Question one - do you agree that the building safety regime in Wales should apply to all multi occupied residential buildings with two or more dwellings?

No: Many smaller blocks of flats are owned by the flat owners who have a share in the freehold. Such blocks are managed by management companies controlled by the same shareholders. The management of other leasehold blocks falls to Residents Management Companies [RMCs) or Right to Manage Companies [RTMs]. Management companies are usually run by volunteer leaseholder directors. It is hard to get leaseholders to volunteer to manage their own blocks of flats.

Requiring duties and responsibilities under the Building Safety Bill in addition to the Fire Safety Order, which we understand will not be disapplied, adds to the regulatory burden and risk for those volunteer directors. This will make it harder to get leaseholders to volunteer as Directors. Where the management becomes too difficult or risky for law directors to deal with they will need to engage Managing Agents, increasing the cost of management to leaseholders. This is entirely appropriate, where the risk demands it, however having two pieces of legislation effectively managing the same thing appears to be over regulation.

Any extension of scope should, in our view, be dependent on the risk. Risk will be affected by the complexity, size, occupation or fabrication. This could be a second category covering building 11 to 18m or description of risk factors that would bring a building into scope two.

Question two do you agree that there should be 2 risk categories for the building safety regime?

Yes. A second category covering building 11 to 18m would appear to be appropriate

Question three do you agree with the proposed scope of category one buildings?

Yes

Question 4 to agree with the proposed scope of category two buildings?

No: For the reason explained above, the scope of Category 2 is not justified by the risk. Any extension of scope should, in our view, be dependent on the risk. Risk will be affected by the complexity, size, occupation or fabrication. This could be a second category covering building 11 to 18m or description of risk factors that would bring a building into scope two.

Question 5 do you agree that licence HMO's should be included within the scope of the building safety regime?

No. HMO's are subject to a separate regulatory regime. It is inappropriate to have two pieces of legislation addressing effectively the same risks.

Question 6 do you agree with the exemption set out in figure 6? Are there any other categories of building that should be included within the scope of the regime during occupation?

Although the buildings out of scope in figure 6 are covered by the Fire Safety Order, the proposed enhanced construction regime, set out in this consultation document, will not apply to category one buildings of the types listed. Arguably care homes and hospitals should be subject to the proposed construction gateways irrespective of height.

Question 7 do you think that any extra measures should be taken as regards single flats above high-risk premises like restaurants and takeaways?

No. Risks can adequately be addressed within the Fire Safety Order.

Question 8 Do you have any other comments on the issues we have raised in this section?

No

Question 9 do you agree that a consistent approach with England to the information set out in the Golden thread and key data set is appropriate?

Yes, it is entirely appropriate. It is common for dutyholders and property professionals to work both in England and in Wales. The need to understand two requirements would inevitably lead to confusion and incorrect implementation.

Question 10 do you agree that is appropriate for all buildings within scope of the building safety regime to provide information in relation to the key data set?

Yes: However, whilst we understand the benefit of such information to Regulators, we do not see how such limited information, particularly in relation to the information required for Category 2 buildings, will be useful to residents or indeed to dutyholders. It is unclear why the general public would require such information. If the information is required to provide information to prospective purchasers more information is clearly required. Such information could be provided by an LPE01. This would be an appropriate place to provide the information.

Question 11 do you agree that the broad duties set out are appropriate?

No. No duties appear to be imposed upon Designers or Contractors. Neither a Principal Designer or Principal Contractor can discharge their duties if other designers or contractors do not comply with their own duties and co-operate with them and each other.

Question 12 are there any additional duties we should include?

Designers need to ensure that any design that they prepare complies with the Building Regulations.

Contractors need to ensure that any work that they do complies with the Building Regulations.

A person with a duty or function must cooperate with any other person working on or in relation to the project, to the extent necessary to enable any person with a duty or function to fulfil that duty or function.

All duty holders appointed to work on a project must have the skills, knowledge and experience, and, if they are an organisation, the organisational capability, necessary to fulfil the role that they are appointed to undertake, in a manner that ensure compliance with the Building Regulations . A person who is responsible for appointing a designer or contractor to carry out work on a project must take reasonable steps to satisfy themselves that the designer or contractor fulfils these conditions.

A person working on a project under the control of another must report to that person anything they are aware of in relation to the project which is likely to lead to a situation where the Building Regulations will not be complied with.

A designer must take all reasonable steps to provide, with the design, sufficient information about the design, construction or maintenance, to adequately assist the Accountable Person, other designers and contractors to comply with their duties.

All duty holders must provide any information required to compile the golden thread.

Question 13 do you agree that there should be a named individual identified where the dutyholder is a legal entity?

No. With risk must come authority. If the law requires an individual to be named, they must be given the legal authority to act and other directors must be required by law to cooperate.

The more onerous that you make a duty the more likely it is that it will attract only those that are tolerant to risk.

There is also an issue in regard to professional indemnity insurance for such individuals. If the PII chooses to provide cover for such individuals, the cost is likely to be prohibitive.

If it is to be a named individual it is likely to be the director of the Management Company [RMC or RTM} who did not resign in time.

Although many leases only allow leaseholders to be directors of the property's Management Company an inferred clause in all leases permitting the appointment of professional directors would allow such appointments and ensure that those with duties had the skills, knowledge, experience and behaviours to undertake them.

Question 14 how effective are the existing arrangements for local authorities and Fire and Rescue authorities to consider issues of availability of water during the preparation of local development plans?

No response

Question 15 should fire and rescue authorities become "specific consultation bodies" as defined by the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005?

No response

Question 16 To what extent do you agree with the proposed content to the fire statement?

Strongly agree

Q 17 do you agree responsibility for the content of the fire statement should rest with the dutyholder?

Yes. Or where one is appointed the Principal Designer.

Question 18 do you agree that gateway two should be a hard stop point where construction cannot begin without permission to proceed?

Yes

Question 19 should the local authority building control body have discretion to allow a staged approval approach?

No response

Question 20 what is an appropriate time scale for the local authority building control to respond to gateway two applications?

No response

Question 21 Should the local authority building control be allowed to extend these time scales?

No response

Question 22 do you agree that the principal contractor should be required to consult the client and the principal designer on changes to plans?

Yes. It is essential that they do so given that both parties duties continue during the construction phase. A written record of such consultations should be maintained and captured in the golden thread.

Question 23 do you agree the principal contractor should be required to notify the local authority building control of any proposed major changes before carrying out the works?

No. Duties in relation to design compliance should remain with the Principal Designer who should notify the LABC of changes and obtain approval. The Principal Contractor must have a duty to notify the Principal Designer where they wish to make a change and the also a duty not to deviate from an approved design without approval of the Principal Designer.

Question 24 do you agree that where major changes are made to the approved plans there should be a hard stop and work should not proceed until the revised plans had been approved by the local authority?

Yes for the reasons explained above.

Question 25 what is an appropriate time scale for local authority building control to respond to major changes?

No response

Question 26 do you agree that for a new category one building an accountable person must be registered before occupation of the building can begin?

Where the building is to be managed by a resident's management company [RMC] made up of leaseholders (RMC or RTM) the Landlords intention to have an RMC is specified in the lease before any units are sold. The RMC comes into existence before the first lease is sold and is at this stage run by professionals appointed by the Landlord. The control however changes from professional directors to leaseholder directors within the a timescale determined by the Landlord. We agree that an accountable person need to be registered. Accountability should be retained by the Landlord until such time as the building is fit to handover however at this point the Accountable Person could be either the Lanlord or where already in place the RMC. As noted above the board of the RMC will often change from professionals to leaseholders, usually after all leases are sold. At this point those in control of the RMC will be wholly different.

Question 27 do you agree that a final declaration should be produced by the principal contractor with the principal designer to confirm that the building complies with building regulations?

No. Whilst it is possible for a Principal Designer to design a compliant building and a Principal Contractor to construct the building in accordance with the compliant design it is difficult if not impossible to make declarations in relation to each other's work. A Principal Designer could make a declaration of conformity at Gateway 2 and confirm that any changes that they have been notified of have been approved. They cannot be expected to inspect the Principal Contractors work to ensure that it is compliant. A Principal Contractor should not be expected to confirm a design is compliant only that they built to the design and did not deviate from it without approval.

We understand in Ireland that the Architect is responsible for signing to confirm compliance with the Building Regulations. On more complex projects he is able to include sub-opinions in his overall compliance statement on compliance from, for example, structural engineers, fire engineers and mechanical and electrical services consultants. This model would appear to be appropriate and allow the responsibility for sign off to be shared with those with the necessary skills, knowledge, experience and behaviours to make such a statement.

Question 28 should local authority building control be required to respond to gateway three submissions when within a particular time scale?

No response

Question 29 are there any circumstances where we might need to prescribe local authority building controls ability to extend these time scales?

No response

Question 30 do you agree that the client during gateway 2 (if not continuing into the role of accountable person) must hand over the building safety information about the final as built building to the Accountable Person before occupation is permitted?

Yes. It is essential that they do so. An accountable person and any appointed building safety manager will not be able to manage your building in accordance with the proposed legislation without the building safety information. A situation where information is not provided at handover and must be obtained by survey and paid for by leaseholders, as it is in many cases currently, cannot be allowed to continue in the future.

It is crucial that this point is understood by Principal Contractors and other duty holders and that a consequence should exist for failing to provide the correct level of building intelligence.

Question 31 do you agree it is appropriate to allow staged occupation where previously agreed during gateway 2 e.g. a mixed development?

Yes. Where the Client and Accountable Person BOTH agree that it is safe to do so.

Question 32 do you agree that category one buildings undergoing major refurbishment should also be subject to the gateway approach?

Yes. It is essential that all changes that may affect compliance with the Building Regulations go through a compliance process. Major works should in addition be subject to the gateway approach.

Question 33 are there any other types of residential building or characteristics of a residential building that should require it to go through the gateway process?

As noted in Question 6 we believe care homes and hospitals should be subject to the proposed construction gateways?

Question 34 we will be undertaking further consultation in this area when we set out regulations. Would you be interested in being added to our stakeholder list in relation to the design and construction phase?

Yes please add us to your stakeholder list in relation to the design and construction phase.

Question 35 do you agree that there should be a single and clearly identifiable accountable person for all premises covered by the building safety regime?

Yes there should be a single and clearly identifiable accountable person.

Question 36 do you agree with the proposed approach in identifying the accountable person?

No. In a leasehold property the lease will dictate who has responsibility for the management of various parts of the building and how they can recover costs for doing so.

The lease sets out exactly what the leaseholder has bought, what is exclusively theirs and what is shared; what services the landlord must deliver and what proportion the leaseholder must pay.

The various parties in a leasehold block of flats are explained in https://arma.org.uk/downloader/tvv/Who_is_Who_in_a_block_of_Leasehold_flats.pdf

A freeholder may issue a lease to a Landlord giving them permission to construct a building. The only conditions on the lease could be to pay for the lease and return the land to the freeholder at the end of the lease.

A landlord (who may or may not be the freeholder) can issue leases to various residential leaseholders or to another sub-landlord who issues leases to various residential leaseholders. Either Landlord can assign full or partial maintenance responsibility to a maintenance trustee. In some leases the landlords only right is to remove and replace that maintenance trustee with another body that is not them.

The maintenance trustee can be a Residents Management Company, a Right to Manage Company or another company named in the lease.

The maintenance trustee can be responsible for the maintenance of the whole building or only part of the building. (They could be considered to be the 'the person/entity that is performing the property management function' See paragraph 7.12.3 and answer to Q63.)

A Landlord may, particularly in a mixed use property, retain responsibility for the structure, roof and external walls [Retained Parts]. The lease will indicate how he can recover cost for any maintenance or compliance work. The landlord would in such circumstances charge the management company or perhaps commercial leaseholders for the work. The maintenance trustee would recover costs from residential leaseholders through the service change.

Unless the law allows a freeholder or landlord authority to act the leasehold arrangement may prevent them from acting. If the law does permit them to act, they must also have the ability to recover the costs of acting.

In a building with Retained Parts there will necessarily be two Accountable Person. If the law requires only one and they are allowed to agree for one to be the only Accountable Person

there must be a mechanism to overcome and rights and responsibilities within the lease in relation to the arrangement.

A default to the Freeholder or even the Superior Landlord provides an opportunity for those Landlords and Management Companies who do not want to take on the role to pass the responsibility up to the line to an organisation that may have little or no ability or competence to discharge their duties.

In a building with a residents management company or right to management company it is likely that the Accountable Person will be the management company. The shareholders or members of that company are the residents. https://arma.org.uk/downloader/f1s/2014-07_ARMA_Advice_Note_-_Lessees_and_RMCs_V01.pdf . In such circumstances to move the responsibility away from the management company risks disenfranchising those that the bill is intended to protect: the residents.

Question 37 are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an accountable person?

Potentially where enfranchisement has occurred and a Right to Manage Company has been formed or where the RMC is a named manager it will be difficult to apply the concept of an accountable person. RMC directors can be short-lived and potentially, at time, not qualified or sufficiently knowledgeable to act. The accountable person cannot discharge their duties although they should clearly understand their obligation to instruct appropriately qualified experts. A well written management agreement with a Managing Agent and/or Building Safety Manager would assist this process but not absolve the AP of their obligations.

Measured capability and/or a level of business acumen should be specified as required qualifications for an accountable person based on the associated risks of a serious incident.

The ability to appoint professional directors on Management Companies as discussed earlier would help.

There is also a potential problem in common hold https://www.lease-advice.org/advice-guide/commonhold/ . In common hold parts of the building that are not demised to the flat owners (referred to as unit-holders) are owned and managed jointly by the flat owners through a commonhold association.

Question 38 do you agree that the default position should be that the accountable person is a freeholder?

No for the reasons explained in Question 36 and 37

Question 39 for mixed use buildings there will be a responsible person under the FSO for the business premises and an accountable person under the building safety regime for the residential parts. Are there any requirements we should consider about how these responsibilities responsible party should work together to support and ensure fast safety of the whole building?

FSO or Building Safety must require that where a fire safety or structural risk exists that could affect the safety of a building or part of a building to which the Building Safety Bill applies that the relevant Responsible Person take such action as is necessary to reduce the risk to an acceptable level. An acceptable level would be one where the safety case for the in scope building is accepted by the regulator.

If such a requirement is enacted it is unclear how the Responsible Person recovers costs for action that is only required to ensure the safety of residents of another building who are arguable not 'relevant persons'.

Mandating an overarching agent to deal with both commercial and residential, which is a relatively common practice in such situations, would appear to be the answer.

Question 40 do you agree with the proposed duties of the building safety manager for category one buildings?

No. The role is described as a Building Safety Manager. There must therefore be an assumption therefore that the BSM manage the process and others to ensure that the Accountable Persons relevant duties and responsibilities are undertaken. By necessity may people and organisations will be involved in the tasks described in paragraph 7.3.3 however the duty appears to require either the Accountable Person or the Building Safety Manager to 'carry out the duties' rather than ensure that these duties are carried out.

Where there is a Managing Agent in place who does not have the organisational capability or skills knowledge and experience to act as a licenced Building Safety Manager, the Accountable Person will need to engage a licenced BSM to 'carry out' the described duties and a Managing Agents to discharge all other relevant duties including those duties under the FSO, which we understand, will still apply.

It is noted that there is no requirement for the Accountable Person to be competent if they choose to undertake the role themselves which cannot be in the interest of the residents this bill is designed to protect.

We strongly believe that there should be a scheme for accrediting non specialist contractors such as decorators and cable contractors whose work can affect the safety of buildings. To require a BSM to accredit each contractor and to verify their work has not affected the safety case each time they visit will be expensive and difficult to achieve. ARMA are working with WG8 and the soon to be inaugurated Building Safety Alliance with a view to develop such a scheme and would be keen to work with the Welsh Government addressing the significant and important issue.

Question 41 do you agree with the proposed division of roles and responsibilities between the accountable person of the building safety manager?

It is correct that the Accountable Person is accountable however not appropriate for a Duty Holder such as the BSM to have no legal responsibilities.

Question 42 is the relationship between the accountable person and the building safety manager sufficiently clear?

The term 'take their instructions from' confuses the relationship. The Building Safety Manager is legally required to be competent. They are the ones that know what needs to be done. They necessarily cannot act without authority from the Accountable Person, however must be the one that identifies what needs to be done and when. The term take instruction from suggest that the Accountable Person decides what is done and when, which, if the case, would suggest that they don't need a BSM.

Question 43 Do you agree that the proposed duties and functions set out in Figure 8 for accountable persons for category one buildings are appropriate?

Create maintain and update the Golden thread for the building is included only under during occupation create the information must also be included in the during design and construction section for new buildings.

Table 8 suggests the accountable person must ensure there are sufficient funds available to this person in order for them to effectively undertake these roles and responsibilities on behalf of the accountable person. In this whole buildings the lease determines how and when funds can be obtained. Money cannot be spent that has not been collected. Unless legally mandated in the building safety bill a dutyholder can only obtained funds where the lease permits them to do so. A freeholder may have given 1000 year lease the landlord to build a property on a piece of land. It is not reasonable to expect them to pay for remediation of a building they did not build and have no control over.

Table 8 suggests the accountable person If not undertaking the role of building safety manager themselves needs to appoint suitably competent people to undertake the work on a daily basis. It is extremely unlikely that any building safety manager they an organisation or an individual well be able to or wish to undertake all the relevant tasks themselves. Therefore there also needs to be a requirement for the building safety manager since you're anybody they engage has the skills knowledge experience and behaviours necessary to do what they need to do. Non specialist contractors such as Internet cabling contractors and decorators can significantly compromise fire safety and in particular compartmentation within a building. It is therefore essential that contractors such as these are also competent.

Question 44 Do you agree that the proposed duties and functions set out in Figure 8 for accountable persons for category two buildings are appropriate?

Despite their being a legal duty under the fire safety order to provide Fire Safety Information to the Responsible Person and it being impossible to manage fire and structural safety within a building without information on the fire strategy and details any active or passive fire safety measures they legislation and table 8 are silent about maintaining any sort of fire safety information. If you are not aware of what walls are compartments walls, what doors are fire doors, how the smoke extraction system operates, etc, you cannot manage fire safety in the building. It is unreasonable to ask a fire engineer to reverse engineer any building under 18m each time they visit to work out whether it is constructed in accordance with the Building Regulations and remain safe to occupy.

There is no mention of maintenance or inspection records, records of competence and training or details of those who plan, manage and monitor fire and structural safety.

If this bill is intended to ensure residents safety it is strange but there is no requirement to develop or deliver a resident engagement strategy in category two buildings.

Question 45 Do you think that the different roles and responsibilities for category one and category two accountable persons are clear and proportionate?

There is insufficient detail for both category one and category 2 accountable persons. There is very little consideration given to cost recovery.

Question 46 Are there any additional duties that should be placed on dutyholders?

Dutyholders should ensure that's all contractors who undertake activities in relation to four or structural safety or carry out work that can affect the safety of the building have the necessary skills knowledge experience and behaviours.

Question 47 do you agree with our proposed fire safety outcomes?

Yes although as noted paragraph 7.8.14, most fires originate in flats rather than common parts, there is therefore little that can be done to reduce the likelihood of fire in flats. It would appear not unreasonable to require that residents to do their part and undertake 5 year electrical inspections, annual gas safety checks and remediate any defects in the inspection or checks.

Question 48 do you agree with our proposed overall purpose of a fire risk assessment?

No. It would appear more logical to have common standards in Wales and England and make PAS 79-2:2020 Fire risk assessment. Housing. Code of practice the standard to be complied with.

Question 49 do you agree with our proposed risk areas?

We are broadly in agreement with the following caveats:

It appears strange to exclude the need for electrical inspections and annual gas safety checks however to include a requirement to consider internal structure, the maintenance and inspection of which will be equally expensive and disruptive for the residents. That is not to suggest that internal structure should not be considered, but only to explain that the costs of leasehold are usually bourn by the leaseholders. There is therefore little point in excluding one important measures and including another.

In 7.8.20 it is suggested that flat front doors need to be certified. Requiring all doorsets that are not certified to be replaced will involve significant cost, which in leasehold blocks of flats will be borne by leaseholders.

In 7.8.22 one needs to be careful about the requirements in relation to escape routes. It is hard in many cases to alter escape routes in large buildings and when possible it would be expensive. The unintended consequences could be risk assessors proposing actions that effectively make existing building unoccupiable because they cannot be implemented at an affordable cost.

We do not agree with the suggestion in 7.8.29 to install automatic fire alarms in purpose built blocks of flats. They could lead to whole building evacuation when this is unnecessary and may delay the fire and rescue authorities ability to fight a fire. Such a system is vulnerable to false alarms which will lead to residents ignoring alarms and unnecessary attendance by the fire and rescue service with the inevitable risk of false alarm charges.

Question 50 do you agree that a fire risk assessment must be renewed annually and whenever premises are subject to major works or alterations for all buildings in scope?

Yes we believe this is appropriate and will avoid the inevitable disputes caused by a system where the frequency is dictated by the risk assessor based upon risk.

Question 51 do you agree that only suitably qualified experienced fire risk assessors should undertake fire risk assessments for buildings within scope?

Yes, however, as you note, clear guidance is required on what a suitably qualified experienced fire risk assessors looks like. It is essential that the standards are common in both Wales and England

Question 52 Do you agree that fire risk assessments must be permanently recorded?

Yes however we would suggest that there is a statutory limit on the time that they need to be maintained for. We would suggest that risk assessments should be maintained for 7 years for the regulator but there be a requirement for only current one to be shared with residents. To support this we suggest that the Fire Risk Assessor is required to check whether any actions in the previous assessment have been completed and to carry over onto the current risk assessment any outstanding actions with a note to confirm that they remain unactioned.

Question 53 do you have any views about whether accountable persons or their employees should be precluded from conducting fire risk assessments themselves?

We believe that having an independent fire risk assessor is desirable.

Question 54 do you have any views on enforcement or sanctions for non-compliance with regards to the accountable person?

Enforcement is always required to ensure there is compliance, however it must be remembered that in leasehold properties where there is a resident's management company or Right to manage company the company relies upon volunteer directors to operate.

The memorandum and articles of many residents management companies and right to manage companies require directors to be a leaseholder.

Making the penalties too severe will further discourage residents to come forward in an area where it is already hard to find volunteers. There is also a significant risk that those who do volunteer will be necessarily risk tolerant which cannot be the desired outcome.

If the penalties are too severe it is likely that the only director will be the one who did not resign quickly enough. This cannot be in the interest of good governance of management companies.

As noted before, if the law is written to permit Management Companies to appoint Professional Directors the issue will to some degree be overcome, however professional indemnity insurance for such directors may be expensive.

An alternative to fines and jail terms would be the disbarring of directors or enforced removal of directors by the regulator. This would address the issues discussed above with regard to volunteer directors and be a serious incentive for professional directors to act appropriately.

We do agree however that there must be accountability.

Question 55 do you have any views on enforcement or sanctions for a person undertaking a fire risk assessment without suitable qualifications or experience?

Those who choose to undertake a risk assessment without suitable qualifications or experience make a conscious decision to do so, so should be subject to appropriate sanction? It is imperative however that what constitutes suitable qualifications or experience in different types of building is clear and unambiguous?

Question 56 do you agree with our proposal to create duties with regards to compartmentation on accountable persons

It is appropriate however the duties must be supported with a duty on residents to permit access to their demised area for inspection and where the walls are not demised to the leaseholder to undertake remedial work, to cooperate with the AP in the execution of their duty and where the compartmentation is demised to undertake the remedial work themselves. There must be a right for the AP to take action, obtainable through the courts or tribunal, where the leaseholder fails to take action.

It is imperative that fast resolution should be available even if this must be through the courts or tribunal or courts. Costs, which will be covered by the service charge and therefore paid by leaseholders, for enforcement must be reasonable. The process must therefore be streamlined but have checks and balances to prevent abuse. The assistance of Fire and rescue service / the regulator through the use of notices following mandatory reporting of resident [leaseholder] offences is one option.

Question 57 do you agree with our proposal to create duties with regards to compartmentation on residence

Yes we strongly agree with this requirement as noted in our response to Question 56.

Question 58 do you agree the concept of a safety case for category one buildings is an appropriate way to assess and manage the risks of building safety issues?

In relation to fire safety the safety case appears to duplicate much if not all of what is required within a fire risk assessment. Duplication must be avoided because it will lead to unnecessary costs that will need in leasehold buildings to be paid by the leaseholders.

Question 59 what do you believe would be a reasonable time scale for existing category one buildings to create a safety case

The time scale will need to reflect the number of specialists available to identify and recreate this information. Although the numbers of buildings in Wales is relatively modest the same requirement will be implemented in England at the same time. We would suggest the time scale is made dependant on the risk .

Question 60 do you agree there should be a mandatory reporting duty on dutyholders in the occupation phase

For a mandatory reporting system to be effective it must be either anonymous or there must be immunity from prosecution in relation to the issue raised. If neither is the case issues are either unlikely to be reported or issues will ‘not be found’.

Much will depend on the objectives of such a requirement. If learning is the end, then anonymous reporting would be appropriate, as has been found in the CROSS and SCOSS structural safety reporting system.

Question 61 which incidents and issues do you think should trigger such a duty and why

We do not believe that a mandatory reporting duty will have the effect that is desired.

However we do believe that any fire, regulator enforcement notice, structural defect, compartmental, etc. failure should be notified.

Question 62 should there be requirement for the accountable person to register under the building safety regime during the occupation phase

Yes we believe it's appropriate that the accountable person registers the building. As the registration process will make the accountable person known to the regulator it is likely that only those who are truly accountable will enter their name onto the registration.

Question 63 are the registration process requirements sufficient. Are there any others that should be included

Depending on who is in law determines is the accountable person, 'the person or entity that is performing the property management function' could be the management company (residence management company [RMC] or right to manage company [RTM]) and/or the managing agent. Clarification is clearly needed on what is meant by those performing the property management function. See also response to Q36.

Question 64 should there be a requirement for dutyholders (both the accountable person and the building safety manager) to obtain a building safety licence in the occupation phase

If the Accountable Person is to be the owner of the building, requiring a licence would appear to restrict the right to own a property. A duty similar to that set out in both the Management of Health and Safety at Work Regulations and the Fire Safety Order to appoint one or more people to advise them would appear more appropriate. On category 1 buildings a requirement on the BSM to make the Accountable Person aware of their duties as is the requirement under CDM 2015 would also resolve the issue.

Requiring a building safety manager to have a licence would provide clarity to Accountable Persons and residents as to who is and who is not competent to fulfil that role.

Question 65 are there any other requirements that should form part of the licencing process for accountable persons in addition to the completion of basic training about the building safety regime and the fit and proper person tests [category one buildings only]

We do not believe in the licencing of accountable persons for the reasons described above.

Question 66 should there be a competence requirement and or minimum qualifications for those manage in category two buildings. If so what criteria should those engaging in such services meet.

Yes, driving up the standards within the industry is something the ARMA fully endorse. ARMA are working with a number of members of Working Group 8 (the Building Safety Alliance) to identify the appropriate standards for managing agents and are keen to work with the Welsh government on this matter. All people managing category two buildings should we believe have an appropriate level 4 qualification.

Question 67 Do you agree that there should be regulation of all residential management property

The Association of Residential Managing Agents (ARMA), represents over 325 professional managing agents in England and Wales. ARMA has 291 full members and 35 Associates (firms with less than two years trading).

ARMA members collectively manage around 1.6 million leasehold properties. In 2014 ARMA introduced a new self-regulatory regime for its members known as ARMA-Q. This aimed to raise standards and the quality of service across the residential leasehold management sector and by 2016 all ARMA members had met the new regime.

ARMA-Q has now evolved into what it is known simply as 'ARMA Accreditation'. This places consumers at its heart and requires all members to meet a new Consumer Charter and Standards (Ref 1). There are 180 Standards and these have been developed specifically for managing agents. These Standards include but are not limited to the RICS Service Charge Residential Management Code. ARMA members are regulated by an independent Regulatory Panel made up of six lay members. Each has been specially selected for their knowledge of the industry. They have a collective experience spanning law, accounting, consumer, surveying and regulatory professions. Most importantly, leaseholders are represented on the panel. The role of the panel is to provide independent regulation of the Member and Associates of the Association.

ARMA therefore has substantial experience in developing and regulating standards specifically within the residential property management industry and is well placed to advise the Government on policy

The 326 ARMA managing members represent approximately 40% the MAs in England and Wales, and together manage 1.6 million leasehold homes. Although ARMA members represent nearly all of the larger firms, for the sake of simplicity assume that the other half of the MAs (i.e. non ARMA firms) also represent a million homes. According to the latest Government figures this leaves approximately 2m leasehold homes outside of the MA sphere.

Given that the average service charge was stated in the Competition and Markets Authority 2014 report (Ref. 2) to be £1,100 per annum, we can infer that £2.42bn of leaseholder service charge funds are managed without an MA. It is therefore important that consumer protection is extended beyond the MA sector into self-managed blocks.

There are a range of measures in place to protect consumers. Section 19 of the Landlord and Tenant Act 1985 allows leaseholders to challenge unreasonable service charges via the First Tier Tribunal Property. The two Ombudsman schemes (The Property Ombudsman) allow leaseholders redress against poor service standards provided by MAs.

ARMA does believe that regulation of the MA sector is desirable and, in the absence of mandatory regulation, implemented its own self-regulatory regime, which requires its members to adhere to a strict set of 180 Standards, underpinned by regular independent external audits of every Member and an independent Regulatory Panel to consumers in the event of breaches of our Standards.

However, self-regulation is inherently flawed when adherence to those regulations are only required by ARMA members and are therefore essentially voluntary within the industry as a whole. Indeed, this can lead to the MAs who abide by the self-regulatory regime (i.e. ARMA members) being at a competitive disadvantage to MAs who do not, which cannot be in the consumers interest. ARMA believes that there should be a "Licence to Operate" for MAs, most likely in the form of an approved register.

To be entered on the register a firm would have to demonstrate that the principal of the business is a "fit and proper" person, that the firm is a member of an accredited trade body, such as RICS or ARMA, that the firm belongs to an Ombudsman scheme and that Client Money Protection at an applicable level is certified.

ARMA believes there should be a requirement for all MAs to be members of a relevant professional body, the latter to be approved by Government.

However, we would add a non-regulatory independent body provided by Government that holds a register of firms and grants the licence to operate.

This mechanism would take the Scottish registration system as a basis but recognise the huge value of the ARMA and RICS standards and regulatory mechanisms already in place. Both of these professional bodies have Codes in place that have been tried and tested over the years. Both would need to apply to Government to have their Codes approved.

ARMA would see this working as follows. Organisations would require a Licence to Operate. This would be administered by the Government body. It should be cost neutral to the Exchequer as the Licence to Operate would carry an appropriate, tiered, fee. To issue the Licence to Operate the Government body would require a "fit and proper" person test on the Principal(s). Membership of a professional body such as RICS or ARMA would be mandatory and many of the desirable administrative requirements such as a suitable level of PI insurance, membership of an Ombudsman scheme and perhaps Client Money Protection could be moved down into the professional body membership requirement.

This also leaves the ongoing relevant checking and auditing costs within the professional body rather than with the Government body. Should a firm leave the professional body the latter would notify the Government body. This will allow the latter to check for firms avoiding reprimand by switching bodies. Membership of the professional bodies can be policed by the current structures in place, which is simpler than establishing a new Regulatory oversight. ARMA believe this option will be the fastest, easiest and most flexible option and will build upon the Codes and standards that are already in the market.

Question 68 what standard should those carrying out residential management functions meet. Should there be a differentiation between the standards required for those managing category two buildings and those managing unadopted spaces

The requirements should include the introduction of Government approved/Licenced professional trade bodies (currently the appropriate organisations are RICS and ARMA) to which membership of at least one should be mandatory.

Controlling Principals should be required to demonstrate that they are a "fit and proper" person. There is an argument that at least one principal should hold a relevant professional qualification – in fact this is already a requirement of RICS. For ARMA members, at least one principal should be qualified to MIRPM or AssocRICS level. Client Money Protection at an appropriate level should be mandatory where consumer funds are held in a bank account by a third party, whether a Managing Agent, landlord, self-managing block (RTM or RMC), etc. Membership of an appropriate property Ombudsman scheme is already mandatory and should be maintained.

The above should not be restricted to MAs only, but must include any entity directly engaged in the management of long leasehold property and the holding of client funds. Introducing additional requirements for entry should not significantly affect innovation.

If someone is motivated enough to enter the sector, the time taken to obtain the relevant qualifications can only be beneficial to the sector as a whole. Minimum entry requirements are in consumers' best interests.

Personal qualifications relevant to the residential long leasehold property management industry include those provided by the Institute of Residential Property Management (IRPM) and the Royal Institution of Chartered Surveyors (RICS):-

- AIRPM (Entry level for the IRPM. Must be involved in the provision of residential property management services, but can be legal, accountancy or property manager based).
- MIRPM (an exam based structured training qualification. A minimum of 3 years' experience necessary prior to application. Course material based solely on residential property management and open to residential property managers only).
- FIRPM (a step up from MIRPM, based on a supplemental application and demonstrating a higher level of experience and expertise in residential long leasehold property management).
- AssocRICS (either a direct exam-based route via the RICS or step up from the MIRPM qualification subject to passing an RICS ethics test).

- MRICS (an exam/interview based structured training qualification. A minimum of 2 years' experience and a relevant University Degree is the normal route prior to application. Candidates must be able to demonstrate practical experience and competence in a wide range of property related fields. First time pass rates are circa 60%).
- FRICS (a step up from MRICS, based on a supplemental application and demonstrating a higher level of experience and professional achievement). These directly relevant personal qualifications are considered adequate for the purpose of regulation.

A requirement for RTM and RMC company directors (even those who have appointed a MA) should also acquire certification by attending a short course on their roles both as a UK company director and as a director of an RMC/RTM. This would cover legislation surrounding both company and leasehold law such as company reporting requirements, Section 20, treatment of service charge excesses etc. Evidence of MAs professional skills with regards to financial reporting could be highlighted due to the extensive requirement for the preparation and completion of budgets and accounts.

The "fit and proper" person declaration could be adopted to mirror the existing Scottish requirement. However, a tiered/hierarchical system could be very difficult or almost impossible to properly monitor/regulate and would need more consideration. Initially, at least, Principals/Company Officers would need to take ultimate responsibility for their employees. Consideration should be given to a mandatory level of relevant Continuing Professional Development or structured learning. This is already a requirement of both IRPM and RICS, which require 15 and 20 hours respectively per annum to be recorded/uploaded to the relevant body's portal. Within companies, ARMA believes that client-facing roles should require minimum levels of relevant qualification.

In terms of core elements that should be included:

- Ethics – certified by an online test.
- Standards of service – overseen by the Ombudsmen.
- Financial transparency – overseen by the First-tier Tribunal Property.
- Financial probity – as evidenced by an appropriate Client Money Protection scheme.

Any Code will need to incorporate these four elements. As per the Scottish system, failure to operate without having been accepted on the approved register and practicing as a MA of long leaseholder property without a Licence to Operate should be a criminal offence. There needs to be a real personal deterrent to operating outside the system. Professional bodies or a Regulatory body (e.g. RICS and ARMA) would oversee adherence to the code and, in the case of proven breaches, employ a sliding scale of measures/sanctions, up to and including expulsion from the register.

Question 69 how could these issues of probity and responsibility be evidenced in such a system

Companies should require a Licence to Operate via an approved register. This should be extended to all parties involved in the overall management of leasehold property. For example, a landlord, RMC or RTM would need to register for a Licence unless they have appointed a third party that is on the register.

Anyone practicing in the capacity of a MA of long leaseholder property without a Licence to Operate should be a criminal offence. Accordingly, if they fail to appoint a third party that is on the register they would be committing a criminal offence. This would ensure compliance and also act as a mechanism to weed out unregistered third parties.

Likewise, MAs operating without being on the register should be a criminal offence as per Scotland. Membership of the register would require proof of membership of an approved trade body such as RICS and ARMA (which means that the company has already passed certain criteria such as proof of PI, certification of a relevant level of CMP, membership of an Ombudsman scheme). Suitable levels of qualifications for senior staff, qualified staff ratios, etc can be subsequently added. Registration could be required on an annual (or if this is administratively onerous, three yearly) basis. Should a company fall short of the required standards a warning can be issued, requiring rectification within a certain timeframe. Failure to comply would result in suspension or removal of the Licence to Operate until compliance is reasserted.

Question 70 do you agree that all accountable persons should be required to promote building safety

Yes

Question 71 do you agree that this information should be provided in a way that is accessible and understandable and should where relevant reflect specific needs of residents

To be cost effective and therefore affordable by residents the only appropriate way to make information available is via cloud-based document management applications and, by exception to those without Internet facilities, in paper form.

The information in 8.2.8 will however require a considerable amount of administration if it is to be up to date and relevant. All of this will come at a cost to residents. Where a resident requests a paper copy is it appropriate that's all other residents should pay for the additional costs associated with this?

The more information that is required, the more the systems will cost to administer, and the more residents will have to pay through their service charge. Should those who do not want to view the information pay the significant costs associated with the provision. Should residents be given the option, on a democratic basis, as to whether they want the information or not?

Question 72 do you agree that a nominated person who is a non resident would be able to request information on behalf of a resident who lives there. If yes who do you believe that nominated person should be

The term resident is not established in property law. In the draft Building Safety Bill the term 'resident' is defined as 'a person who lawfully resides in a dwelling'. There will be residents in a building that are lawfully entitled to be there but who may be unable to prove that this is the case. Managing agents for in a long leasehold block of flats should be aware of the names of the leaseholders. They are unlikely to be aware of the names of any tenants whose names may only be known by the leaseholder and where they have one, their letting agent. In many cases the tenants may have children whose name will certainly not be known by either the managing agent, the leaseholder or a letting agent. If the dutyholder has a duty to communicate to a resident how do they determine who is and who is not a resident. Where you can identify a resident and they choose to identify a non-resident to request information on their behalf there appears to be no reason why this should not happen. However such a system is open to abuse. To prevent such abuse will evolve a significant amount of bureaucracy.

In leasehold premises information should be provided to the leaseholder who then has a duty to disseminate to tenants or co occupiers. Requests from tenants or co occupiers need to go through the leaseholder.

Question 73 is there any other information that an accountable person should be required to provide on request

No as noted in question 71 above we have significant concerns about the costs to residents associated with this requirement. It is far from certain that the majority residents want this information and, where they do, whether they will continue to do so when they realise that they need to pay for the privilege.

Question 74 do you agree that for category one buildings the accountable person must provide the information as set out in paragraph 8.2 10

The list appears appropriate.

See also the response to Q72 with regard to the identification of residents.

Question 75 is there any other information that you think would be useful to provide

No

Question 76 in what ways could an accountable person demonstrate that they have established effective two way communication

Accountable person to demonstrate that they have established effective two way communication by providing the information and responding appropriately two any questions or feedback received.

Question 77 do you agree that there should be a new requirement on all residents of buildings within scope to cooperate with the accountable person and their appointed representative to allow them to fulfil their duties under the building safety regime

Yes, it is entirely appropriate without cooperation from residents it is impossible for the accountable person and their building safety manager or managing agent to comply with the duties imposed upon them.

Question 78 do you think there should be any specific requirements to facilitate this

The must, in our opinion be:

- A right of access in residents premises (demised areas) to undertake any duties in accordance with the bill;
- The right of access can be obtained having given the resident notice the time access is required and the justification for access;
- There must be a specified period before access is required for the notice to be served;
- It must be possible to apply to the tribunal courts where access it's refused.

The accountable person must be able to serve notice on a resident where they believe they have or may do something that affects the safety of the building. The notice should set out the breach, identify the expected action and the date by which action should be taken. Once again, the accountable person should be able to apply to the courts where action is not taken by the resident and the significant risk to the building remains.

Question 79 what safeguards should be put in place to protect residents' rights in relation to this requirement

An Accountable Person will not be able to enter a flat or enforce any action unless the client agrees or the matter is enforced by the courts.

Question 80 do you agree that there should be a new requirement all residents of buildings within scope not to knowingly breach compartmentation

Yes, this is essential.

Question 81 do you agree that there should be a single process for escalating concerns to the regulator in relation to the building safety regime regardless of category of building or where it is in the building life cycle

Yes, we believe this is appropriate.

Question 82 should a similar model be established to allow leaseholders to apply for a change or removal of the building safety manager. What would be an appropriate mechanism to do this

Yes, we believe this should follow a process similar to that for the appointment of a manager under the Leasehold and Commonhold Reform Act 2002.

Question 83 what roles and responsibilities are appropriate for accountable persons with regard to people who cannot safely evacuate

An accountable person should only be required to:

- make residents aware that they can communicate via them to the Fire and Rescue services where they will have difficulty self-evacuating and will need assistance from the Fire Rescue services;
- communicate such information to the Fire and Rescue services; and
- include such information in a secure premises information box.

It should be noted that it will be very difficult for the reasons expressed in Question 72 to communicate with all residents. It is also likely that information will very quickly become out of date .

The only reasonable way to overcome this is to require residents to reconfirm or provide information again on an annual basis. Doing this will allow notifications over a year old to be removed.

Question 84 should accountable persons who required to collate details of all those who require assistance

It would be perhaps easier and more effective for Fire Rescue services to maintain a central register of information and allow residents to communicate this information by telephone or online although it is accepted that costs for this would you born by the Fire and Rescue services and therefore the tax payer.

Alternatively it would perhaps be more reliable to require:

- those with Safeguarding responsibility to notify the Fire and Rescue Authority where they believe that a person may need assistance with evacuation and in their view is unable to notify the FRA themselves;
- the Responsible Person to advise all those who are not able to self evacuate to notify the FRA using the 999 service when they become aware of a fire in their building of this fact.

Question 85 should accountable persons be required to provide this information immediately to the Fire and Rescue service in the event that an evacuation was necessary

To make this a requirement all buildings would need to be manned on a 24 hour basis or there would need to be a duty resident who is able to hold and pass over the information.

As most buildings do not have permanent staff this requirement appears to be unreasonable and unaffordable full residents

Question 86 should this be the case for all categories of building

One must question the benefit of collecting collating and communicating information that is likely to be out of date when it is needed. It is more likely with such a system that Fire and Rescue services will spend time unnecessarily trying to rescue people who are either not in the building anymore or were not in the building at the time of the fire. A simpler and more reliable solution, as noted above, would be to require:

- those with Safeguarding responsibility to notify the Fire and Rescue Authority where they believe that a person may need assistance with evacuation and in their view is unable to notify the FRA themselves;
- the Responsible Person to advise all those who are not able to self-evacuate to notify the FRA using the 999 service when they become aware of a fire in their building of this fact.

Question 87 do you agree that the Welsh government should pursue our means to protect workers from raising concerns with regards building safety

Yes

Question 88 are there any actions that could be taken ahead of legislative reform that would support local authorities and Fire and Rescue authorities to manage multi occupied residential buildings in a more holistic way

No response

Question 89 do you agree with the list of key functions for the regulator as proposed

Yes

Question 90 other additional functions which are not listed that you believe are required in order to achieve are building safety aims

No response

Question 91 do you think that some of these functions are more essential than others

No response