



## FBU submission to MHCLG consultation

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

July 2019

### Introduction

This is the Fire Brigades Union (FBU) submission to the Ministry of Housing, Communities and Local Government (MHCLG) consultation, *Building a Safer Future: Proposals for reform of the building safety regulatory system*, launched on 6 June 2019. The FBU is the democratic, professional voice of firefighters and other workers within fire and rescue services across the UK. We represent the vast majority of whole-time (full-time) and retained (part-time, on-call) operational firefighters and operational fire control staff across the UK.

The FBU agrees with Judith Hackitt's judgment, as expressed in her foreword to the interim report that "the whole system of regulation, covering what is written down and the way in which it is enacted in practice, is not fit for purpose, leaving room for those who want to take shortcuts to do so".<sup>1</sup> The union also welcomes the direction of travel in her final report towards a new, more robust regulatory framework.<sup>2</sup>

However the FBU was disappointed that Hackitt did not take the opportunity to evaluate the building regulations themselves or explore the balance between statutory proscription and voluntary guidance. The union is also critical of some of Hackitt's proposals, which still leave too much power in the hands of private businesses, and do not challenge the deregulatory, free market free-for-all that weakened fire safety and thereby contributed to the Grenfell Tower fire.

The FBU's overall concern with the Westminster government's proposals is that they do not embed in statute the role of the fire and rescue service in the new building safety regime. The fire and rescue sector may become marginalised in a new regime involving the Health and Safety Executive (HSE), local authority building control, the Local Government Association (LGA) and others. The role of representing the service cannot be left solely to the National Fire Chiefs Council (NFCC), as appears to be the case at present. HSE, the LGA, the NFCC and other bodies were all complicit in creating the light-touch, weak regulatory regime that led to the Grenfell Tower fire. Other stakeholders, including trade union representatives across these sectors, should have a prescribed, statutory role in the new building safety regime, so that the views of the workforce – particularly those whose work includes inspecting premises – are heard loud and clear.

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<sup>1</sup> Judith Hackitt, Independent Review of Building Regulations and Fire Safety: Interim report, 18 December 2017: 5

<sup>2</sup> Judith Hackitt, Independent Review of Building Regulations and Fire Safety: Final report, 17 May 2018: 3

## **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**

The FBU agrees that the new regime should initially apply to multi-occupied residential buildings of 18 metres or more (approximately 6 storeys). Judith Hackitt’s final report stated that there are 2-3,000 high-rise residential buildings (HRRBs) over 30 metres (10 storeys) in England. Her interim report stated that there are 10,000 residential buildings over 18 metres (6 storeys) in England.<sup>3</sup>

The FBU would like to see legislation that enables all residential buildings above 11m in height to be considered as HRRBs. The London Fire Brigade (LFB) has also proposed this height as the threshold in the long run.<sup>4</sup> Firefighting ladders currently used across England are able to carry out rescues externally up to approximately 11m (4 storeys) in height. According to Home Office figures, there are more than 40,000 purpose built flats of 4 storeys or more known to fire and rescue services in England.<sup>5</sup>

The FBU therefore wants the new regime to apply to other multi-occupancy ‘institutional residential buildings’, particularly those where people sleep e.g. hospitals, care homes, hotels, prisons, halls of residence and boarding schools. Given the widespread of use of cladding in recent years, and the uncertainty around its composition and flammability, the precautionary principle would suggest lower height thresholds for places where people live, whether it is their permanent home or temporary residence. The FBU underlines the need for central government to provide local fire and rescue services with the resource funding necessary to carry out these additional responsibilities.

The evidence provided in Annex B of the consultation document shows elevated rates of fire in buildings above 11m in apartments/flats, care homes, education, houses of multiple occupation (HMOs), hospitals, hotels, prisons and sheltered housing. Similarly, the risks of fatalities and casualties are elevated above 11m in all the same categories. This evidence contradicts those such as the LGA who previously denied that “high-rise equals high-risk”.<sup>6</sup> If the new regime is adopting a risk-based approach, then these premises should be included in its scope.

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

The difficulties with cross-cutting legislation of multi-occupied residential buildings has been recognised since at least the Holroyd report on the fire service (1970). Holroyd and other subsequent reports suggested arrangements for co-operation between fire and rescue services and other relevant authorities. Guidance is not sufficient; if local authorities and other safety bodies have to consult with fire and rescue authorities and vice versa by law, then there are clear lines of accountability for supervision and enforcement. Providing regulators are suitably resourced, they are then in a better position to collaborate in the best interests of the communities they serve. The new regime must prescribe the irreplaceable role of fire and rescue authorities, principally their fire safety inspectors, to ensure fire safety risks are managed professionally.

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<sup>3</sup> Hackitt, Final report, 17 May 2018: 19; Hackitt, Interim report, 18 December 2017: 34

<sup>4</sup> LFB, Independent review of building regulations and fire safety: Listening Exercise, 30 July 2018: 2

<sup>5</sup> Home Office, Fire Statistics Table 1204: Fire Safety Returns, by fire and rescue authority, F2

<sup>6</sup> LGA, Fire safety in purpose-built blocks of flats, 2012: 20

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

The FBU believes the creation of what Hackitt called a “Joint Competent Authority” (JCA) and the Westminster government describes as the “building safety regulator” may help this process, providing fire and rescue authorities are not treated as the poor relation. The union argues that regulators should be state bodies only – private ‘approved inspectors’ should be scrapped, with in-house local authority building control taking back all these functions. The FBU believes only professionally trained firefighters should be responsible for fire safety inspections. The union wants any guidance produced for collaboration to be authored and backed by governments, with private industry guidance eliminated from formal processes.

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

Fire does not respect the physical boundaries between domestic dwellings and workplaces, so regulation has to face that fact. There is a societal trend towards building mixed developments – for example with shops on the ground floor and purpose built flats above. Risks decide – but as the Grenfell Tower fire showed, past behaviour is not always the best predictor of future performance. The precautionary principle means that regulators have to plan for known risks and also uncertainty.

**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?**

In the construction phase, the principal risks are most acute for construction workers, depending on the materials used and the peculiarities of the design, such as its height, depth and other features. Trade unions representing construction workers should be consulted.

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

Fire professionals take a particular interest in buildings where there is a life-risk involved.

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

Multi-occupancy ‘institutional residential buildings’, particularly those where people sleep, such as hospitals, care homes, hotels, prisons, halls of residence and boarding schools should be included. The particular ‘higher-risk’ establishments should be determined by a panel of professional stakeholders, based on the best available evidence. This should include the views of the trade unions, namely the representatives of front line professionals.

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

There should be an unambiguous duty on all ‘responsible persons’ – ultimately the owners – to cooperate with regulatory authorities. They profit from this ownership, so the buck stops with them. Stringent enforcement powers by well-resourced inspectors would improve cooperation.

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

#### **PART A - DUTYHOLDER ROLES AND RESPONSIBILITIES IN DESIGN AND CONSTRUCTION**

##### **Q. 2.1. Do you agree that the duties set out above are the right ones?**

The FBU believes the duties set out for client, principal designer, principal contractor, designer, contractor, aligned with the existing roles identified under the Construction (Design and Management) Regulations 2015, would improve building safety.

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

The FBU believes that their duties with regard to fire and rescue authorities should be clearly spelt out.

##### **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.**

The FBU wants the named individual to be the owner or a director with specific duties for safety and health.

##### **Q. 2.4. Do you agree with the approach outlined above, 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.**

The FBU accepts the proposal that the Construction (Design Management) (CDM) Regulations, derived from European Union directives, are used as a model for dutyholder responsibilities under building regulations. The CDM Regulations were generally welcomed by trade union safety representatives in the construction industry. By contrast, we recall that in 2007 opposition leader David Cameron supported a misguided early day motion calling for the CDM Regulations to be annulled and then as prime minister in 2015 threatened to subject the revised regulations to the deregulatory 'red tape challenge'. It is therefore progress if the Westminster government is now supporting this regulatory model.

##### **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?**

The FBU strongly supports the proposal for fire and rescue authorities to become statutory consultees for buildings in scope at the planning permission stage. The union wants the Westminster government to go further and make fire and rescue authorities statutory consultees at all other gateways in the process. The union notes Hackitt's final report recommendation (2.46):

Fire and rescue authorities should also have the explicit ability to **delay** JCA clearance at any Gateway Point if the information provided by the dutyholder does not enable them to undertake a proper assessment. A new dispute resolution process needs to be created as part of the JCA to handle any differences in opinion between fire and rescue authorities and Local Authority Building Standards around the possible amendment/rejection of dutyholder plans.<sup>7</sup>

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<sup>7</sup> Hackitt, Final report, 17 May 2018: 43

This proposal would help embed fire safety from the beginning of construction and strengthen the hand of fire safety inspectors to raise their concerns before construction is underway. Making fire and rescue authorities statutory consultees makes it far more difficult for cowboy construction firms to circumvent fire safety measures.

Some chief fire officers complain via the NFCC that this will add workload to already stretched fire and rescue authorities. This is an awful retreat. All fire safety inspection is resource intensive. The answer – for the sake of public safety – is sustained investment in the fire and rescue service from central and local government to ensure the resources are there to meet the risks. It is a travesty in light of the Grenfell Tower fire that some chief fire officers prefer not to campaign for resources and instead to minimise their statutory responsibilities.

A second objection by some chief fire officers is that even statutory consultees can be ignored. But making fire and rescue authorities statutory consultees makes it far more difficult for cowboy construction firms to circumvent fire safety measures. Leaving this as a voluntary process does not make it more likely such firms looking for short cuts will comply. Strengthening the enforcement powers of fire safety inspectors would make their professional advice more difficult to ignore.

The scope for gateway one should be at least buildings of 18 metres, rather than 30 metres.

**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.**

The FBU agrees that planning applicants must submit a Fire Statement as part of their planning application. The Fire Statement should cover fire service access and access to water supplies. The union agrees that requirements for the contents of the Fire Statement should be set out nationally. It should include details of any height or width restrictions or layout constraints that may impact on fire service access.

**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.**

The FBU agrees that fire and rescue authorities should be consulted on applications for developments within the ‘near vicinity’ of buildings in scope. Access for pumping appliances and other fire service vehicles is vital. Local fire professionals should determine the extent of the near vicinity, based on their risk assessment.

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

All developments which local fire inspectors consider could compromise access to the building(s) in scope.

**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.**

The FBU believes responsibility for the fire statement should rest as high up the chain as possible, preferably with individuals who own the land and/or proposed building. Those who seek to profit most from the construction should carry the heaviest responsibility for safety.

**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**

The FBU supports early engagement with fire safety inspectors. The union believes the responsible persons should have a statutory duty to consult with fire and rescue authorities at this and other gateways, as proposed by Hackitt (see our response to Q2.5).

**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?**

The FBU believes planning permission is a necessary stage for ensuring developers consider fire and structural risks, but it is not sufficient on its own to ensure the final building is safe.

**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.**

The FBU accepts the information necessary as part of gateway two includes: Full Plans produced by the principal designer; 3D digital model of the building produced by the principal designer; A Fire and Emergency File produced by the principal designer; Construction Control Plan produced by the principal contractor.

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

These do appear to be the appropriate dutyholders to provide each form of information.

**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?**

This is a matter for the new regulator to determine, providing it facilitates exhaustive safety information.

**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**

The FBU strongly supports the power of 'hard stop', where construction cannot begin without permission to proceed. The union believes local fire inspectors should have the power to impose a hard stop in their own right if their fire safety concerns have not been adequately resolved.

**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.**

The FBU wants the new system to move away from excuses about "additional burdens". The safety of people in their homes and places of residence is not a burden – safety is a necessity.

**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.**

The FBU agrees 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. If the building is not approved, then it should not have been built. If it is deemed unsafe by safety professionals (including fire inspectors), it should be remedied – at the owners' expense. If it remains unsafe it should be pulled down.

**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**

The FBU agrees that the building safety regulator should be able to prohibit building work from progressing unless non-compliant work is first remedied. If building work breaks the law and puts people's lives in danger, then inspectors should be within their rights to act in the interests of society.

**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?**

The FBU believes that safety should not have a time limit. If the building safety regulator is properly resourced (including by construction firms paying their taxes), then delays will be minimised.

**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**

The FBU does not favour making exceptions. Safety must be paramount.

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

All parties involved should have a duty to cooperate with each other and regulators, to ensure safety.

**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?**

The FBU agrees 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.

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

The regulator (including fire inspectors) should be notified of all changes listed in the consultation document.

**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?**

Safety is paramount. A properly resourced regulator will minimise delays in responding.

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

The government should concentrate on providing the resources necessary.

**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.**

The FBU agrees that a final declaration should be produced by the Principal Contractor with the Principal Designer to confirm that the building complies with building regulations. Fire safety inspectors should be statutory consultees at this gateway before occupation, as with previous gateways. Fire safety inspectors should have the power to halt occupation of the building until the fire safety requirements have been met.

**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?**

There should be a specified timescale. Safety is paramount. A properly resourced regulator will minimise delays in responding.

**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**

No.

**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.**

The FBU agrees that the accountable person must apply to register and meet additional requirements (if necessary) before occupation of the building can commence. Registration is essential for regulators – including for fire safety inspections over the life cycle of the building.

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

The FBU believes it should be an offence for the accountable person to allow a building to be occupied before they have been granted a registration for that building. Occupiers, whether they are there for living or for work must be confident that all the necessary safety checks have been carried out and authorised as safe before occupation. Those who allow the building to be occupied without authorisation, even partially, put people's lives 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**

Partial occupation should not be allowed. Safety is a whole process. Until the building is signed off as safe by all relevant regulators (including fire inspectors), it is not safe to occupy.

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

The FBU agrees a similar gateways process should apply to buildings in scope that undergo significant refurbishment. This could have prevented some or all of the damaging failures during the refurbishment of Grenfell Tower before the 2017 fire.

**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?**

For existing projects, where planning permission has not yet been sought, the government proposes that they should go through gateway one; where planning permission has been granted but full plans have not been submitted, the government proposes that they should start at gateway two; and where construction is already underway, the government proposes that they should start at gateway three. This transitional arrangement still requires resources for inspectors and the power to hard stop before occupation as necessary.

## **PART B – DUTIES IN OCCUPATION**

**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.**

The FBU agrees that a safety case should be subject to scrutiny by the building safety regulator before a building safety certificate is issued. The union agrees with Hackitt that “fire and rescue authorities should also have the explicit ability to delay JCA clearance at any Gateway Point if the information provided by the dutyholder does not enable them to undertake a proper assessment”.<sup>8</sup>

**Q. 3.2. Do you agree with our proposed content for safety cases? If not, what other information should be included in the safety case?**

The FBU agrees that the building safety case should contain at least the items listed.

**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**

Safety cases are a well-established approach within health and safety law for assessing ongoing risks.

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

The broad principle should be that owners pay, particularly corporate bodies, because they profit from the arrangements and have the greatest ability to pay. By contrast, individual residents who are tenants should not have to face the direct costs or those passed on by owners. In many cases safety works have arisen from decisions made by the building owner which the individual residents

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<sup>8</sup> Hackitt, Final report, 17 May 2018: 43

may have been either, unaware of, or, unaware of the consequential risks. Where the state is the owner, the costs should be borne from general taxation.

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

The FBU accepts the proposals to create in law an 'accountable person' role for the occupation phase of residential buildings in scope, who will be legally responsible for ensuring that building safety risks to occupants are reduced so far as is reasonably practicable. The union agrees that if owners appoint professionals to support them in fulfilling this responsibility, they should not delegate accountability to another party.

**Q. 3.6. Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an accountable person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.**

We are not aware of any.

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

The FBU agrees that the accountable person requirement should be introduced for existing residential buildings as well as for new residential buildings. Safety matters now, not just for the future. Making all buildings safe now is the priority.

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

The FBU agrees that only the building safety regulator should be able to transfer the building safety certificate from one person/entity to another. This is to ensure accountability and to avoid liabilities pushed down the chain away from those who have the power to improve matters at the top.

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

The FBU agrees with the duties and functions of the building safety manager listed.

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

Building safety managers should have to meet mandatory national professional qualifications.

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

The FBU agrees that the building safety manager should be an appointment, subject to the usual rules of contract governing employee relations and the 'accountable person' cannot transfer or delegate their own liabilities.

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

The FBU accepts the default position that the building safety regulator must appoint a building safety manager where there is not one. The accountable person must bear the costs.

**Q. 3.13. Do you think there are any other circumstances in which the building safety regulator must appoint a building safety manager for a building? Please support your view with examples.**

As above.

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

Until the accountable person provides a suitable alternative building safety manager.

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

Only when a suitably qualified alternative building safety manager is provided.

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

Costs have to be borne by those highest in the chain of command.

**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**

The FBU agrees that the registration scheme, which involves issuing a building safety certificate is an effective way to provide this assurance and transparency.

**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?**

The FBU agrees the person applying for registration should pay the fee to the regulator, in order to cover the costs of administration. The union accepts that the building safety regulator must consult with the accountable person and the building safety manager over the building safety certificate.

**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**

The FBU agrees the building safety certificate should apply to the whole building. Safety is about the whole building. Fire does not respect arbitrary boundaries between regulations.

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

The FBU accepts the types of conditions – but the emphasis must be on mandatory conditions.

**Q. 3.21. Do you agree with the proposals outlined for the duration of building safety certificates? If not, please support your view.**

The FBU accepts the duration of the building safety certificate will generally match the duration of the safety case. The maximum of five years should be kept under review and should be reduced, depending on the nature and risk of the building. Local fire inspectors should decide the latter.

**Q. 3.22. Do you agree with the proposed circumstances under which the building safety regulator may decide to review the certificate? If not, what evidential threshold should trigger a review?**

The building safety regulator must be able to review the certificate at any time if a breach of safety is evident.

### **PART C - DUTIES THAT RUN THROUGHOUT A BUILDING'S LIFE CYCLE**

**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.**

The FBU favours national standards for all types of buildings at every stage of the life cycle. A universal system in a common format laid down by central government is the most effective way to guarantee consistent safety standards. An added advantage is to reduce time-consuming bureaucracy.

**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**

The FBU is not aware of a better standard.

**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.**

All the items specified should be in the key data set.

**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.**

The FBU favours open and publicly available information. This will assist both residents and fire safety professionals.

**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**

If the data is safety-critical, it ought to be publicly available as far as possible.

**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**

N/A

**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.**

Any guidance should come from central government, not industry bodies.

**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**

All fire safety information should be available to local fire inspectors.

**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.**

The FBU agrees that the Client, Principal Designer, Principal Contractor, and accountable person during occupation should have the responsibility to establish reporting systems and report occurrences to the building safety regulator.

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

The FBU agrees that workers must have confidence to report safety concerns without fear of blame. The government should strengthen the role of trade union safety representatives in the process. Trade union safety representatives have a strong track record and experience of identifying safety failures and seeking their remedy.

**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?**

The emphasis should be on immediate reporting. This should be within 24 hours.

**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?**

The scope of mandatory occurrence reporting should cover fire and structural safety concerns.

**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.**

All the categories listed should be reported. The precise list should be discussed by a range of representative bodies (including the FBU) within the fire sector.

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

This should be discussed by a body of fire sector stakeholders (including the FBU).

**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.**

The government should consult with design professionals and then seek views on their suggestions.

**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.**

The FBU supports the protection of workers who blow the whistle on failures within their industry and therefore supports the building safety regulator becoming a prescribed person under Public Interest Disclosure Act 1998.

**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.**

The FBU agree that the enhanced competence requirements for these key roles should be developed and support a national framework. The union believes a new British Standard is preferable to Publicly Available Specifications.

**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**

The FBU supports framing one of the building safety regulator's statutory objectives as to 'promote building safety and the safety of persons in and around the building'. The union believes that legislation aids clarity for all parties and supports enforcement against those who transgress safety.

**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**

The FBU wants the general duty to apply throughout the life cycle, to ensure clear lines of accountability for public safety.

**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.**

The FBU favours applying dutyholder roles and the responsibility for compliance with building regulations to all building work. The Westminster government should move away from the language of "burdens" and instead set a high, statutory imperative for safety.

#### **Chapter 4: Residents at the heart of a new regulatory system**

**Q. 5.1. Do you agree that the list of information in paragraph 253 should be proactively provided to residents? If not, should different information be provided, or if you have a view on the best format, please provide examples**

The FBU strongly supports enhanced powers for all residents in every sector of housing, not just the new regulatory system for high rise residential buildings and other higher risk buildings. In particular, residents require powers of redress from those highest in the hierarchy of ownership and control of their homes – so central government must strengthen residents’ power to hold these key actors to account.

The FBU believes that at least the information listed in paragraph 253 should be proactively provided to residents. However the precise list should be drawn up after consultation and negotiation with a range of residents’ representative organisations, who are better placed to develop a bottom up approach that gives residents what they need.

**Q. 5.2. Do you agree with the approach proposed for the culture of openness and exemptions to the openness of building information to residents? If not, do you think different information should be provided? Please provide examples.**

The FBU supports the aim for a culture of openness. The union agrees that the default position should be that the accountable person and building safety manager will make all relevant information about a building available to residents. Safety should be the only basis for exemptions.

**Q. 5.3. Should a nominated person who is a non-resident be able to request information on behalf of a vulnerable person who lives there? If you answered Yes, who should that nominated person be?**

- Relative,
- Carer,
- Person with Lasting Power of Attorney,
- Court-appointed Deputy,
- Other (please specify).

All nominated persons, namely those instructed by a vulnerable resident, should be able to request information.

**Q. 5.4. Do you agree with the proposed set of requirements for the management summary? Please support your view.**

The management summary sets out a minimum of information. This should be established following consultation and negotiation with representative residents’ groups.

**Q. 5.5. Do you agree with the proposed set of requirements for the engagement plan? Please support your view.**

Similarly, the engagement plan is a minimum. The final contents should reflect the wishes of representative residents’ groups.

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

The FBU is aware that under health and safety at work legislation, there are duties imposed on workers to take due care with regard to their own and others safety. If this is the analogy drawn with residents, then it cannot be opposed in principle. However any duties on residents cannot be used as an excuse for the accountable person or building safety manager to neglect their own duties, or to avoid their liabilities.

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

It would help fire safety inspectors to receive information on any building works/alterations that might affect compartmentation and other essential fire safety matters. Fire safety inspectors would also need the right of access for any premises they are expected to inspect. Firefighters already have an excellent record of getting access to vulnerable households through home fire safety visits.

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

Firefighters provide a humanitarian service and therefore do not engage in policing people's homes. Residents' should have safeguards that reflect this approach: entry to homes should be about safety matters only and not about policing criminal activity.

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

The FBU wants to hear the views of representative residents' groups before commenting on these processes.

**Q. 5.10. Do you agree to our proposal for an escalation route for fire and structural safety concerns that accountable persons have not resolved via their internal process? If not, how should unresolved concerns be escalated and actioned quickly and effectively?**

The FBU wants to hear the views of representative residents' groups before commenting on these processes.

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

The FBU wants to hear the views of representative residents' groups before commenting on these processes.

## **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.**

The FBU supports the principle of a periodic review of the regulatory system and agree that this should be undertaken independently of the new building safety regulator (what Hackitt called the Joint Competent Authority). The union wants both the building safety regulator and any review body to reflect a wider range of stakeholders than presently is the case. We want representation that goes beyond employers and industry lobbyists, to include trade unions (particularly the FBU) on all fire safety matters. The FBU believes central government is wrong to leave reform of the building safety system to those centrally responsible for the current mess it is in.

The FBU believes it is arbitrary to set a period of every five years as the timeframe for review. This may be appropriate in future. However at present, in the aftermath of the Grenfell Tower fire, the continued risks associated with flammable cladding and the urgency of introducing more robust regulation, five years appears too complacent.

**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.**

The FBU agrees with the LGA and NFCC that the new building safety regulator should be a coordinating body overseeing the activities of the existing regulators, with a relatively small central staff performing oversight and monitoring. Creating an entirely new regulator with a full operational role would be overly-bureaucratic and unnecessary. We see no advantage in appointing one of the existing regulators as a lead with authority over the others. The FBU further agrees that the building safety regulator needs a board containing political representation to avoid democratically elected councils and fire authorities being directed by a quango consisting of officers from those authorities. However this cannot be monopolised by the LGA and NFCC, who represent the employers and fire principal managers only. Employee voice is also required, which means a place at the table for the FBU and other relevant, recognised local government and HSE trade unions.<sup>9</sup>

**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.**

The FBU believes the situation is urgent and therefore supports early implementation ahead of legislation. However the Joint Regulators Group does not reflect the range of key stakeholders in the fire and rescue service and has similar omissions from other sectors. Whether it is the Joint Regulators Group or existing national regulator, a wider base of representation is necessary, notably including the relevant representative trade unions.

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<sup>9</sup> LGA, Beyond Hackitt Protecting the vulnerable in the years ahead, March 2019: 14

## **MINIMISING CONFLICTS OF INTEREST WITHIN THE REGULATORY SYSTEM**

**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**

The FBU has long supported national standards and believes universal professional standards are crucial to improving the fire safety regime. The union wants mandatory requirements for fire risk assessors, including formal certification by a central government body and a single government register of approved fire risk assessors.

**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.**

The FBU wants government committees to oversee all building safety, including the competency of fire risk assessors. The lesson of Grenfell is that fire safety matters cannot be delegated to industry; government has to approve everything from standards to guidance.

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

The functions of the committee are adequate, but should be finalised at the first meeting. The key issue is therefore who constitutes the committee and who attends. The FBU wants a wide range of fire stakeholders involved, including the FBU itself.

**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.**

The proposed committee should be appointed by central government. It should not be an industry-led forum. Ministers have to be accountable, civil servants should oversee its proceedings, the committees should include a wide range of stakeholders (including trade unions like the FBU) and proceedings should be transparent.

## **OVERSIGHT OF THE CONSTRUCTION PRODUCTS SYSTEM**

**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.**

The FBU believes that central government should establish a standards committee to provide impartial advice to the Secretary of State on construction products and system standards. The committee must include a wide range of stakeholders, including the relevant trade unions. This committee should then discuss the proposed ‘inventory list’.

There also needs to be a government-owned, government-run testing facility for construction products as part of the new regulatory system. Central government needs to carry out its own research and its own testing, as was the case during the immediate post-war period and before the BRE was privatised in 1997.

**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.**

Given the failings with the Approved Documents, the inventory list ought to be more ambitious.

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

The government should take advice from trade union safety representatives in the construction industry. This matter should also be subject to further assessment under the approach to standards set out in answer to Q 8.1 above.

**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.**

The proposals will only work if there is central government testing and proper consultation with construction-sector unions.

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

See Q 8.1.

**Q. 8.6. – Q 8.15.**

The government should take advice from trade union safety representatives in the construction industry.

## **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?**

The FBU has long identified weak enforcement due to under-resourcing as a failing of the building safety regime. The old HM inspector of fire services, scrapped at the turn of the century, used to report the number of fire safety inspectors annually. In 1996-97, it estimated there were 1,724 fire safety inspectors in England and Wales. An FBU Freedom of Information request immediately after the Grenfell Tower fire found that there were barely a thousand inspectors (measured by full time equivalent), indicating a 40% fall in the number of inspectors over twenty years. Between 2010 and 2017, the number of fire safety inspectors fell by 28%. This is greater than the drastic fall in staffing right across the fire and rescue service, which is approximately 20%. A significant minority of fire and rescue services were not even in a position to report the number of inspectors and the Westminster government does not currently publish figures, even if it collects such data. Therefore these principles might be laudable, but without providing the resources to fire and rescue services to appoint and train fire safety inspectors, these goals will remain a pipe dream.

**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?**

The FBU supports the new criminal offences.

**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.**

The FBU welcomes further sanctions available on a wider range of products.

**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.**

The FBU supports civil sanctions, providing they are not a substitute for criminal prosecution.

**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.**

The FBU agrees that formal enforcement powers should be expanded. However the union supports wider changes to local authority building control, including proper resourcing of local authority building control and the scrapping private 'approved' inspectors. Central government should consult and negotiate with trade unions organising this sector on the level of resources necessary to restore robust building safety enforcement.

**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?**

Extending time limits makes sense. The government should take advice from trade unions in local authority building control.