ***External walls and roof:*** The risk of the external walls and roof structure failing to prevent the spread of fire, and allowing fire to re-penetrate the interior of the building.

- 7.8.16. There will always be a risk of fire breaking out in a residence, and there may be little the Accountable Person can do to prevent this. As such it is particularly important to ensure that any fire is contained in the space where it breaks out, and can be extinguished quickly. Fires that spread into other flats or common areas can put all residents at immediate risk.
- 7.8.17. Preventing that from happening is largely a matter of ensuring effective compartmentation; this is the capacity of the building structure to contain a fire. For compartmentation to be effective, walls and ceilings separating residences from each other, or from common areas, must prevent the spread of fire for long enough to allow the fire to be extinguished. This is partly a result of sound construction and maintenance, but even minor works by residents or contractors (for example drilling through external walls to install utilities) can significantly compromise compartmentation.
- 7.8.18. The same is true of doors and windows. These can often be the weak points in a building's compartmentation, both because they may be less robustly constructed than the walls, and if left open they have no capacity to contain fire at all. The front doors of flats are particularly important as they separate dwellings from common areas which are escape routes.
- 7.8.19. The performance of external wall systems are critical to the fire protection of the building. Where building work is being carried out Part B of the Building Regulations 2010 sets requirements limiting the combustibility of materials used and compartmentation requirements including fire stopping. The maintenance of compartmentation integrity is critical.

- 7.8.20. Mitigation measures in this area largely focus on how to maintain or enhance compartmentation, although other approaches such as fire suppression can also be highly effective. They include:
- Identifying and rectifying defects that compromise compartmentation
 - Installing certified fire doors with self-closing devices as the front doors of all flats, and prohibiting their removal, replacement or modification and regularly checking and maintaining them
 - Verifying works that breach compartmentation use appropriate and adequate fire-stopping
 - Removing and/or replacing external cladding which does not resist the spread of fire
 - Installing and maintaining fire suppression systems (e.g. sprinklers) within flats and/or automatic smoke control systems in common areas.
- 7.8.21. The vital importance of compartmentation to fire safety means that we propose additional duties in this area on the Accountable Person, residents and contractors.

Escape

- 7.8.22. We propose that the fire risk assessment should consider the following risk areas in terms of escape:

Risk area: escape

- (i) ***Need for escape.*** The risk that residents are unaware of the need to evacuate the building (or, conversely, that they believe such a need exists when it does not).
- (ii) ***Layout:*** The risk that an escape route does not allow people to evacuate swiftly and safely, especially from upper floors of taller buildings (e.g. the escape route is obstructed or too long or complex).
- (iii) ***Navigation:*** The risk that people (including people with mobility and sensory impairments) may be unable to follow the escape route, especially in conditions of power failure or smoke penetration.
- (iv) ***External arrangements:*** The risk that people exiting the building are unable to reach an external place of safety

- 7.8.23. If effective fire protection is in place, there should rarely be any need to evacuate a whole building. Unless a fire starts in their own property, residents are generally safer if they remain where they are than try to escape. The fire will very often be contained and extinguished before it

spreads, and will probably pose less danger to residents than a mass evacuation – which may bring risks of panic, trampling or becoming trapped. Some of these risks – for instance those arising from the layout of the building – might only be capable of being mitigated directly by extensive reconstruction or adaptation. In these cases it would be important to focus on compensatory measures.

7.8.24. Overall, mitigation measures might include:

- Clear and appropriate action residents should take in the event of fire.
- Installing smoke and/or heat alarms
- Installing an evacuation alarm which allows the Fire and rescue service to direct an evacuation, where appropriate
- Installing evacuation lifts or external fire escapes, where appropriate
- Keeping escape routes clear of obstructions
- Installing and maintaining clear signage (floor and flat numbers) and emergency lighting
- Enabling people with mobility or sensory impairments to identify themselves as such, so that they can be rescued in the event of a full evacuation of the premises.
- Ensuring all emergency exits can be opened from the inside without a key, and that they lead to an external place of safety accessible to the emergency services

Firefighting

7.8.25. We propose that the fire risk assessment should consider the following risk areas in terms of firefighting:

Risk area: firefighting

- (i) ***Summoning the FRS:*** The risk that the Fire and rescue service is not made aware of a fire promptly
- (ii) ***Firefighting information:*** The risk that the Fire and rescue service is unaware of aspects of building design and use that are needed to inform an effective firefighting response
- (iii) ***Firefighting equipment:*** The risk that equipment for fighting a fire is missing or unreliable
- (iv) ***Access for firefighters:*** The risk that firefighters are unable to reach the location of a fire swiftly and safely

- 7.8.26. A fire would normally be reported to the Fire and Rescue Service (FRS) by raising the alarm with a call to 999. However, some premises, particularly those with a high proportion of vulnerable residents, might benefit from an automatic fire alarm which alerts the FRS. These systems should be installed where the risk assessment identifies them as an appropriate means of raising the alarm. But they bring their own risks in that they can generate false alarms, which wastes the FRS's time in responding to them and which may induce residents to disregard the alarm altogether.
- 7.8.27. Effective firefighting relies on the FRS having a full understanding of the layout and features of the premises. The FRS is required to collect site-specific risk information under section 7(2)(d) of the [Fire and Rescue Services Act 2004](#)⁵⁹. We believe it would be appropriate to require Accountable Persons to provide the FRS with important information like floor plans and information about vulnerable residents.
- 7.8.28. Some buildings contain built-in firefighting equipment. For instance, the Building Regulations Part B require new buildings 18m or more in height or more than 6 storeys to include dry risers on every floor⁶⁰. The FRS rely on this equipment if a fire breaks out. Where these are present we expect that they are properly maintained and protected from tampering or vandalism.
- 7.8.29. Mitigation measures in this area might include:
- Instructions to residents to call 999 in case of fire
 - Installation and maintenance of automatic fire alarms where appropriate
 - Supplying the FRS with up-to-date information about the building and its residents
 - Including key information in an on-site premises information box
 - Maintaining firefighting equipment appropriately (including dry-risers and firefighting lifts)
 - Ensuring common areas can serve as an escape route and access route for firefighters

The process for a fire risk assessment

⁵⁹ 2004 Ch. 21 <https://www.legislation.gov.uk/ukpga/2004/21/contents>

⁶⁰ A dry riser is a built-in pipe to which a firefighting hose can be connected, removing the need to deploy long lengths of hose up internal staircases. It is supplied with water by a pumping appliance which is connected at the base. See Building Regulations 2010 B5 Sections 16 and 18 - https://www.legislation.gov.uk/uksi/2010/2214/pdfs/ukxi_20102214_en.pdf

Timing and frequency

- 7.8.30. A fire risk assessment must reflect current and actual risks of fire in the premises if it is to inform effective action to mitigate those risks. Therefore, the assessment cannot be a static or one-off exercise; it needs to be updated as the circumstances of the building change.
- 7.8.31. We therefore propose that a fire risk assessment must be reviewed annually, and on every occasion that the premises are subject to major works or renovations or are otherwise subject to a significant change in circumstances. That does not necessarily mean redoing the whole assessment; but it would mean verifying that the risks and mitigation measures remain valid, and adding any new risks.

Fire risk assessors

- 7.8.32. There are currently no legal restrictions on who can conduct a fire risk assessment, nor any requirement for those doing so to have any particular qualifications or experience. This has been widely criticised as a major flaw in the current system. We therefore propose that all fire risk assessments must be conducted by suitably qualified and experienced individuals. We will set out in regulations details on 'suitable qualifications' and 'experience'. We are seeking views on this issue.

Recording and sharing the fire risk assessment

- 7.8.33. There is currently no requirement to record a fire risk assessment in residential properties. We do not believe this is acceptable. The fire risk assessment is critical to maintaining fire safety, and its findings need to be clearly recorded, understood, acted upon and updated. We therefore propose that all fire risk assessments must be permanently recorded in documentary or electronic form. We would stipulate what this means in regulations, and we would include in guidance a suitable template for risk assessors and Accountable Persons to use.
- 7.8.34. This requirement would apply to all buildings within the scope of the Building Safety Regime, regardless of the risk Category for the building.

- | | |
|-------|---|
| Q 47. | <i>Do you agree with our proposed fire safety outcomes? Please support your views.</i> |
| Q 48. | <i>Do you agree with our proposed overall purpose of a fire risk assessment? Please support your views</i> |
| Q 49. | <i>Do you agree with our proposed risk areas? Please support your views</i> |
| Q 50. | <i>Do you agree that a fire risk assessments must be reviewed annually, and whenever premises are subject to major works or alterations for all buildings within scope?</i> |

- Q 51. *Do you agree that only a suitable qualified and experienced fire risk assessors should undertake fire risk assessments for buildings within scope? Please support your views.*
- Q 52. *Do you agree that fire risk assessments must be permanently recorded?*
- Q 53. *Do you have any views about whether Accountable Persons or their employees should be precluded from conducting fire risk assessments themselves?*
- Q 54. *Do you have any views on enforcement or sanctions for non-compliance with regards to the Accountable Person?*
- Q 55. *Do you have any views on enforcement or sanctions for a person undertaking a fire risk assessment without suitable qualifications or experience?*

7.9. *Compartmentation*

- 7.9.1. Compartmentation is the capacity of the structure of a building to contain a fire where it originates for long enough to allow it to be extinguished. It relies on the building being constructed and maintained in ways which resist the spread of fire. Effective compartmentation is critical to fire safety.
- 7.9.2. If a fire spreads beyond the dwelling where it starts, perhaps to adjoining flats, others are immediately in danger. More seriously, a fire which spreads into a common area can threaten all the building's occupants, while also preventing them from escaping.
- 7.9.3. There are already requirements in the Building Regulations covering compartmentation. [See [Section 9: Approved Document B Volume 2: Wales](#)]⁶¹. However, they only protect the building at the point that it is completed and handed over for use. During occupation, buildings can deteriorate and/ or be modified in ways which could jeopardise compartmentation. For instance, fire doors can be replaced with ordinary doors which do not prevent the spread of fire; fire doors can be compromised by the fitting of new door furniture or cat flaps; and walls can be penetrated to install satellite dishes or home renovation projects.
- 7.9.4. We believe that difficulty of detection, combined with the critical importance of compartmentation, leads to a need to ensure effective compartmentation on a continual basis, not just when the building is completed and when a fire risk assessment is undertaken.

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<https://gov.wales/sites/default/files/publications/2021-01/building-regulations-guidance-part-b-fire-safety-volume-2-buildings-other-than-dwellinghouses.pdf>

- 7.9.5. We believe compartmentation should be covered in fire risk assessments (section 7.8). The fire risk assessment should identify and address any flaws in compartmentation. However, a fire risk assessor may be unable to detect some flaws for example, where they are within a dwelling. Such issues point to creating requirements on everyone who occupies or works in the building, not just the Accountable Person.
- 7.9.6. We propose to create a new general duty to maintain compartmentation in all buildings within scope of the Building Safety Regime. The duty would apply to everyone, including residents and contractors, as well as to the Accountable Person. We are proposing that this duty would prevent a resident or Accountable Person from knowingly or recklessly weakening compartmentation to a significant extent:
- Drilling through or otherwise penetrating an external wall without applying adequate fire-stopping;
 - Drilling through or otherwise penetrating any part of the internal structure separating one flat from (a) another flat; (b) a roof or ceiling void; or (c) a common area, without applying adequate fire-stopping;
 - Replacing fire doors with doors which do not adequately resist the spread of fire;
 - Tampering with or removing self-closing devices on fire doors;
 - Modifying fire doors by installing letterboxes, cat flaps and so on which do not adequately resist the spread of fire;
 - Installing windows or window vents which, because of their design or means of installation, do not adequately resist the spread of fire.
- 7.9.7. The duty would not cover matters which pose no significant threat to compartmentation, including:
- Works wholly within a flat, for instance knocking through internal walls separating one room from another;
 - Replacing internal doors within a flat (unless, exceptionally, such doors were required by the Building Regulations to be fire doors);
 - Works which do not fully penetrate a wall, floor or ceiling, such as wall-mounting of appliances, curtains or furniture.
- 7.9.8. The duty would not cover accidental damage, provided that steps were taken to repair the damage promptly and in ways which restored compartmentation.

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

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

7.10. *Safety Case*

7.10.1. The Hackitt Review and our own Expert Group were clear: Information is key across the life cycle. During occupation, for Category 1 buildings, this is in the form of a building Safety Case. A Safety Case is “a structured argument, supported by a body of evidence that provides a compelling, comprehensible, evidenced and valid case as to how the Accountable Person is proactively managing and controlling fire and structural risks.”

7.10.2. We intend to work with MHCLG to ensure consistency across the industry with regards to Safety Cases. A Safety Case will set out the fire and structural risks identified in the building, how those risks have been dealt with and/or how they are being managed. The fire risk assessment will form part of this Safety Case.

7.10.3. The process of preparing the Safety Case will involve:

- Identifying hazards.
- Deciding who might be harmed and how.
- Evaluating the risks associated with these hazards.
- Deciding on the necessary control and mitigation measures.
- Recording those findings and implementing them.
- Evaluating and monitoring on an ongoing basis.

7.10.4. The Safety Case should refer to the totality of the building safety information and include all supporting evidence identifying how fire and structural risks are being managed – this information should be stored in the Golden Thread. The Safety Case report should set out how the fire and structural risks in a building are being managed. As well as a written explanation and justification of the approach being taken to manage risks, referencing the supporting evidence in the Safety Case.

7.10.5. In order to produce an effective Safety Case, the Accountable Person will need to produce (or inherit) a document that:

- Contains a detailed description of the as-built construction;

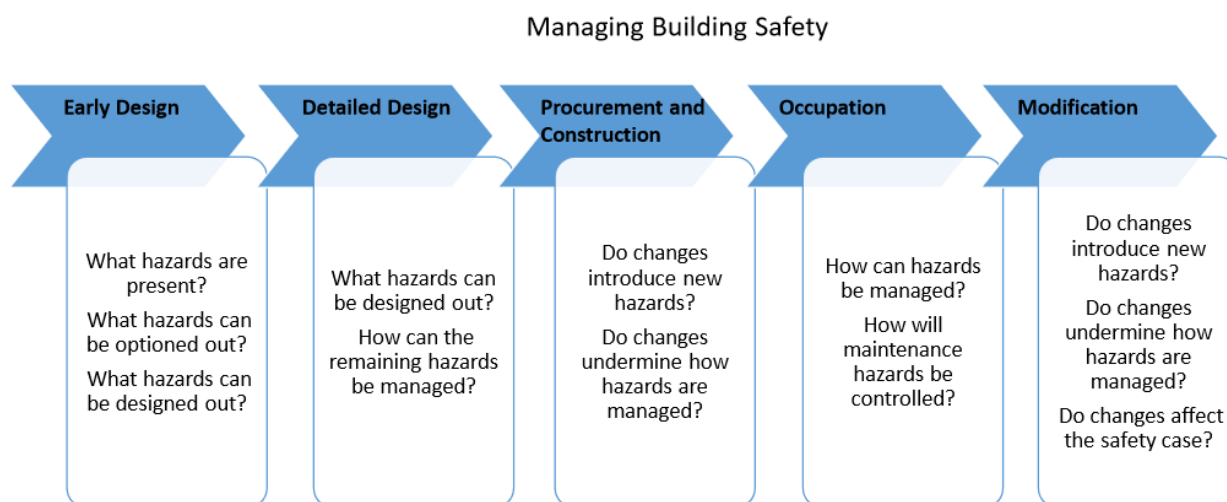
- Identifies within the description the health and safety critical elements of the construction along with the identity of the material used in each;
- Where these elements require maintenance or regular checking, sets out the regime that has been put in place to do this and provides evidence that it is being adhered to;
- Where checks and maintenance do occur, sets out the results of the checks and/or records of work done;
- Describes the overall safety management system of the building; and
- Contains clear confirmation that all current legislative requirements for the building are being met.

7.10.6. For existing buildings, the Safety Case will necessarily have to start from a less well-advanced position. For new buildings, especially those that will go through the gateway process, the Golden Thread of information should already have identified risk, this will allow the Accountable Person to produce a comprehensive Safety Case.

7.10.7. With existing buildings, building the Safety Case will be a slower process and certain elements of the construction will need to be checked over time. For existing buildings the Accountable Person should look to prioritise things such as readily combustible facing materials, cavity barriers and insulation. Checking internal compartments may also be required. The Accountable Person may want to appoint someone to carry this out on their behalf.

7.10.8. The diagram below sets out the high level consideration of how risks should be managed across the building lifecycle.

7.10.9. *Figure 9: Building Safety lifecycle*



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

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

7.11. *Mandatory Reporting*

7.11.1. Where properly observed, the aforementioned duties will help to reduce and mitigate building safety risks in a building. However, despite best efforts the reality is that sometimes things will go wrong. We propose there should be a duty on the Accountable Person to report any significant incidents or occurrences that would pose a significant risk to life and safety to the regulator. This would ensure that any significant issues can be quickly reported and trigger any required follow up and investigation by the regulator. It would also help dutyholders demonstrate transparent and responsible building management.

7.11.2. In practice this will require a clear system to be in place so dutyholders are aware of the nature of incidents that will trigger this duty and how and when they should raise matters to discharge it.

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

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

7.12. *Registration and Licensing*

The Accountable Person

- 7.12.1. In order to strengthen oversight and accountability for the new regime, we propose that there will be a legal requirement for the Accountable Person to register the building(s) they are responsible for, regardless of which Category the building is. The Accountable Person must be registered in, or at least legally represented in England or Wales. Failure to comply with the registration requirements will be a criminal offence. In the event of failure of a dutyholder to register themselves as the Accountable Person in respect of a particular building, the default assumption will be that the Accountable Person is the freeholder.
- 7.12.2. The registration process would clarify the category of the building(s) they are responsible for (i.e. Category 1 or 2). This will ensure there is clarity as to the identity of the individual/entity that is ultimately accountable for the building under the regime and the relevant duties they will be expected to carry out. In addition, the Accountable Person would also identify and provide details for the person/entity managing the building on their behalf (this could be a Managing Agent for Category 2 buildings, or a Building Safety Manager for Category 1 buildings) if they are not undertaking the role themselves.
- 7.12.3. As part of the registration process, the Accountable Person would:
- Provide information in relation to the building including the key dataset
 - Identify the person/entity that is performing the property management function (this could be the same person)
 - Have undertaken or committed to undertake a Fire Risk Assessment
 - Have established systems and protocols for working and sharing information with others
 - For Category 1 buildings they would have to create a Safety Case for the building
- 7.12.4. In Wales we already have established precedent for a similar system. Rent Smart Wales (RSW) requires all landlords in Wales to register as landlord for any properties they rent and to apply for a licence if they self-manage the property or to disclose the name of any third party agent that will be responsible for managing the property, who will then be required to apply for an agent licence. Landlords and agents are required to undertake prescribed training to demonstrate competence. RSW works with all Local Authorities across Wales and has powers to lead enforcement action against those landlords and agents failing to comply with their legal obligations.

- 7.12.5. Whilst the system is not entirely comparable to the proposed approach under the Building Safety Regime, many of the key principles are applicable and demonstrate an existing effective system of licensing oversight in housing that draws upon various authorities to ensure the safety and wellbeing of residents. For example we are proposing to mirror the approach of a basic level of training for all Accountable Persons as part of the registration process; and licensing of those undertaking management duties on behalf of an Accountable Person reflecting the different levels of skills, knowledge and expertise required.
- 7.12.6. With regards to the Building Safety Regime, it is important that the Accountable Person has the required expertise and competence to fulfil their role properly and that the right people are undertaking this work. The range of responsibilities covered by the Accountable Person will be a combination of existing building management duties, some new requirements and some aspects that will require specialist or technical expertise. It will be important for the Accountable Person to appropriately assess which duties they can undertake themselves and which they may need to delegate to others.
- 7.12.7. We believe there should be a requirement to complete basic training as a prerequisite to registering as an Accountable Person, to provide an overview of how the new regime works in practice including gaining a clear understanding of their role, interaction with other key dutyholders and the regulatory framework etc. Using the Rent Smart Wales comparison, the Accountable Person training would be similar to the level which the landlord must undertake to receive a 'Landlord License'. The training would be high level and provide a broad overview of the regime and responsibilities supporting the Accountable Person to make an informed choice about whether they also have the necessary skills, knowledge and expertise to deliver day-to-day and specialist management of the buildings for which they are an Accountable Person.
- 7.12.8. Once basic training has been undertaken, and the Accountable Person has their 'Accountable Persons License', they would be able to register their building(s) as either Category 1 or 2. This will ensure there is clarity as to the identity of the individual/ entity that is ultimately accountable for the building under the regime and the relevant duties they will be expected to carry out. In addition, the Accountable Person must also identify and provide details for the building manager if they are not undertaking the role themselves. For Category 2 buildings this could be a Managing Agent for example. For Category 1 buildings this would be a Building Safety Manager.
- 7.12.9. The Accountable Person for Category 1 buildings would also need to pass a fit and proper person test. This is to demonstrate that they are of

sufficient integrity and good character to be involved in the management of the property and that they do not pose a risk to the welfare or safety of persons occupying the property. If they cannot pass such a test they must appoint a licensed Building Safety Manager. When considering whether a person is 'fit and proper' the licensing authority could have regard to a number of factors including whether the applicant (or a director, trustee or member of an applicant which is a corporate entity) has committed any serious offence (particularly in areas relevant to their role as a dutyholder e.g. fraud or dishonesty) and any history of a having previous licence revoked.

Those Managing Buildings

- 7.12.10. It is also important to ensure that appropriate management models are put in place, ensuring that those responsible for discharging their duties have the requisite knowledge and experience to do so. A licensing system could provide a formalised mechanism to set requirements on the suitability and competence required to support Accountable Persons delivering their duties, but also more broadly for all those involved in the management of all buildings.
- 7.12.11. There is a balance to be struck for different categories of building. In relation to more complex Category 1 buildings, it is right that the level of expertise required in the proper management of these buildings is reflected in more stringent competence requirements and that these are consistent and clear. Therefore we believe that Building Safety Managers undertaking roles delegated to them by the Accountable Person in relation to the Building Safety Regime should be appropriately licensed to demonstrate their competence in terms of knowledge, qualifications and expertise.

Category 1 Buildings

- 7.12.12. For Category 1 buildings, the Building Safety Manager would have to obtain a 'Building Safety Manager Licence'. The role involves more practical day to day management of a broad range of duties, and the need to appropriately consider which of them they can undertake themselves and which will require them to engage specialist expertise.
- 7.12.13. Due to the extensive and varied nature of managing a Category 1 building, it may more commonly be undertaken by an organisation that will have more resources, management systems and the depth and diversity of professional expertise to undertake the role. It may also be unrealistic to assume they could perform all duties without engaging specialist third party support, there will be a core level of competence required to effectively meet the role requirements.

- 7.12.14. The Building Safety Expert Group recommended that competence was an area where we should seek to align with the UK approach as much as possible. We agree with this approach and propose that the regime in Wales should be developed in a way that allows competency requirements to be set and adopted at a UK-wide level.
- 7.12.15. In England, the industry-led Competence Steering Group was established to develop proposals for an overarching system to oversee competence requirements for buildings in scope. The Group is further divided into 13 working groups each focussing on different competence aspects. Working Group 8 is specifically focusing on the competency framework for the proposed Building Safety Manager in England. Members of this Group cover a wide range of residential and commercial expertise for the occupation phase, with participating members coming from social housing sector, commercial management, facilities managers, health and safety experts and fire safety experts. The Group published their final report '[Setting the Bar](#)' with recommendations specifically developed for the Building Safety Manager role.⁶²
- 7.12.16. The UK Government is also working with the British Standards Institute and industry to develop a suite of national standards to provide a competency framework. These new national standards are intended to provide a bridge to the wider competence requirements being developed for the improvement of skills, knowledge, experience and behaviours of the professionals and tradespeople working in buildings.

Category 2 Buildings

- 7.12.17. Currently, anyone can undertake residential property management functions with all the legislative, health and safety and financial issues that management of such properties present. As such, we are interested in views about whether there should be regulatory oversight of the exercise of these functions, wherever they are undertaken. The Minister for Housing and Local Government has previously expressed an interest in developing a regulatory regime to capture those who manage leasehold properties.
- 7.12.18. For Category 2 buildings (especially those with fewer dwellings), we do not want to make the responsibilities and competence requirements so onerous that they are disproportionate to the tasks involved in managing these buildings. Providing a competence requirement, and importantly guidance and resources in order to meet it, can help level the playing field in this respect. However, the Building Safety Regime includes all buildings containing two or more dwellings. We think it appropriate to consider whether all third parties nominated to manage Category 2 buildings are

⁶² <http://cic.org.uk/admin/resources/setting-the-bar-9-final-1.pdf>

suitably qualified to do so. We are therefore seeking views as to whether there should also be property management requirements for those managing Category 2 buildings.

- Q 62. *Should there be a requirement for the Accountable Person to register under the building safety regime during the occupation phase?*
- Q 63. *Are the registration process requirements sufficient? Are there any others that should be included? If so, please outline and explain.*
- Q 64. *Should there be a requirement for dutyholders (both the Accountable Person and the Building Safety Manager) to obtain a building safety licence in the occupation phase? Please explain your answer.*
- Q 65. *Are there any other requirements that should form part of the licensing process for Accountable Persons in addition to completion of basic training about the building safety regime and the fit and proper persons test (Category 1 buildings only)?*
- Q 66. *Should there be a competence requirement and/or minimum qualifications for those managing Category 2 buildings? If so what criteria should those engaging in such services meet?*

7.13. *Going Further: Managing Agents and those providing management services*

- 7.13.1. The regime outlined in the previous section is envisioned to encompass all properties which fall under the Building Safety Regime, i.e. all buildings containing two or more dwellings. However, the responsibilities and services provided by organisations and individuals which engage in the management of such properties are mirrored closely by those which administer charges to freehold properties on estates where Local Authorities have not adopted the roads, public open spaces and/or facilities, where residents are billed for the maintenance costs. Indeed, it is not uncommon for blocks of flats to share responsibility for the maintenance of public open spaces and facilities with freeholders on the same site.
- 7.13.2. Should the proposed regime be extended to cover the administration of all such charges, it would then be possible to ensure that there is an appropriate focus both on value and on the long term safety, sustainability and stewardship of property held and/or maintained communally, for the benefit of all residents.

Probity and Responsibility

- 7.13.3. We propose that those with residential property management responsibilities, including for collecting and administering service charges, organising works etc. should be required to meet a minimum standard,

and there should be a mechanism to prevent those with poor performance from continuing to practice.

- 7.13.4. Requirements considered may reflect the number/ complexity of properties managed. For example if looking after one house converted into two flats, the requirements, cost, etc. could be lower than someone carrying out that function in respect of larger development with more complex characteristics.

- Q 67. *Do you agree that there should there be regulation of all residential property management? Please support your views.*
- Q 68. *What standards should those carrying out residential management functions meet? Should there be a differentiation between the standards required for those managing Category 2 buildings, and those managing unadopted spaces? Please support your views.*
- Q 69. *How could the issues of probity and responsibility be evidenced in such a system? Please support your views*

8. Residents: Roles and Responsibilities

8.1. *Introduction*

8.1.1. Resident safety and wellbeing must be at the heart of these reforms. The tragic events of the Grenfell fire demonstrate how devastating the consequences can be when residents are not listened to. Residents will be at the core of our new regime and the changes proposed here are about empowering residents to have more say in the matters that affect their homes and providing clear channels for them to speak up and alert those responsible when things go wrong. It is not enough to simply provide channels for complaints, dutyholders must be able to demonstrate that resident engagement is proactive, meaningful and collaborative. There are many great examples of this work already happening in the sector, particularly in the social sector. We want to see a more harmonised approach to resident engagement, regardless of tenure.

8.1.2. However, we also recognise that in addition to having a greater voice, residents also have a key role to play in assisting with improving building safety in their buildings. They are often best placed to notice and raise early warnings when there are risks present but they must also be mindful of steps they can take to support dutyholders in maintaining a safe building for their own benefit and that of other residents. In effect the additional rights conferred under the regime will also come with some responsibilities and dutyholders will play a key role in promoting awareness and understanding of key building safety principles and how residents can meet them to avoid, and mitigate, risk.

8.2. *Requirements on the Accountable Person with regards to Residents*

8.2.1. Residents of multi-occupied buildings have clear and legitimate interests in understanding the risks that they face. In order to deliver this the Accountable Person will have a number of roles and responsibilities in this space. Section 7.7 sets out roles and responsibilities required of the dutyholders. The table below gives a brief summary of the requirements on the Accountable Person during the occupation phase.

8.2.2. *Figure 10: Requirements on Accountable Person in occupation phase*

CATEGORY 2	CATEGORY 1
<i>Buildings with two or more separate dwellings which are less than 18m in height (or up to and including 6 storeys)</i>	<i>Buildings which are 18m or more in height or more than 6 storeys with two or more dwellings</i>
Supporting and informing residents Promoting Building Safety	Supporting and informing residents <ul style="list-style-type: none"> • Develop and deliver a resident engagement strategy • Actively manage complaints and concerns of residents

8.2.3. In the paragraphs below, we detail minimum expectations in relation to supporting and informing residents. We are proposing to require these

through legislation. We hope that responsible Accountable Persons will go further than these minimum requirements and over time we may consider adding additional requirements in relation to supporting and informing residents.

Promoting Building Safety

8.2.4. We would expect that all Accountable Persons provide a minimum level of information to residents to promote safety in their buildings. This information would include:

- Fire safety measures within the building e.g. fire doors, sprinklers, fire breaks, escape routes, and importantly what their purpose/use is in helping to keep residents safe.
- Advice on what to do in the event of a fire/if the fire alarm is activated. Residents should be reminded of this information on a regular basis. This information should also be displayed in a prominent place in the common area of a building.
- General fire safety advice for residents – for example this might include where to access general information on fire safety (e.g. electrical safety, storing dangerous materials, etc). For the most part this could consist of signposting residents to the general fire safety advice (and more tailored help for high-risk individuals) that Fire and Rescue Authorities provide. But it could also include information relevant to the particular building, for example if there are balconies, not to use these for barbecues.
- Information on the roles and responsibilities of the Accountable Person and residents (e.g. this would include information on what residents can expect from the Accountable Person in relation to building safety); but also the expectations on residents (e.g. compartmentation, allowing access for fire safety issues, not interfering with fire safety equipment).

8.2.5. The level and detail of information provided to residents should reflect the complexity of the building. We want to promote a culture of openness and transparency, therefore our expectation is that the Accountable Person is proactive, providing information to residents and updating them as and when appropriate.

8.2.6. In providing information the Accountable Person should be mindful of the needs of residents. Information should be provided in a way that is accessible and understandable. Where necessary, for example, proportionate provisions will need to be made for vulnerable residents and those with additional needs i.e. those with disabilities. We would also

expect the Accountable Person to take account of the language profile of residents and to provide suitable information to meet these needs.

- 8.2.7. A nominated person would be able to receive and request information on behalf of a vulnerable resident living in a building.
- 8.2.8. There would also be a requirement on the Accountable Person to provide additional information where requested to do so.
- Category 2 buildings
 - Fire Risk Assessments (in full, current and historic).
 - Planned maintenance and repair schedules (as well as asset management plans, e.g. lift maintenance, fire door maintenance)
 - Outcome of any inspection in relation to building safety
 - Details of fire protection measures and fire safety systems (e.g. sprinklers, smoke alarms, fire extinguishers) and their maintenance schedule
 - In addition to the information above, residents in Category 1 buildings would also be able to request information in relation to:
 - The fire strategy for the building
 - Structural Assessments
 - Planned and historical changes to the building

Q 70.	<i>Do you agree that all Accountable Persons should be required to promote building safety (as set out at para 8.2.4)? Please support your views.</i>
Q 71.	<i>Do you agree that this information should be provided in a way that is accessible and understandable, and should where relevant reflect the specific needs of residents? Please support your views.</i>
Q 72.	<i>Do you agree that a nominated person who is a non-resident would be able to request information on behalf of a resident who lives there? If yes who do believe that nominated person should be? (Relative, carer, person with lasting power of attorney, other)</i>
Q 73.	<i>Is there any other information that an Accountable Person should be required to provide on request? Please provide information on the two different categories of building if relevant.</i>

Develop and deliver a resident engagement strategy

- 8.2.9. For Category 1 buildings there will be additional requirements to develop, and, more importantly, deliver resident engagement. This engagement should be genuine and ongoing. It is not sufficient to merely create a

strategy and issue information on a regular basis; that is lip service and will not be acceptable. The Accountable Person will need to ensure they are working in partnership with residents to ensure the safety of the building.

- 8.2.10. Whilst there will be no prescription in relation to how a strategy is delivered we will set out best practice approaches in guidance. Any strategy will have to provide the following information to residents (and their representatives). This information must also be shared with leaseholders where they are not residents of the building.
- A statement setting out how the Accountable Person will deliver resident engagement (involvement and participation) in the building
 - How the Accountable Person will establish effective two way communication
 - Setting out what information will be shared with residents, when and through what mechanisms.
 - How residents can get more actively involved.
 - How residents can access additional information on request.
 - How the Accountable Person will report the results of Fire Risk Assessments, Safety Case Reviews, other relevant safety checks, the outcomes of any inspections or assessments by the regulator.
 - How the effectiveness of resident engagement will be assessed, reported back to residents and continuously improved.
 - An explanation of how residents can raise concerns and issues with the Building Safety Manager and the Accountable Person, and the process for dealing with these and reporting back.
 - The Accountable Person must also provide information on the process to escalate concerns to the regulator.
 - Where there are intermediary landlords⁶³ between the residents and the Accountable Person, the Accountable Person will need to articulate how they will ensure there is effective cooperation in relation to building safety.
- 8.2.11. This information is in addition to that provided under 'promoting building safety' as outlined above. Community Housing Cymru have already developed [Safety First in Housing](#)⁶⁴ which sets out how landlords in the

⁶³ For example if a leaseholder is subletting to a tenant, the leaseholder would also be required to cooperate and/ or facilitate cooperation.

⁶⁴ <https://chcymru.org.uk/uploads/general/CHC-Safety-Transparency-Offer-ENG-v4.pdf>

Social Housing Sector will take forward resident engagement in relation to building safety. It is a useful starting point for all sectors to make initial headway in this area.

- Q 74. *Do you agree that for Category 1 buildings the Accountable Person must provide the information as set out at para 8.2.10? Please support your views.*
- Q 75. *Is there any other information that you think it would be useful to provide? Please support your views.*
- Q 76. *In what ways could an Accountable Person demonstrate that they have established effective two way communication?*

Actively manage complaints and concerns of residents

- 8.2.12. For Category 1 buildings there will be a requirement for the Accountable Person to establish a process for residents to raise building safety concerns, this would include how to make a formal complaint where a resident felt that a concern had not been addressed. The internal process for raising concerns would need to set out:
- The process for raising a concern (including guidance on the information to be submitted).
 - The process for escalating a concern into a formal internal complaint.
 - How information and data will be recorded in relation to complaints and concerns raised.
 - How responses to concerns and complaints will be provided (including timescales for acknowledgement, investigation and assessment of the concern, and final resolution) to the complainant.
 - How the assessment of the concern and decision making around any action taken and rationale for that action (or inaction) will be recorded.
 - How information on all concerns and complaints will be reported back to residents and leaseholders.
 - Information on how to escalate a concern to the regulator.
- 8.2.13. Whilst we would not require Category 2 buildings to have such an extensive system in place for residents to raise concerns or complain, we would expect the Accountable Persons to give due consideration to how residents might raise concerns with them.
- 8.2.14. For all residents and leaseholders there would be a route of escalation to the regulator where the building safety concern is considered urgent [section 8.4 refers].

8.3. *Roles and Responsibilities of Residents*

8.3.1. As mentioned above, the roles and responsibilities of residents should not be underestimated. In the vast majority of fires, regardless of setting, it is the unsafe behaviour of people that can lead or contribute to fires and their severity, or the efficacy of for example evacuation procedures. Where the cause of a fire is behavioural it is difficult to legislate for change; change can only be delivered in partnership with residents. True engagement with residents will promote a better understanding about the contribution they can make to building safety.

8.3.2. There are already existing duties placed on all parties in the system whether they are a resident, landlord or regulator in relation to safety issues in a building. For example, the owner (i.e. freeholder, head lessee or landlord) are normally responsible for maintaining the exterior of buildings, common areas and ensuring that there is adequate buildings insurance. Leaseholders and residents are obliged not to make any structural alterations without prior permission. Landlords are also required to ensure that their properties are safe and free from hazards; whilst landlords are able to access properties to undertake inspections and to carry out works they can only do so where they have given adequate notice.

8.3.3. However, in all multi-occupied buildings we believe that additional responsibilities for residents should be introduced in order to support the safety of the building for all:

- A requirement on residents (and intermediary landlords) to cooperate with the Accountable Person (and their appointed representative – e.g. Managing Agent or Building Safety Manager where relevant) and to support them in fulfilling their duties in relation to building safety. This could include for example:
 - Providing access to their property for safety check or work to be carried out. Any access would require the Accountable Person to provide reasonable notice to the resident.
 - Providing reasonable information on works undertaken within their properties.
 - Seeking prior consent for works that were likely to compromise fire safety measures.
- A requirement on residents not to knowingly breach the compartmentation of their property. For example a resident, contractor or intermediary landlord would be prevented from:

- Drilling through or otherwise penetrating an external wall without applying adequate fire-stopping;
- Drilling through or otherwise penetrating any part of the internal structure separating one flat from (a) another flat; (b) a roof or ceiling void; or (c) a common area, without applying adequate fire-stopping;
- Replacing fire doors with doors which do not adequately resist the spread of fire;
- Tampering with or removing self-closing devices on fire doors;
- Modifying fire doors by installing letterboxes, cat flaps and so on which do not adequately resist the spread of fire;
- Installing windows or window vents which, because of their design or means of installation, do not adequately resist the spread of fire.

- Q 77. *Do you agree that there should be a new requirement on all residents of buildings within scope to co-operate with the Accountable Person (and their appointed representative) to allow them to fulfil their duties under the Building Safety Regime? Please support your views.*
- Q 78. *Do you think there should be any specific requirements to facilitate this? Please support your views.*
- Q 79. *What safeguards should be put in place to protect residents rights in relation to this requirement? Please support your views.*
- Q 80. *Do you agree that there should be a new requirement on all residents of buildings within scope not to knowingly breach compartmentation? Please support your views.*

8.4. *Escalating Complaints to the Regulator*

- 8.4.1. We are proposing that there is a single process for escalating concerns to the regulator in relation to the Building Safety Regime, regardless of the Category of building or where it is in the building lifecycle. What is key is clarity of next steps for the individual raising concerns where internal processes have failed.
- 8.4.2. The regulator will have a role to play where dutyholders are not appropriately fulfilling their role and meeting responsibilities. There are a number of ways that this might be brought to the regulators attention including:
- Complaints from residents

- Repeated failure to comply with required duties e.g. sharing information with the regulator and residents such as requested information on risk assessments etc
- Concerns raised by dutyholders themselves
- A significant incident occurring in a building registered to them
- Opinion following inspections

8.4.3. How this will be dealt with will depend on the nature of the failure, and which dutyholder is at issue. In some cases, for example in the case of more minor issues, the regulator may engage in a dialogue with the relevant dutyholder in relation to any concerns they have become aware of, either directly or brought to their attention by third parties. This may consist of the regulator putting the dutyholder on notice of a particular issue (e.g. delays to submitting required information/notifications, slippage in adhering to the resident engagement strategy and providing information to residents in a timely fashion) and seeking clarification and assurances on steps being taken to remedy the problem and subsequently evidencing it has been resolved satisfactorily.

8.4.4. With regards to building managers (e.g. managing agents), there are a number of ways the existing system can allow for a change/removal of existing building managers, these include enfranchisement, the right to manage and by application to the Leasehold Valuation Tribunal (LVT). Private leaseholders have the right to apply to the LVT under s24 of the [Landlord and Tenant Act 1987](#) to appoint another building manager due to mismanagement on the freeholder/landlord's part.⁶⁵ Leaseholders are asked to identify their choice of manager in the application (e.g. themselves or a professional managing agent) but the final decision is made by the tribunal. Once the order is made, it can be varied or discharged on further application by leaseholders (or the appointed manager themselves) by the LVT if the appointed manager is not performing well.

8.4.5. We are seeking views as to whether a similar approach should be applied to Building Safety Managers of Category 1 buildings.

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

⁶⁵ <https://www.legislation.gov.uk/ukpga/1987/31/section/24>

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

8.5. *Disability, Evacuation and the Law*

- 8.5.1. Currently, the [Regulatory Reform \(Fire Safety\) Order 2005](#) places a legal duty on responsible persons to provide adequate means for emergency escape in the event of fire for all building occupants⁶⁶. The same duties apply to those members of staff or visitors in a building who for whatever reason suffer from some degree of impairment that puts them at a disadvantage in the event of an emergency.
- 8.5.2. The FSO requires fire risk assessments to be undertaken as the means by which a 'responsible person' can identify and manage fire risks. There is also a requirement to set out a suitable emergency plan for the premises. In a purpose built block of flats this would not normally require a full evacuation of the building. However, in some cases an evacuation may be necessary, for instance if a fire spreads out of control. In such cases, it is important that those who may find it hard or impossible to leave the building unaided receive assistance to do so. Such people could include those with mobility, sensory or cognitive impairments, or other medical conditions or injuries which would hamper or preclude self-evacuation.
- 8.5.3. In a workplace, this commonly involves preparing a Personal Emergency Evacuation Plan (PEEP⁶⁷) for each relevant individual. However, PEEPs rely on the availability of trained staff to assist the evacuation. Such support is unlikely to be available in a block of flats with no staff on the premises, and in that sense there is little benefit in preparing PEEPs for residents of them. Rather, it will often be necessary for firefighters to rescue individuals who cannot leave the premises unaided. To do so, they need to know their location in the building (e.g. flat and floor number) and the nature of any disability the individual has. We therefore propose that residents should have the right to supply these details to the Accountable Person, who would be under a duty to collate them, and to supply them immediately to the FRS in the event that an evacuation of the building was necessary. Such information is, though, necessarily personal and sensitive. There would be no obligation on residents to provide it, although

⁶⁶ <https://www.legislation.gov.uk/ukxi/2005/1541/contents/made>

⁶⁷ A PEEP is a bespoke 'escape plan' for individuals who may not be able to reach an ultimate place of safety unaided or within a satisfactory period of time in the event of any emergency. Importantly, the plan must not rely on the Fire and rescue service's intervention to make the plan work.

Accountable Persons would be required to treat all information they did receive in complete confidence and to disclose it only to the FRS.

- 8.5.4. Not all people with a disability will require assistance from another person. In some instances, including where suitable aids and adaptations have been provided, the person will be able to facilitate their own escape. Recognising their dignity and right to independent evacuation is important. There should be no sense of expecting someone with a visible disability to provide details to the Accountable Person. Conversely, people with some invisible disabilities may require assistance. It is also possible that a need for assistance may be temporary, for instance if someone is using a wheelchair because of a broken leg or someone in the late stages of pregnancy.
- 8.5.5. For most multi-occupied buildings, especially purpose-built blocks of flats, the appropriate action in the event of fire is to 'stay put'. This means that the building has been designed in such a way that the compartmentation will contain the fire where it originates for long enough for it to be extinguished. Therefore, a fire in a flat or in a common area should not endanger those in other flats, who are usually safer remaining where they are. In these circumstances, the need to evacuate, and therefore to rescue those who could not self-evacuate, would only happen in exceptional circumstances, if a fire was spreading in such a way to require an evacuation of all or part of the premises.

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|-------|---|
| Q 83. | <i>What roles and responsibilities are appropriate for Accountable Persons with regards to people who cannot safely self-evacuate? Please support your views.</i> |
| Q 84. | <i>Should Accountable Persons be required to collate details of all those who would require assistance?</i> |
| Q 85. | <i>Should Accountable Persons be required to provide this information immediately to the FRS in the event that an evacuation was necessary?</i> |
| Q 86. | <i>Should this be the case for all Categories of buildings? Please support your views</i> |

9. Raising Concerns

9.1. *Introduction*

- 9.1.1. This section sets out how we would expect concerns to be escalated. This refers to concerns in relation to whistleblowing, as well as escalating residents' concerns where internal resolution is not satisfactory.
- 9.1.2. Whistleblowing is where a worker reports certain types of wrongdoing that affect public interest, including raising concerns that are in the benefit of public safety. Generally these are things such as criminal offences, endangering health and safety, damage to the environment, or covering up wrongdoing. In the context of building safety, these might be things such as construction workers who have concerns about building safety on site, or a Building Safety Manager who has concerns they are not being adequately supported by the Accountable Person to discharge their duties.
- 9.1.3. The Grenfell Tragedy also highlighted the need to ensure that there are appropriate routes of escalation where residents feel that serious safety issues are not being addressed appropriately. As such it is appropriate to also set out a clear route for residents to be able to escalate matters where internal processes have not adequately addressed safety concerns. Under these circumstances we would expect the regulator to identify if escalation is necessary and take appropriate action.

9.2. *Raising Concerns/ Whistleblowing*

- 9.2.1. As part of the wider cultural and behavioural shifts required under the new regime, it is important that those working under it feel safe to raise concerns if they see that things are going wrong or responsibilities are not being met. Concerns raised in this context will help to facilitate sharing of learning across the sector and contribute to a sector-wide picture of safety concerns. The new Building Safety Regime aims to cultivate a 'just' culture; the ability to raise concerns freely and openly should be supported and encouraged.
- 9.2.2. Industry and the sector should work to ensure this message is communicated as part of wider regime adoption at every stage. It is also important to ensure there are legal protections in place for those who decide to raise concerns.
- 9.2.3. The [Public Interest Disclosure Act 1998](https://www.legislation.gov.uk/ukpga/1998/23/contents)⁶⁸ (PIDA) protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they make certain types of protected disclosures. More commonly known as whistleblowing protections. We propose that these

⁶⁸ 1998 Ch.23 <https://www.legislation.gov.uk/ukpga/1998/23/contents>

protections should be also be afforded to workers when reporting building safety concerns under the new regime.

- 9.2.4. In England, this is to be achieved by including the new Building Safety Regulator as a 'Prescribed Person' under PIDA. In Wales, our regulatory model may be different which means we may need to take a different approach. We will work closely with UK Government on legislative amendments in this area to ensure that our final model is sufficiently covered and offers workers equivalent protections.

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

10. Regulating the Building Safety Regime

10.1. Introduction

- 10.1.1. Establishing clearer lines of accountability is only one side of the coin. This is only really meaningful if it results in better systems for holding those accountable to their duties and demonstrable consequences for failing to comply. This is critical to increasing public confidence in the system and bringing about the scale of cultural change required to make the reforms effective.
- 10.1.2. The key to ensuring the new regime is successful will be its effective regulation. The changes we are proposing amount to a complete overhaul of the existing system. This is not just about procedural and process changes, it also requires a significant cultural and behavioural shift from all involved in the design, construction and management of buildings across Wales. Maintaining the status quo is not an option as tragedies such as Grenfell and subsequent inquiries and reviews have made very clear.
- 10.1.3. Whilst wholesale change on this level will inevitably take time to fully embed, a key driver for adoption (and in its most narrow sense, compliance) will be the ability of the Regulator, however it is formed, to establish itself as an authoritative and respected presence. The Regulator must also be able to impose sanctions that reflect the importance of compliance with the new regime and to signal the change in attitude and approach to building safety under the new regime.
- 10.1.4. The agreed model for the new Building Safety Regulator, where it will sit, how it will be structured and funded, and the sourcing of necessary capacity and expertise is still to be determined. This is a critical area for consultation, ensuring that all of our key partners and stakeholders have the opportunity to understand current options and thinking in this area, and share their experience and expertise to help us shape the right solution for Wales. For the purposes of this consultation we set out the key role, functions and potential options for a regulatory model.

10.2. Current Regulatory System

- 10.2.1. As the Hackitt report highlighted, the current regulatory regime is fractured, with a number of enforcement bodies covering different aspects of regulation in relation to the fire and structural safety of a building during design and construction, and once it is occupied.
- 10.2.2. The existing regulatory oversight in Wales is split between the three Fire and Rescue Authorities and the 22 Local Authorities; Local Authority

Building Control under the [Building Act 1984](#)⁶⁹, Local Authority Housing Officers under the Housing Health and Safety Rating System (HHSRS) ([Housing Act 2004](#)⁷⁰), and the Fire and Rescue Authorities under the [Regulatory Reform \(Fire Safety\) Order 2005](#)⁷¹.

Local Authority Building Control

- 10.2.3. Local Authority building control departments enforce the [Building Regulations 2010](#)⁷² under powers contained within the Building Act 1984. There are 22 Local Authority building control departments in Wales.
- 10.2.4. The building regulations can cover building work to construct, extend, make alterations to or change the use of buildings of differing uses. The role of the Local Authority can include assessment and approval of building regulation applications, undertaking routine site inspections to check compliance with the building regulations and at the completion of building work issuing a completion certificate.
- 10.2.5. Where necessary Local Authorities have powers under the [Building Act 1984](#)⁷³ to undertake enforcement action where there is non-compliance with the building regulations.

Fire safety

- 10.2.6. Fire and Rescue Authorities (FRAs) oversee fire safety of the common parts of a building under the [Regulatory Reform \(Fire Safety\) Order 2005](#) which places duties on a 'Responsible Person' to maintain the safety of a building and to reduce the risk of fire in relation to the internal common areas of blocks of flats (e.g. carrying out risk assessments).⁷⁴ It applies to workplaces in full but only to the common parts of shared residential properties like blocks of flats.

Housing conditions

- 10.2.7. Local Authorities have responsibility for overseeing housing conditions within individual dwellings and houses in multiple occupation. This duty is conferred on Housing and Environmental Health Officers (EHOs) under both the [Housing Act 2004](#)⁷⁵ and The [Housing Health and Safety Rating System \(Wales\) Regulations 2006 \(HHSRS\)](#).⁷⁶ Under the latter, EHOs have the ability to inspect and assess individual dwellings against a list of

⁶⁹ <https://www.legislation.gov.uk/ukpga/1984/55>

⁷⁰ <https://www.legislation.gov.uk/ukpga/2004/34/part/1>

⁷¹ <https://www.legislation.gov.uk/uksi/2005/1541/contents/made>

⁷² <https://www.legislation.gov.uk/uksi/2010/2214/contents/made>

⁷³ <https://www.legislation.gov.uk/ukpga/1984/55>

⁷⁴ The Regulatory Reform (Fire Safety) Order 2005 (Fire Safety Order). As outlined in section 3 we are already seeking to reform the FSO via a Bill with UK Parliament to improve its operation which will support our broader building safety reforms.

⁷⁵ <https://www.legislation.gov.uk/ukpga/2004/34/part/1>

⁷⁶ <https://www.legislation.gov.uk/wsi/2006/1702/made>

29 hazards (including fire) and oblige building owners to take remedial action.

10.2.8. This division, and in some cases overlap, of enforcement responsibilities can result in some aspects of regulation being duplicated due to overlapping powers and coverage, or indeed areas being overlooked because each respective authority is (rightly) focussed on their area and there is not enough 'stepping back' to look at the regulatory picture as a whole. The Hackitt report effectively provided this 'step back' to look at the existing picture as a whole and identify where it needed to change. For us in Wales, there are a number of key issues with the existing system that a new regulatory model will need to address, these include:

- Complexity- the regulatory system as a whole is complex. This is especially problematic when seeking to empower residents, and members of the public generally, to navigate the regulatory landscape, engage in building safety matters and hold the right people to account
- Communication and information sharing between existing regulatory authorities
- The absence of the skills and expertise of Building Control during the occupation phase
- Unequal access between authorities - Local Authorities have access to individual dwellings but do not have the same level of expertise around fire; conversely, FRAs have the necessary skills and expertise but do not have any right of access to individual dwellings
- Ineffective sanctions- sanctions under the current systems are not robust enough to encourage compliance creating a culture where cost cutting and 'gaming the system' has taken precedence over safety and quality of build

10.3. *Regulators working together*

10.3.1. During Design and Construction the Local Authorities and the Fire and Rescue Service work closely together. As mentioned in section 3.2, the [guidance](#) that governs the way in which these bodies work together has recently been updated⁷⁷..

10.3.2. During occupation, formal consultation between Local Authorities and the Fire and Rescue Authority should take place in accordance with the

⁷⁷ <https://gov.wales/building-regulations-and-fire-safety-procedural-guidance>

requirements of the [Housing Act 2004 Section 10](#)⁷⁸ and the [Regulatory Reform \(Fire Safety\) Order 2005](#) Articles 30, 31 and 46.⁷⁹

- 10.3.3. In summary, these require the Local Authority to consult the relevant fire and rescue authority before enforcement action is taken (so far as it is practicable), and vice versa.
- 10.3.4. We are proposing to enhance these requirements to support more proactive dialogue between regulatory bodies. To be most effective we believe it is important to establish communication and join up at three levels:
- **Strategic level consultation** - Formal consideration of procedural and policy issues about how best to consult and communicate between agencies.
 - **Tactical level consultation** – This has two aspects:
 - arrangements for emergency situations – for example consultation between Local Housing Officers and Fire Officers in the event of considering issuing a prohibition notice.
 - arrangements for non-emergency situations – for example, proposals for inspection programs.
 - **Data Exchange** – information should be shared between the two authorities to support them in their respective duties and to best enable appropriate oversight of safety.
- 10.3.5. Section 10.8 sets out our proposals for greater collaboration between enforcement bodies for the purposes of regulating buildings within scope ahead of legislative reform.

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

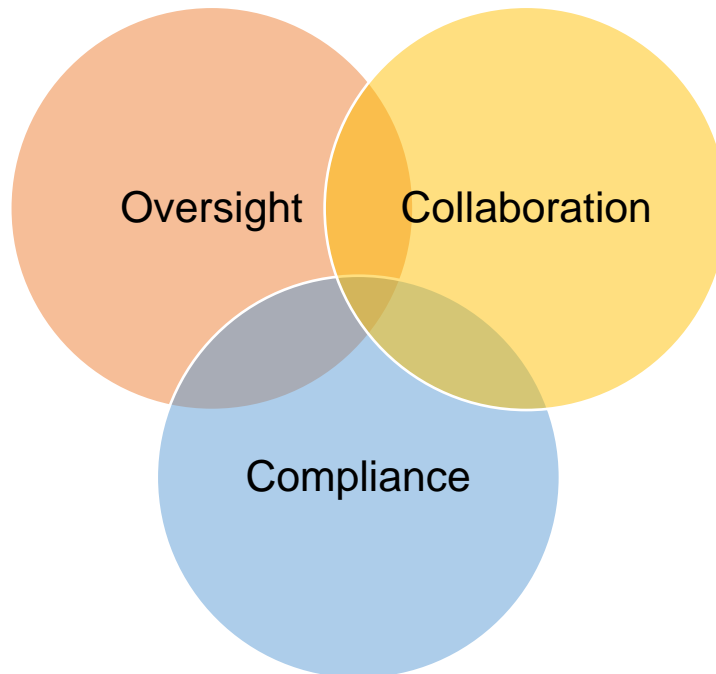
10.4. *Regulatory Objectives and Functions*

- 10.4.1. When considering a new regulatory model for Wales, it is helpful to first consider the types of functions we might expect a regulator to possess. This is the starting point when thinking about which regulatory model is right for Wales, as if we can agree on a set of functions, this can in turn help us identify, or at least narrow down, which model will best help us deliver those functions in the most effective way.

⁷⁸ <https://www.legislation.gov.uk/ukpga/2004/34/section/10>

⁷⁹ <https://www.legislation.gov.uk/uksi/2005/1541/contents/made>

- 10.4.2. The key aim of the regulator will be to ensure the safety of residents and others in and around buildings by holding dutyholders to account in performance of their duties under the regime. In meeting this overarching aim, we propose that regulators will have 9 core functions that can be grouped into 3 broad regulatory objectives:



Oversight: monitoring effective operation of the regime.

- 10.4.3. *Inspecting buildings* - whilst dutyholders will be responsible for ongoing maintenance of building safety by conducting regular assessments and taking steps to mitigate and address any identified issues, a Regulator will have an interest in having direct first-hand experience of inspecting a building itself either following concerns or issues being raised with a particular building, or to facilitate its own intelligence and data collection requirements to help inform decisions and advice/guidance.
- 10.4.4. *Ensuring competence* - there is an ongoing programme of work to set standards and drive up industry competence in building safety. A Regulator will have a key role to play in observing those competence standards by working with industry and other experts to ensure they remain effective, are adhered to and are clearly communicated
- 10.4.5. *Setting safety standards and policy direction* - drawing on its own, industry and other relevant authorities' expertise to inform Government policy direction with regards to building safety in line with competence requirements and objectives of the new regime. This could include helping to inform Government policy in relation to building safety and the regime informed by its overview of risks and trends (e.g. changing scope of the regime overtime).

Collaboration: working with others to achieve regime objectives.

- 10.4.6. *Working with others* - we recognise that effective regulation is a collaborative endeavour and we are dealing with a technical and complex area. A Regulator will need to work with industry and other authorities with existing expertise and knowledge of relevant building safety aspects in order to properly oversee the regime. A key group they will also need to liaise with will be residents whose views are crucial as the ultimate beneficiaries of the new regime. A Regulator will also need to work with other enforcement bodies across the four nations to ensure there is information sharing and knowledge of cross border issues as appropriate.
- 10.4.7. *Public engagement/ education* - for the regime to work effectively all participants and stakeholders will need to understand how it operates and their role/contribution within it. A Regulator will have a key role to play in this by producing, disseminating and sharing advice on best practice, information and guidance. This is not just limited to technical guidance for those with responsibilities under the new regime, but also extends to raising awareness of general building safety issues and developments to the wider public in order to increase public trust and confidence in the safety of their buildings following the damage created by the failures and issues exposed over the last few years.
- 10.4.8. *Public accountability* - the operation and performance of the new regime in practice would need to be captured and scrutinised in order to review its effectiveness. A regulator would have a key role to play in ensuring a required level of accountability. This could include annual reports to the Welsh Government/Senedd and making appropriate information publicly available, as well as other arrangements for providing and evidencing the impact of the regulatory regime.

Compliance: ensuring adherence to regime requirements.

- 10.4.9. *Dealing with complaints* - it is envisaged that a Regulator will be able to receive and act upon direct complaints about potential breaches and contraventions of the regime. These could be from a range of sources including residents, other authorities and dutyholders.
- 10.4.10. *Investigations and Enforcement* - in order to ensure compliance and that any contraventions of the regime are appropriately dealt with, a Regulator will need to be able to investigate any issues raised and have the ability to impose sanctions, including criminal prosecution. Investigation could involve liaising with relevant authorities/ dutyholders in relation to information shared with a regulator by third parties or that comes to light through its own information/intelligence e.g. mandatory reporting.
- 10.4.11. *Governance considerations* - this is from two perspectives. Firstly a Regulator will be concerned with ensuring dutyholders observe

governance requirements in fulfilling their role and responsibilities (e.g. in terms of creation, maintenance and sharing of information and data created as part of the regime). It also concerns a Regulator's own governance responsibilities in performance of its own functions (e.g. collating building information and working with others).

- 10.4.12. During Occupation the regulator will also have to provide registration and licensing functions and will hold a register of dutyholders assigned to buildings under the regime. Elements of this register could be publicly available.

- Q 89. *Do you agree with the list of key functions for the regulator as proposed?*
- Q 90. *Are there any additional functions which are not listed that you believe are required in order to achieve our building safety aims?*
- Q 91. *Do you think that some of these functions are more essential than others? Please explain your answer.*

10.5. *A Regulatory Model for the Building Safety Regime*

- 10.5.1. As outlined in section 6, local authority building control will take on sole responsibility for regulation of the design and construction phase. This section deals exclusively with the occupation phase.
- 10.5.2. Establishing an effective regulatory system is critical to the success of the new regime. Whilst it is one of the most important aspects of our new approach it is also one of the most complex. The scale and scope of our proposed regime, and the many different building types and responsibilities that relate to them all makes for a complex landscape to oversee. The importance of this aspect means that we want to consult extensively with stakeholders and experts to ensure we adopt the right approach. We already know that maintaining the status quo is not an option and so we need to be bold and think big in terms of how we identify and scope our regulatory approach to ensure we meet our building safety goals.
- 10.5.3. The regulatory model we adopt must represent the building profile here. In terms of Category 1 buildings, we know that as of April 2020 we have approximately 148 high rise residential buildings that meet the Category 1 criteria in Wales, we anticipate around four to five new Category 1 buildings being developed every year. We are working to fully understand the number of Category 2 buildings in Wales, but best estimates at the moment are 13,000-37,000 properties, around 130,000 flats.
- 10.5.4. In June 2020 we published our building safety [Position Statement](#) which sought early feedback and consultation on the proposed building safety

regime.⁸⁰ We posed two potential options for regulation of the new regime, a single regulator or multiple regulators. These two options amounted to a consolidation of a number of broader options which are set out in more detail below. However, these options are not exhaustive and we are seeking views on alternative workable models that we could also consider.

A Single Regulator

- 10.5.5. There are a number of potential options under the umbrella position of a single regulator. In broad terms this would help to streamline regulation of what is a complicated existing system. Meaning that there is an easily identifiable body who oversees and enforces the regime - making it clear for dutyholders, other relevant authorities, residents and the public at large, who has authority and where to direct any concerns/issues they may have.
- 10.5.6. However, a single regulator is going to need to draw upon the expertise and technical experience of existing authorities. This means that existing regulators would still retain involvement in the regulatory landscape. What this means in practice is that the extent to which there really is a 'single' regulator could be tempered by the operational reality.

A new national building safety regulator

- 10.5.7. This would potentially provide a streamlined process, centralising oversight and enforcement in one body. This would be easier for dutyholders under the regime, and others, to access and understand the regulatory landscape. It would provide independence from existing authorities in this space. Establishing a new body might make it easier to meet capability and capacity requirements by bringing in additional resources. It could more easily be adapted overtime to regulate and oversee a wider range of issues if needed
- 10.5.8. There are of course significant cost implications in establishing a new body. Establishing a new body would also be complex and take time. There is also potential to continue duplication of work, as existing authorities will not cease to play a role, and would retain their full responsibilities as regards single dwellings and non-residential properties.

One lead Regulator

- 10.5.9. This would see one of the existing authorities (the Local Authority or the Fire and Rescue Authority) become the lead regulator of the new regime. In either case there would be capacity and expertise considerations as neither option have blanket expertise to cover the regime alone without the need to develop and bring in additional expertise and resources.

⁸⁰ <https://gov.wales/sites/default/files/publications/2020-06/building-safety-position-statement.pdf>

- 10.5.10. However, the specific considerations for each option would be different. For example, Local Authorities would need to acquire fire engineering knowledge. However they already have a significant amount of experience with some of the other aspects of the regime that go beyond regulation, such as engaging with residents, developing engagement strategies from a housing perspective and overseeing registration and licencing requirements.
- 10.5.11. In relation to FRAs, they are set up as an emergency service and generally lack the corporate capacity to take on a regulatory role beyond one relating solely to fire safety. However, they clearly have the expertise required from a fire safety perspective. In addition, looking at the existing regulatory framework, it is possible to see how this might be amended to prioritise the fire and rescue service as the lead regulator by reviewing the FSO to consider if it could be broadened to allow access inside individual dwellings and removing fire safety considerations from the Local Authority HHSRS process to avoid duplication.
- 10.5.12. Whilst such a model would draw on existing expertise and authorities, it would need to provide clear demarcation of roles as it is unlikely the non-lead authority would drop out of this space entirely.

Multiple Regulators

- 10.5.13. Whichever regulatory model is opted for, the reality is that the existing enforcement bodies will retain existing powers and continue to have a critical role to play in the new regime. In fact, the Hackitt review recognised this and recommend the creation of a Joint Competent Authority (JCA) would be more appropriate than the creation of an entirely new single regulator that draws building safety expertise away from existing authorities who would still have a critical role to play.

A Concurrent regulatory regime

- 10.5.14. The experience and expertise within existing authorities will be crucial to effective regulation of the new regime. Rather than significantly reform the existing model, this option would maintain it but improve identified deficiencies to strengthen the regulatory regime going forward.
- 10.5.15. Areas of focus could include developing a framework to clarify which aspects each authority is responsible for to avoid overlap/duplication of efforts. For example, the Fire and Rescue Authorities could have a more prominent enforcement role for Category 2 buildings which are largely concerned with ensuring annual fire assessments are undertaken. Whereas Local Authorities could have more oversight of the design and construction process and, during occupation could have oversight of the registration and licensing process and additional aspects of the regime that pertain to Category 1 buildings (e.g. resident engagement strategies).

- 10.5.16. In addition, there could be stronger information sharing and collaboration agreements to facilitate a joint approach. Regardless of area of responsibility, both enforcement agencies will have an interest in the overall picture and information being produced and monitored.

Coordination and oversight arrangements

- 10.5.17. This option replicates the one above but has an additional aspect. In addition to the existing authorities, a joint committee could be established with representatives from regulatory authorities, industry, and potentially representatives from the sector, for example builders/developers, building managers/managing agents and residents.
- 10.5.18. This “committee” would have a coordination function and essentially review and monitor the new regulatory regime and ensure that it is meeting its objectives and discharging its functions in accordance with agreed frameworks. A framework could be co-produced by the existing regulators within a given area, for example the Fire and Rescue Authority areas.
- 10.5.19. The framework could:
- Clarify how the responsibilities and scope of the new regime are apportioned between the regulatory bodies with the aim of encouraging more collaborative working
 - Constitute an agreed way of working amongst enforcement authorities
 - Clarify frequency and nature of interaction with the coordination and oversight arrangements
- 10.5.20. This proposed option acknowledges the roles and responsibilities of existing regulators but reflects the need for more comprehensive and coordinated working practices to raise safety standards in multi-occupied residential buildings.
- 10.5.21. This would provide an additional element of independence, accountability and oversight to deal with any issues around conflicts and perceptions that this was ‘business as usual’. Enforcement agencies could report to the committee who would then be in a position to feed into a national picture of building safety across Wales.
- 10.5.22. During both design and construction and occupation, enforcement powers and responsibility would continue to sit with Local Authorities and the FRAs but the coordination committee would have oversight of how these functions were being discharged.

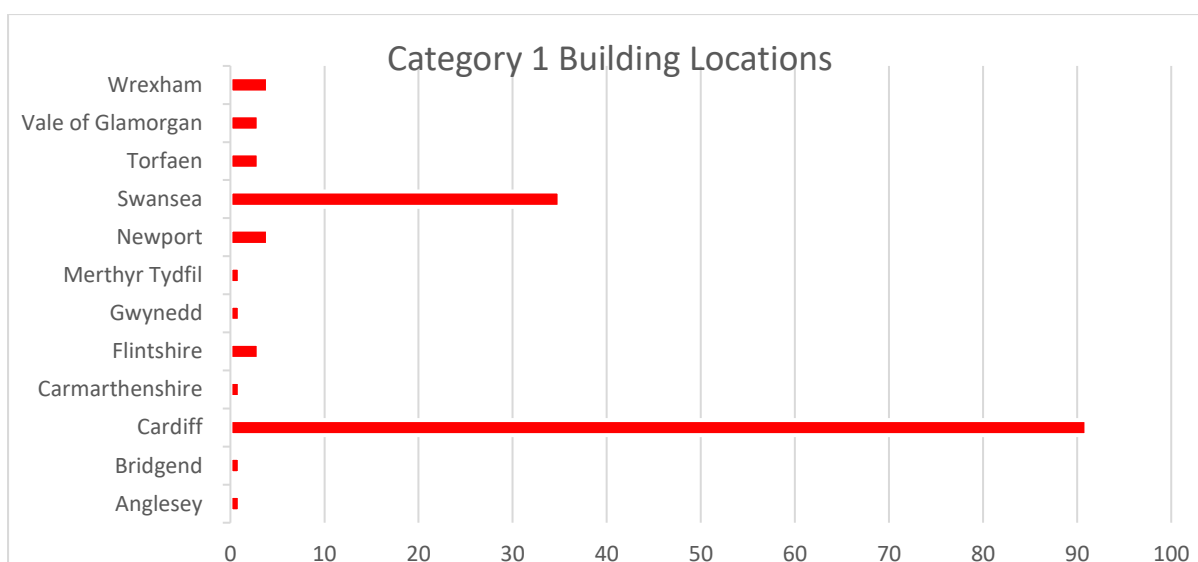
Q 92. *In your view, do any of the regulatory model options outlined provide a preferred approach to regulating the regime in occupation*

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

10.6. Consideration of a Regional or National Approach

10.6.1. A consideration for regulation, especially of the occupation phase, is the geographic spread of buildings. As the chart below demonstrates, whilst the vast majority of Category 1 buildings in Wales are concentrated in Cardiff and Swansea; Category 2 buildings will probably be more evenly spread across areas, instead reflecting high density areas of populations.

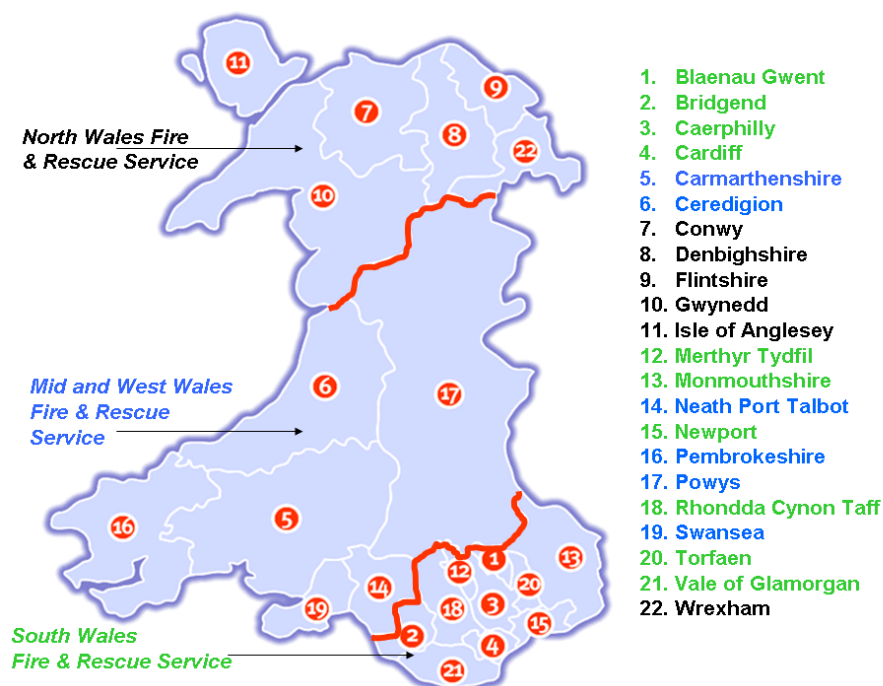
10.6.2. *Figure 11: Geographic spread of high rise residential buildings (HRRBs) in Wales.*



10.6.3. In addition to considering which regulatory model we should adopt in Wales, we will also need to consider whether it should operate on a regional or national level. For example, a regional model could reflect the FRA areas, or be based on the proposed economic areas of the [Local Government and Elections \(Wales\) Bill](#)⁸¹. This could of course be done on a Local Authority basis, but the burden on the FRA to ‘service’ a significant number of Local Authority areas, would be significant. The map below sets out FRA and local authority areas.

⁸¹ <https://business.senedd.wales/mglIssueHistoryHome.aspx?lId=26688>

10.6.4. *Figure 12: FRA and local authority areas*



10.6.5. We already have existing examples of a regional approach to regulation. For example, the Shared Regulatory Services (SRS) is a combined approach to the provision of regulatory services that cover the council areas of Bridgend, Cardiff and the Vale of Glamorgan. The service covers a range of neighbourhood, commercial and enterprise and specialist services, including regulating housing safety in private rented properties (including fire safety). The SRS is overseen by single management structure with representatives from each of the authority areas. The primary reason for establishing the service was to effectively pool and maximise resources and there are similar considerations and approaches that are relevant for building safety purposes.⁸²

10.6.6. Any level of regional working would need to allow for the ability to capture, understand and change between a local, regional and national focus. This means being able to understand the picture in each Local Authority area as well as ensuring that this local information is shared in such a way that it is able to also build a regional and national picture of building safety in order to inform guidance and advice on a pan-Wales basis.

10.6.7. Whilst this is a consideration that would come later in our work to identify a viable regulatory model, it is something we need to consider and equally would like to hear your views.

⁸² <https://www.srs.wales/Documents/About-Us/A-short-guide-to-SRS-2019.pdf>

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

10.7. *Sanctions and Enforcement*

- 10.7.1. This section sets out our initial thinking on proposals to improve compliance and strengthen enforcement and sanctions within the new Building Safety Regime. We know that enforcement bodies (the Local Authorities and the Fire and Rescue Authorities) currently use both informal conversation and dialogue as well as formal enforcement action where there are issues to be addressed under the [Housing Health and Safety Rating System](#) (HHSRS)⁸³ and the [Regulatory Reform \(Fire Safety\) Order 2005](#) (FSO)⁸⁴ regimes. Both are appropriate, and we would encourage them to continue in this approach. However, the Hackitt Review highlighted that historically there has been a reticence to take enforcement action, this approach has provided little deterrence against non-compliance. This was highlighted as particularly true during the design and construction phase.
- 10.7.2. We want to see a system where regulatory action is the last resort, not because regulators shy away from using their powers, but because buildings comply with exacting standards and are managed with the safety of residents at their heart. We must promote behaviours that reinforce the importance of building safety, and we must ensure that the regulatory framework allows those that break or bend the rules to feel the full force of enforcement and sanctions.
- 10.7.3. To deliver on this we will ensure that those with legal responsibilities in this space are clear what their roles and responsibilities are. We will produce clear guidance to support them. Where there is failure in the system, this should initially be addressed quickly and informally through dialogue and support.
- 10.7.4. We anticipate that there will be proactive inspection and monitoring programmes. This will require prioritisation based on risk.
- 10.7.5. We believe it is appropriate moving forward that there remains the option for support and informal action ahead of formal enforcement action. This is often the most effective in bringing about action. However, where necessary enforcement action should be taken forward swiftly. Action could be formal orders, or prohibition notices. In the most serious cases enforcement action could be in the form of prosecution for criminal

⁸³ <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals>

⁸⁴ <https://www.legislation.gov.uk/ukxi/2005/1541/contents/made>

offences, with appropriate sentencing powers for the courts (including fines, imprisonment or revocation of licenses).

10.7.6. Therefore we are seeking views on the framework of enforcement actions available reflecting how concerns and enforcement activity could be escalated, an indication of these levels is set out in the table below.

10.7.7. *Figure 13: Overview of proposed framework of enforcement action.*

Action		Description
Across the Life Cycle	Ongoing Dialogue	Site Visits Informal dialogue
	Minor/ Emerging Issues	Agreed action plan The relevant dutyholder and enforcing body would agree a schedule of remediation work required and timescales by which to complete it. Failure to adhere to such a plan could be grounds for escalating enforcement action.
	Medium Risk/ Action Required	Enforcement Notice As happens now, an Enforcement Notice would be required to set out: <ul style="list-style-type: none"> • what regulation(s) the dutyholder was in breach of • the nature of the hazard(s) as a result of that breach • the nature of remedial action (but not necessarily a prescribed course of action) for the order to be revoked; and • the dates when action is to be started by and completed.
During Design & Construction	High Risk/ Urgent Action Required	Stop Notice A Stop Notice could be issued where an Enforcement Notice has been contravened or the work, in contravention of the Building Regulations, presents a serious risk of harm to people in or about the building if the building were used. As happens now, a Stop Notice would set out: <ul style="list-style-type: none"> • what regulation(s) the dutyholder was in breach of • the nature of the hazard(s) as a result of that breach • the nature of remedial action (but not necessarily a prescribed course of action) for the order to be revoked; and • the dates when action is to be completed by.
During Occupation		Emergency Remedial Action As can happen now, Emergency Remedial Action could be undertaken by the Local Authority where an Enforcement Notice has been contravened, for example the works have not been undertaken; and the risk is so great that it presents a serious risk of harm to people in or about the building if the building continued to be used without the defect being resolved. As happens now, the Emergency Remedial Action would set out: <ul style="list-style-type: none"> • what regulation(s) the dutyholder was in breach of • the nature of the hazard(s) as a result of that breach • the nature of remedial action required; and • an indicative cost range to remediate the building. Emergency Prohibition Order As happens now, an Emergency Prohibition Order imposes prohibitions on the use of residential premises or part of premises. As happens now, a Prohibition Order would set out: <ul style="list-style-type: none"> • what regulation(s) the dutyholder was in breach of • the nature of the hazard(s) as a result of that breach • the nature of remedial action required for the order to be revoked; and • dates when action is to be started by and completed.

- 10.7.8. In investigating breaches it is important that regulators have the ability to take all appropriate steps in order to make an informed decision with regards to enforcement action. While the interior of flats is outside the scope of the building safety regime, it may be difficult to inspect parts of a building which are in scope (such as balconies, or floors and walls separating one flat from another (i.e. issues of compartmentation)) without access to dwellings. Environmental Health Officers are already able to access the interiors of properties under their existing powers. The Fire and Rescue Authorities however are not. We are seeking views as to whether these access rights should be available to the FRAs. Entry would be by prior arrangement with the tenant or leaseholder. There would be no right to demand or force entry without notice. It would also be limited to inspecting those parts of the building which are covered by the regime.

- Q 95. *Do you agree that there should be a framework for escalating enforcement and sanctions? Please support your views.*
- Q 96. *Do the levels set out at Figure 13 sufficiently reflect these levels? Please support your views.*
- Q 97. *What penalties or offences should we consider being created as part of the enforcement and sanctions regime associated with building safety? Please support your views.*
- Q 98. *Do you agree that access rights should also be provided to the Fire and Rescue Authorities, along similar lines to those available to Environment Health Officers in relation to their powers under the HHSRS? Please support your views.*
- Q 99. *What safeguards should be put in place to protect residents' rights in relation providing access to their properties? Please support you views.*

10.8. *A Joint Inspection Team*

- 10.8.1. There are steps we can take to prepare for the new regulatory regime before it is established. Legislation is still some time away. As a result we have considered further steps that should be taken to improve building safety in the interim. It is clear that there are already identified problems that cannot wait for the new system to be rectified, and there are likely to be other issues that are yet to come to light. We must take steps to uncover as accurate a picture of the state of existing buildings as possible.
- 10.8.2. It is proposed that Welsh Government establish a Joint Inspection Team (JIT) to work alongside Local Authorities and the Fire and Rescue Authorities (FRAs) to help them enforce against landlords/responsible parties using their existing powers. The JIT would be comprised of a multi-disciplinary team representing expertise from the existing enforcement

bodies i.e. environmental health officers, fire engineers and building control, overseen by a team leader. The team would accompany Local Authority staff to high rise residential buildings to inspect buildings, report on the state of the building and identify any hazards or defects that could form the basis of enforcement action. The team would then advise the Local Authority on how to take enforcement action if appropriate. Buildings would be prioritised for inspection by a risk matrix. This is similar to an existing JIT model that has been established in England. In that case, the JIT has no legal authority and can only act in an advisory capacity for the Local Authority. We are considering a similar set up here.

- 10.8.3. Creation of a JIT would help to improve building safety within the existing building stock. Instead of focusing only on powers available to the Local Authority, we intend to also add representatives from the Fire and Rescue Service to participate in the Team. In addition to providing advice on enforcement action and supporting enforcement agencies to better understand where to target their efforts, information and intelligence gathering through inspections and reports would provide a clearer picture of the existing risk profile for high rise building across Wales. The composition of the JIT would also encourage closer working between Local Authorities and FRAs as the existing regulators.
- 10.8.4. We propose that the Welsh JIT would initially focus on high rise residential buildings (over 18m/6 storeys). This is in line with the additional requirements proposed for Category 1 buildings under the regime. However, we would also want the JIT to consider buildings in Category 2 where there were particular issues that the Local Authority and Fire and rescue service wanted to target together within a local area or region. It is proposed that this team is established for an initial period of two years. Once the new regime is established the team could continue to support the new regulatory model by continuing to inspect buildings and reporting to the regulator.
- 10.8.5. We are currently working with colleagues leading the JIT in England, the WLGA and Welsh enforcement authorities to explore a model that would work for Wales. This includes identifying the right composition of the team, where they should be located and development of a risk matrix to prioritise buildings for inspection.

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

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

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

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

11. General Requirements in Relation to Fire Safety Equipment

11.1. *Current Position in Wales*

11.1.1. All new residential properties built since 1992 are required to have at least one mains-powered smoke alarm on each floor.⁸⁵ In addition, since 2016, building regulations have required the provision of an effectively operating fire suppression system (sprinkler systems) when building residential properties or converting buildings for residential use.

11.1.2. There are currently additional requirements in the rental sector to ensure landlords are responsible for ensuring their property meets certain fire safety obligations, including that there are no fire hazards in the property. In October 2015, Rent Smart Wales issued a [Code of Practice](#)⁸⁶ for landlords and agents licensed under [part 1 of the Housing \(Wales\) Act 2014](#)⁸⁷. Landlords are required to ensure:

- Electrical installations in the property are safe when the tenancy begins⁸⁸;
- Electrical installations are maintained in a safe condition throughout the tenancy;
- Any appliance provided is safe and has the British Safety Standard sign;
- Gas supplies and gas appliances are in a safe condition when tenancy begins⁸⁹
- Gas supplies and appliances are fitted or repaired by a Gas Safe engineer;
- Gas safety checks are undertaken every 12 months by a Gas Safe engineer;
- Any upholstered furniture provided by the landlord must be fire resistant⁹⁰; and

⁸⁵ <https://gov.wales/building-regulations-guidance-part-b-fire-safety>

⁸⁶ <https://gov.wales/building-regulations-and-fire-safety-procedural-guidance>

⁸⁷ <https://www.legislation.gov.uk/anaw/2014/7/contents/enacted>

⁸⁸ Electrical Equipment (Safety) Regulation 1994 <https://www.legislation.gov.uk/uksi/1994/3260/made>; Plugs and Sockets Regulations 1994 <https://www.legislation.gov.uk/uksi/1994/1768/made>; [Approved Document P Building Regulation 2010](#) <https://gov.wales/sites/default/files/publications/2019-05/building-regulations-guidance-part-p-electrical-safety.pdf>; British Standard BS1363 <https://www.britishstandard.org.uk/pub/bs-1363-22016a12018-9780580511097.aspx>

⁸⁹ Gas Safety (Installation and Use) Regulations 1998 <https://www.legislation.gov.uk/uksi/1998/2451/contents/made>

⁹⁰ Furniture and Furnishings (Fire) (Safety) Regulations 1988 (amended 1989 & 1993) <https://www.legislation.gov.uk/uksi/1988/1324/contents/made>

- Carbon monoxide detectors are fitted if the property has a coal or wood fire.

11.1.3. These requirements do not apply to private homeowners.

11.2. *Position in Scotland:*

11.2.1. Following the Grenfell tragedy in 2017, the Scottish Parliament has legislated for greater fire safety equipment required in domestic properties than is currently the position in Wales. This was achieved by an amendment of the Housing (Scotland) Act 1987⁹¹.

11.2.2. From February 2021, these legislative changes will mean that the requirement for fire and smoke alarms that currently applies to private rented property and new builds in Scotland will be extended to all homes in Scotland (regardless of tenure).⁹² Domestic properties will require:

- One smoke alarm installed in the room most frequently used for general daytime living purposes;
- One smoke alarm in every circulation space on each storey, such as hallways and landings; and
- One heat alarm installed in every kitchen.
- An interlinked and mains powered smoke or heat alarm system must be fitted in a property and there should be adequate carbon monoxide protection, carbon monoxide detectors should be fitted where there is a carbon-fuelled appliance, such as boilers, fires (including open fires), gas heaters and stoves, or flues. Such a system will trigger every alarm if one alarm is activated, meaning residents are alerted immediately in the event of a fire.

11.2.3. The Scottish Government estimated costs to ensure the new standards are met would be in the region of £200 per dwelling, however this would vary according to what is already in place and the type of alarm used.

11.2.4. For homeowners, compliance will form part of any Home Report⁹³ when a house is sold. The responsibility for meeting the standard applies to building and home owners, so landlords are responsible for making sure

⁹¹ [Housing \(Scotland\) Act 1987 \(Tolerable Standard\) \(Extension of Criteria\) Order 2019](#)

⁹² Whilst the change in legislation is due to come into force in February next year, if approved, the new safety requirements will not need to be met until February 2022 as Ministers have suggested a year-long delay due to practical difficulties homeowners are likely to face due to the coronavirus pandemic. <https://www.gov.scot/policies/fire-and-rescue/home-fire-safety/>

⁹³ A Home Report is a document which every seller of a residential property is required to produce prior to putting the property onto the market. The Home Report is produced by a Chartered Surveyor. Home Reports for sellers of houses were introduced in the [Housing \(Scotland\) Act 2005](#)

rented properties comply with the standard (and for meeting the cost of doing so).

- 11.2.5. As we are reviewing building safety in relation to fire risk, this is an opportune time to consider if there are further steps we can take to reduce the risk of fire in all residential dwellings in Wales, improving the fire safety of private homes in line with rented homes. The balance is between making our homes safer and requiring homeowners to spend money to meet any new requirements.
- 11.2.6. We are considering whether Welsh Government should pursue similar requirements in this area and area seeking views.

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

12. Annexes

12.1. Figure 14: Fire Risk Assessment

Outcome (in statute)	Risk area (in statute)	Possible mitigation measures (in guidance)
Fire prevention	<i>Accidental ignition:</i> The risk of fires starting accidentally in common areas	<ul style="list-style-type: none"> • Regular inspection and maintenance of electrical & gas installations and appliances • Restriction on use of power points in common areas (eg for charging) • Prohibition of smoking in common areas • Safe systems of work for contractors
	<i>Arson:</i> The risk of fires starting due to deliberate and malicious ignition in or around the premises	<ul style="list-style-type: none"> • Security measures to prevent entry to premises by non-residents and/or to record those entering and leaving • Preventing accumulation of combustible material in common areas to deter opportunistic fire-setting • High risk measures including fireproof letterboxes & involvement of police
	<i>Fire loading:</i> The risk of combustible material accumulating in common areas	<ul style="list-style-type: none"> • Regular cleaning of common areas, in particular to prevent build-up of rubbish, junk mail etc. • Restriction on use of common areas for storage, by RP or residents • Separate and secure storage of cleaning materials, surplus furniture etc. • Safe and secure facilities for disposal of refuse
	<i>Dwelling fires:</i> The risk of fires starting in individual flats	<ul style="list-style-type: none"> • Provision of generic and tailored fire safety advice and equipment from the FRS • Appropriate inspection and maintenance of installations and appliances, where these are the RP's responsibility
Fire protection	<i>Internal compartmentation:</i> The risk that the internal structure of the building (ie walls, floors and ceilings) may fail to prevent the spread of fire from one flat to another, or to a common area	<ul style="list-style-type: none"> • Identifying and rectifying defects in building construction that compromise compartmentation • Verifying that all works that breach compartmentation (eg holes drilled through walls) use appropriate and adequate fire-stopping • Installing and maintaining fire suppression systems (eg sprinklers) and/or automatic smoke control systems
	<i>Doors and windows:</i> The risk that doors and windows may fail to prevent the spread of fire from a flat to a common area, or to the outside of the premises	<ul style="list-style-type: none"> • Identifying and rectifying defects in building construction that compromise compartmentation • Installing certified fire doors with self-closing devices as the front doors of all flats, and prohibiting their removal, replacement or modification • Installing and maintaining fire suppression systems (eg sprinklers) and/or automatic smoke control systems
	<i>External wall and roof:</i> The risk that fire may propagate across the external walls (including cladding, balconies and similar structures) and roof structure	<ul style="list-style-type: none"> • Identifying and rectifying defects in building construction that compromise compartmentation • Verifying that all works that breach compartmentation (eg holes drilled through walls) use appropriate and adequate fire-stopping • Removing and/or replacing external cladding which does not resist the spread of fire • Installing and maintaining fire suppression systems (eg sprinklers) and/or automatic smoke control systems

Outcome (in statute)	Risk area (in statute)	Possible mitigation measures (in guidance)
Escape	<i>Need for escape:</i> The risk that residents are unaware of the need to evacuate the building (or, conversely, that they believe such a need exists when it does not).	<ul style="list-style-type: none"> Establishing and promulgating clear and appropriate procedures residents should take in the event of fire. Installing smoke or heat alarms in individual flats and, subject to the building's evacuation strategy, in common areas Installing an evacuation alarm which allows the Fire Service to direct an evacuation of relevant areas of the building
	<i>Layout:</i> The risk that an escape route does not allow people to evacuate swiftly and safely, especially from upper floors of taller buildings (eg the escape route is obstructed or too long or complex).	<ul style="list-style-type: none"> Installing evacuation lifts or external fire escapes Keeping escape routes clear of obstructions such as refuse, and not allowing them to be used as temporary storage areas
	<i>Navigation:</i> The risk that people (including people with mobility and sensory impairments) may be unable to follow the escape route, especially in conditions of power failure or smoke penetration.	<ul style="list-style-type: none"> Installing and maintaining clear signage directing people to and along the escape route Installing and maintaining emergency lighting along the escape route Enabling people with mobility or sensory impairments to identify themselves as such, so that they can be rescued in the event of a full evacuation
	<i>Place of safety:</i> The risk that people exiting the building are unable to reach an external place of safety.	<ul style="list-style-type: none"> Ensuring all emergency exits can be opened from the inside without a key, and that they lead to an external place of safety accessible to the emergency services
Firefighting	<i>Summoning the FRS:</i> The risk that the FRS is not made aware of a fire promptly	<ul style="list-style-type: none"> Instructions to residents to call 999 in case of fire Installation and maintenance of automatic fire alarms where appropriate, taking account of the risk of false alarms
	<i>Firefighting information:</i> The risk that the Fire and rescue service is unaware of aspects of building design and use that are needed to inform an effective firefighting response	<ul style="list-style-type: none"> Supplying the FRS with up-to-date building floor plans, especially for larger and more complex buildings Supplying the FRS with details of occupancy, including residents who have a PEEP Including key information in an on-site premises information box Supporting the FRS to gather site-specific risk information
	<i>Firefighting equipment:</i> The risk that equipment for fighting a fire is missing or unreliable	<ul style="list-style-type: none"> Providing dry risers at least to the level mandated by building regulations Maintaining firefighting equipment appropriately, and protecting it against tampering or vandalism
	<i>Access for firefighters:</i> The risk that firefighters are unable to reach the location of a fire swiftly and safely	<ul style="list-style-type: none"> Ensuring common areas can provide both an escape route for residents and an access route for firefighters Provision of clear signage identifying floor and flat numbers Provision and maintenance of firefighting lifts Where possible and appropriate, providing a suitable external area for the deployment of fire appliances

12.2. Figure 15: Roles and Responsibilities: Three Risk Categories

Standard	Enhanced	Advanced
<i>Buildings with between two and five dwellings that are less than 18m in height (or up to and including 6 storeys)⁹⁴</i>	<i>Buildings with more than five dwellings which are less than 18m in height (or up to and including 6 storeys)</i>	<i>Buildings which are 18m or more in height or more than 6 storeys with two or more dwellings</i>
<i>During Design & Construction:</i>	<i>During Design & Construction:</i>	<i>During Design & Construction:</i>
The building will have to comply with all relevant Building Regulations. There is a choice of Building Control Body to oversee this work.	The building will have to comply with all relevant Building Regulations. There is a choice of Building Control Body to oversee this work.	The building will have to go through the new Gateway Application Process. Dutyholders will have to be identified. The option to choose the Building Control Body to oversee this work will be removed.
<i>During Occupation:</i>	<i>During Occupation:</i>	<i>During Occupation:</i>
An Accountable Person will need to be registered against the building who will be required to ensure that they undertake a number of roles and responsibilities including in relation to:	An Accountable Person will need to be registered against the building who will be required to ensure that they undertake a number of additional roles and responsibilities in addition to those set out under 'Basic', including in relation to:	An Accountable Person will need to be registered against the building who will be required to ensure that they undertake a number of additional roles and responsibilities in addition to those set out under 'Basic' and 'Additional', including in relation to:
Activities in relation to keeping and using information <ul style="list-style-type: none"> • Ensure annual fire risk assessments of the building are undertaken by a suitably qualified person • Document findings from the fire risk assessment • Act on the findings of the Fire Risk Assessment • Keep any installation/ testing certificate 	Activities in relation to keeping and using information <p style="text-align: center;">No further requirements</p>	Activities in relation to keeping and using information <ul style="list-style-type: none"> • Create, maintain and update the golden thread and key dataset for the building • Create, maintain and update the Safety Case for the building
Activities in relation to building maintenance <ul style="list-style-type: none"> • Ensure that there is appropriate compartmentation in the building's structure and external walls and any common parts • Providing and maintaining relevant (fire) safety equipment 	Activities in relation to building maintenance <p style="text-align: center;">No further requirements</p>	Activities in relation to building maintenance <p>In addition to the requirement in relation to fire:</p> <ul style="list-style-type: none"> • Ensuring the risks of failure in structural integrity are reduced so far as is reasonably practicable.

⁹⁴ The exception being any building which includes a dwelling designed or permanently adapted for occupation by people with mobility or sensory impairments, these buildings would fall within the Enhanced Category.

Standard	Enhanced	Advanced
<ul style="list-style-type: none"> Ensuring the risk of fire within a building is reduced so far as is reasonably practicable. Plan, monitor and manage maintenance and improvements in response to the fire risk assessments, reducing risk of fire for the building. 		<ul style="list-style-type: none"> Ensure regular reviews of the Safety Case are undertaken by a suitably qualified person including the structural integrity of the fabric of the building. Plan, monitor and manage maintenance and improvements in response to the Safety Case, reducing risk of structural integrity failure for the building. Any works should comply with current building regulations
<p>Working with others</p> <ul style="list-style-type: none"> Working with other RPs under the FSO Cooperate with enforcement bodies Provide relevant information to emergency services (and others supporting an emergency response) in the event of an incident 	<p>Working with others</p> <ul style="list-style-type: none"> Provide relevant information to the Fire Service with regards to Fire Safety features 	<p>Working with others</p> <ul style="list-style-type: none"> Provide relevant information to regulators with regards to Building Safety The Accountable Person and Building Safety Manager must work with and support each other.
<p>Probity and responsible working</p> <ul style="list-style-type: none"> The Accountable Person would have to be registered. Where another 'person' was managing the building on behalf of the Accountable Person they would have to be identified. 	<p>Probity and responsible working</p> <ul style="list-style-type: none"> Where a 'person' was discharging roles and responsibilities on behalf of the Accountable Person (for example a Managing Agent or Building Safety Manager) they should be suitably qualified to undertake this role. Where they are not qualified they should procure the relevant services to undertake aspects of the role. Ensure effective communication (meeting any relevant statutory obligations) in terms of communicating effectively about planned maintenance and upgrades (as a result of the fire risk assessment) and the impact of these works on service charges, providing sufficient notice where expenses are likely to be high. 	<p>Probity and responsible working</p> <ul style="list-style-type: none"> Ensure robust and transparent record keeping. Undertake due diligence and have proper financial practices in place The dutyholder must consider the lifecycle of the building and ensure it is suitably maintained (and upgraded) to ensure the safety of the asset now and for the future. A suitably competent person (a Building Safety Manager) will need to be appointed to undertake work on a day to day basis. This person must be suitably qualified and licensed. The Accountable Person must ensure there are sufficient funds available to this person in order for them to effectively undertake these roles and responsibilities on behalf of the Accountable Person.

Standard	Enhanced	Advanced
<p>Supporting and informing residents</p> <ul style="list-style-type: none"> Promoting Building Safety 	<p>Supporting and informing residents</p> <ul style="list-style-type: none"> Promoting key safety features and identifying their contribution to Building Safety 	<p>Supporting and informing residents</p> <ul style="list-style-type: none"> Develop and deliver a resident engagement strategy Actively manage complaints and concerns of residents

12.3. *Figure 16: Consultation Questions*

Question	Page
Q 1. Do you agree that the Building Safety Regime in Wales should apply to all multi-occupied residential buildings with two or more dwellings? Please support your view.	29
Q 2. Do you agree that there should be two 'Risk Categories' for the Building Safety Regime? Please your views.	33
Q 3. Do you agree with the proposed scope of Category 1 buildings? Please support your view.	33
Q 4. Do you agree with the proposed scope of Category 2 buildings? Please support your view.	34
Q 5. Do you agree that licensed HMOs should be included within the scope of the Building Safety Regime?	34
Q 6. Do you agree with the exemptions as set out at Figure 6? Are there any other categories of building that should be included within the scope of the regime during occupation? Please support views	34
Q 7. Do you think that any extra measures should be taken as regards single flats above high-risk premises like restaurants and takeaways? Please support your views.	34
Q 8. Do you have any other comments on the issues we have raised in this section?	34
Q 9. Do you agree that a consistent approach with England to the information set out in the Golden Thread and Key dataset is appropriate? If no, please support your views	38
Q 10. Do you agree that it is appropriate for all buildings within scope of the Building Safety Regime to provide information in relation to the key dataset? Please support your views.	38
Q 11. Do you agree that the broad duties set out are appropriate?	41
Q 12. Are there any additional duties we should include? Please support your views	41
Q 13. Do you agree that there should be a named individual identified where the dutyholder is a legal entity? Please support your views.	41
Q 14. How effective are the existing arrangements for Local Authorities and Fire and Rescue Authorities to consider issues of availability of water during the preparation of Local Development Plans?	45
Q 15. Should Fire and Rescue Authorities become "specific consultation bodies" as defined by the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005?	45
Q 16. To what extent do you agree with the proposed content of a Fire Statement?	45
Q 17. Do you agree responsibility for the content of a fire statement should rest with the dutyholder?	45
Q 18. Do you agree that Gateway Two should be a 'hard' stop point where construction cannot begin without permission to proceed? Please support your views.	49
Q 19. Should the Local Authority Building Control Body have discretion to allow a staged approval approach? Please support your views.	49
Q 20. What is an appropriate timescale for the Local Authority Building Control to respond to Gateway Two applications? Please support your views.	49
Q 21. Should the Local Authority Building Control be allowed to extend these time scales? If so what would the circumstances be? Please support your views.	49
Q 22. Do you agree that the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans?	49
Q 23. Do you agree the Principal Contractor should be required to notify the Local Authority Building Control of any proposed major changes before carrying out works?	49
Q 24. Do you agree that the where major changes are made to the approved plans there should be a "hard" stop and work should not proceed until the revised plans have been approved by the local authority	49
Q 25. What is an appropriate timescale for the Local Authority Building Control to respond to proposed major changes? Please support your views.	49
Q 26. Do you agree that for new Category 1 buildings an Accountable Person must be registered before occupation of the building can begin?	50

Question		Page
Q 27.	Do you agree that a final declaration should be produced by the Principal Contractor with the Principal Designer to confirm that the building complies with building regulations? Please support your view.	50
Q 28.	Should Local Authority Building Control be required to respond to gateway three submissions within a particular timescale? If so, what is an appropriate timescale?	50
Q 29.	Are there any circumstances where we might need to prescribe local authority Building Control's ability to extend these timescales? If so, please support your view with examples.	51
Q 30.	Do you agree that the Client during Gateway Two (if not continuing in the role as Accountable Person) must hand over building safety information about the final, as built building to the Accountable Person before occupation is permitted?	51
Q 31.	Do you agree it is appropriate to allow staged occupation (where previously agreed during Gateway Two) e.g. a mixed use development?? Please support your views	51
Q 32.	Do you agree that Category 1 buildings undergoing major refurbishment should also be subject to the Gateway approach? Please support your views.	51
Q 33.	Are there any other types of residential building or characteristics of a residential building that should require it to go through the Gateway process? Please support your views.	51
Q 34.	We will be undertaking further consultation in this area when we set out regulations. Would you be interested in being added to our stakeholder list in relation to the Design and construction phase? Please provide your details	51
Q 35.	Do you agree that there should be a single and clearly identified Accountable Person for all premises covered by the Building Safety Regime?	54
Q 36.	Do you agree with the proposed approach in identifying the Accountable Person? Please support your view.	54
Q 37.	Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an Accountable Person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.	54
Q 38.	Do you agree that the default position should be that the Accountable Person is the freeholder?	54
Q 39.	For mixed-use buildings there will be a 'Responsible Person' under the FSO for the business premises, and an 'Accountable Person' under the Building Safety Regime for residential parts. Are there any requirements we should consider about how these responsible parties should work together to support and ensure fire safety of the whole building?	54
Q 40.	Do you agree with the proposed duties of the building safety manager for Category 1 buildings? Please support your view.	55
Q 41.	Do you agree with the proposed division of roles and responsibilities between the Accountable Person and Building Safety Manager?	55
Q 42.	Is the relationship between the Accountable Person and Building Safety Manager sufficiently clear? Please explain your answer.	55
Q 43.	Do you agree that the proposed duties and functions set out in Figure 8 for Accountable Persons for Category 1 buildings are appropriate? Please support your view.	60
Q 44.	Do you agree that the proposed duties and functions set out in Figure 8 for Accountable Persons for Category 2 buildings are appropriate? Please support your view.	60
Q 45.	Do you think that the different roles and responsibilities for Category 1 and Category 2 Accountable Persons are sufficiently clear and proportionate?	60
Q 46.	Are there any additional duties that should be placed on dutyholders? Please support your views.	60
Q 47.	Do you agree with our proposed fire safety outcomes? Please support your views.	69
Q 48.	Do you agree with our proposed overall purpose of a fire risk assessment? Please support your views	69
Q 49.	Do you agree with our proposed risk areas? Please support your views	69

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Q 50.	Do you agree that a fire risk assessments must be reviewed annually, and whenever premises are subject to major works or alterations for all buildings within scope?	69
Q 51.	Do you agree that only a suitable qualified and experienced fire risk assessors should undertake fire risk assessments for buildings within scope? Please support your views.	70
Q 52.	Do you agree that fire risk assessments must be permanently recorded?	70
Q 53.	Do you have any views about whether Accountable Persons or their employees should be precluded from conducting fire risk assessments themselves?	70
Q 54.	Do you have any views on enforcement or sanctions for non-compliance with regards to the Accountable Person?	70
Q 55.	Do you have any views on enforcement or sanctions for a person undertaking a fire risk assessment without suitable qualifications or experience?	70
Q 56.	Do you agree with our proposal to create duties with regards to compartmentation on Accountable Persons? Please provide information to support your views.	72
Q 57.	Do you agree with our proposal to create duties with regards to compartmentation on residents? Please provide information to support your views.	72
Q 58.	Do you agree the concept of a Safety Case for Category 1 buildings is an appropriate way to assess and manage the risk of building safety issues?	74
Q 59.	What do you believe would be a reasonable timescale for existing Category 1 buildings to create a Safety Case?	74
Q 60.	Do you agree there should be a mandatory reporting duty on dutyholders in the occupation phase?	74
Q 61.	Which incidents/issues do you think should trigger such a duty and why? Please provide examples	74
Q 62.	Should there be a requirement for the Accountable Person to register under the building safety regime during the occupation phase?	79
Q 63.	Are the registration process requirements sufficient? Are there any others that should be included? If so, please outline and explain.	79
Q 64.	Should there be a requirement for dutyholders (both the Accountable Person and the Building Safety Manager) to obtain a building safety licence in the occupation phase? Please explain your answer.	79
Q 65.	Are there any other requirements that should form part of the licensing process for Accountable Persons in addition to completion of basic training about the building safety regime and the fit and proper persons test (Category 1 buildings only)?	79
Q 66.	Should there be a competence requirement and/or minimum qualifications for those managing Category 2 buildings? If so what criteria should those engaging in such services meet?	79
Q 67.	Do you agree that there should there be regulation of all residential property management? Please support your views.	80
Q 68.	What standards should those carrying out residential management functions meet? Should there be a differentiation between the standards required for those managing Category 2 buildings, and those managing unadopted spaces? Please support your views.	80
Q 69.	How could the issues of probity and responsibility be evidenced in such a system? Please support your views	80
Q 70.	Do you agree that all Accountable Persons should be required to promote building safety (as set out at para 8.2.4)? Please support your views.	83
Q 71.	Do you agree that this information should be provided in a way that is accessible and understandable, and should where relevant reflect the specific needs of residents? Please support your views.	83
Q 72.	Do you agree that a nominated person who is a non-resident would be able to request information on behalf of a resident who lives there? If yes who do believe that nominated person should be? (Relative, carer, person with lasting power of attorney, other	83
Q 73.	Is there any other information that an Accountable Person should be required to provide on request? Please provide information on the two different categories of building if relevant.	83

Question		Page
Q 74.	Do you agree that for Category 1 buildings the Accountable Person must provide the information as set out at para 8.2.10? Please support your views.	85
Q 75.	Is there any other information that you think it would be useful to provide? Please support your views.	85
Q 76.	In what ways could an Accountable Person demonstrate that they have established effective two way communication?	85
Q 77.	Do you agree that there should be a new requirement on all residents of buildings within scope to co-operate with the Accountable Person (and their appointed representative) to allow them to fulfil their duties under the Building Safety Regime? Please support your views.	87
Q 78.	Do you think there should be any specific requirements to facilitate this? Please support your views.	87
Q 79.	What safeguards should be put in place to protect residents' rights in relation to this requirement? Please support your views.	87
Q 80.	Do you agree that there should be a new requirement on all residents of buildings within scope not to knowingly breach compartmentation? Please support your views.	87
Q 81.	Do you agree that there should be a single process for escalating concerns to the regulator in relation to the Building Safety Regime, regardless of the Category of building or where it is in the building lifecycle? Please support your views.	88
Q 82.	Should a similar model be established to allow leaseholders to apply for a change/removal of a Building Safety Managers? What would be an appropriate mechanism to do this? Please support your views.	89
Q 83.	What roles and responsibilities are appropriate for Accountable Persons with regards to people who cannot safely self-evacuate? Please support your views.	90
Q 84.	Should Accountable Persons be required to collate details of all those who would require assistance?	90
Q 85.	Should Accountable Persons be required to provide this information immediately to the FRS in the event that an evacuation was necessary?	90
Q 86.	Should this be the case for all Categories of buildings? Please support your views	90
Q 87.	Do you agree that Welsh Government should pursue a means to protect workers from raising concerns with regards to building safety? Please support your views.	92
Q 88.	Are there any actions that could be taken ahead of legislative reform that would support Local Authorities and the Fire and Rescue Authorities to manage multi-occupied residential buildings in a more holistic way?	96
Q 89.	Do you agree with the list of key functions for the regulator as proposed?	99
Q 90.	Are there any additional functions which are not listed that you believe are required in order to achieve our building safety aims?	99
Q 91.	Do you think that some of these functions are more essential than others? Please explain your answer.	99
Q 92.	In your view, do any of the regulatory model options outlined provide a preferred approach to regulating the regime in occupation	103
Q 93.	Are there other regulatory models that are not presented here that we should consider? Please set out any alternatives.	103
Q 94.	Do you think a local, regional or national approach to regulation would be appropriate? Please explain your answer, highlighting any positives and negatives you identify.	105
Q 95.	Do you agree that there should be a framework for escalating enforcement and sanctions? Please support your views.	107
Q 96.	Do the levels set out at Figure 13 sufficiently reflect these levels? Please support your views.	107
Q 97.	What penalties or offences should we consider being created as part of the enforcement and sanctions regime associated with building safety? Please support your views.	107
Q 98.	Do you agree that access rights should also be provided to the Fire and Rescue Authorities, along similar lines to those available to Environment Health Officers in relation to their powers under the HHSRS? Please support your views.	107

Question		Page
Q 99.	What safeguards should be put in place to protect residents' rights in relation providing access to their properties? Please support you views.	107
Q 100.	Do you agree with the proposal to establish a Joint Inspection Team as outlined?	108
Q 101.	Do you agree that the Joint Inspection Team's scope should be limited to Category 1 buildings initially with potential to expand? Please support your views.	108
Q 102.	Do you agree with the proposed composition of the Joint Inspection Team?	109
Q 103.	Are there other functions the Joint Inspection Team could perform in addition to those outlined (i.e. enforcement advice and evidence gathering)?	109
Q 104.	Do you agree that Welsh Government should pursue requirements around additional fire alarm systems as outlined above that would apply to all residential dwellings? Please support your views.	112