

Building a safer future: proposals for reform of the building safety regulatory system



ARCH response to consultation

Introduction and summary of main points

ARCH represents local authorities that have chosen to own and manage council housing. Our 69 members manage over 600,000 homes. Some are not immediately affected directly by the proposals in this consultation paper, having no homes in buildings over 18 metres. For others, the proposals will have very major implications: Birmingham City Council, for example, has nearly 200 blocks over 10 stories in height; the proposal to extend the application of the new regime to buildings over 6 stories doubles the number of blocks involved to over 400.

Our response focuses on the implications for local authorities as owners and managers of existing buildings. While many of our member authorities are involved in the construction of new homes, some of which will fall within the scope of the proposals here, we feel others are better placed to comment in detail on the proposed duties when a building is being designed and built, as set out in Part A of Chapter 3. Our comments centre on Parts B and C of Chapter 3, and on Chapter 4. We also have some comments on Chapters 5 and 6, although we have not attempted to answer all the consultation questions.

The main points in our response can be summarised as follows:

1. We agree that the current building regulatory system is not fit for purpose and support the Government's intention to replace it; we also agree that the new regime should be based on the recommendations of the Hackitt review.
2. We are disappointed that the period allowed for consultation on the Government's proposals was too short to allow us to involve our member local authorities or their tenants as fully as we would have liked in the preparation of this response. We also think there are issues in the consultation paper that need to be discussed further, including with local authorities and tenants; the most important of these are mentioned below. For both reasons we hope to have a continuing dialogue with Government on important details of the new regime as they are finalised for legislation and implementation.
3. For the foreseeable future, the great majority of buildings falling within the scope of the new regime will be those already existing, and it is to the residents of these buildings that we, as landlords, owe the responsibility to ensure that their homes are safe and shown to be safe. We therefore want to see the requirements of the new regime, primarily the production of a safety case and the issue of a building safety certificate, applied to all existing buildings as soon as is reasonably practicable, while recognising that for some local authorities this will be a major administrative challenge. The consultation paper has little to say on how this might be tackled. Our initial thinking is to argue against a single implementation deadline, in favour of an implementation timetable for each local authority to be agreed with MHCLG or the new regulator, to reflect the proportion of their dwelling stock in scope, based on an initial high-level risk assessment and the presumption that buildings will be tackled in descending order of risk. We would welcome further discussion with MHCLG on this issue.

4. The consultation paper also has relatively little to say about the challenges involved in producing a safety case for an existing building, particularly where relevant information on construction or past refurbishment is not available and cannot easily be collected. It suggests that the accountable person should be required to decide whether the available information is adequate to understand the risks to the building and how they can be mitigated and managed, or whether there is a need to collect new information by way of an intrusive survey, such as a Type 4 fire risk assessment, which may be impossible where there are no vacant flats to survey. We believe this responsibility is too heavy a burden for accountable persons to carry without more detailed guidance from MHCLG or the new regulator. We would welcome further discussion on this issue, with a view to contributing to such guidance.

5. We support the proposal for a building safety manager to be appointed for each building in scope, but the implications of this approach need to be carefully considered. Firstly, it must be recognised that the role involves a skill set spanning building technology, information management and resident engagement, which is a combination rare among those currently involved in housing management. Appointment of building safety managers for each building cannot therefore be envisaged as a process of redeploying existing staff (within a local authority or within the wider industry) after limited retraining. It involves the creation of a whole new professional group almost from scratch, with the associated challenges of promoting the role, attracting applicants, organising training and issuing qualifications, all of which will take a significant length of time.

6. The process envisaged for certification of existing buildings in the consultation paper appears to be a sequential one:

- Step 1: Identification of accountable person registered with regulator
- Step 2: Appointment of registered building safety managers for each building
- Step 3: Production of safety case by building safety manager
- Step 4: Scrutiny of safety case by building safety regulator
- Step 5: Issue or refusal of building safety certificate

While this may be a practicable long-term objective, the immediate problem following enactment of the new regime may well be that there is an acute shortage of suitably qualified and experienced people ready to take up the building safety manager role, and that a choice must be made between delay in completing the production of safety cases for all buildings, or accepting that, for a specified period, safety cases may need to be produced in the absence of a registered building safety manager, and considered on their merits by the regulator. Rather than extend the implementation timetable unnecessarily, we would argue for the latter option.

7. The consultation paper aims to put residents at the heart of the new regulatory system, but nowhere does it discuss exactly to whom the term 'residents' is intended to apply. Local authority-owned buildings are normally occupied on a variety of tenures, including by local authority tenants, leaseholders and tenants of leaseholders. Some leaseholders may also have let their dwellings on schemes like Air B&B. And in many cases dwellings will have occupants additional to those holding the leasehold or tenancy agreement, such as family members, lodgers, etc. This means it is not straightforward to decide exactly who should be counted as a resident to whom the building safety manager should be required to supply information, or to whom the proposed duty to cooperate should apply. In broad terms, these various types of resident fall into two general categories: persons in control of a dwelling (leaseholder, local authority tenant), some of whom may not be

residents in the usual meaning of the term, and others, who are resident, however briefly, but have no direct accountability to the local authority as building owner. We see the need for both categories to have both rights (e.g. the right to receive information from the building safety manager) and responsibilities (e.g. the duty to cooperate with the building safety manager) under the new regime.

8. The costs of implementing the new regime to some local authorities will be considerable. The fact that local authorities will treat this expenditure as a top priority and unhesitatingly divert funds from other urgent and important tasks should not be used as an excuse to argue that additional funding is not required. We expect to see proposals to fully meet these costs in the outcome of this year's Spending Review.

9. This response has been prepared by Matthew Warburton, ARCH Policy Adviser, who may be contacted for further information about any part of it at matthew.warburton@arch-housing.org.uk or by phone on 07891 105906.

Detailed response

1. Chapter 1: Introduction and progress to date

1.1 This chapter sets out what the Government has already done and is currently doing to make buildings safer. There are no questions to answer.

2. Chapter 2: Types of Buildings we want to include in the new system

2.1 Dame Judith Hackitt's Independent Review recommended applying new requirements to buildings over 10 storeys. On the basis of a review of the incidence of fires and consequent risk to safety MHCLG proposes a wider scope, with the new regime applying to buildings that are:

- Lived in by multiple households; and
- 18 metres high (6 storeys) or more.

2.2 **Consultation question 1.1** asks respondents to support this proposal:

ARCH Response: We recognise and agree with the arguments for extending the scope of the new regime to buildings over 18 metres, or 6 stories. However, it is important to note that, in some authorities this will significantly increase the number of blocks falling within the scope of the new regime, adding substantially to the organisational and cost implications of the new regime.

2.5 Dame Judith recommended that the Government consider whether the new regime should be extended in due course beyond high-rise residential buildings to other premises where people sleep with a high fire risk, whether or not high-rise. MHCLG suggests that these may include:

- prisons, detention centres and other secure premises
- hospitals and other health care institutions where patients stay overnight
- supported/sheltered housing

- educational buildings such as boarding schools and halls of residence.

2.6 **Consultation questions 1.4 to 1.7** ask for views on the merits and relative priority of extending the new regime to include each of these categories of premises.

ARCH Response: Most of these categories describe premises that are not owned or managed by local authorities, and while we support the principle that the new regime should apply to all premises where people sleep, we are not in a position to comment on the detailed implications for these premises. Much supported and sheltered housing, however, is owned and managed by local authorities. Our impression is that the building safety and fire risks associated with such premises are generally less substantial than in high-rise blocks, and, while we are willing to reconsider this view at any time in the light of evidence, we would regard extension of the new regime to cover such premises as a step to be implemented only after the application of the new regime to high-rise buildings has been substantially achieved.

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?

ARCH Response: To avoid this situation arising, we would argue that the new regime should apply to all buildings of 6 stories or more of which any part is in residential use.

3. Chapter 3: A new dutyholder regime

3.1 As recommended by Dame Judith Hackitt, MHCLG proposes to introduce dutyholders who will be responsible for making sure buildings are safe. Each dutyholder will have specified responsibilities at different stages of a building's life, including:

- Part A – duties when a building is being designed and built
- Part B – duties when people are living in the building
- Part C – duties that run throughout the building's life cycle.

3.2 Part A proposes:

- Making sure that there is a clear set of dutyholders involved in the design and build of buildings so there is clear responsibility.
- Dutyholders will be responsible for ensuring that building regulations are complied with.
- Dutyholders will be required to show that they are managing risks at new 'gateway points' before they can continue to the next stage of the building process:
 - Gateway 1: before planning permission can be given, the dutyholder will need to submit a 'fire statement' and the regulator will consult the Fire and Rescue Authority to make sure fire safety is considered early on.
 - Gateway 2: before construction can begin, the dutyholder will need to show how the building has been designed to be safe and

follows building regulations by providing full plans and supporting documents.

- Gateway 3: before anyone can move into the building, the dutyholder will need to hand over building safety information about the completed building. They will need to apply for and receive a provisional registration of the building and tell the regulator that building risks have been assessed and arrangements are in place to make sure the building is managed safely while people are living there.

3.2 **Consultation questions 2.1 – 2.33** invite views on these proposals.

ARCH Response: We are not in a position to make detailed comments on the proposals in this Part.

3.3 Part B proposes:

- Creating a new ‘accountable person’ role who will be the dutyholder responsible for making sure that building fire and structural safety risks are reduced as much as reasonably practicable when people are living in the building.
- Dutyholders will create a ‘safety case’ which contains all the important information about a building that shows how the dutyholders are managing any fire or structural risks on an ongoing basis.
- The accountable person may also employ a ‘Building Safety Manager’ who has the right skills and expertise to look after the building. Their role would be to help the accountable person by doing the day-to-day work involved with keeping a building safe.

3.4 **Consultation questions 3.1 to 3.22** invite views on these proposals.

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?

ARCH Response: Yes – an independent check of each safety case is essential to guarantee its adequacy and give residents confidence that they will be safe in their homes. However, the implications for currently occupied dwellings are very different from those for newly constructed homes. For new homes which have been within scope of the new regime from their inception there should be no difficulty in assembling the golden thread of information necessary to assess risk, understand how to manage it and construct the safety case. It is straightforward to motivate developers to produce an adequate safety case in good time by disallowing occupation before a building safety certificate is issued. In the case of current stock, neither of these conditions applies. Detailed information on construction, past refurbishment and other matters necessary to the preparation of a safety case will, in many cases, be missing and difficult to replace. In most circumstances, blocks currently occupied will remain occupied while the relevant dutyholder prepares a safety case and the regulator considers it; only in cases where the dutyholder identifies an exceptionally high fire risk will it be feasible or reasonable to empty a block until such time as a building safety certificate is approved. Preparation of a first safety case for each block in scope will be a major administrative task for many local authorities, and their scrutiny and endorsement will be a very major task for the new regulator.

Unless these tasks are adequately resourced and carefully managed, there is a high risk that both landlords and the regulator will be criticised for failing to act speedily and effectively enough to make residents safe.

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

ARCH Response: The proposed content is comprehensive and we have no suggested additions. However, as the next section of the consultation paper discussed, the information available on existing buildings will necessarily be different in character and the detailed content of the safety case also different from that of a new building.

There is no consultation question explicitly asking for comments on paragraphs 130 – 139 of the consultation paper, which discuss the particular problems involved in the production of a safety case for an existing (occupied) building, where relevant information on construction or past refurbishment is not available and cannot easily be collected. It suggests that the accountable person should be required to decide whether the available information is adequate to understand the risks to the building and how they can be mitigated and managed, or whether there is a need to collect new information by way of an intrusive survey, such as a Type 4 fire risk assessment, which may only be possible where there are vacant flats to survey.

We believe this responsibility is too heavy a burden for accountable persons to carry without more detailed guidance from MHCLG or the new regulator. We would welcome further discussion on this issue, with a view to contributing to such guidance.

Q 3.3 Do you agree that this is a reasonable approach for assessing risks on an ongoing basis?

ARCH Response: We agree that building safety registration should normally be reviewed every 5 years, or exceptionally sooner in the case of major refurbishment, occurrences of fire or residents' concerns. However, the timetable for the first reviews needs to be considered in conjunction with the timetable for first implementation to avoid a situation where certificates for all existing buildings come up for review at the same time, which would place an impossible on building safety managers and the regulator.

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

ARCH Response: This is an important issue, particularly for local authorities with a high percentage of flats held by leaseholders. We believe that leaseholders should not be held responsible for remediating fire safety issues which have arisen as a result of systematic failure of the current regulatory system, and that Government should accept some of the responsibility for these failings, and the associated costs of remediation, just as developers should be held accountable for work they have carried out that does not adhere to standards. We would expect to see leaseholders' contribution to major works capped, using the existing powers in Sections 219 and 220 of the Housing Act 1996, so that the charges for major works do not exceed £10,000 (£15,000 in London) for the same property over any five year period.

Q 3.5 Do you agree with the proposed approach to identifying the accountable person?

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 so, please provide examples of such arrangements and how these difficulties could be overcome.

ARCH Response: We agree with the proposal to require the identification of an accountable person for the occupation phase of relevant buildings, who would be legally responsible for ensuring that building safety risks are reduced so far as is reasonably practicable. We agree that the accountable person's responsibilities should include those set out in paragraph 157 of the consultation paper. We also accept the principle that the accountable person should be identified by reference to their right to receive rents or service charges from residents. In the case of blocks owned by a local authority, this right resides with the local authority itself – a corporate body established by statute. Paragraph 161 proposes that where, as in this case, the accountable person is a legal entity rather than an individual, a single accountable person should be identified “at Board level”. This concept is, strictly, not applicable to a local authority, which does not have a Board with functions equivalent to that of a company. Drawing on similar accountability arrangements for other critical functions, we would suggest that the appropriate person to take on the accountable person role in a local authority is the Chief Executive, or the second-tier officer reporting directly to the Chief Executive with responsibility for housing.

Some local authorities have established arms-length council-controlled companies that own or manage housing. It is not entirely clear how the principles for deciding who should be the accountable persons should apply in this situation. We would welcome further discussion on this point.

We also believe that there is an issue to be addressed in relation to mixed-use buildings, for example, local authority-owned blocks with ground-floor units let on commercial leases. As stated in response to Q 1.8 above, we believe that the local authority, as freeholder, should be accountable for the safety of the whole building, but that, as a consequence, commercial leaseholders or other non-residential occupants or users of the building should be subject to similar duties to co-operate as apply to residential leaseholders, with the accountable person and/or building safety manager having powers to act in the event they do not cooperate.

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?

ARCH Response: To minimise risk and provide reassurance to all residents of high-rise buildings it is essential that the new regime does not apply new buildings alone but to existing buildings, which for many years to come will form the great majority of buildings in scope. The key task in achievement of this aim is the production of a robust safety case for each building in scope, scrutinised and signed off by the regulator through the issue of a building safety certificate. Identification of an accountable person who will be

responsible for the production of the safety case is only the first step in this process. Paragraph 119 already proposes that a new building may not be occupied unless a building safety certificate has been issued, so it seems odd and unnecessary to propose, in paragraph 162, that no new building may be occupied unless an accountable person has been registered with the regulator, since, presumably, no safety case would be considered by the regulator that had not been prepared by a registered accountable person.

It also seems anomalous that paragraph 163 proposes that “similar requirements” will be introduced for existing buildings, to be implemented following a transitional period, while there is no discussion of a timetable or transitional arrangements in the earlier discussion of safety cases for existing buildings in paragraphs 130-139. The requirement to identify an accountable person for each occupied building in scope is not the principal challenge in applying the new regime to existing buildings, and we see no reason why it should not come into force a short time after the relevant legislation is enacted. The major challenge is the process that the accountable person will be expected to oversee, involving the appointment of building safety managers for each building in scope, the assessment of risk and the production of a safety case for each building prior to application for a building safety certificate. Any statutory timetable for implementation of the new regime should apply, not to the identification of an accountable person, but to the completion of this process for all relevant buildings; we would also like to see a commitment that the new building safety regulator will consider all applications within a specified time period before issuing or refusing a building safety certificate.

Our initial thinking is to argue against a single implementation deadline, in favour of an implementation timetable for each local authority to be agreed with MHCLG or the new regulator, to reflect the proportion of their dwelling stock in scope, based on an initial high-level risk assessment and the presumption that buildings will be tackled in descending order of risk. We would welcome further discussion with MHCLG on this issue.

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?

ARCH Response: We see the logic of this proposal where there is a potential risk that the arrangements for which an accountable person is responsible are not preserved in a transfer of responsibility or ownership of a building. We are not convinced that this risk is significant in the case of local authority-owned buildings where a building remains in local authority ownership but accountability passes from one local authority officer (such as the Chief Executive) to his or her successor in post.

Q 3.9 Do you agree with the proposed duties and functions of the building safety manager?

Q 3.10 Do you agree with the suitability requirements of the building safety manager?

Q3.10 Is the proposed relationship between the accountable person and the building safety manager sufficiently clear?

ARCH Response: Discussion of the role and responsibilities of the building safety manager are spread across several parts of the consultation paper. The following comments are not just relevant to the above questions but apply more generally.

We see the argument for the creation of a new role with broadly the responsibilities proposed for the building safety manager but believe that the implications of this approach need to be carefully considered. Firstly, it must be recognised that the role involves a skill set spanning building technical, information management and resident engagement, which is a combination rare among those currently involved in housing management. Appointment of building safety managers for each building cannot, therefore, be envisaged as a process of redeployment of existing staff (within a local authority or within the wider industry) with limited retraining; it involves the creation of a whole new professional group almost from scratch, with the associated challenges of promoting the role, attracting applicants, organising training and issuing qualifications, all of which will take a significant length of time.

The process envisaged for existing buildings in the consultation paper appears to be a sequential one:

- Step 1: Identification of accountable person registered with regulator
- Step 2: Appointment of registered building safety managers for each building
- Step 3: Production of safety case by building safety manager
- Step 4: Scrutiny of safety case by building safety regulator
- Step 5: Issue or refusal of building safety certificate

While this may be a practicable long-term objective, the immediate problem following enactment of the new regime may well be that there is an acute shortage of suitably qualified and experienced people ready to take up the building safety manager role, and that a choice must be made between delay in completing the production of safety cases for all buildings, or accepting that, for a specified period, safety cases may need to be produced on a collaborative basis, without the supervision of a registered building safety manager, and considered on their merits by the regulator. The very likely real and substantial challenges involved in production of safety cases early in the implementation of the new regime must be taken into account before proceeding with the proposal (paragraphs 174 and 177) to make a criminal offence of failure to submit a valid application to register a building. There should be a clear deadline for compliance with the requirement to submit a valid application, based, as we have argued above, on an evidence-based appraisal of the implementation challenge in relation to existing buildings.

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?

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?

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

Q 3.15 Under what circumstances should the appointment be ended?

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

ARCH Response: The approach proposed depends on the availability of sufficient registered building safety managers from among whom the regulator can appoint a suitable candidate. As argued above, this may not be the situation early in the implementation of the new regime, and other methods of intervention will need to be identified where the regulator is not satisfied that the accountable person has made adequate arrangements for production of a safety case for one or more of the buildings under their control. Whatever interventions are envisaged, they should be capable of being initiated whenever the regulator is not satisfied that an accountable person is making adequate and timely arrangements to act on his or her responsibilities – we see no reason to enumerate in law all the possible circumstances under which this may be the case – and should be brought to an end as soon as the regulator is satisfied that the accountable person has made adequate arrangements to take back control. To avoid creating a perverse incentive for the accountable person to invite intervention, the reasonable costs of appointment of an independent building safety manager should be recoverable from them.

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?

ARCH Response: As argued earlier, we see the issue (and public display) of a building safety certificate as the key to ensuring assurance that a building is safe, and transparently evidently safe. Identification of an accountable person and appointment of a building safety manager are merely steps to enable this outcome.

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?

ARCH Response: Yes, subject to the comments made earlier about the likely need to relax the requirement for a registered building safety manager to be appointed for every building in early implementation. The regulator should not be able to refuse an application on the grounds that it does not comply with statutory requirements if non-compliance is simply technical; non-compliance should have to be substantial and material to the application, in that it disables the regulator from processing it in the normal way. It is very important that the regulator is required to process applications within a reasonable period, and we would welcome further discussion on what this might be.

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

ARCH Response: It is essential that a building safety certificate apply to the whole building, since there is no practicable way to manage risk flat by flat in a multi-occupied block. It follows, however, that the accountable person needs adequate powers to ensure the cooperation of all residents, and non-resident leaseholders, in securing the safety of the building. A legal requirement on residents to cooperate will help achieve this, but there will

need to be steps available to an accountable person in the event that residents fail to comply.

Q 3.20 Do you agree with the types of conditions that could be attached to the building safety certificate?

ARCH Response: We agree that conditions should fall into the three categories proposed, and that, where the regulator decides to impose special conditions against the wishes of the accountable person, there should be a right of appeal.

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

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

ARCH Response: We agree with these proposals.

3.5 Part C sets out duties that run throughout a building's life and proposes:

- The dutyholder to be responsible for the golden thread of building information, ensuring it is created, maintained and held digitally throughout the building life cycle to support safety improvements; this information to be held in a specified format.
- A system of 'mandatory occurrence reporting' to the regulator which will ensure that the client, principal designer, principal contractor and accountable person must ensure that anyone involved in the construction of the building can report fire and structural issues.
- The new system will make sure that all dutyholders employ people who are suitably qualified and competent.

3.6 **Consultation questions 4.1 to 4.20** invite views on these proposals.

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
- (b) New buildings in the occupation stage
- (c) Existing buildings in the occupation stage.

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

ARCH Response: We understand and support the proposal to make the golden thread of information a key feature of the new regime. We also believe that, as far as possible, the same approach should apply to existing and new buildings proposals. We are not aware of any alternative to BIM that should be given serious consideration, consequently our view is to support the proposal to mandate BIM standards applicable to existing as well as new buildings, subject to recognition, discussed earlier, of the challenge involved in assembling all the necessary information on existing buildings, particularly older ones.

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?

ARCH Response: We are not aware of any.

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

ARCH Response: All buildings in scope should not only be made safe, but be seen to be safe. Consequently we believe relevant information should, wherever possible, be made public. We agree, therefore, that the key dataset should, by default, be publicly available, with data withheld from the public only where a convincing case is made that it should remain private.

Q 4.5 Do you agree with the proposals relating to the availability and accessibility of the golden thread?

ARCH Response: We agree.

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

ARCH Response: Existing buildings owned by local authorities will normally include dwellings held on a variety of tenures, including local authority tenants, leaseholders and tenants of leaseholders. There is evidence that a growing number of dwellings are being occupied through Air B&B and similar arrangements. Uncertainty about occupancy could create significant difficulties in a number of areas, including: identifying and contacting residents to whom the proposed duty to cooperate applies, deciding who needs to be consulted about the resident engagement strategy and identifying who needs to be contacted in the case of an occurrence. We believe there is a case for including residents' names and contact details in the key dataset, though not on the public part of it.

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?

ARCH Response: We agree.

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

ARCH Response: Yes.

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 be?

ARCH Response: We agree.

Qs 4.12 – 4.16

ARCH Response: We agree and have no detailed comments to make.

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

ARCH Response: Our comments are confined to the role of building safety manager. We agree that there should be nationally agreed competence requirements for this role, linked to new training and qualifications provided by appropriately accredited bodies.

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’?

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?

ARCH Response: We agree that the building safety regulator should have a general duty to promote building safety and the safety of persons in and around the building, consistent with the regulator’s role as the national lead body with responsibility for ensuring building safety. We are not convinced that it is appropriate to extend this duty to all dutyholders, some of whom will be relatively junior employees, for whom the duty would constitute an open-ended addition to their job description of doubtful practical impact.

4. Chapter 4: Residents at the heart of the new regulatory system

4.1 It is proposed that the accountable person in an occupied high-rise building will have specific duties to residents:

- A duty to provide residents with the information they need so that they understand the protections in place to keep their building safe from structural or fire issues;
- Residents will also be able to access more detailed information about building and fire safety by requesting it from the accountable person, who would only be able to refuse to provide it for specified reasons (e.g. sharing that information would create a security risk or divulge personal information).
- A duty to have a Resident Engagement Strategy which sets out how they will engage with residents and how residents can get involved and benefit from participating in engagement on building safety, and to make sure residents can raise safety concerns, a clear process for responding to them.
- Residents would have a clear obligation to cooperate with the work of the accountable person to keep the building safe.
- Residents would be able to take urgent safety concerns to the new regulator if the accountable person fails to deal with them properly.

4.2 **Consultation questions 5.1 to 5.11** invite views on these proposals.

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

ARCH Response: Chapter 4 aims to put residents at the heart of the new regulatory system, but nowhere does it discuss exactly whom the term 'residents' is intended to apply to. As noted earlier, local authority-owned buildings are normally occupied on a variety of tenures, including by: local authority tenants, leaseholders and tenants of leaseholders. Some leaseholders may also have let their dwellings on schemes like Air B&B. And in many cases, dwellings will have occupants additional to those holding the leasehold or tenancy agreement, such as family members, lodgers, etc. This means it is not straightforward to decide exactly who should be counted as a resident to whom the building safety manager should be required to supply information, or to whom the proposed duty to cooperate should apply.

There are good reasons for arguing that the list of information in paragraph 253 should be made available both to all occupants (however short-term) of each dwelling, and also to non-residents who are in effective control of any dwelling, such as absentee leaseholders. Rather than being required to provide this information to both these categories of 'resident', we would like to see the building safety manager required to ensure that it is provided, normally by providing it to the person in control of a dwelling (i.e the tenant or leaseholder) coupled with an obligation on the latter to pass the information on to anyone in occupation. It might also be necessary to place some requirement on the building safety manager to check whether relevant information had been passed on and act in default where it had not.

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

ARCH Response: We agree with the presumption that all relevant information about a person should be available to residents, with the same caveat as previously, that it is necessary to consider more carefully who qualifies as a resident for these purposes. In general, we believe that the right should apply both to occupants and to persons in control (as defined above), but this makes more complicated the question of deciding on exemptions (e.g what information should a private tenant be entitled to receive about their leaseholder landlord?).

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

ARCH Response: Yes, and we see no reason why a vulnerable person should not be able to nominate any person of their choice to act on their behalf. A person with lasting power of attorney should also be able to act without separate nomination in relation to this issue.

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

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

ARCH Response: We agree.

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?

Q 5.7 What specific requirements, if any, do you think would be appropriate?

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?

ARCH Response: A new requirement on residents to cooperate with the accountable person and building safety manager is only one way to address concerns that some residents may, in a variety of ways, act so as to compromise the fire safety or structure of the building in which they live. It is not the only one. There are some issues where it may be more appropriate to introduce explicit statutory requirements, if necessary punishable in the breach as criminal offences. One example might be the situation where a leaseholder fails to fit a fire-resistant front door, or who makes alterations that compromise the fire safety of a dwelling. Another might be where a leaseholder lets a dwelling to a tenant or other occupant on a tenancy or licence that does not require the tenant to cooperate with the building safety manager in the same way as the leaseholder is required to. These would supplement, not replace, a general requirement to cooperate with the building safety manager, as the latter would be needed to deal with matters encountered during the day-to-day discharge of the building safety manager's role, such as refusal of access, or flammable rubbish left in communal areas.

We also believe that the building safety manager or accountable person will need powers:

- To enter and inspect dwellings (intrusively if necessary) with notice, without the need to refer to the courts for an injunction;
- To serve notice on tenants or leaseholders to remedy defects (dependent on lease terms) within specified timescales;
- To remedy defects where a notice to remedy has not been complied with and to recover costs, and
- To enter leasehold premises to undertake works (with notice) to landlord spaces or services to maintain the security or safety of the building without the need to refer to the courts for an injunction.

To ensure the safety of mixed use buildings, a similar duty to cooperate should apply to other users and occupants of the building so far as is appropriate, and the powers of the building safety manager or accountable person identified as necessary in the previous paragraph should also apply in relation to such users.

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

ARCH Response: We agree with the proposed requirements for internal processes for raising safety concerns, but we would draw attention to the fact that, as social landlords, we were consulted last year on proposals in the Social Housing Green Paper on the handling of tenants complaints more widely and the role of the Housing Ombudsman. In responding to those proposals, we made the point that all local authorities of which we are aware operate a single complaints system for all local authority services and that unilateral reform of the arrangements for one service could risk creating confusion and to 'wrongly' routed complaints not being dealt with adequately. Such systems frequently make provision for urgent issues, such as fire safety, to be dealt with more speedily than others. We would make the same point here. It is essential that reform of the arrangements for raising safety concerns should minimise the risk that residents have difficulty deciding who to take their complaint to, and what response can be expected. We expect to see a close fit between the Government's response to consultation on the Social Housing Green Paper, and its response to the current consultation, on these closely related issues.

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 processes?

Q 5.11 Do you agree there should be a duty to cooperate as set out in paragraph 290 to support the system of escalation and redress?

ARCH Response: Yes, and we would emphasise the importance of a 'no wrong door' approach as set out in paragraph 290. As argued in response to the previous question, residents should not be required to have expert knowledge of the various complaints systems to which they have access in order to ensure that fire safety concerns are speedily and effectively dealt with.

5. Chapter 5: A more effective regulatory framework for buildings

5.1 MHCLG proposes to create a new building safety regulator responsible at a national level for:

- Oversight of building safety and wider regulation
- Oversight of operation and enforcement of the new regime for high-rise residential buildings, and setting guidance
- Advising government on what buildings should be included in the scope of the new regime by developing and analyzing evidence on risk; and
- Oversight of the competence of people working on buildings, including keeping a register of those competent to take on key dutyholder roles in the new system and providing guidance on where to find qualified people to work on buildings in scope.

5.2 **Consultation questions 6.1 to 7.4** invite views on these proposals.

ARCH Response: We broadly support these proposals and have no detailed comments to make.

5.3 MHCLG also propose stronger regulation of construction products, to be achieved by:

- Making manufacturers' responsibilities clearer in legislation, focusing on construction products that are critical to safety, and requiring clear labeling and information so that it is clear how the product should be used safely.
- Strengthening national regulation of construction products, with a national complaints system and a stronger focus on enforcement, and
- Setting minimum standards for independent assurance schemes and encouraging their use, so people can be confident that construction products meet the standards manufacturers claim.

5.4 **Consultation questions 8.1 to 8.15** invite views on these proposals.

ARCH Response: We broadly support these proposals and have no detailed comments to make.

5.5 MHCLG is also proposing that the whole regulatory system is independently reviewed to make sure it is working properly.

6. Chapter 6: Enforcement, compliance and sanctions

6.1 MHCLG proposes:

- To create new criminal offences to make sure those responsible for the safety of a high-rise residential building during the design and construction of the building, as well as when residents are living in the building, comply with their responsibilities.
- To give the new regulator the power to take quick and effective action, through monetary penalties such as fines, when the requirements of the new regime have not been met.

6.2 **Consultation questions 9.1 to 9.4** invite views on these proposals.

ARCH response: We support these proposals and have no detailed comments to make other than in relation to the proposal to make a criminal offence of failure to submit a 'valid' application for a building registration certificate within the required time period. As we argued in response to the proposals in Chapter 3, Part B, implementation of the new regime for existing buildings will be, for some local authorities, a major and time-consuming challenge, and it is essential that the implementation timetable is demonstrably realistic, without which it would be unfair to make non-compliance a criminal offence. We have offered views on how the implementation timetable should be developed and would welcome further discussion with MHCLG on this point.

We are also concerned to understand just what is envisaged by the proposal that the relevant offence should be failure to submit a 'valid' application for building safety certification. It could hardly be reasonable to require this to mean a successful application, since this would require foreknowledge of the regulator's response to the application; if it does not mean a successful

application, then what distinguishes a 'valid' application from any other? Draft legislation will need to be clear on this point.

6.3 MHCLG also proposes:

- To give local authorities more time to serve enforcement notices, so that they can take action where problems are uncovered later; and
- To enable private individuals to make a claim for damages where work on a building has not met building regulations standards, and they have suffered harm as a result.

6.4 **Consultation questions 9.5 and 9.6** invite views on these proposals.

ARCH Response: We broadly support these proposals and have no detailed comments to make.