



Consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings

G15 response

October 2022

About the G15

The G15 is made up of London's largest housing associations. The G15's members provide more than 715,000 homes across the country, including around one in ten homes for Londoners. Delivering good quality safe homes for our residents is our number one priority. Every year our members invest almost £900m in improvement works and repairs to people's homes, ensuring people can live well. Together, we are the largest providers of new affordable homes in London and build around 15% of all affordable homes across England. It's what we were set up to do and what we're committed to achieving. We are independent, charitable organisations and all the money we make is reinvested in building more affordable homes and delivering services for our residents.

Find out more and see our latest updates on our website: www.g15.london

The G15 members are:

- A2Dominion
- Catalyst
- Clarion Housing Group
- The Guinness Partnership
- Hyde
- L&Q
- MTVH
- Network Homes
- Notting Hill Genesis
- One Housing
- Optivo
- Peabody
- Southern Housing Group

For more information, please contact: G15@mtvh.co.uk

Overview

The G15 members are supporters and allies in the government's important work on building safety regulation. We are signatories to the Building a Safer Future Charter, in some cases as founder members or working toward 'Champion' status. Over the past few years G15 members have been actively involved in various industry working groups developing solutions relating to building safety and have helped to pilot emerging policy proposals. We have carried out significant programmes of work within our individual organisations, both to address current building safety issues and to prepare for the future regulatory changes.

The G15's members welcome the opportunity to comment on the government's current proposals, on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings.

We fully support the principles, objectives, and ambition of the proposals. We recognise that the regulatory changes will ultimately bring about significant improvement in the construction and building management sectors, and that this will help to safeguard the safety and wellbeing of our residents who are of course at the heart of everything we do. We also recognise and accept that in the short/medium term there will be a period of disruption and difficulty, for ourselves and the industry as a whole, as we contend with the scope and scale of the changes.

It is within this context that we wish to raise some concerns about the practicalities of the implementation. We also wish to extend a general offer to work with the government and/or building safety regulator, and continue a dialogue, so that we can help to find suitable solutions.

We have grouped these concerns into the following themes:

1. Introduction of the new regime
2. Regulator resourcing
3. Gateways
4. Dutyholder roles and responsibilities

We perceive two key risks associated with our concerns:

- a) That the new regulations may not achieve the government's intended objectives.
- b) That the delivery of much needed new affordable homes may be put at risk, particularly in the short to medium term.

G15 members have come together to submit a joint response to this consultation, in order to highlight our primary shared views and concerns to the government. In addition to collaborating on this response, G15 members have in many cases also contributed to the National Housing Federation's response and/or submitted their own individual responses.

1. Introduction of the new regime

We wish to raise the following points on the arrangements for introducing the new regulatory regime.

Time for industry to adapt

We request that the government allows sufficient time for industry to prepare and adapt before the various legal obligations take effect, after further details of the requirements have been confirmed and clarified through secondary legislation and regulator guidance.

We recognise that the government is keen to implement the new regime as quickly as possible, and we certainly support this in principle. However, we don't agree that industry has already had sufficient time to prepare for the changes. Whilst the industry has been aware of the principles of the proposed regulatory changes for many years, and G15 members and others have been taking steps to prepare, in many ways we cannot properly identify and implement the necessary practical solutions without knowing the detail of the requirements and regulator expectations.

We have ongoing concerns with the current capacity of the Fire & Structural Engineering Consulting sector to support the combined requirements of new build, renovation, and buildings in occupation, as landlords continue to call upon the limited available resources in all these areas. Fire Engineering Consultant capacity is also impacted as they adjust their understanding of what is acceptable to Building Control and the new Building Safety Regulator.

Clarity on dates

We request also that the government publishes a date(s) for when the new regime (or individual elements of the new regime) is expected to come into force. Current published information suggests that this could be any time between April 2023 and October 2023 (ref. transition plan previously issued in connection with the Building Safety Act). This uncertainty over timescales makes it difficult to prepare and prioritise, particularly for development projects that are already in-flight and at critical stages.

Transitional provisions

We request that the government reconsiders the proposed transitional provisions for the regulations covering higher risk buildings, in respect of the cumulative effect of the 6-month period for work to “commence” after the new regime comes into force (ref. paragraphs 12.11 and 12.15 of the consultation), the proposed new definition of “commencement” (ref. paragraphs 11.10 and 11.16), and the application of the transitional provisions to individual buildings (ref. paragraphs 12.7-12.8).

These three variables together result in a very short and abrupt transitional period in practice. This, combined with the lack of clarity over dates as mentioned above, is creating risk and uncertainty for current developments that are already facing viability challenges in a difficult market.

We would therefore ask that the cumulative effect of the three variables is relaxed, through one or more of the following changes:

- Extend the period for work to “commence” after the new regime comes into force to longer than 6 months.
- Don't apply the proposed new, more stringent definition of “commencement” to the transitional provisions; and/or
- Make allowances (within reason) for sites with more than one building, rather than applying the transitional provisions to each individual building – e.g., set one date for commencement of the first building, together with a longstop date for commencement of the last building.

2. Regulator resourcing

We have general concerns about whether HSE (as building safety regulator), fire authorities, and local authority building control will have adequate resources to deliver all aspects of the proposed new regime and how this may impact delivery of the sectors obligations to providing new homes.

We would request that the government considers these potential limitations when devising the regulatory implementation, including the timescales and transitional provisions.

The success of the proposals for both government and industry rely heavily on the resourcing of the regulator and other authorities. If HSE, fire authorities, and local authority building control are not adequately staffed (both in terms of capacity and expertise), then there is the potential for a poor standard of regulatory oversight, significant delays to development projects awaiting regulator approvals, and significant risk and uncertainty for development projects.

Even now, G15 members are experiencing challenges in engaging with HSE, fire authorities and local authorities building control for pre-application consultation advice and the like, and responses from these authorities to formal applications are slow (in some cases with long delays). This is already impacting the delivery of G15 members' development projects. We are concerned that this is due to capacity constraints, and that the pool of expertise is finite.

There are significant limitations on suitably skilled expertise in the industry at present. Recruitment, upskilling and familiarisation with the new regulatory regime at the required scale and within the necessary timescales is likely to be challenging and expensive.

Fire authorities will play an important role in the new regime, but we have heard anecdotally that they do not feel ready for the incoming regime or know how they will resource it.

We are aware that the HSE will recover the regulator resourcing costs through charges to developers. Details have not yet been published as to the likely magnitude of these charges, and therefore the likely cost implications for developers. We would request clarity on this.

3. Gateways

We support the principles and objectives of the gateway's regime and agree there is a need for robust building control approval processes. However, we wish to raise some points as follows.

Determination period extensions

We noted above our concerns regarding regulator resourcing. In connection with this, we foresee risks to the regulator's determination periods at Gateway Two, Gateway Three, and in the event of "major changes" or "notifiable changes".

We are concerned about the potential for significant unplanned delays to development programmes, in the event that developers are effectively obliged to "agree" determination period extensions with the regulator (e.g., ref. paragraph 3.72 of the consultation). We envisage that the regulator may seek to agree extensions with applicants as a result of its capacity constraints, and in this case applicants would have little choice but to agree, as the alternative would be a lengthy section 30A process.

Gateway Two

We agree in principle with the proposals for Gateway Two, including the concept of the 'hard stop' and the requirement to complete and submit much more design information to the regulator before they approve any commencement. We are committed to driving the necessary culture change and are certain it will benefit the industry itself and most importantly residents. This is not to say it will be easy; we are cognisant that G15 members and others will face challenges with the practical implementation – including meeting the extensive Client obligations and adapting our project programmes to allow for lengthy determination periods.

We strongly support the government's inclusion of a 'staged approach' to building control approval, and we would request that this option is treated by the regulator as the norm/default for complex builds. We anticipate that a robust staged approval process will be the most practical solution both for industry to deliver and the regulator to resource and will produce the best outcomes against the objectives. The design and construction of complex buildings is inherently an iterative process, with increasing levels of detail being developed by an increasing number of disciplines as the design progresses. Without the 'staged approach', this process would be compressed with the risk of unintended outcomes or oversights.

We would also request the following in relation to the information required for building control applications (ref. paragraph 3.15 of the consultation), in particular the plans and prescribed documents:

- Greater clarity on the regulator's expectations, as early as possible prior to the requirements taking effect. The information provided through the current consultation is helpful, but there is a further level of detail needed about the extent/level of information expected by the regulator for each type of document. We expect the HSE intends to provide practical guidance, but we'd note that this needs to be published in a timely manner relative to the regulations coming into force, so that Clients and contractors/consultants can prepare effectively.
- Proportionality as to the regulator's expectations. Linked to the above, we would ask that the extent/level of information expected by the regulator for each submission type is proportionate to the purpose of that submission and the associated risks.
- Clarity as to the proposed determination timescales when the applicant provides information to satisfy conditions to approval (ref. paragraph 3.65 of the consultation).

Gateway Three

We are concerned by the proposed 12-week determination period for the regulator's completion certificate approvals (i.e., Gateway Three). We expect that the proposed time period is based on the government's or HSE's own concerns about regulator capacity, however 12 weeks feels excessive and will add significant time and cost to construction programmes.

We request a more pragmatic approach to Gateway Three that meets the needs of both the regulator and developers. We would welcome further dialogue with the government / HSE on this.

We suggest the following as considerations:

- The government proposes that the regulator will be involved throughout the build process, through change control reviews and a programme of inspections. If this is implemented and resourced effectively, then the final approval should be a formality rather than requiring an extensive review. This should allow the determination period to be shortened.
- In reference to paragraph 3.91 of the consultation, we consider that the client (or someone on their behalf) should be able to submit a completion certificate application once all building work that is **material to building safety** has been completed, allowing other minor work (e.g., internal decorations and finishing) to be completed concurrently with the regulator's determination period.

4. Dutyholder roles and responsibilities

We are broadly in agreement with the dutyholder proposals, albeit we are cognisant that G15 members and others will face challenges in meeting the Client obligations. However, we wish to raise some points as follows.

Principal Designer duties

We have concerns about the proposed duties for the Principal Designer (PD) in particular.

We understand the government envisages that the lead design consultant on the project will be assigned the role of PD – usually an architect but in some cases an engineer, depending on the project type and scope. G15 members would generally expect to then assign the PD role to a main contractor once the build contract is entered into.

However, we expect that architects, engineering firms, main contractors, and their professional indemnity (PI) insurers may be unable or unwilling to fully accept the PD duties as currently drafted. We request that the government / HSE carefully considers the drafting of the PD duties, in consultation with consultancy firms, contractors, PI insurers, and industry-facing construction lawyers.

If this isn't addressed, then it is likely that the intent of the regulations will not be delivered in practice. There would be a risk of disconnect between the regulatory descriptions of PD duties and the wording of Client-PD contracts, and a risk that the PD role is just delegated to specialist consultants rather than being integrated into the scope of architects etc – both risks having previously materialised in the case of CDM 2015 implementation.

Based on our experience, we expect that the concerns of consultants (e.g., architects or engineering firms) and their PI insurers may include:

- Consultants are likely to accept obligations to co-ordinate and communicate with others, however they are unlikely to agree contractually to be responsible or liable for the work of others, ensure the compliance of the work of others, or be “in control of” the work of others (except in the case of sub-consultants appointed by them).
- Consultants are unlikely to accept contractual terms that include absolute terminology such as “ensure”, and their contractual obligations tend to be caveated by “reasonable skill and care” provisions.
- The terminology of “all reasonable steps” proposed for the PD compliance declaration appears acceptable, however we expect consultants will want clarity through guidance as to what “all reasonable steps” might constitute in practice.

Competence assessment

As developers we are accustomed to ensuring competency under CDM for example and carrying out our own due diligence on the contractors and designers we appoint. We support the principle that the Client should provide a signed declaration to say that we have assessed and are content that the PD and PC have the necessary competence. We note that the regulator intends to provide guidance to support the competence requirements (ref. paragraph 2.28 of the consultation); this will be welcomed, and we request that this is provided as early as possible prior to the requirements taking effect.

We are aware of PAS 8671 and 8672, but we would note that the untested nature of these standards and the current state of competence frameworks will likely present some challenges for some clients to carry out these assessments efficiently and consistently (and in fact the regulator's ability as well).

Therefore, it will be helpful for the regulator guidance to build upon this and go further in clarifying the expectations both as to the competence standards and the assessment methods.

