

# The Chartered Institute of Building

submission to the

## Ministry of Housing, Communities & Local Government (MHCLG)

on the consultation on

## Building a Safer Future: Proposals for reform of the building safety regulatory system

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# Building a Safer Future: Proposals for reform of the building safety regulatory system

## Introduction

The Chartered Institute of Building (CIOB) is at the heart of a management career in construction. We are the world's largest and most influential professional body for construction management and leadership. We have a Royal Charter to promote the science and practice of building and construction for the benefit of society, which we have been doing since 1834.

Our members work worldwide in the development, conservation and improvement of the built environment. We accredit university degrees, educational courses and training. Our professional and vocational qualifications are a mark of the highest levels of competence and professionalism, providing assurance to clients and authorities who procure built assets.

We welcome the opportunity to respond to this consultation and are happy to be involved in the debate as it develops.

## Background

The CIOB have welcomed Dame Judith Hackitt DBE [Building a Safer Future: Independent Review of Building Regulations and Fire Safety](#) and are supportive of the 53 recommendations to establish a new regulatory framework and achieve a culture change to create and maintain safe buildings.

We are pleased that the Government confirmed its support and set out a detailed implementation plan, published in December 2018, which sets out the action Government will take to fundamentally reform the building safety system in the future.

The CIOB have been active in driving this reform, participating in the Industry Response Group (IRG), the Competency Steering Group (CSG) as well as several working groups including:

- Working Group 9, Site Supervisors – Chaired by Peter Dawber FCIQB
- Working Group 10, Project Managers – Chaired by Professor Charles Egbu FCIQB
- We also have CIOB members and staff participating on Working Group 0, Overarching System for Overseeing Competence (Paul Nash FCIQB), Working Group 11, Procurement Professionals (Mike Foy OBE FCIQB) and Working Group 6, Building Standards (Lyndsey Montgomery, Qualifications Development Manager at the CIOB)

Separately, the CIOB has a [Construction Quality Commission](#) which was formed in response to the Independent Inquiry into the Construction of Edinburgh Schools and several other high-profile failures in the industry. Some of the work to-date includes:

- The launch of a course in Construction Quality Management by the CIOB Academy in September 2018.
- The publication of a new Code of Quality Management in July 2019.
- The introduction of a Quality MOOC by the CIOB Academy, which will go live in October 2019.
- The pilot of a new Certification Scheme based on the Code of Quality Management, which will be launched in 2019.

In addition to this work, the CIOB has collaborated with the Royal Institute of British Architects (RIBA) and the Royal Institution of Chartered Surveyors (RICS) to launch the 'Building in Quality' initiative. This is a free-to-download digital tool to improve the quality of outcomes in the construction industry.

The success of the new regime is heavily dependent on how the new Building Safety Regulator is constituted and how it operates. The consultation document contains few details on this. The CIOB would like to see more information on what the Government plans, and to have the opportunity of contributing to the development of a model which provides a robust and efficient regime in the future. CIOB members across the industry, including project managers, site supervisors and those who work in public and private sector building control, will all be affected by this and must be consulted on the operation of the Regulator.

Our response to the Building a Safer Future: Proposals for reform of the building safety regulatory system can be seen below, it has been informed by several CIOB members with a background in fire safety, building regulations and quality management.

## Full Response

### **Chapter 2: Stronger requirements for multi-occupied high-rise residential buildings**

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

We agree with extending the regime to cover all multi-occupied residential buildings of 18 metres (approximately 6 storeys) and above. This is a good starting point and must be regularly reviewed to see whether the 18 metres should be reduced, or other types of buildings should come into scope.

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

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

The safety of the public is the most important aspect relating to fire safety. Any building where there is a duty of care should be subject to the new regulatory arrangements – residential or non-residential - during the design and construction phase. We consider all the buildings listed in paragraph 42 as 'higher-risk' and should all therefore be subject to the new regulatory arrangements.

We endorse the position set out in the consultation document as a starting point, with the addendum that other buildings (both higher and lower) should also be made subject to the new regulatory regime, e.g. mixed-commercial-residential properties.

### **Chapter 3: A new dutyholder regime for residential buildings of 18 metres or more**

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

Yes.

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

The safety of persons, in and around the building, as highlighted in paragraph 63, should be included.

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

Yes, a named individual who is responsible for building safety is essential to this review and the new regulatory regime. A named individual, with legal liability, serves as an important reminder to adhere to required safety standards.

We note that should the named individual leave the company, or otherwise becomes unable to perform and/or maintain the duties and standards expected for the job to be completed, there must be a process in place for responsibility to be transferred. This should be robust enough to ensure a minimum number of transfers, to guard against such dutyholders moving between different building projects.

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

We agree with the concept. The principles of CDM are logical but need to be transferred into this framework to ensure they fit together.

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

Yes, responsibility will be with Principal Designer of a project, so this person should be named as the dutyholder, and should liaise with the Fire and Rescue authorities.

Clarification is needed on who is a "statutory consultee" and who Fire and Rescue authorities are expected to report to (though the latter certainly do need to be one of the principal consultees).

We also note whether the Fire and Rescue services have the resources to carry out responses to consultations for buildings in scope and if the Planning Authority have the right skills to perform their duties. Both need to be addressed to ensure early risks are addressed.

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

We agree that planning applicants must submit a Fire Statement as part of their planning applications in the same way that other technical reports, such as a sustainability and impact assessment, are required to support planning applications.

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

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

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

Yes, the Fire and Rescue authorities should be consulted on applications within the 'near vicinity' of buildings in scope. Experience from Grenfell suggests that additional buildings were constructed in the way of existing buildings, some of which may have impeded access for fire and other emergency services. A Fire Statement would need to address concerns such as these and, although these would not prevent construction of other buildings in the near vicinity, it would force developers to consider and address such concerns in the planning application, and in the Fire Plan of both the new and existing building.

With this in mind, we want to ensure that those constructing buildings in the near vicinity - at a later date - must go through the same process and work together to ensure consistency. For this reason, we believe that all developments within the redefined radius should be included.

We suggest that planning applicants should have to identify the in-scope building within 150m and evidence that their development will not have any detrimental effect. We also suggest that guidance on vehicle access (as set out in paragraph 81) is considered and published, and that the Fire and Rescue authorities can comment and voice concerns regarding access issues as part of the planning process. We are aware that further consultation may be required on this as well as other items to be included as part of the Fire Statement.

**Q. 2.9. Should the planning applicant be given the status of a Client at gateway one? If yes, should they be responsible for the Fire Statement? Please support your view.**

Yes, the case for safety and the dutyholder concept must start at the outline planning application and carried through occupation and ongoing management. Many developments change ownership during or after the planning application process and it is essential to have a designated person from the inception of the project.

We note that the applicant is not always the Client – the applicant could be an agent or other third party and the person responsible should be the Client paying the application fee.

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

Yes, it fits in with the concept of a 'golden thread' of information about each HRRB.

**Q. 2.11. Is planning permission the most appropriate mechanism for ensuring developers consider fire and structural risks before they finalise the design of their building? If not, are there alternative mechanisms to achieve this objective?**

Yes, though at Planning Application stage the building is still only theoretical, so considerations around fire and other risks are most important. The Fire Statement is the best mechanism of ensuring these concerns are considered and addressed from the outset of the project.

We assume these risks are within the scope of the Fire Statement.

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

Yes.

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

Yes.

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

The Client must ultimately be responsible, but both the Principal Designer and Principal Contractor also hold partial responsibility for the safety standard of the building being constructed, and this should be formally recognised in future legislation.

Typically, the Client will appoint an agent to manage the submission, this is likely to be the Principal Designer. This is often the case since the Principal Designer will be coordinating with other designers to prepare the application and is therefore best placed to coordinate these design packages. So, in the first instance, it should be the Client's responsibility, but they may wish to delegate this to a competent Principal Designer.

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

Yes, the regulator needs evidence to show that technical agreement has been achieved.

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

Yes, providing dutyholders demonstrate that they are managing the process with evidence of the documentation and due regard for the overall process. There must be a safety case made as to why other aspects are not being submitted at the same time and we suggest that firm guidance should be developed to assist with this process. For example, the Warrant system in Scotland allows for staged submissions for Building Regulations approval.

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

Yes, if work carried out does not comply, or cannot be shown to comply with these regulations, there must be the power to pull it down. This should also include powers to expose works that have been covered up to ascertain compliance. This position is consistent with current regulations around obtaining planning approval – if a building does not have planning approval, it can be demolished on the order of the Planning Authority.

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

Yes, it should have similar powers to that of the Health and Safety Executive (HSE) which have the power to prevent further work from progressing when it is not conforming to required standards of safety. Similar powers must be exercisable by the building safety regulator, if statutory powers are to be respected and adhered to, they must be backed up with appropriate powers in the event of non-compliance.

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

Yes, there must be a statutory timescale to ensure progress. The current 8-week timescale (which is the time prescribed for local authorities to determine Building Regulation applications) would be appropriate to enable time for review and approval of submissions.

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

Yes, the timeline may sometimes need to be extended if the information is not sufficient to make a compliance decision. However, the time frame should not include time when the regulator is waiting for additional information from the duty holder. Additionally, this detail should not come at the end of the 8-week timescale, as there needs to be recognition that other departments will need to review it.

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

We do not believe that any changes to plans should be made unless there is a significant reason (e.g. safety) to do so. If a change to plans is needed, we agree that the Principal Contractor would need the approval of the Client and the Principal Designer.

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

Yes, but we urge caution using the term 'major changes' (a subjective and potentially confusing word). Any change that could have an impact on fire, structural or other safety standards of the building should be reported to the building safety regulator, with no changes allowed that could compromise any of these standards. This must be legislated and implemented with zero-tolerance approach toward changes which could affect the safety of the building and its future occupants.

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

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

Given our response to Q. 2.22, we do not feel that we should be making distinctions of what is a major or minor change in relation to fire safety. Seemingly insignificant changes can have a significant impact on building regulation compliance in other areas. Setting definitions of what constitutes major and minor will create confusion and potentially be open to abuse.

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

Yes, under the same 8-week timescale identified in Q. 2.19 for consistency.

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

These depend on the nature of the building, its use, design and the nature of any proposed changes. Setting fixed timings could have an impact on individual design and technical questions.

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

Yes, this is fundamental to the principle of dutyholder responsibility for compliance.

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

Yes, but this must be planned and scheduled not just subject to commercial request and needs to be appropriate to the complexity of the building and its construction.

**Q. 2.28. Are there any circumstances where we might need to prescribe the building safety regulator's ability to extend these timescales? If so, please support your view with examples.**

Yes, the only circumstances are when supplied information has been deemed to be insufficient or where phased occupation has been requested (see response to Q. 2.16).

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

Yes, the accountable person must be registered, and their duties strictly defined. This is particularly important when they come to sell the building. The building also cannot be insured if it is not registered, so this requirement already exists in practice.

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

Yes, otherwise this would undermine the whole gateway principle and place occupants at risk.

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

We believe that partial occupation of a single HRRB should be viewed as unacceptable i.e. where residents are in occupation of part of the building whilst another part is still under construction.

However, from a development point of view it is not unusual to have a mix of uses within a single building and for part of that building e.g. residential or hotel, to be occupied before a tenant has been identified for the other use(s) e.g. retail or commercial. A risk therefore arises when these other uses are fitted out whilst the building is in occupation, so any safety case for the building needs to recognise and plan for that. This goes beyond the technical requirements of fire separation and means of escape which should be designed into the building anyway.

Similarly, where two or more HRRB's are being constructed as part of a single development, it may be possible for one building to be occupied whilst others are still under construction, subject to the safety case.

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

Yes, including a safety case for work occurring whilst a building is occupied as most refurbishment work occurs when people are still living in their homes.

**Q. 2.33. Do you agree with the approach to transitional arrangements for gateways? If not, please support your view or suggest a better approach?**

Yes, it is logical to have a transitional arrangement.

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

Yes, a building safety certificate can only be issued should they have understanding about the risks and management process.

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

Yes.

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

Yes, there also needs to be consideration about the scope of the act reaching overseas territories. In many cases, the building owner – and therefore the accountable person – will be based offshore.

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

Yes.

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

This is not time limited. There must be a responsible person with the duty to appoint a building safety manager whilst the building is occupied.

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

Either through demonstrable incompetency, or if there is a new building owner – in which case a new building safety manager must be appointed with responsibility transferred.

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

By the accountable person (the client), who is likely to recover these costs through the service charge to the building occupants.

**Q. 3.17 Do you agree that this registration scheme involving the issue of a building safety certificate is an effective way to provide this assurance and transparency? If not, please support your view and explain what other approach may be more effective.**

Yes.

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

Yes.

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

Yes.

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

- a) New buildings in the design and construction stage, please support your view.
- b) New buildings in the occupation stage, please support your view.
- c) Existing buildings in the occupation stage, please support your view.

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

Yes, at the design and construction stage there is an ideal opportunity to capture all appropriate data and information (especially product manufacturer data) within a project information model both to capture a digital record of the completed building and support the safe operation during the in-use. BIM can also be used during the design stages to test the functional performance in a virtual environment. At this stage there is a low client cost investment for the model creation and a high return on investment.

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

Yes, retrospectively there will likely be greater value in creating an information model with graphically a low level of definition, but a higher level of non-graphical information to support the asset management and statutory compliance activities. There will be a need for appropriate level of data capture and surveying employed which will necessitate client investment.

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

Where appropriate, we would recommend that a triage process be created to inform / grade which projects should be retrospectively modelled and to what information level. As a minimum, a digital and validated information set should be created which is indexed, searchable and a minimum baseline of statutory requirements which includes an asset register.

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

Soft Landings, as per BS8536 (Briefing for design and construction), in order to align the interests of those briefing and designing as well as the end users to support operational goals.

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

Other areas of information that should be included are:

- Statutory information
- Chemical Safety Data Sheets (COSHH)
- A digital health and safety file
- Digital operation & maintenance information
- Other information to support emergency service needs

**Q. 4.4. Do you agree that the key dataset for all buildings in scope should be made open and publicly available? If not, please support your view.**

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

Yes, subject to security issues and key information related to public safety. This information should be accessible on request to safety inspection organisations and officials, including Fire and Rescue as well as other emergency services. The Fire and Rescue service should be able to utilise this dataset while they are preparing to deal with a fire in a building, which enables them to control and safeguard this more quickly.

Digital records should not be available to the general public unless they are an occupant or prospective occupant of the building. In both cases, redacted versions could be made available.

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

There should be information to ensure that end users and other relevant stakeholders (e.g. emergency services) can review and determine to help shape the briefing process.

**Q. 4.7. Are there any specific aspects of handover of digital building information that are currently unclear and that could be facilitated by clearer guidance? If yes, please provide details on the additional information you think should be clearer.**

Exchange Information Requirements from appointing parties are still quite poor and better guidance is required especially in creating organisational information requirements. Additionally, there should be clear guidance for clients in data and information storage during the operational stages – detailing the importance of a common data environment.

**Q. 4.8. Is there any additional information that should make up the golden thread in occupation? If yes, please provide detail on the additional information you think should be included.**

Any changes, however minor, should be included in the golden thread in occupation. Whenever there are changes to the building, information must be updated.

**Q. 4.9. Do you agree that the Client, Principal Designer, Principal Contractor, and accountable person during occupation should have a responsibility to establish reporting systems and report occurrences to the building safety regulator? If not, please support your view.**

Yes, the emphasis should be on the accountable person, plus the occupation of the Building Safety Manager. The Principal Designer and the Principal Contractor are only relevant during any subsequent changes to the building.

**Q. 4.11. Do you agree that, where an occurrence has been identified, dutyholders must report this to the building safety regulator within 72 hours? If not, what should the timeframe for reporting to the building safety regulator be?**

Yes, so that there is consistency with other organisations like HSE.

**Q. 4.12. Do you agree that the scope of mandatory occurrence reporting should cover fire and structural safety concerns? If not, are there any other concerns that should be included over the longer term?**

Yes.

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

Yes.

**Q. 4.14. Do you have any suggestions for additional categories? Please list and support your view.**

No further suggestions for additional categories.

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

Yes, the principle is correct. During the design phase when, as well as the Principal Designer, there may be multiple separate specialist design practices involved (e.g. structural engineer, building services engineer, fire engineer etc). During this phase a proposed design by one such designer may have serious negative impact on the integrity of the proposed design. This needs reporting so that it can be logged and shared more widely to ensure it is not occurring elsewhere in the sector.

**Q. 4.16. Do you agree that the building safety regulator should be made a prescribed person under Public Interest Disclosure Act 1998 (PIDA)? If not, please support your view.**

Yes, whistleblowing has been shown to work in other areas of public safety.

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

Yes, this chimes with the work that the CIOB and other bodies have been doing to achieve a consistent approach across the sector. It is vital that the industry and users of buildings are assured that key actors in the safety of buildings are proven to be competent and remain so, as well as subject to scrutiny and not simply peer review.

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

Yes.

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

Yes.

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

Dutyholder roles and the responsibility for compliance with building regulations must be applied to all building work. Ensuring clear duties and responsibility means, in the event on non-compliance, appropriate enforcement action can be taken. This provides protection and assurance to the client, owners and occupants.

## **Chapter 5: A More Effective Regulatory and Accountability Framework for Buildings**

**Q. 6.1. Should the periodic review of the regulatory system be carried out every five years/less frequently? If less frequently, please provide an alternative time-frame and support your view**

Yes, every part of the regulatory system should be reviewed at least once every five years. In the event of an issue related to building safety, we recommend the review of the relevant section, together with a wholesale review of all building regulations, as appropriate, should be brought forward.

This will also require upskilling and investment for the relevant body (MHCLG, Competency Authority and or Planning Authority) carrying out the review. Furthermore, a programme of activity should be communicated to industry at the earliest possible time.

**Q. 6.2. Do you agree that regulatory and oversight functions at paragraph 315 are the right functions for a new building safety regulator to undertake to enable us to achieve our aim of ensuring buildings are safe? If not, please support your view on what changes should be made.**

Yes.

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

No, some of these areas cannot take place without statutory status, and powers under legislation.

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

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

Yes, the CIOB has been integral part of this process and supports the proposals as set out and for an industry-led committee to oversee competence.

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

Yes.

**Q. 7.4. Do you agree that there should be an interim committee to take forward this work as described in paragraph 332? If so, who should establish the committee? Please support your view.**

We recommend rather than an interim committee, we should move forward with a formal implementation committee to avoid delay and confusion.

We believe that there should be a review of who is best to lead the committee, with membership that covers the width and breadth of the built environment. The CIOB would be keen to be involved in this and offer recommendations for potential membership from across the built environment.

**Q. 8.1. Do you agree with the approach of an 'inventory list' to identify relevant construction products to be captured by the proposed new regulatory regime? Please support your view.**

In principle we agree with the approach. However, we are aware that the Construction Products Association (CPA) have noted that this will lead to current products not being covered by any harmonised standard (hEN) or a European Technical Assessment (ETA). Additionally, a Declaration of Performance under a hEN will need enhancing to increase the information provided.

CIOB are aware that London Underground keep and deploy such an inventory list to check compliance of products with the Sub-Surface Fire Regulations. This was a requirement originating from the Investigation into the King's Cross Underground Fire by Desmond Fennell OBE QC in 1987. There is information available on such deployment around consistency of approach, innovation, testing data, use of registration by manufacturer's as a marketing tool and resourcing.

The CPA's LEXiCON initiative could help provide clarity to identify construction products by using plain language to share product data in a consistent way. This will also help increase the accessibility of product information for those requesting and those providing it.

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

Yes, it will lead to quick deployment of a product system which will become suitably embedded over the long-term. However, focus should be given to independent testing to illustrate Building Regulation 7 "as built" performance for the circumstances in which said products are used. Many products perform well in intended situations but will not do so if incorrectly specified for inappropriate circumstances or installed poorly.

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

Key Products that are used or impact in life safety situations that are independently and consistently tested to a stated standard (such as British Standards, BBA or En standards) to illustrate and evidence compliance with Building Regulation 7 Materials & workmanship.

We support the views of the CPA in their formal response which states:

Yes, provided they exclude products covered by hENs or ETAs. This leaves products covered by British Standards, other National Standards, International Standards Organisation, national technical specifications of a country other than the UK, independent certification scheme including those provided by a certification body accredited by a national accreditation body belonging to the European co-operation for Accreditation (EA) e.g. United Kingdom Accreditation Service, British Board of Agrément.

Where there is no relevant recognised standard, the use of tests, calculations or other means may be used to demonstrate that materials can perform the function for which it is intended. UKAS or an equivalent national accreditation body belonging to the EA may accredit a testing laboratory which demonstrates a means of showing that tests can be relied upon.

Accommodation of the use of materials susceptible to change in their properties is also allowed under Regulation 7. The properties of some materials can change in certain environmental conditions which will affect the performance of the material over time. Such materials are permitted for use in building work if the residual properties of the material, including structural properties, met both of the following conditions:

- Residual properties can be estimated at the time of the property's incorporation in the works.
- The residual properties are shown to be adequate for the building to perform the function for which it is intended form the expected life of the building.
- A clear list of what standards are to be excluded and which are to be included is necessary to avoid errors in the list.

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

Yes, clear materials and product labelling, building performance and other critical information affecting specification and installation will help ensure improved building safety.

**Q. 8.5. Are there further requirements you think should be included? If yes, please provide examples.**

A process requirement will be necessary to ensure manufacture and safety performance standards of building products do not change in the short- and long-term.

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

We are not convinced about having a separate regulator for construction products and a Building Safety Regulator. There is also a danger that we could have two sets of construction products – those covered by the Construction Products Regulation and the rest. Furthermore, simply examining a construction product in isolation without context as to how it will be used will provide limited information as much of this fall outside the parameters of the manufacturer.

Simply put, to avoid confusion and duplication, a single comprehensive, common and holistic approach would work best.

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

Yes, construction product regulators should have practical knowledge of life safety material deployment, workmanship and performance. They should not be remote from application.

## **Chapter 6: Enforcement, compliance and sanctions**

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

Yes, though this will require some timelines. Again, this should be consistent with the approach of the HSE and there must be powers for the regulator to step in and stop works if the constructor is not complying with requirements. There must also be clarity as to what penalties are applicable under these circumstances.

**Q. 9.2. Do you agree we should introduce criminal offences for:**

- (i) an accountable person failing to register a building;**

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

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

**Yes, Yes, and Yes. This is why CDM penalties work – there needs to be effective sanctions for regulations to have teeth.**

Yes, Yes, and Yes. This is why CDM penalties work – there needs to be effective sanctions for regulations to have teeth.

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

Yes.

**Q. 9.4. Do you agree that an enhanced civil penalty regime should be available under the new building safety regulatory framework to address noncompliance with building safety requirements as a potential alternative to criminal prosecution? Please support your view.**

We would not object to an additional civil penalty regime, particularly if the dutyholder did not receive adequate support or information (and the criminal process was unable to prosecute the Principal Designer or Contractor, or the company the dutyholder was representing). However, any civil penalty regime must not be used as a substitute for criminal prosecution where non-compliance with building safety requirements has been proven.

**Q. 9.5. Do you agree that formal enforcement powers to correct non-compliant work should start from the time the serious defect was discovered? Please support your view.**

Formal enforcement powers should be in place to correct any defect which relates to or could jeopardise the safety of the building or its occupants. For this reason, the word 'serious' should be deleted to avoid possible confusion. Any defect affecting life safety should be deemed as serious. The extent and lifetime of these powers should be consistent with existing statute of limitations set out in legislation governing construction.

**Q. 9.6. Do you agree that we should extend the limits in the Building Act 1984 for taking enforcement action (including prosecution)? If agree, should the limits be six or ten years?**

Yes, we agree with extending the limits in the Building Act 1984. The six- and ten-year limit appear arbitrary – we would recommend these are extended to 15 years, which would be consistent with the period set out to cover the length of liability for product and material defects.