Written evidence submitted by the National Fire Chiefs Council [BSB 304]

Draft Building Safety Bill Response

Lead Organisation

National Fire Chiefs Council (NFCC)

NFCC is the professional voice of the UK fire and rescue services and is comprised of a council of UK Chief Fire Officers. This submission was put together by the NFCCs Protection Policy and Reform Unit. NFCC held workshops every week across a five-week period, to engage with all fire and rescue services in England, including specific sessions for Chief Fire Officers. These sessions informed the contents of this submission.

The Building Safety Bill will become a key piece of legislation that will contribute to essential developments in fire safety. NFCC supports the draft Bill for multiple reasons discussed within this submission, but believe it would benefit from further clarification in certain areas, including how the Bill will interact with secondary legislation and overlapping regulations and frameworks, and how those holding responsibility will coordinate with one and other. Further detail will improve the efficacy of the Bill.

We trust our submission below is helpful, and welcome further discussion, particularly regarding how the legislation can be effectively implemented by FRSs.

How well does the Bill, as drafted, meet the Government's own policy intentions?

NFCC recognises the draft Bill is an enabling piece of legislation. In this regard we welcome the flexibility provided which appears to have met the government's policy intentions.

In particular we welcome that the draft Bill:

- requires new levels of competency and scrutiny
- provides for changes to be made to planning and building control functions
- introduces oversight from a new regulator
- places new duties on those responsible for buildings
- provides a new focus on the needs of residents.

This broad enabling nature does however mean that achieving the policy intent will depend heavily on detail yet to be seen within secondary legislation and further guidance.

It is important that these stages are not opportunities for any elements of the original policy intentions to be lost or watered down.

The original work carried out by Dame Judith Hackitt identified an environment that was overly complex and not fit for purpose. She focused on the need to simplify and reduce the number of overlapping regulations. It is not clear if the Bill as drafted, has achieved this.

Key concerns such as the multiple and overlapping pieces of legislation remain, particularly the interaction with the Regulatory Reform (Fire Safety) Order 2005 (FSO).

NFCC has held engagement with all Fire and Rescue Services (FRS) across the UK in the last five weeks on the draft Bill. Our members identified a number of concerns about how

new legislative requirements will co-exist with current ones. This includes the question of how multiple Responsible Persons (RPs) will now interact with multiple Accountable Persons (APs) and Building Safety Managers (BSMs), particularly in mixed-use buildings.

In addition, the impacts of the Bill on UK FRS warrant further engagement with government, and NFCC will be taking further time to review the draft Impact Assessment.

It is not clear what relationship is intended between the powers to direct Fire and Rescue Authorities in the draft Bill, and the *Fire and rescue national framework for England*. The proposed powers represent a complete regulatory departure from the model of operational independence and local risk management currently underpinning the framework for FRSs.

The National Framework requires FRSs to structure Risk Based Inspection Programmes according to local risk and provides discretion in this regard. While we fully support the intent to ensure the new Building Safety Regulator (BSR) is adequately resourced, the National Framework will need to be updated to recognise additional constraints Fire and Rescue Authorities will face in formulating local RBIPs and managing resources. Clear guidance about how these frameworks are intended to interact, including further detail on the recharging model, would therefore be welcome.

The draft Bill also provides that the BSR will be able to request the assistance of competent officers. As there are known limitations on the numbers of officers with the required level of competencies, and a long lead-in time for training, detailed work is needed for transition planning.

NFCC looks forward to further engagement with partners in the Home Office, the Ministry of Housing, Communities and Local Government and the Health and Safety Executive to ensure that the draft legislation is able to be effectively implemented by FRSs.

Does the draft Bill establish an appropriate scope for the new regulatory system?

NFCC welcomes the draft Bill's flexibility for the scope to be widened over time. However, we believe the intention to begin with residential buildings of 18 metres or more could be more ambitious and could better recognise the needs of more vulnerable groups.

The explanatory notes refer to high rise residential buildings (HRRBs) of 18 meters or more in height, or more than 6 storeys (7 storeys). While we appreciate that this provides a clearly identifiable place to start, there are other higher risk premises we believe could realistically form part of the initial scope.

By the time the new regulator comes into force, the approximate 11,300 HRRBs will have had additional attention due to:

- the government's Consolidated Advice Note (CAN)
- the Joint Inspection Team (JIT)
- Protection Board activity
- other post-Grenfell scrutiny being driven by the market, such as the EWS1 form process.

There are only approximately 400 new builds/refurbishment projects involving HRRBs per year. This is a small amount when compared to the existing built environment.

At planning, design and construction stage, the scope of the Gateways system could therefore be reasonably widened to include more premises groups from the outset, such

as care homes. There exists the potential to create a two-tier building regulatory system, with lower standards of safety accepted in premises where the most vulnerable occupants of society reside.

We also welcome the proposed scope for the new regulator to:

- oversee the safety and standard of all buildings
- oversee the performance of building control bodies
- directly assure the safety of higher-risk buildings
- improve the competence of people responsible for managing and overseeing building work
- understand and advise on existing and emerging building standards.

We have also raised with officials that we do not support the narrowing of the scope achieved through the insertion of the words "more than" before the words "six storeys". We believe the spirit of the original proposals were inclusive of existing six storey buildings. The addition of the words "more than" now narrows the scope to buildings which are 18m, or *seven storeys.* We believe this is likely to miss a number of existing six storey buildings deliberately constructed to be just under 18m, in order to 'game' the system.

One example would be the Cube in Bolton. The building where last year's fire occurred was six storeys, but recorded as being under 18m. The consequence of this was that during an assessment of the two buildings following Grenfell, the taller building on the development had its combustible insulation replaced with mineral wool, but the shorter one where the fire started did not.

It is noted that the Bill is concerned only with the safety of people. The response to the Call for Evidence on Approved Document B found that a large majority of respondents supported the inclusion of property protection as a guiding principle. This was on the grounds of protecting the Nation's built assets, avoiding business disruption, continuity of social and public services, prevention of pollution and avoiding remediation costs.

The only argument against the inclusion of property protection was that it is matter for owners and their insurers. However, in most multi-occupancy buildings the resident has no control over property protection decisions which are made early in the design stage. For these reasons we believe that the regulator should also have some remit to ensure appropriate measures are in place to minimise property loss.

Will the Bill provide for a robust – and realistic – system of accountability for those responsible for building safety? Are the sanctions on those who do not meet their responsibilities strong enough?

The proposed new duty holder roles and sanctions are welcome, however, there is still much confusion around how these roles, responsibilities and the sanctions will interact with those of the FSO.

The requirements and sanctions relating to the AP mean the level of accountability is high, through registration and the powers of the regulator to veto this. However, it is important that secondary legislation and statutory guidance also support high levels of accountability and sanctions.

The creation of Gateways with the ability of a hard stop, and the requirement to create safety cases and provide other documentation is a welcome step, as it means that

designers, contractors, and owners will be more accountable than before.

Additional requirements for competence are welcome. This is an area in which NFCC has already undertaken extensive efforts to ensure that UK FRS can be scrutinised in the same way it is expected of others.

NFCC welcomes the oversight that will be provided by the new regulator to provide its own functions by the creation of the three advisory committees covering technical, competence and resident related functions.

The new roles and responsibilities of the AP and BSM are supported, but how these roles, responsibilities and the sanctions will interact with those of the FSO is not yet fully understood. How Safety Cases will work in line with the requirement to produce Fire Risk Assessments in the same buildings is not yet fully understood.

We anticipate there will still be issues identifying RPs where they exist as an offshore entity and are difficult to bring to account. Solutions such as effective data sharing between regulators and making rules on who may become an AP may contribute to remedying these issues.

The regulator will have access to a range of sanctions, many of which mirror existing regulatory powers such as the powers to issue notices. These have been proven to be effective tools. It is also noted that the regulator themselves will be the building control authority in relation to higher risk buildings.

There are some inconsistencies in the penalties that can be awarded under the BSB and FSO. This may introduce a level of unnecessary confusion and should be rectified during the Bill's passage. The NFCC supports the premise that strong sanctions support effective enforcement of the law and that where discrepancies between the two pieces of legislation exists, the higher award should be standardised.

Will the Bill provide strong mechanisms to ensure residents are listened to when they have concerns about their building's safety?

NFCC welcomes the draft Bill's provision of new mechanisms for ensuring residents' concerns about building safety are listened to, and the inclusion of a Resident Panel to support and advise the new Building Safety Regulator. However, NFCC believes there is an explicit need for a principal/lead AP for a building to support clarity.

NFCC supports the new duties to provide residents with building safety information and to implement and review a Resident Engagement Strategy detailing complaint processes and routes of escalation and redress.

NFCC welcomes the removal of the 'democratic filter', enabling residents to escalate their complaint directly to the Housing Ombudsman, having first exhausted their landlord's own complaints process.

There are some aspects which would benefit from further clarity, including whether sublet tenants and private rented sector residents can escalate their complaints to the Housing Ombudsman as a body which applies to social housing residents.

Clarity is sought on whether leaseholders are 'relevant owners' and therefore if they can escalate concerns to the New Homes Ombudsman as well the Building Safety Regulator

and the Housing Ombudsman; and if so, which would take primacy.

It is unclear in the draft Bill as to whether there is a distinction between the bodies, residents can go to for HRRBs vs out of scope buildings. It appears that residents in HRRBs can have their concerns heard directly by the new BSR, but residents in 17.9m buildings need to refer to the Housing Ombudsman, which could create a two-tier complaints escalation and redress process.

NFCC appreciates that detail will follow in secondary legislation and embrace the notion of dedicated statutory guidance on how the AP should 'operate a complaints procedure'. It is important this guidance is unambiguous in setting out the responsibilities of the AP and BSM.

Outside of social rented accommodation, our members' experience shows the complex nature of some ownership structures can cause confusion for residents about who is responsible for the safety of their building. The introduction of multiple APs, in addition to multiple RPs, will add further layers of complexity to what is already a significant challenge. This will be more so for residents who themselves will be considered an AP, a RP or both (for example in the role as director of the tenant management organisation).

These challenges can undermine the speed and effectiveness that a complaint can be dealt with. This is especially concerning in mixed use buildings where there is the potential to have multiple RPs under the FSO, and multiple APs under the proposed regime for different parts of the same building, plus the addition of a BSM.

NFCC therefore believes there is an explicit need for a principal AP for a building, who has ultimate responsibility for their building and their Resident Engagement Strategy which mandates the complaints process. This should be supported with clear guidance that sets out the two-way resident engagement process and the responsibilities of the resident, the BSM and the AP(s).

Clarity is welcome on the 'No Wrong Door' approach consulted on as per the Government's policy intent. It is unclear whether a complaint from a resident received by a local FRS, can be referred up to the BSR and/or Housing Ombudsman.

Is the Government right to propose a new Building Safety Charge? Does the bill introduce sufficient protections to ensure that leaseholders do not face excessive charges and that their funds are properly managed?

NFCC welcomes the intent to provide a transparent system for the recovery of costs for the implementation of building safety measures. However, NFCC suggests that any recharging mechanisms for leaseholders be clearly defined as relating to reasonable maintenance and upkeep costs only, to avoid perverse outcomes for the liability and costs associated with serious building defects.

The combustible cladding crisis shows the UK has had systematic failures in construction of buildings, and it is likely the safety case regime will unearth more of these issues, potentially extending into other types of safety and economic loss issues. Under the current system leaseholders would be liable for defects caused by architects, designers, developers and installers, where the building has not been designed or built correctly from the outset.

NFCC has much sympathy for the plight of residents in buildings with non-compliant

cladding systems and inherent building deficiencies; this situation is not the fault of residents, nor is it the fault of FRS who are doing their best to mitigate the risk.

Compliance with Building Regulations is the role of those who design, build, alter, and sign-off buildings, such as designers, architects, installers, and Building Control Bodies. These bodies should pay for remedial issues, where it is their failing, not residents.

NFCC supports the extension of the statutory time available for Building Act 1984 offences to be considered, from two years to ten years, as we support greater accountability for those who design and construct buildings. We would welcome more detail on the specific rationale for the period being ten years, as opposed to a longer period. Experience of the leaky cladding crisis in New Zealand (NZ) suggests that ten years may not be sufficient time for latent building defects to become known.

In Scotland, the right to claim and corresponding obligations do not expire until 20 years after the date upon which the right of action first arose. NFCC suggests that it may be more sensible as a minimum for this to be 20 years, to ensure greater harmonisation of regulations across the UK.

Where the failings are due to non-compliance with the regulations, we would like to see analysis of further policy options for supporting impacted homeowners and leaseholders and making sure costs are met by industry, for example:

- Analysis of options to create a construction industry levy so that developers and others can contribute to the Building Safety Fund
- A review of initiatives taken in similar jurisdictions, for example the specialist mediation and Tribunal services established by the NZ government to support homeowners impacted by the leaky building crisis

Does the Bill improve the product testing regime in a way that will command the full confidence of the sector?

NFCC supports the proposals outlined in the draft Bill with regard to the product testing regime to ensure suitable standards of manufacture, testing, and quality assurance. Having the construction products regulator fulfil this function would act as additional assurance to improve the confidence of the sector.

The proposals would benefit from further clarification to improve confidence in the product testing regime. Two key issues are how to ensure that:

- manufacturers make clear claims regarding how materials perform in fire
- the correct standards of testing have been used.

Future regulation in this area should also consider:

- competency requirements for those in roles who are scrutinising claims and ensuring that materials are used correctly
- prescription of specific data on construction products about the nature of any testing undertaken and limitations on product use
- controls on the scope of claims that are made, to ensure products are not being used beyond their tested limits.

The regulation of construction products should also look to better scrutinise Modern Methods of Construction (MMC), an area where an understanding of materials and

construction technique performance is vital for those specifying their use. This should be carried out in conjunction with building control bodies, particularly where prefabricated structures are used. Consistency in this area would better enable building control bodies to focus on checking that products which have been approved are being installed correctly.

Whilst FRS may not be the primary enforcers of this regulation, having better information about construction products, along with test and performance data, will aid regulation in other areas of fire safety. A shared platform will be essential for all regulators in the area to share data, and report deficiencies or instances of materials and products being used incorrectly or beyond their tested limits.

Is it right that the new Building Safety Regulator be established under the Health and Safety Executive, and how should it be funded?

There are a number of advantages to the new BSR being established under the Health and Safety Executive (HSE), but further work is required to ensure a smooth transition and it is vital that Fire and Rescue Authorities be consulted on the development of the BSR's strategic plan.

The HSE have a well-established operating model in an existing national enforcement role and have a built a strong reputation which encourages self-compliance. As such it provides a good foundation to begin a new BSR, however there are number of details and practical challenges to ensure implementation is successful.

While the HSE have significant experience dealing with private sector, the existing operating model does not deal extensively in a residential setting. The residential landscape and the challenges this brings, in terms of protecting some very vulnerable members of society, will be a new arena for the HSE.

The HSE also has a specialist skills gap when considering 'fire' and 'structural' safety issues. The workload of the BSR will therefore be quite different to the current HSE model. There will be challenges around how to resource and recruit for the BSR, though this would be true regardless of who the lead body was.

NFCC notes the draft Bill makes provisions for the BSR to set a strategic plan. It is vital that Fire and Rescue Authorities and FRSs are adequately consulted in the development of such proposals, which will interact heavily with IRMP and RBIP planning. In considering the strategic plan, the HSE will need to ensure that considerable engagement takes place across 45 FRSs with a mixture of eight different governance models, from Mayors, to combined authorities, through to Police, Fire and Crime Commissioners (PFCCs).

The BSR will be enforcing a third tier of legislation (BSB, FSO, HA) on existing buildings and focus initially should be on how enforcers will work together to ensure no conflicts of interest or duplications exist, to ensure it is meeting the requirements of the regulators code.

Initial setup could take significant central investment, there are also cost implications for stakeholders (FRSs and LA) in standing up the required resource to support the work of BSR whilst continuing with business as usual.

Although the intention is for cost recovery, NFCC has some concerns around how the regime will become self-funding. We look forward to further engagement and detail on the HSE's transition plan.

Does the Bill present an opportunity to address other building safety issues, such as requirements for sprinkler systems?

Yes, there is a unique opportunity to improve the safety of the wider built environment beyond what is currently drafted, by addressing the non-worsening provisions in regulation 4(3) highlighted by Dame Judith Hackitt. We would like to see an ambition to address this in due course for **all buildings.**

NFCC is not proposing requirements which would be prohibitively expensive, however we believe a change of use or major refurbishment should trigger a cost/benefit analysis of reasonable life safety improvements balanced against the value of the building works in question. This could be applied to the entire built environment, to help gradually improve safety across building stock over time.

The proposed framework for the Safety Case Report provides a mechanism for the building safety regulator to challenge assumptions that have been made about safety issues. However, it is unclear how the Safety Case Report will interact with the non-worsening clause 4(3), which does not require improvements to building standards to be retrospectively applied.

More clarity is needed as to whether the Safety Case regime can resolve the tension between the principle of non-worsening and the objectives of continuous improvement. We have had positive engagement with officials on this matter, who seem confident that the Safety Case can be used to require APs to retrofit life safety features where it is to address serious risk.

However, the threshold for risk provided by the Bill through the definition of “major incident” in clause 73 (an incident resulting in a significant number of deaths, or serious injury to a significant number of people) seems high. It is also out of sync with the definition of major incident used by blue light services in the JESIP doctrine which could give rise to confusion.

We remain unsure if Safety Cases will provide a mechanism for pursuing reasonable gradual improvements over time, particularly where these are not supported within Approved Document B.

There is potential for the requirements of a safety case to run in opposition to the minimum requirements of the Approved Documents for the Building Regulations 2010 by requiring a higher level of safety. If this is the case, then there needs to be clarity as to how this could be implemented along with clear guidance about what is expected to achieve the required level of safety. Guidance in this area should set out minimum standards and requirements where risk may be higher, for example, in high rise residential buildings with only a single staircase/means of escape.

The Bill should also consider the management of residential buildings with regard to the need for emergency evacuation plans for vulnerable persons. Whilst guidance on this area may be included in the second stage of legislation in this area, NFCC feels that the requirement to ensure the safety of vulnerable occupants should be made explicit.

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