



Llywodraeth Cymru
Welsh Government

Number: WG43589

Welsh Government

Consultation – Welsh Government response

Safer Buildings in Wales: A Consultation A Building Safety White Paper

December 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Overview

Welsh Government's response to Safer Buildings in Wales: A Consultation.

Action Required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

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Additional copies

This summary of responses and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: <https://gov.wales/safer-buildings-wales>

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Introduction

1. The Safer Buildings in Wales White Paper consultation was published on 12 January 2021. It set out our plans to improve building safety following the tragic events at Grenfell Tower, and the policy goals our programme of work is intending to deliver in response to the issues identified by the Hackitt Review¹, the Grenfell Tower Public Inquiry², and our own Building Safety Expert Group³.
2. To help maximise engagement during the consultation, we published a range of supporting documents and materials. These included a video, an Easy Read version and a Quick Read version of the White Paper. In addition, we held a number of targeted engagement events with key partners and residents whose views and recommendations are critical to further inform our policy and legislative development in this area.
3. The consultation closed on 12 April 2021 and we would like to extend our thanks to all who took the time to respond. A total of 95 completed responses were received from a range of partners, including professional bodies, industry, members of the public and representatives from the fire safety and public sectors. A summary of the responses to this consultation has been published here: Safer buildings in Wales GOV.WALES⁴.
4. This report provides our response to the main issues raised and key themes identified in the consultation responses and confirms direction for progressing our plans to introduce a new Building Safety Regime in Wales.

Overview

5. The consultation proposed a comprehensive reform of legislation that represents a significant overhaul of the existing system for building safety in Wales. It focused on legislative change across the lifecycle of multi-occupied buildings: from design, through construction and into the occupation phase; as well as setting out aspirations for cultural change in the way that buildings are designed, built and managed.
6. The proposed new regime set out intention to establish clear lines of accountability by creating new roles and responsibilities for those who own and manage relevant buildings. This will mean that there can be no doubt as to where the responsibility for building safety lies. The proposals seek to drive up standards by improving industry competence. They intend to establish a stronger and more coherent regulatory system which would hold those responsible to account, with serious consequences for attempts to cut costs at the expense of the safety of the building and residents.

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

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

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

⁴ <https://gov.wales/safer-buildings-wales>

7. Respondents were generally supportive of the proposals as outlined in the White Paper. However, we have identified as part of our response a number of areas that will need further consideration. Some of the proposed changes, particularly those relating to the occupation phase, will need primary legislation to be taken through the Senedd (sections 7 & 8 of the White Paper). In addition, where appropriate, there may be a need for further secondary legislation and statutory guidance. We want to ensure the measures we introduce are proportionate and appropriately tailored to the different building categories that will fall within the scope of the proposed regime. We will continue to engage with partners, as well as using the feedback from this consultation, to inform and refine our policy development ahead of any legislative reforms.

Working with UK Administrations

8. There is no doubt that the scope of the regime is extensive and achieving these ambitious reforms will take time. However, working constructively with the UK Government, we have taken opportunities to make improvements for Wales where our policy objectives are aligned.
9. The publication of the draft Building Safety Bill by the UK Government presented an opportunity to take earlier action in our efforts. This has allowed us to respond to the need to modernise both the building control system and the way the construction industry discharges its responsibilities. Following discussions, we have secured changes to the UK Government's Building Safety Bill, currently before Parliament, to apply reforms relating to the design and construction phase to Wales, as well as changes to the law on fire safety in occupied buildings. There are also general changes being made to the Building Act 1984 on our behalf, as well as changes to the Defective Premises Act 1972, which will allow more time for owners and leaseholders to take forward claims against builders and developers for sub-standard work. Changes are also proposed in this Bill to the Regulatory Reform (Fire Safety) Order 2005 (or "the Fire Safety Order" or "FSO"), for instance to require fire risk assessments to be properly recorded, which will also apply to Wales.
10. We have also worked closely with our counterparts in the UK Government to strengthen fire safety legislation in Wales through the Fire Safety Act 2021⁵. It clarifies the parts of a premises that are covered by the Fire Safety Order. The Fire Safety Order applies to all non-domestic premises in England and Wales. These include buildings with two or more domestic premises, such as blocks of flats, although individual flats themselves are excluded; the Act extends the coverage of the Order to include the whole of the rest of the structure, including the external walls and roof. Earlier this year the Welsh Government produced guidance⁶ to assist those affected by the Fire Safety Act 2021, and is working with the National Fire Chiefs Council and the Home Office on a wider overhaul of fire safety guidance for landlords and others. We anticipate this guidance being published in phases during 2022 and 2023.

⁵ <https://www.legislation.gov.uk/ukpga/2021/24/contents/enacted>

⁶ <https://gov.wales/fire-safety-act-2021-html>

Summary

Setting out the Scope of the Building Safety Regime

11. The consultation responses demonstrate broad support for the principles of the proposed reforms and the use of different categories to articulate different requirements for different types of multi-occupied residential buildings with two or more dwellings. Whilst the totality of scope proposed will be pursued, as will the proposal for a high risk category focused on buildings that are 18m or taller, we were challenged by respondents to consider whether the number and scope of other categories should be reconsidered. For example whether there should be more categories with differing requirements in terms of the occupation phase or if in the longer term the high risk category (18m+) should be broadened over time to include other types or heights of buildings during the design and construction phase. We will therefore consider whether the number of categories proposed should be redefined, and what the requirements of those different categories are. There will be further opportunities to comment on these proposals.

The Building Safety Regime (Building and Construction Phase)

12. Overall, there was broad and clear support for the proposals which we are taking forward through the UK Government's Bill. In addition, the consultation identified areas of our proposals that will require further consideration in relation to providing consistency in our approach and clarity on our expectations. We will continue to work with the UK Government and partners as we develop the necessary regulations and guidance to implement the Bill. There will be further opportunities for consultation as we move forward.

The Building Safety Regime (Occupation Phase)

13. There was broad support for the proposed approaches to ensuring the continued safety of buildings across the occupation phase including: additional safety measures that could be implemented to support responsible building management; the creation of a registration and licensing system to support regulation; and identification of dutyholders and competence requirements. The consultation has raised important and valid issues that will need further thought and consideration.
14. The majority of respondents were in agreement with the concept of a clearly identifiable Accountable Person for all buildings in scope and we will proceed on that basis. However, further work is needed to develop a clear approach in relation to identifying an Accountable Person, their role and responsibilities and how they differ for different categories of building. It will also be important to clearly define the role of the Building Safety Manager (BSM) and the relationship between the two. We will also give due consideration to the UK Building Safety Bill in relation to the proposal of a Principle Accountable Person and the role of the BSM in providing clearer lines of accountability and whether the BSM should be a "dutyholder."

15. There was strong support for the majority of the proposals for a new structure for fire risk assessments in residential properties and the proposed fire safety outcomes and risk areas. A few respondents expressed reservations in some areas, including the responsibilities of the Accountable Person to ensure fire prevention in individual flats. We agree responsibility on the Accountable Person should be a reasonable requirement, e.g. providing advice and guidance, the proposed 'fire prevention' risk area attempts to address this. Some respondents felt that there should be less stringent requirements in place for buildings under 18m on the basis that they are perceived as being less at risk. We do not support this view for reasons outlined in our response below. We will reflect on the exact meaning of an annual assessment to be undertaken and whether, in certain cases, it could be possible for an existing assessment to be subjected to a thorough review each year.
16. There was clear support for our proposals to make knowingly breaching compartmentation a criminal offence; the introduction of a safety case for Category 1 buildings; and mandatory reporting requirements. We will work closely with the UK Government, industry and proposed dutyholders to inform our thinking as we move forward.
17. Respondents largely agreed with the development of a registration and licensing system. The challenge going forward will be to ensure we develop a system that is robust, but also simple and accessible to its users. It must be able to accommodate the diverse ownership and management models that are possible for residential multi-occupied buildings to ensure that a true, and accurate, reflection of the management chain of each building is captured. It must also be flexible enough to respond to any changes that may be made to the Building Safety Regime over time.
18. Respondents largely agreed with the proposal that there should be regulation of all residential property management and standards for those carrying out residential management functions. The responses have given us a platform to progress our thinking in relation to managing agents and those managing residential properties.

Residents: Roles and Responsibilities

19. The consultation highlighted particular areas of sensitivity that need to be handled properly, and robustly scoped, in terms of legalities and impacts on privacy and data protection. We must ensure that the defined roles and responsibilities of residents are necessary and proportionate and aligned with a clearly defined safety rationale. We are mindful that there was a relatively low response rate to the consultation from residents and leaseholders compared to other respondent groups. Residents are at the core of the new regime, and we will therefore carry out more targeted engagement with residents and leaseholders of buildings in scope as we are developing our proposals.

Promoting Building Safety: Raising Concerns

20. Most respondents agreed with the proposals unconditionally and felt they would safeguard potential whistleblowing by protecting those working within the new regime to raise concerns without fear of detriment or reprisal, which is imperative to achieving our safety aims. On that basis, we will continue our developments in line with the proposals as set out in the White Paper. To support this, we will work with the UK Department for Business Energy and Industrial Strategy to ensure the regulators at both the design and construction and occupation phases are made a Prescribed Persons under the Public Interest Disclosure Act 1998.

Regulating the Building Safety Regime

21. There was overall support for the proposals in relation to the regulation of the new Building Safety Regime and we will use these as the basis for moving forward. There are a number of steps we will be taking in advance of our legislative reforms to improve the existing building safety system. These include a number of reforms that will be commenced sooner; during the design and construction phases (e.g. the introduction of the 3 Gateways and the creation of dutyholders) and extending the current role of Local Authority Building Control to cover the additional regulatory regime for higher risk buildings.
22. In relation to the occupation phase, responses to the consultation frequently referenced the need for better collaboration, information sharing and communication between existing regulatory authorities to strengthen the existing system in advance of broader legislative reform. We intend to establish a number of working groups with partners to support us in developing the policy including a group focused on our approach to regulation of the occupation phase to decide on the final form, functions and statutory footing of the regulator(s).
23. In addition, the creation of a Joint Inspection Team as proposed in the White Paper will bring together a multi-disciplinary team who will work in partnership with existing regulatory authorities. Not only will this help to improve our understanding of the condition of our existing stock of multi-occupied buildings and support existing regulatory authorities with advice on potential enforcement action, but it will also create a live learning opportunity to evaluate how the agencies work together, both in terms of policy and operational outcomes. This information will be of critical use to our working group as we continue to shape and define our future regulatory model.

Supporting Remediation

24. The White Paper, and this response, looks to the future to change the processes and mechanisms to support safer buildings in Wales. The Welsh Government recognises the need for action in advance of the proposals within the White Paper.
25. We remain very aware of the significant impact these issues are having on affected residents and leaseholders, both financially and on their health and wellbeing. We remain committed to supporting leaseholders and residents in Wales.
26. We are developing proposals for remediation funding which will form the next phase of our programme of support. This is a complex matter and it is right that we properly consider the options available and understand consequences fully so that we can support leaseholders in the best way possible. Further announcements will be made in due course.

Setting out the Scope of the Building Safety Regime

Refer to Section 5 of the Safer Buildings in Wales: A Consultation and Section 4 in the accompanying 'Summary of responses' document

27. This section of the consultation focused on the principles of the reforms and scope of the proposed regime. This included the types of buildings that would be covered during both the design and construction and the occupation phase, and those properties which would fall outside the scope of the regime.
28. The overarching scope of the Building Safety Regime proposed in the White Paper is broken down into two related phases; the design and construction phase and the occupation phase. The White Paper also set out two potential options for the scope of these reforms, set out below.
29. Option A proposed two categories:
 - Category 1 - residential use buildings (including mixed-use buildings) that are more than 18m in height.
 - Category 2 - covers all multi-occupied residential buildings with two or more dwellings up to 18m in height.
30. Option B proposed three categories:
 - Advanced – buildings that are 18m or more in height or more than 6 storeys and contain two or more dwellings.
 - Enhanced – properties with 4 or more dwellings that are no more than 18m in height.
 - Standard - properties with fewer than 4 dwellings within a single property.
31. In both proposals, only the highest risk buildings would be subject to the requirements set out during the design and construction phase. These buildings would go through the building [Gateway Process](#) and associated requirements. During the occupation phase there would be differing requirements depending on the Category a multi-occupied residential buildings was classified as coming within. Requirements for Category 1 buildings would be higher, reflecting the fact that, were a catastrophic incident to occur, it would have the potential to impact significant numbers of residents.

The Scope

Design and Construction Phase

32. With regards to the design and construction phase, the majority of respondents were supportive of 18m+ residential buildings being captured by the Gateway Process. However, we were challenged by respondents to consider whether the range of buildings that should be required to go through the Gateway Process should be widened. Suggestions included different 'types' of buildings, e.g. care homes, as well as different heights (11-18m) and hotels.

33. We do not believe that it is necessary at present to include certain building types within the scope of this regime. This is due to data showing that risk of injury from fire in these settings is low, or there are requirements already placed on these types of buildings that means those risks are already addressed. Where we did not seek the views of a specific sector it would also be unreasonable to impose requirements on them without further consultation. However, if further evidence becomes available we will consider our position on other building types.
34. With regards to whether it would be appropriate to require different types of multi-occupied residential buildings, for example purpose built blocks of flats between 11-18m, to go through the Gateway process; we will review the types of residential developments that are required to go through the Gateway Process on a regular basis as evidence becomes available, changing the scope as appropriate. The [Building Safety Bill \(parliament.uk\)](https://www.parliament.uk/bills/2017-19/building-safety-bill)⁷ is drafted in a way that, once enacted, will allow the Welsh Ministers the flexibility to make changes to the buildings required to go through the Gateway Process through secondary legislation.

Occupation Phase

35. With regards to the occupation phase, the majority of respondents were supportive of all multi-occupied residential buildings with two or more dwellings being within the scope of the Building Safety Regime.
36. A number of respondents pointed to the need for greater clarity with regards to this broad scope, particularly:
- Houses in Multiple Occupation (HMOs) and the legal definition and which 'type' of HMO would be within scope. As such, we will ensure the terms we use to describe buildings are clear; and
 - multi-occupied dwellings that do not share any common areas and whether these are in, or out, of the scope of this regime.
37. The majority of respondents were supportive of HMOs being included within the scope of the Building Safety Regime. Given the range of different types of HMOs, and different requirements and classifications, we will provide greater clarity as to those HMOs that fall within the scope of this regime to ensure clarity. As part of this, we will consider how the current LACORS⁸ guidance could be relevant as we further develop our thinking.
38. Again, respondents challenged the Welsh Government to give consideration to whether the scope of the occupation phase should be expanded, for example whether flats above premises with commercial kitchens should be included. We will give further consideration as to whether enhancements should be made to other legislation to ensure there is greater focus on these types of properties or

⁷ <https://publications.parliament.uk/pa/bills/cbill/58-02/0177/210177.pdf>

⁸ <https://www.cieh.org/media/1244/guidance-on-fire-safety-provisions-for-certain-types-of-existing-housing.pdf>

whether mixed use buildings with only one residential property should be included within the scope of the regime.

39. The list of proposed exempt properties as set out in [Figure 6 of the White Paper](#),⁹ was an area where a range of comments were provided with mixed views. Vulnerability of residents was highlighted as a particular issue that needed further consideration. A number of respondents made reference to care homes and NHS settings. As set out in the White Paper, the data show that risk of injury from fire in these settings is relatively low, and the requirements already placed on these types of buildings mean that those risks are already addressed. As such, we do not intend to include these buildings in the scope of the occupation regime at this time. Should further evidence become available, we will give further consideration to the inclusion of these types of buildings.
40. We will endeavour to draft legislation in such a way that would allow the Welsh Ministers the flexibility to make changes. This will be done through secondary legislation to ensure that the scope of the regime reflects evidence on building safety and properties that should be included within the scope.

Risk Categories

41. Following consultation we will give consideration to our definition of categories and consider the appropriateness of a three category model. Whilst the majority of respondents were supportive of the proposed two category approach, a wealth of comment was provided as to the potential for more categories, or a redefinition of Category 1 to include a wider range of buildings. Respondents supportive of two categories also noted the breadth of the proposed Category 2.
42. There are a number of points that need further consideration, including:
 - the expansion of Category 1 in the future;
 - the breadth of Category 2 and whether it is appropriate to establish more categories within the occupation phase and what the expectations on those different categories might be; and
 - how issues of risk, for example vulnerability of residents, can be incorporated into different categories and whether buildings could move between categories depending on fluid risk factors.
43. Whilst there was no specific evidence provided to support these proposals, the Welsh Government will give consideration to the breadth of categories and to increasing the number of categories, and what aspects of the regime should apply to those different categories. With regards to the occupation phase, as a minimum, all categories will require an annual fire risk assessment to be

⁹ <https://gov.wales/sites/default/files/consultations/2021-01/consultation.pdf#page=34>

undertaken by a suitably qualified professional as set out at paragraph 2.10.1 of the White Paper¹⁰.

¹⁰ <https://gov.wales/sites/default/files/consultations/2021-01/consultation.pdf#page=12>

The Building Safety Regime (Design and Construction Phase)

Refer to Section 6 of the Safer Buildings in Wales: A Consultation and Section 5 in the accompanying 'Summary of responses' document

44. This section of the consultation considered how parts of the UK Government's Building Safety Bill, in relation to design and construction, will apply in Wales. This section focused on the reform of the building control process for Category 1 higher risk buildings. This will include clear lines of accountability throughout the design and construction phase and a Gateway Process intended to provide for robust oversight of the design, construction and refurbishment process.
45. It set out the recommendations for keeping and updating a 'Golden Thread' of information about the design, construction, refurbishment and maintenance of Category 1 buildings, which would be relevant to dutyholders to support management and decision making.
46. In addition, the consultation proposed the creation of a Key Dataset, as a subset of the Golden Thread, for basic information to be held openly and accessibly as public record. This information would differ depending on the category of building.

Golden thread and key dataset

47. The consultation responses showed clear support for consistency with England, with particular emphasis on the need for consistency on the data held and clarity regarding access – who, how and for what purpose. Some respondents felt that the creation of a Digital Passport linked to the Golden Thread should also be considered. This is something we may wish to consider as the Golden Thread develops. We will continue to liaise with the UK Government towards achieving a common approach.
48. In addition, there was clear support for a Key Dataset to be collected across all buildings in scope (Categories 1 and 2). However, responses indicated varying interpretations of the Key Dataset, we will clearly define what it comprises and its purpose, including access.

Dutyholders

49. There was general support for the dutyholder roles and responsibilities during the design and construction phase as outlined in the White Paper. Some respondents suggested the proposals should be broadened to ensure all designers and contractors had responsibilities. Responses also reiterated the importance of clarity and transparency with regard to the duties and responsibilities of dutyholders and the need to provide clarity on competence expectations, and where responsibilities would sit within organisations.
50. Some respondents suggested additional professions which might be subject to these duties, ranging from experts involved in projects, e.g. fire engineers, to expectations of manufacturers selling products.

51. While there was broad support for naming an individual within a dutyholder role, there was some concern that discharging of duties needed to be clearly within the remit of the named individual. We will continue to work with partners to develop clear guidance that will address the issues raised and support the adoption and implementation of the proposals in practice. Consideration will also be given to how dutyholders during the design and construction phase can transition the building to the dutyholder in occupation.
52. We will develop the dutyholder approach during design and construction in a way that is consistent with the Construction Design & Management (CDM) regulations. In addition, we will consider what expectations we should have of other roles and how this should be addressed.

Gateway 1

53. There was a general view from respondents that water considerations for the purpose of fire suppression through the development planning process and Local Development Plans (LDPs) was at best patchy, consultation with bodies with an interest, such as the Fire and Rescue Authorities (FRAs), needed to be formalised. A clear majority of respondents supported making FRAs a statutory consultee. We have recently laid regulations to that effect¹¹.
54. In addition, there was a wide range of suggested additional content for the proposed fire statements which we will need to consider as we continue to develop and refine work in this area in collaboration with partners.

Gateway 2

55. An overall majority of respondents agreed with all of the proposals. Respondents thought making Gateway 2 a hard stop point would act to quality control the design process prior to work commencing on site. There was also support for a staged approval approach, as large complex buildings are undertaken in different phases.
56. There were mixed views expressed in relation to proposals for timescales for Local Authority Building Control to respond to Gateway 2 applications and major changes. However, the majority of the respondents thought that 3 to 8 weeks for applications was a reasonable time period and 6 to 8 weeks would be a reasonable time for major changes. There was also support for Local Authority Building Control to extend their timescales where projects are particularly complex.
57. In addition, the majority of respondents supported proposals to require Principal Contractors to consult the Client and Principal Designer on changes to plans. Responses suggested this would be essential for the continuity of information that would form the basis of the Golden Thread, providing an evidence base to

¹¹ <https://gov.wales/sites/default/files/consultations/2021-01/consultation.pdf#page=12>

support the sign off of work undertaken and improve accountability. There were similar views expressed by respondents in relation to the proposed requirements for the Principal Contractor to notify Local Authority Building Control where major changes occur and for this to be a hard stop. This should include the agreement of the proposals from Local Authority Building Control to ensure safety and accountability.

58. We will develop proposals for response timescales in due course, engaging and consulting with industry. We will develop proposals for control change management requirements including consultation between parties. There will be further opportunities to comment on these proposals as we move forward.

Gateway 3

59. There was overwhelming support for the registration of an Accountable Person (the dutyholder in occupation) before the building may be occupied. Registration requirements will be developed in due course as part of the proposed registration and licensing regime (paragraphs 129-137 below). Similarly, there was significant support for project sign off by main dutyholders as a way of improving accountability. There was some concern highlighted about a potential conflict of interest where the same organisation is signing off the project as the Principal Designer and Principal Contractor. This will need further consideration.
60. When considering Gateway 3 timescales, clearly a balance is required between sufficient time for the regulator to discharge its duties and risks to the client of project delay/wasted time. Some respondents suggested that service level agreements should be used to achieve national consistency. Some respondents felt that timescales should depend on the complexity of the project, as this would influence response times. Several situations were cited as grounds for extending response timescales. These are issues we will consider in developing the detail of the Gateway Process.
61. There was broad support for requiring handover of the Golden Thread and other building safety information to the Accountable Person before occupation. There was recognition of the need for guidance to support a consistent approach to the handover of such information.
62. The majority of respondents supported proposals to allow staged occupation, recognising that it is a common feature of development in practice, and that safe occupation of completed units required careful thought and coordination across dutyholders and regulators.
63. We will develop Gateway 3 procedures, notification and information requirements as part of the necessary secondary legislation and there will be further opportunities to comment on this in due course.

Refurbishment

64. The majority of respondents supported proposals for major refurbishment of Category 1 buildings to be subject to the Gateway approach. The responses identified that there are greater risks when undertaking refurbishment due to the limitation and constraints of an existing building.
65. In relation to other buildings that should go through the Gateway Process, there were varied responses in relation to the characteristics and types of building that should be included. Respondents highlighted vulnerability and occupancy risk regardless of the height of the building. We will need to consider the relationship between vulnerability and fire risk in setting the requirements where refurbishment is proposed. Other respondents also proposed that lower height residential buildings (11-18m) should also be required to go through the Gateway process (paragraphs 32-34 above).
66. Overall, there was broad and clear support for the proposals which we are taking forward through the UK Government Bill. There will be further opportunities for consultation as we develop the necessary regulations and guidance to support the implementation of detailed provisions.

The Building Safety Regime (Occupation Phase)

Refer to Section 7 of the Safer Buildings in Wales: A Consultation and Section 6 in the accompanying 'Summary of responses' document

67. This section of the consultation proposed approaches to ensuring the continued safety of buildings across the occupation phase including additional safety measures that could be implemented to support responsible building management; the creation of a registration and licensing system to support regulation; and identification of dutyholders and to ensure they meet competence requirements. It also set out how the application of these requirements would differ according to building category to ensure proportionality.

The Accountable Person

68. The majority of respondents were in agreement with the concept of a clearly identifiable Accountable Person for all premises covered by the proposed Building Safety Regime and how the concept could support better building management and clear lines of accountability. The responses showed overall support for the proposal in identifying the Accountable Person, with agreement that the Accountable Person should identify and register themselves. There was acknowledgement in the responses that the Accountable Person may change throughout the lifecycle of a building and that any system should be flexible enough to accommodate these changes.
69. That said, a number of respondents raised important and valid issues in relation to the proposals, which started with the fundamentals of identifying an Accountable Person and the proposal to default to the freeholder if an Accountable Person has not been identified or registered themselves. Respondents shared examples of known issues that already exist with absent or non-identifiable freeholders.
70. Particular issues relate to:
- freeholders and/or building owners who live overseas;
 - frequent changes in building owners/freeholders;
 - situations where there are multiple building owners/freeholders; and
 - shell companies.
71. A number of themes ran through the responses in relation to the Accountable Person including:
- a requirement for further information and guidance on the concept of the Accountable Person;
 - resourcing the role of Accountable Person;
 - potential for multiple persons/organisations to hold Accountable Person roles and how these would interact;
 - ultimate accountability if there were multiple Accountable Persons;

- potential for confusion and fit with the fire safety landscape and lines of accountability between an Accountable Person and Responsible Person;
 - a need for consistency of approach; and
 - proportionality.
72. As a result of the responses received, we will proceed with the concept of an Accountable Person but recognise there is a need for further clarity to address the valid issues raised during the consultation. We will also progress the requirement for Accountable Persons for buildings in scope to be registered. In addition, we will give due consideration to the role a Principle Accountable Person (as outlined in the UK Building Safety Bill) could have on providing clearer lines of accountability.
73. We recognise some of the known challenges relating to identifying freeholders and will give these further consideration. We will work with partners to clearly define the relationship between the Accountable Person and Responsible Persons (in mixed use buildings) in response to the feedback received, as well as the transition between dutyholders in the design and construction phase and occupation phase. There is further information on our plans for a registration and licensing system, which will assist with the identification of dutyholders under the new regime (paragraphs 129-137 below).

Building Safety Manager

74. Respondents broadly agreed with the proposed duties of the Building Safety Manager (BSM) for Category 1 buildings for the occupation phase. There was clear support for the role having closer day-to-day responsibility for the management of the building and completing more practical tasks, and for the role holder to be the first point of contact for residents/leaseholders.
75. Respondents did highlight the need for clear guidance on any liabilities relating to the building that would be attributed to the BSM role and what the expectations would be for the role holder.
76. Responses largely agreed with the proposed division of roles between the Accountable Person and BSM as set out in the consultation. A theme running through responses for this section was the requirement to define competency requirements for both the Accountable Person and the BSM with clear guidance on how the two roles are expected to interact. Another theme was how an Accountable Person must ensure they fulfil the duties of the BSM if they choose not to appoint one.
77. A significant number of respondents were not clear on the relationship between the Accountable Person and the BSM, but this mainly related to the need for further clarity on the role of the Accountable Person.
78. It is clear from the responses received that we need to give further consideration to the relationship between the Accountable Person and BSM and we will need to:

- further test understanding of the roles as these develop;
- clearly define lines of accountability and legal responsibility;
- ensure there are no gaps in responsibility and allocation between roles;
- consider job specifications;
- consider resourcing; skill sets; and technical requirements;
- outline competency and qualification requirements;
- work with industry to respond to the requirements of these new roles; and
- consider initiatives that may be required to address any gaps in the market.

79. Based on the responses, there is further work required to clarify the roles and their relationship to each other and the wider Building Safety Regime. We will also consider the proposals in the UK Building Safety Bill in relation to the role of the BSM and whether they will be a “dutyholder” and take this into account.

Drawing a Line: Two Categories of Risk

80. Most respondents agreed with the proposed duties and functions of the Accountable Person for Category 1 buildings as set out in Figure 8 of the White Paper¹². Some respondents provided additional duties they felt should be attributed to the Accountable Person for Category 1 buildings and we will explore these further.
81. Respondents highlighted a number of areas where further clarity was needed on the role of the Accountable Person, these included:
- finance and budgets;
 - commitments relating to the time required to fulfil the role effectively;
 - levels of engagement and interaction required with residents/ leaseholders;
 - the relationship between this role and other professionals associated with the building e.g. Responsible Person;
 - the role outside building safety and associated requirements;
 - processes and procedures role holders are expected to follow; and
 - competence requirements for each of the proposed activities outlined in Figure 8 of the White Paper.
82. Due to the wide scope of Category 2 buildings outlined in the consultation document, there was some disagreement with the duties as set out in Figure 8 of the White Paper. These broadly relate to the need for proportionality and ensuring requirements are not too onerous in buildings with a small number of dwellings. There was a recurrent theme that emerged relating to the duties of

¹² <https://gov.wales/sites/default/files/consultations/2021-01/consultation.pdf#page=60>

the Accountable Person and the relationship to building size and perceived risk factors.

83. For smaller, less complex buildings, some respondents felt that the duties of the Accountable Person should not include the need for annual fire risk assessments where there had been no substantial changes to the building by replacing this with an annual fire risk review. This is discussed further in paragraphs 102-105 below.
84. As with Category 1 above, respondents highlighted a number of areas where further clarity was needed on issues relating to the duties of the Accountable Person in Category 2 buildings, these included:
 - finances and budgets;
 - infrastructure available to the Accountable Person to undertake their role;
 - transition arrangements between the design and construction and occupation phase;
 - freedom of choice relating to building control functions;
 - further information on resident engagement expectations;
 - information management including the collation and storage requirements;
 - clearer guidance on what the Accountable Person could delegate; and
 - competence of those delegated to and how the Accountable Person is expected to verify this.
85. Many of the issues raised for Category 2 also relate to Category 1 buildings and the duties of the Accountable Person and we will consider these all moving forward. However, whilst we recognise the need for further clarity in this area, we note the substantial feedback given by respondents relating to proportionality and the scope of the current Category 2 proposals. We have set out our intention to consider the breadth of the proposed Category within the scope section (paragraphs 41-43 above).
86. In addition, a number of respondents were not clear on the different roles and responsibilities of Accountable Persons in Category 1 and Category 2 buildings. We recognise that further clarity is required on these issues and will continue to work with partners to address these issues as we move forward.
87. Respondents provided a small number of additional duties for us to consider in relation to dutyholders. These included:
 - broader requirements to communicate regularly with interested parties (for example residents, Responsible Persons, between Accountable Persons and BSMs, etc); and
 - a requirement to regularly supply information to interested parties.
88. Some respondents took the opportunity in this section to outline how dutyholders should have to regularly undertake refresher training to ensure their ongoing competence. The overarching theme in this section related to the

need for proportionality; clear differences in the requirements for Category 1 and 2 and a request for further clarity on proposed duties and related implications. We will give all these points due consideration as we move forward.

Fire risk assessments: content

89. The White Paper proposed a completely new structure for fire risk assessments in residential properties, based on the main risks of fire in such properties. That structure contained a set of fire safety outcomes which should, as far as possible, be attained in each building. Each of those would include a set of risk areas (threats to the attainment of each outcome, which should be evaluated as part of the risk assessment) and mitigation measures (which could be applied so as to reduce the risks that had been identified).
90. At present, the Fire Safety Order 2005 (FSO) does not articulate outcomes sufficiently clearly – and when it does, they relate more to workplaces than to residential buildings. As such, the proposed starting point for the new approach to fire risk assessments is a set of four broad fire safety outcomes which should, as far as possible, be achieved in every multi-occupied residential building (set out in paragraph 7.8.5 of the White Paper¹³). This aims to provide clarity for all concerned – landlords, residents, contractors, fire risk assessors and others.
91. Those responding to the consultation agreed overwhelmingly with our proposals. Of those who expressed reservations, several felt it was unreasonable for Accountable Persons to attempt to ensure fire prevention, given that most fires originate in flats rather than common areas. We agree: whilst landlords of rented properties will often have some control over electrical installations and appliances in flats, as a general rule the risk of fire breaking out in a flat is beyond the control of the Accountable Person. This is reflected in our proposed risk areas (page 113 of the White Paper¹⁴) which make clear that the Accountable Person would largely be concerned with minimising the risk of fire breaking out in common areas only.
92. One social landlord felt that the outcomes should reflect those in British Standard PAS 79-2:2020; and they made the same point in response to the question about the purposes of a fire risk assessment. However, the Standard is a detailed methodology for fire risk assessors: it is not the law, and emphasises technical detail ahead of clarity for non-experts. We believe it would be possible to conduct a fire risk assessment as we proposed using PAS 79-2:2020, and we will consider a more detailed exercise to map the requirements of one onto the other.

¹³ <https://gov.wales/sites/default/files/consultations/2021-01/consultation.pdf#page=63>

¹⁴ <https://gov.wales/sites/default/files/consultations/2021-01/consultation.pdf#page=114>

93. Other respondents supported the broad outcomes but raised issues of detail, for instance around evacuation alarms and dry risers. These (and many others) are legitimate technical issues which we will address in guidance on the new system.
94. The White Paper went on to propose that a fire risk assessment would have two broad purposes:
- to determine the extent to which the fire safety outcomes were attained; and
 - to identify measures or actions that could and should be taken to improve the extent to which the outcomes were attained.
95. In broad terms, this describes the purpose of a fire risk assessment under the FSO as it is now. The difference is that we propose to clearly set out the outcomes to which the assessment should relate.
96. Whilst there was an overwhelmingly positive response to the proposed purposes of a fire risk assessment, several respondents believed the purpose and content of a fire risk assessment should be the same in Wales as in England. We agree that consistency is desirable; however, we believe that the current process is not fit for purpose. It does not properly address the main risks of fire in a residential building, and it is too complex for non-experts to understand. We believe correcting that is more important than maintaining consistency.
97. The White Paper subdivided each of the fire safety outcomes into “risk areas”, which would be the subject of the fire risk assessment. Overall, there were 15 risk areas across the four outcomes, and they are all listed on page 113 of the White Paper¹⁵The overall response to the proposed outcomes was positive.
98. Some respondents focused on the risk of fire breaking out within individual flats, and either argued that this should be addressed more fully in the risk areas, or that doing so would impose undue costs and complications on Accountable Persons. The proposed ‘fire prevention’ risk area attempts to address this by setting the responsibility on the Accountable Person to a reasonable requirement.
99. We believe there is only a limited amount that an Accountable Person could do to mitigate the risks within individual flats. This could include providing advice and guidance on fire safety, whether directly or from the Fire and Rescue Service, and ensuring proper maintenance of appliances and installations within flats where these are the landlord’s responsibility (i.e. in rented premises). Beyond that, in most cases, there will need to be a greater emphasis on ensuring other outcomes that are more controllable – fire

¹⁵<https://gov.wales/sites/default/files/consultations/202101/consultation.pdf#page=114>

protection, escape and firefighting.

100. In addition, respondents highlighted areas that would benefit from further clarity and consideration in relation to fire risk assessments, these included:

- The responsibilities of landlords and managing agents: These will vary between buildings according to contractual responsibilities, we propose to address this in our definition of Accountable Person.
- Responsibility for funding remedial works: This will vary between buildings depending on the contractual relationship between relevant parties (Freeholder; Managing Agent; Tenants; and Leaseholders).
- There were some assumptions from respondents that the proposals would not apply to existing buildings: Whilst this is true in relation to proposals for the design and construction phase, the risks we describe could arise (and, if they do, should be addressed) in all buildings.
- A need to define firefighting equipment more clearly: By this we mean permanent installations in premises, such as dry or wet risers and automatic fire suppression systems.
- Requirements for intrusive surveys which would duplicate the Fire Safety Act (FSA) 2021: Neither the White Paper or FSA contain a requirement for this type of survey.
- Consideration of risks around escape should be person-centred and support the use of PEEPs (Personal Emergency Evacuation Plans): Whilst we agree, for reasons we set out in the White Paper, we do not believe the term “PEEP” is appropriate in a residential context (this is discussed further at paragraphs 173-180).
- There should be no need for all smoke or heat alarms in a building to be interlinked, or for automatic fire alarms to be installed: We agree, other than in exceptional cases where alarms form part of a strategy to evacuate the whole building in case of fire.
- Risks associated with combustible cladding and insulation should be included: These are covered under the fire protection risk area of “external walls and roof”.

101. Overall our proposals on the content and purpose of a fire risk assessment received strong support. Several respondents raised valid, detailed and technical issues and we will clarify these in more detail through guidance. Subject to that, we will proceed as outlined in the White Paper.

Fire risk assessments: process

102. The White Paper proposed several ways of improving robustness in the process of conducting fire risk assessments: that they should be conducted at least every year, that they should be recorded in some permanent form, and that they should be conducted only by people who were suitably qualified and experienced.

103. Overall, the majority of respondents agreed in principle with all of the proposals. However, there was a small minority which argued that lower or less inherently risky buildings (such as those in Category 2) should be subject to fewer of the constraints proposed, including exemption from the requirement for an annual assessment or require a lesser degree of expertise to assess them. We do not agree. Fire risk varies significantly from one building to the next and it is very hard, if not impossible, to identify in legislation the residential buildings which have an inherently higher or lower risk of fire.
104. As set out in the White Paper, fire casualty rates are highest in HMOs and in houses and other buildings converted into flats – very few of which will be Category 1 buildings. So providing this exemption would, if anything, mean applying less stringent requirements to those buildings with the highest casualty rates. It is however, important to remember that a risk assessment is itself proportional to risk. The risk of fire depends entirely on the specific circumstances of each building - its construction, including the materials used; type/number of external exits; existence of fire suppression system etc. and its maintenance, management and occupancy. It is not possible to know the exact and current level of risk in a building until it has been assessed, so it is not possible to exempt it from assessment on the basis that it is low risk. Taking a proportionate approach to assessments on this basis will mean lower-risk buildings will automatically need a less extensive risk assessment.
105. There is an opportunity to reflect on the exact meaning of an annual risk assessment to be undertaken. It could be possible for an existing assessment to be subjected to a thorough review each year, where there have been no major works undertaken, no significant changes in occupancy, no complaints from residents, no action or advice from regulators and no actual incidents of fire. A fuller assessment would be appropriate if a review identified possible areas of concern or uncertainty. We will consider this further as we develop and refine our proposals.
106. There was almost universal support for the proposal in the White Paper that only someone with suitable qualifications and experience should conduct a fire risk assessment¹⁶. However, some respondents felt there needs to be clarity about the types of qualifications that would be appropriate. We agree, and propose to set that out in future regulations, building on existing qualifications and accreditation schemes, and on other work done by the fire safety sector¹⁷. This will be subject to a further consultation.

¹⁶ At present, anyone can conduct a fire risk assessment regardless of their knowledge or competence

¹⁷ Examples include:

[https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/A_Guide_to_Choosing_a_Competent_Fire_Risk_Assessor -](https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/A_Guide_to_Choosing_a_Competent_Fire_Risk_Assessor_-_Version_2_published_29th_April_2014.pdf)

[Version 2 published 29th April 2014.pdf](https://www.nationalfirechiefs.org.uk/write/MediaUploads/Grenfell/A_Guide_to_Choosing_a_Competent_Fire_Risk_Assessor_-_Version_2_published_29th_April_2014.pdf) and

https://iosh.com/media/9017/fsf_approved-code-of-practiceindd.pdf

107. There was also strong support for the White Paper's proposal that a fire risk assessment should be properly and permanently recorded, either in paper or digital form¹⁸. The only area of concern was around the length of time for which a fire risk assessment had to be kept. To clarify, we believe that a fire risk assessment should be kept for a sufficient amount of time to ensure there is a proper audit trail of the extent to which recent deficiencies had been identified and addressed.
108. The White Paper posed an open question about the status of fire risk assessors. Some have suggested that Accountable Persons or their employees should be precluded from conducting their own fire risk assessments, on the grounds that this could create a conflict of interest. An assessor who was independent of the Accountable Person is unlikely to have a conflict.
109. Views on this question were mixed. The majority of respondents believe there should be no restrictions, provided all risk assessors are suitably qualified and experienced. On balance, we would agree with this view. While there could be a commercial incentive for "in-house" assessments to gloss over risks, the same could also be true of independent assessors. They would have a contractual relationship with the Accountable Person, and might equally be inclined to provide a compliant assessment so as to secure repeat business.
110. There is also a risk that requiring independent assessors could unfairly penalise conscientious landlords and managing agents who have developed in-house expertise so they can fulfil their duties properly and cost-effectively. This expertise would become redundant if we were to require an independent assessment.
111. Overall, there was strong support for almost all aspects of our proposals. We believe these should apply equally to all buildings within scope; however, we will not be requiring an assessor to be independent of the Accountable Person. Subject to that, we will proceed as set out in the White Paper.

Fire risk assessments: non-compliance

112. The White Paper also asked for views on enforcement or sanctions against Accountable Persons for non-compliance with the requirements.
113. At present, articles 9(1)¹⁹ and 32(1)(a) of the FSO²⁰ make it a criminal offence to fail to conduct a suitable and sufficient fire risk assessment. That applies both to Responsible Persons themselves and to anyone they engage to carry out an assessment. If tried in the Crown court, the offence is punishable with up to two years in prison, and/or an unlimited fine; the magistrates' court has power only

¹⁸ At present, there is generally no requirement to record a fire risk assessment, unless premises are licensed – e.g. pubs and restaurants – or there are five or more employees on site

¹⁹ <https://www.legislation.gov.uk/ukxi/2005/1541/article/9>

²⁰ <https://www.legislation.gov.uk/ukxi/2005/1541/article/32/made>

to impose a fine.

114. A fire risk assessment which was carried out by someone who was not qualified might well be more likely to be unsuitable and insufficient. However, because there is no requirement for a fire risk assessor to be qualified, there are no sanctions solely for not having appropriate qualifications.
115. The consultation revealed strong support for some form of sanction in this area. The majority of respondents believed that there should be legal penalties for acting as a fire risk assessor without qualifications, while some believed the Accountable Person should be responsible for ensuring the risk assessor was qualified. We believe it would be appropriate for Accountable Persons who knowingly engaged an unqualified assessor to be liable to sanction themselves. In cases where the risk assessor had deliberately misrepresented their qualifications, it might be possible for the risk assessor to be charged with fraud, but we believe it would be simpler for assessors themselves to be directly liable for acting as an assessor while unqualified.
116. We propose to provide that a fire risk assessment conducted by an unqualified person is inherently unsuitable and insufficient and, in such cases, that both the assessor and an Accountable Person who engaged them knowing they were unqualified, would be guilty of an offence. We would not propose to change the sentencing powers of the courts in respect of such offences.

Compartmentation

117. The White Paper proposed to make knowingly breaching compartmentation a criminal offence. This would apply to everyone, including Accountable Persons and their employees or agents, contractors and residents themselves.
118. The rationale for this is that sound compartmentation is critical to maintaining fire safety in premises containing multiple dwellings. It ensures that a fire can be contained and extinguished in the flat where it starts, without threatening the common areas or other flats. Compartmentation can be jeopardised by something as simple as drilling through a wall to accommodate a cable or pipe, or replacing a fire door with one with inadequate fire protection. It would not be right to make the Accountable Person solely responsible for such breaches of compartmentation caused by residents or contractors.
119. Consultees strongly supported these proposals and we will proceed on that basis. However, a few respondents raised doubts related to the practicality of enforcing the law regarding works taking place wholly within flats, and whether residents could be properly aware of their responsibilities in this area.
120. As set out in the White Paper, the proposals would not apply to works taking place wholly within a flat. Only breaches of the walls separating flats from common areas, other flats or the outside of the building would be covered. This sort of work is much more likely to be undertaken by the Accountable Person or by contractors. However, we agree that residents need to be made aware of the risks in this area, perhaps especially around replacing fire doors with non-

fire doors, or removing self-closing devices from them, both of which are known to occur.

Safety Case

121. The consultation responses showed clear support for the introduction of a safety case for Category 1 buildings as a means of ensuring that all relevant information relating to building safety management, assessments and inspections and any mitigating steps are recorded and monitored.
122. We will work to scope and clarify safety case requirements including:
- content and form;
 - how the safety case will interact with other building safety information (e.g. fire risk assessments, fire safety statement, building maintenance systems, etc.);
 - timescales for the creation of the safety case;
 - requirements for review of the safety case and oversight by the regulator;
 - which elements of the safety case might be made available to residents in an accessible format;
 - whether requirements might also apply to other building categories and, if so, how they might differ; and
 - application of requirements to existing buildings.
123. We will take forward our proposals in this space so that the safety case forms part of the Golden Thread of information which will be critical to supporting dutyholders to ensure safety throughout the building lifecycle.
124. In advance of these reforms coming into force, we would encourage building owners and Responsible Persons to think about the retention and maintenance of building information that may form part of the safety case going forward. An example of this would be any surveys or assessments undertaken in relation to the creation of a Building Passport, under the Welsh Building Safety Fund. The passport would identify key building safety risks and plans for mitigation/remediation which could usefully form part of a safety case in the future.

Mandatory Reporting

125. The majority of respondents were supportive of the broad idea of a mandatory reporting duty on dutyholders in the occupation phase as a key feature of demonstrating progressive culture change and transparency, critical elements to safety and responsible building management. We will progress development of requirements for mandatory reporting for Category 1 buildings.
126. Several respondents outlined ideas around a mandatory reporting duty and we will take these into consideration as we continue to develop mandatory reporting requirements, including:

- content and form of the report;
- threshold and circumstances that would trigger a mandatory report;
- how mandatory reporting will interact with other reporting requirements (e.g. Reporting of Injuries, Diseases and Dangerous Occurrences Regulations - RIDDOR)²¹;
- how these occurrences should also be captured in internal documentation (e.g. the safety case);
- the extent to which dutyholder and regulators' systems might need to be linked;
- whether aspects of mandatory reporting incidents might be publicly available;
- whether requirements might also apply to other building categories and, if so, how they might differ; and
- application of requirements to existing buildings.

127. We will also consider whether to adopt a process for voluntary reporting of risks that a dutyholder may wish to report to the regulator that does not reach the threshold to trigger a mandatory report. When considering this, we will carefully weigh the additional value such a system may provide against the risk of it leading to over reporting and impairing the regulator's ability to effectively review and act on all of the information being shared.

128. We will work closely with UK Government, industry and proposed dutyholders on the development of both the safety case and mandatory reporting requirements to ensure consistency to support the sector with its adoption and implementation.

Registration & Licensing

129. Identification of dutyholders and those supporting them to manage buildings is key to strengthening the current building safety system. The ongoing Grenfell Inquiry continues to demonstrate how the absence of clear lines of accountability can make it very difficult to understand where responsibility for safety lies at various stages of a building's lifecycle. To address this, we intend to take forward our proposals to create a registration and licensing (R&L) process. The system will support regulation by identifying dutyholders and confirming which building(s) they are responsible for, ensuring dutyholders meet the required competence standards and confirming requirements prior to occupation taking place in new buildings.

130. Consultation responses were supportive of this approach, but highlighted a lack of detail in the proposals. To address this we will work to refine and clarify system requirements, and there will be further opportunities for partners to feed into the development of policy in this space. Requirements include:

²¹ <https://www.legislation.gov.uk/ukxi/2013/1471/contents>

- content and form;
- pre-occupation conditions to be evidenced at point of registration;
- conditions attached to the R&L process;
- how dutyholder activities will be monitored;
- how R&L requirements will differ between building categories;
- application of R&L requirements to existing buildings; and
- which elements of the system might be made publicly available.

131. Respondents identified that the Rent Smart Wales system provided a good example of an existing model to explore further, including the existing licensing requirements and processes currently adopted by Rent Smart Wales. We will explore the parallels and potential synergies with existing R&L systems, including Rent Smart Wales, to help us shape the final system. We will undertake a mapping exercise of the existing R&L environment to better understand what the impact and cost implications of establishing such a system might be on dutyholders, who may find themselves subject to multiple R&L processes and requirements in respect of the same property. As with all aspects of the regime, proportionality will be key to ensuring that requirements are reasonable and effective.
132. Responses highlighted the importance of the competence of the BSM role which will be captured in the R&L system. As outlined in (paragraphs 74-79 above), we will work closely with UK Government and industry to scope and define competence requirements to ensure these are reflected in the process. It will be important to ensure the R&L system can be reviewed and updated as circumstances and any qualifications/experience change. Equally, the system must be able to flag any failure to satisfy relevant competence standards and allow the regulator to take appropriate action.
133. Consultation responses also indicated that there are legal sensitivities we must consider as we shape the system. Any conditions or requirements attached to registration could have the potential to interfere with private property rights. We will continue to ensure that Human Rights Act 1998 considerations inform our policy development.
134. It is critical that we are mindful of operational integrity when developing the system. It will be required to hold significant amounts of data, some of which will be sensitive. As such, we will scope IT system requirements and models, in line with data protection and information sharing protocols, to ensure effective operational delivery of the system.
135. The broad scope of the new regime poses a challenge for us to develop an R&L system that is robust, but also simple and accessible to use for the various groups that may come into contact with it (e.g. regulator, dutyholders, residents, members of the public, etc.). It must also adequately accommodate the diverse ownership and management models that are possible for residential multi-occupied buildings to ensure that a true, and accurate, reflection of the

management chain of each building is captured. It must also be flexible enough to respond to any changes that may be made to the Building Safety Regime over time.

136. Respondents largely agreed with the proposal that there should be competence requirements and/or minimum qualifications for those managing Category 2 buildings. A number of respondents offered options for ensuring competence of those managing Category 2 buildings. They included suggestions regarding continuous professional development, and ensuring skills and knowledge are up to date through refresher training every two to three years. A theme emerging from the responses highlighted the need for proportionality when considering future competence requirements.
137. Based on the feedback received, we will be setting out competence requirements for those managing Category 2 buildings and will give due regard to the points raised by respondents.

Going Further: Managing Agents and those providing management services

138. Respondents largely agreed with the proposal that there should be regulation of all residential property management and there was overall support for us setting out standards for those carrying out residential property management functions. Proportionality was highlighted as a matter for consideration in relation to both the regulation of, and standards required, for those involved in residential property management.
139. Responses included suggestions on the advantages of regulating residential property management whilst others identified concerns.
140. A number of respondents suggested options for addressing issues of probity and responsibility in this area ranging from competence requirements to the role of a regulator. It was evident from the responses that those involved in residential property management often have a broad remit; there are perceived disconnects between England and Wales in this field and there are currently potential gaps in regulation and enforcement. Respondents also highlighted links to the possible increase in financial burden that any proposed changes could result in.
141. The responses have given us a platform to progress our thinking in relation to managing agents and those managing residential properties.

Residents: Roles and Responsibilities

Refer to Section 8 of the Safer Buildings in Wales: A Consultation and Section 7 in the accompanying 'Summary of responses' document

142. Resident safety and wellbeing must be at the heart of the proposed reforms. Residents will be at the core of our new regime and the changes proposed in this section of the consultation are about empowering residents to have more say in the matters that affect their homes and providing clear channels for them to speak openly, and alert those responsible, when things go wrong.
143. Overall there was strong support for the proposals as set out in the White Paper and there are 3 key areas we will progress as part of resident reform in the new Building Safety Regime:
 - resident engagement;
 - resident responsibilities; and
 - resident complaints.
144. A strong theme emerging from the consultation was the use of the umbrella term 'residents' when the reality is more complex. We will work to develop clear definitions, identify the level of involvement residents should have in relation to the three key areas above and the extent to which the requirements might differ according to status.
145. We are also mindful of the relatively low response rates to the consultation from residents and leaseholders compared to other respondent groups. As a result, this is an area where the Welsh Government will carry out more engagement with residents and leaseholders of buildings in scope to ensure we are developing our proposals in line with clear feedback.
146. Responses flagged particular areas of sensitivity that need to be handled properly, and robustly scoped, in terms of legalities and impacts on privacy and data protection. There is also a balance to be struck between acknowledging residents' rights and accepting that there are financial implications for enhanced measures and the provision of information that is being proposed. We will ensure that we are mindful of these aspects as we develop our proposals.
147. We will develop clear guidance to support dutyholders to understand expectations and how objectives can be achieved in practice. Some of the concepts in this space are not new - there will be existing systems and processes that could be adapted to meet the proposed requirements. We are aware that a 'one size fits all' approach is not appropriate. Rather than creating prescriptive requirements on these aspects, we will make clear the principles, objectives and procedures that will need to be in place to allow dutyholders to take ownership and consider which methods of delivery are appropriate for their building and resident profile.

148. There will also be a requirement to monitor and evaluate the effectiveness of engagement strategies and complaints systems to indicate whether they are being used in practice and if they are resulting in positive change and/or preventing risks and incidents. They will be important indicators of trust and confidence in both dutyholders and the systems they make available to residents.

Resident Engagement

149. Effective resident engagement is critical to ensuring the safety of all residents in a building. By 'resident engagement,' we mean engaging in meaningful conversations and including residents in decision-making relating to the running of the building (where possible and appropriate), and not just when things go wrong. This should be more than mere compliance with the legal duties to notify and inform.
150. Following strong support from the consultation for our proposals, the Accountable Person will be required to develop and maintain a resident engagement strategy for Category 1 buildings. This will only be a requirement for Category 1 buildings due to the complexities involved in managing a building with more residents.
151. However, we are clear that the principles of engaging with residents and a need for the Accountable Person to listen to their residents is not confined to Category 1 buildings only and the principles of engagement should be present across building categories in a form and frequency that is proportionate for the building and resident profile. We will further consider how requirements might differ according to building category as we progress our proposals on scope of the regime.
152. In addition, Accountable Persons for all building categories will be required to provide key safety information to their residents. This will include:
- fire safety measures within the building (e.g. fire doors and sprinklers);
 - general fire safety advice (e.g. cooking, smoking and electrical safety); and
 - advice on what to do in the event of a fire/if the alarm is activated.
153. There will be no requirement for the Accountable Person to produce most of this advice themselves as it is freely available from the FRS. The Accountable Person will only be required to pass this advice on to residents. However, the Accountable Person would have to provide advice which was specific to the building, e.g. on escape routes.
154. Providing residents with this information is critical in facilitating resident engagement so that residents have an understanding of general fire safety concepts, as well as information specific to their building and what their expectations should be in relation to risk management.

155. In addition to engaging with residents, we will also work closely with property management professionals and those who may take on the new dutyholder positions to make sure requirements around the provision of information are proportionate and deliverable.
156. Responses also emphasised the importance of accessibility. There is little value in providing information to residents that may be highly technical and difficult to understand. Technology and digital tools can be used to support accessibility and provide a diverse range of options to inform and engage residents. However, we must also be mindful of varying levels of familiarity and comfort with technology based approaches. The key is to provide a range of options that best suit resident preference and profile to ensure inclusivity. For example, The Social Sector Engagement Best Practice Group²², which has received wide support across the social sector, emphasises the importance of traditional methods of communication such as personalised letters. In addition, Community Housing Cymru have developed [Safety First in Housing](#)²³ which sets out how landlords in the Social Housing Sector will take forward resident engagement in relation to building safety.
157. Overall, there was strong support for the proposals as set out in the White Paper and we will move forward on that basis.

Roles and Responsibilities of Residents

158. Residents and dutyholders need to work in collaboration to achieve the Building Safety regime's objectives. Key to this is residents' understanding of the role they will need to play and how they can cooperate with dutyholders to ensure safety. Dutyholders must be able to hold residents to account if they are behaving in ways which pose risk to themselves or their neighbours. For example, the White Paper proposed to introduce a new requirement on all residents of buildings within scope not to knowingly breach compartmentation. There was strong support from respondents in relation to these proposals (paragraphs 117-120 above).
159. There are also important legal implications around privacy in this space to the extent that we impose any expectations or limitations on behaviour, particularly within private dwellings.
160. We will work to further scope and refine the content and form of resident responsibilities, and explore the best means of implementing these within the regime. This will involve looking at the extent to which methods of encouraging and incentivising behavioural change (behavioural insights) could operate as an alternative to the imposition of legal duties.

²² <https://www.gov.uk/government/publications/the-social-sector-building-safety-engagement-best-practice-group-final-report>

²³ <https://chcymru.org.uk/cms-assets/legacy/general/CHC-Safety-Transparency-Offer-ENG-v4.pdf>

161. Responses also noted that there needs to be very clear guidance and information made available to residents so that they understand their role in this regard and any consequences of non-adherence. We will consider the need for supporting guidance to make any requirements clear. We will also consider the impact of existing legislation that may be applicable here to avoid duplication (e.g. protection from harassment etc.).
162. Overall respondents agreed with the proposals as set out in the White Paper and we will proceed on that basis.

Resident Complaints

163. The consultation responses were supportive of our proposals for the Accountable Person to develop and maintain a complaints process for Category 1 buildings. As such, we will progress this proposal and this will only be a requirement for Category 1 buildings due to the complexities involved in managing a building with more residents.
164. However, we are clear that the principles of addressing resident complaints is not confined to Category 1 buildings and should be present across all building categories in a form that is proportionate for the building and resident profile.
165. The complaints process should include:
- how to raise a concern and escalate concerns into formal complaints;
 - how concerns and complaints are recorded and responded to (including timescales for acknowledgement, investigation, assessment and final resolution);
 - how rationale for any decisions taken on a concern or complaint is recorded; and
 - information on escalating a complaint to the regulator.
166. Proportionality is key. There needs to be balance between everyday or individual complaints, which should be dealt with at local level by the dutyholder, against more serious breaches or incidents, where the regulator may want to intervene (or at least be made aware of them to monitor the situation and contact the dutyholder).
167. Evidence of repeated failures to properly engage with resident complaints may also warrant escalation to the regulator where it demonstrates a pattern of behaviour on the part of a dutyholder that could lead to significant risk being overlooked or result in harm to residents.
168. We will work to provide greater clarity on the form and content of the required complaints system, including thresholds for escalation, types of issues that could be escalated, how they can be escalated and expectations around how they will be dealt with if they result in regulatory involvement.

169. It is important to clarify that complaints made by residents are distinct from whistleblowing concerns. See paragraphs 181-185 for more on whistleblowing protections.

Escalating Complaints to the Regulator

170. The majority of respondents agreed there should be a single process for escalating concerns to the regulator to allow leaseholders to apply for a change/removal of a Building Safety Manager. We will need to give further consideration to clearly defining the criteria for any such process to reduce any risk of misuse of the process.
171. Respondents suggested several existing regulatory approaches that should be considered in the establishment of this process. We will undertake an exercise to identify existing regulatory models to take into account any parallels and potential synergies with existing systems, with a view to building on established effective practice in this area.
172. We will continue with the proposals as set out in the White Paper, taking into account the feedback received.

Escape and evacuation

173. The White Paper posed several questions about the issue of people who for whatever reason (often due to a disability of some kind) cannot evacuate a building without assistance. It proposed that these individuals should be entitled to notify the Accountable Person of their needs, and that the Accountable Person would pass this information on to the FRS in case of a fire. This information could then be used to prioritise such individuals for rescue. Such information is often known in a workplace context as a personal emergency evacuation plan or “PEEP”, although as we explained in the White Paper, this term may not be appropriate in a residential context.
174. It is important in considering this issue to remember that whole-scale evacuations of (or rescues from) a block of flats are only necessary in exceptional circumstances. If the compartmentation in the block is sound, then potentially only those in the flat where the fire occurs need to leave. Everyone else is almost always safer remaining where they are: this is sometimes referred to as a “stay put policy”, although it is more an inherent feature of building design and construction than a policy as such.
175. Nonetheless, there can be instances where evacuation or rescue is needed, and in such cases, those who are unable to leave without assistance (for instance, if they cannot use the stairs unaided) need further help. There are some harrowing accounts from the Grenfell Tower fire of residents with disabilities who could not leave, but equally could not be rescued because the London Fire Brigade did not know of their existence or which flats they lived in; most of them died in the fire. It is that situation that the White Paper proposals sought to address.

176. Overall, the majority of respondents supported some form of provision to address this issue but there was some concern expressed about the personal sensitivity of information about disabilities, and about requiring disclosure of this to the Accountable Person. However, the proposal in the White Paper would only allow for voluntary disclosure: if a resident chose to inform the Accountable Person of their needs, the Accountable Person would have to record that and pass it on to the FRS in case of a fire (but would not be permitted to do anything else with the information). There would be no requirement on residents to disclose this information if they did not want to. Whilst information about disabilities is inherently personal and sensitive, it would not be necessary for anyone to give full details of their condition, only that it meant they would need help in evacuating the premises.
177. Some responses argued that the information concerned should be recorded as part of the fire risk assessment. The presence of residents who cannot self-evacuate is part of the broad set of risks relating to fire. However, we do not think using the fire risk assessment to record details about individuals would be practical. Fire risk assessments would normally be updated on an annual basis, whereas residents and their needs can change at any time.
178. Some also suggested that residents should supply information about personal needs directly to the FRS. This approach removes the risk of any breakdown of communication in the event of an actual fire. It is also broadly consistent with the FRS's duty to collect so-called "site-specific risk information" (s7(2)(d) of the Fire and Rescue Services Act 2004).²⁴ However, it seems more likely that residents would be aware of, and act on, an offer to supply details to the Accountable Person rather than directly to the FRS.
179. Opinion was split as to whether this proposal should apply to all buildings or Category 1 only. As set out previously, there is no evidence that taller buildings are more at risk from fire. In addition, an inability to self-evacuate is often absolute, and not dependent on building height or the distance to a ground floor exit.
180. These questions prompted a relatively wide range of responses. However, there was strong support for some form of provision for people who cannot self-evacuate and the majority view supported the specific proposals in the White Paper on this issue. On that basis, we will proceed as outlined in the White Paper.

²⁴ <https://www.legislation.gov.uk/ukpga/2004/21/section/7>

Promoting Building Safety: Raising Concerns

Refer to Section 9 of the Safer Buildings in Wales: A Consultation and Section 8 in the accompanying ‘Summary of responses’ document

181. This section of the consultation set out how we would expect concerns to be escalated. This relates to whistleblowing and the legal protections in place for workers who raise public interest concerns.
182. Most respondents agreed with the proposals unconditionally and felt they would safeguard potential whistleblowing by protecting those working within the new regime to raise concerns without fear of detriment or reprisal, which is imperative to achieving our safety aims. It is clear that cultural and behavioural commitment to these objectives must drive our reforms. However, the reality is that we must also ensure there are adequate legal protections in place to provide appropriate means of redress for situations where there is a failure to adhere to these aims.
183. To support this, we will work with the UK Government to ensure workers are afforded important protection from detrimental treatment or victimisation from their employer when making disclosures in the public interest; this is more commonly known as whistleblowing²⁵.
184. Whilst these protections must be enshrined in the new system, legal redress should be a last resort. As such, we will also look to industry to encourage and demonstrate a culture of openness and positive reception to workers raising concerns about risks and that these risks are effectively dealt with. This will include ensuring whistleblowing policies and procedures are in place and their effectiveness is routinely monitored and reviewed.
185. It is important to note that this is distinct from complaints that may be raised by residents. Whilst this is also important and may well be escalated to the regulator in certain cases, the legal protection relating to whistleblowing applies to workers in an employment context only. Terminology is important and so going forward we will refer to ‘raising *concerns*’ in a whistleblowing context and ‘resident *complaints*’ to avoid confusion. More detailed information on resident complaints was set out in paragraphs 163-169 above.

²⁵ [Public Interest Disclosure Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk)

Regulating the Building Safety Regime

Refer to Section 10 of the Safer Buildings in Wales: A Consultation and Section 9 in the accompanying 'Summary of responses' document

186. The key to ensuring the new regime is successful will be its effective regulation. The changes proposed in this section relate to regulation of the occupation phase of the Building Safety Regime.
187. These are arguably some of the most critical aspects of our reforms, as effective regulation is key to ensuring that the system as a whole is effective and is delivering and achieving its objectives. Our approach to regulation will be based on the Principles of Good Regulation, which require regulatory activities to be carried out in a way that is transparent, accountable, proportionate, consistent, and targeted.²⁶
188. We know that the key issues with the current system are complexity and ineffective regulation. We also acknowledged in the White Paper that this is an area requiring extensive and in-depth engagement with external expert partners, namely the existing regulatory authorities and those who will be subject to regulation under the new regime (i.e. dutyholders).
189. Responses recognised these aspects. We will convene a number of working groups with partners to support us in developing policy and the approach to regulation of the occupation phase to decide on the final form, functions and statutory footing of the regulator(s).

Current Regulatory System

190. There are a number of steps we will be taking in advance of our legislative reforms to improve the existing building safety system. These include the reforms to the design and construction phases as outlined in paragraphs 44-66 (e.g. the introduction of the 3 Gateways), which will be commenced sooner.
191. In relation to the occupation phase, responses to the consultation frequently referenced the need for better collaboration, information sharing and communication between existing regulatory authorities to strengthen the existing system in advance of broader legislative reform. The creation of a Joint Inspection Team as proposed in the White Paper will facilitate this, as it will bring together a multi-disciplinary team who will work in partnership with existing regulatory authorities. Not only will this help to support existing regulatory authorities with advice on potential enforcement action, but it will also create a live learning opportunity to evaluate how the agencies work together, both practically and operationally. This information will be of critical use to our working groups as we continue to shape and define our future regulatory model. More information on our plans for the Joint Inspection Team is at paragraphs 204-207 below.

²⁶ <https://www.legislation.gov.uk/ukpga/2006/51/section/21>.

192. We would also recommend that regulatory authorities take action in advance of the reforms to assess any interim changes they can make to strengthen their current activities in this space, as well as giving consideration to how they work with other enforcement bodies. We hope the suggestions and themes raised in the consultation responses summary help with this.

A Regulatory Model for the Building Safety Regime

193. Responses to the consultation did not indicate a strong or majority preference for a single or multi-regulator approach for the occupation phase. A national approach to the regulator received more support than local and regional delivery mechanisms. However, irrespective of the final model adopted, clear themes emerged that will form the guiding objectives that will inform development of the regulator(s) for this phase:

- regulation should be based on proportionality and informed assessment of risk;
- the need for the regulator to demonstrate an authoritative and robust approach;
- creating a system that is as simple and accessible as possible, with clear lines of accountability and definition of functions;
- the need to assess resource, capacity and competence implications to inform decision making;
- the need for a dual approach to include education and guidance to support sector transitioning, as well as punitive sanctions to address non-compliance; and
- developing a system that can properly manage and mitigate conflicts of interests in regulation.

194. We will work with existing authorities to scope current baseline capacity etc. and with our working group to consider impacts and system demands as we progress and confirm the functions and requirements for the new regulator(s).

195. In addition, we will adopt a 'function over form' approach, working closely with our working group to agree on the functions the regulator(s) in this space should undertake and decide on the most appropriate delivery model. We will also work closely with the other devolved administrations, our UK Government counterparts and the Health and Safety Executive, who will be regulating the building safety reforms in England. Whilst we may have a different model in Wales, there will undoubtedly be benefits to aligning our regulatory objectives and functions with the approach taken in England; many responses to the consultation also acknowledged this.

196. It is clear from responses that there was general agreement with our proposed regulatory functions and we will use these as the basis for moving forward. An important point raised was that these functions cannot (and should not) necessarily be categorised as essential or desirable, but instead represent a mix of interdependent tactical and strategic functions. We will work with our

partners to further scope and define regulatory functions. However, it is clear that the new regulator(s) must take a more proactive and holistic approach to the regulation of building safety.

197. The systems and procedures created to support the delivery of regulatory functions and data capture/monitoring will also need to be responsive and robust. The regulator(s) will not operate in a vacuum, but will base decisions and interventions on information, advice and evidence from a range of sources and contributors, including dutyholders, residents, advisory groups and intelligence gathered from inspections and assessments. Systems will need to accommodate this, and make information sharing and operational delivery as streamlined as possible. Moreover, collaboration with other enforcement agencies and UK regulators will be key, particularly where dutyholders and BSMs are responsible for managing buildings across the UK.
198. We have committed to removing the use of Approved Inspectors for Category 1 buildings and making Local Authority Building Control the sole regulator for the Design & Construction phase. Whilst this phase is theoretically distinct from the occupation phase, it is imperative that the regulatory system is cohesive overall and reflects a position that acknowledges the practical reality that regulation of a building over the course of its lifecycle is fluid. To this end, a central focus of our work with partners through our working group will be to ensure that decisions made regarding the regulation of the occupation phase are mindful of this fluidity and identify critical areas of overlap, such as handover of the site after Gateway 3 prior to occupation. This will help us to avoid the creation of an equally complex, albeit different, regulatory system.

Sanctions and Enforcement

199. The White Paper set out proposals for a framework of how enforcement and sanctions activity could be escalated when needed. There was strong agreement with these proposals and most respondents agreed the levels set out at [Figure 13 of the White Paper](#)²⁷ were reasonable, appropriate and in line with the other enforcement frameworks.
200. It will be important to ensure the regulator(s) has a variety of tools available to deter non-compliance and enable more severe or timely action to be taken in relation to more serious breaches. Further consideration will need to be given on the specific type of action, and range of penalties and offences that could be included as part of the enforcement and sanctions regime. We will use the consultation responses and continued engagement with partners to consider options in more detail.
201. In addition, we are mindful of the breadth of legislation already available to existing regulators in this space. It will be important that any additional powers or opportunities to intervene strengthen compliance and support enforcement. As set out in the White Paper, we aim to reduce complexity and create a strong

²⁷<https://gov.wales/sites/default/files/consultations/202101/consultation.pdf#page=107>

enforcement model that leaves no room for side stepping compliance. We will need to ensure the system is supported by a focus on competency, capacity and strong networks, regardless of the regulatory model adopted.

202. The White Paper also sought views as to whether access rights should be available to FRS, in a similar way to Environmental Health Officers, to allow them to determine critical failings in compartmentation and other fire related issues.
203. The majority of respondents agreed that FRS should have access rights. However, it was also acknowledged this approach may lead to additional administrative burdens, e.g. notice requirements needed for entry. The Welsh Government will be mindful of these considerations as we continue to develop options in this area. Depending on decisions made as to the regulator(s) in occupation, access rights will be critical, and we will ensure that this is set out in legislation.

A Joint Inspection Team

204. We are pleased to note that our proposal to establish a Joint Inspection Team in Wales received strong support. There was also majority support for the proposal that the Joint Inspection Team focuses initially on Category 1 buildings. This was based on the view that these buildings have a higher risk profile and therefore inspecting these buildings will provide greater assistance to existing enforcement authorities.
205. The multi-disciplinary composition of the Joint Inspection Team was welcomed, with an emphasis on the team having appropriate skills, knowledge, experience and behaviours to undertake their role.
206. A small number of respondents raised potential issues relating to the proposed Joint Inspection Team; these related to the possible impact on current resources and existing inspection regimes. Likewise, a very small minority of respondents disagreed with the proposal to initially focus on high-rise buildings. A number of respondents provided suggestions on additional functions that could be performed by the Joint Inspection Team. Education, training and the fulfilment of an advisory role were the main themes that emerged.
207. We will establish the Joint Inspection Team as set out in the White Paper giving due regard to the points raised regarding resources, coherence with existing inspection regimes and possible additional functions.

General Requirements in Relation to Fire Safety Equipment

Refer to Section 11 of the Safer Buildings in Wales: A Consultation and Section 10 in the accompanying ‘Summary of responses’ document

208. This section of the consultation considered if there are further steps we can take to reduce the risk of fire in all residential dwellings in Wales by improving the fire safety of private homes in line with rented homes.
209. There was very strong support for the White Paper proposal that we might pursue a requirement on all householders (not just those in flats) to install smoke and/or heat alarms in their properties. This was based on a similar approach in Scotland, where alarms must now be installed in all dwellings, and this must be disclosed as part of the information provided to buyers when a property is sold.
210. The benefits of domestic smoke and heat alarms are unarguable. By providing early warning of fire, they save lives and facilitate a rapid firefighting response. The 2017 National Survey for Wales indicated that 95% of households have at least one smoke alarm, with 50% reporting they had two, and 28% reporting more than two. However, this information does not provide information on whether homes comply with the best practice of (a) a smoke alarm in the main circulation area (hallway or landing) on each floor, (b) a smoke alarm in the main living room, (c) a smoke alarm in each bedroom used by children, and (d) a heat alarm in the kitchen; with all of these mains powered and interlinked (such that if one alarm activates, they all do).
211. We have long supported measures to promote installation of smoke and heat alarms, and have funded the FRS to conduct over half a million home fire safety visits – as part of which, smoke and heat alarms are supplied free of charge to those who need them. In principle, we are happy to pursue the possibility of making installation mandatory, as the White Paper proposed and as the majority of consultees endorsed.
212. However, there are likely to be two caveats. The first is cost. While a simple battery-powered alarm can be bought for under £10; equipping a typical house to the “best practice” standard noted above requires work by a qualified electrician typically costing several hundred pounds. We will need to consider how costs associated with these proposals could be met, and whether, for instance, it is reasonable to require householders to pay them.
213. The second issue is the need to consider devolved powers and enforcement. Private homes (particularly owner-occupied homes) cannot generally be inspected in the way that rented flats or common areas can and there is unlikely to be capacity to inspect large numbers of private dwellings for these purposes.
214. We will continue to pursue options in this area, noting the above caveats about cost, devolved powers and enforcement.