

Royal Institute of British Architects

Department for Levelling Up, Housing and Communities:
Consultation on implementing the new building control regime
for higher-risk buildings and wider changes to the building
regulations for all buildings
October 2022

The Royal Institute of British Architects is a global professional membership body driving excellence in architecture. We serve our members and society in order to deliver better buildings and places, stronger communities and a sustainable environment. Being inclusive, ethical, environmentally aware and collaborative underpins all that we do.

The RIBA welcomes the proposed changes to the building control regime, the most significant in generation.

Our comments aim to bolster the policy aims of the Government and ensure the recommendations of Dame Judith Hackitt effect real change within the construction industry, both at a regulatory and behavioural level. Our comments fall under two areas: deliverability of the regulatory process and assurance of built quality.

Deliverability of the regulatory process

Proportionate duties and reasonable steps

The general duties proposed under the Draft Building (Appointment of Persons, Industry Competence and Dutyholders) (England) Regulations [2021] included the term 'must take all reasonable steps to ensure'. We are concerned that the consultation does not mirror this wording for all duties and omits the phrase 'reasonable steps'.

The use of 'reasonable steps' (or 'so far as reasonably practicable' as used in CDM) must be applied to all duties that relate to a professional undertaking. If the term 'ensure' is used without a reasonableness qualification it may not be possible for professionals to be commissioned to undertake a role that those duties will apply to due to their professional indemnity insurance requirements. Only duties that require a dutyholder to provide specific information to another party or to ensure the dutyholder itself is competent, should be absolute. In addition, consistency of regulations is important for business certainty.

Statutory duties with contractual authority

The client must be required to ensure that the Principal Designer and Principal Contractor have reasonable authority, over relevant parties, defined in their contracts to enable them carry out their duties.

Design responsibility

Although the Principal Designer and Principal Contractor role are pivotal to the success of this regulatory regime, it is vital that the regulations and guidance make clear that all designers, contractors, and the client are responsible. Neither the Principal Designer nor any other designer should be required to take responsibility for the design work of other designers.

Assurance of built quality

Autonomous scrutiny of as-built works and evidence of as-built compliance

Within the building control approval application (as part of the Construction Control Plan) there should be a requirement detailing how an autonomous scrutiny of works by the project team will be carried out, and the approach that will be taken to document relevant evidence demonstrating that the building, when built, will be in compliance with relevant requirements. After completion of the works, the completion certificate application must include this evidence demonstrating the building (not simply the design) complies with the relevant requirements.

Questions and detailed answers:

New dutyholder roles and responsibilities in the building regulations to ensure a stronger focus on compliance with the regulations

Do you agree or disagree with the proposed duties that will apply to all dutyholders during design and construction?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

It appears that the duties described in this consultation are a summarised form of the proposed duties included in the Draft Building (Appointment of Persons, Industry Competence and Dutyholders) (England) Regulations [2021] (APICD) rather than newly drafted complete duties. If this is the case it is unhelpful to have duties written as summaries of the proposed draft regulations, small nuances in wording can make a big difference in the practicality of undertaking or being commissioned to undertake a dutyholder role.

The general duties proposed under the Draft Building (Appointment of Persons, Industry Competence and Dutyholders) (England) Regulations [2021] included the term 'must take all reasonable steps to ensure', and the RIBA recommends this is retained in the legislation and applied to all duties.

The use of 'reasonable steps' (or 'so far as reasonably practicable' as used in CDM) must be applied to all duties that relate to a professional undertaking. What is reasonable for a particular duty would

be defined in industry best practice/standards/guidance and by expert witness testimony in court. If the term 'ensure' is used without a reasonableness qualification it will be difficult for any professional to be commissioned to undertake a role that those duties will apply to. Professional indemnity insurance policies may not cover professionals signing up to carry out services with these absolute obligations. Architects and other professionals must be insured for all the work they undertake as set out in their codes of conduct as this provides their clients with a meaningful recourse should the professional be found negligent. Only duties that require a dutyholder to provide specific information to another party or to ensure the dutyholder itself is competent, should be absolute.

Do you agree or disagree with the proposed duties that will apply to the client during design and construction?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The client should be required to resource a project with adequate fees to all parties they appoint.

The duty should be amended to make explicit referent to fees:

A client must make suitable arrangements for planning, managing and monitoring a project (including the allocation of sufficient time, fees and other resources) so as to ensure compliance with all relevant requirements.

The client must be required to ensure that the Principal Designer and Principal Contractor have reasonable authority, over relevant parties, defined in their contracts to enable them carry out their duties.

Do you agree or disagree with the proposed duties that will apply to designers and the Principal Designer during design and construction?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The RIBA recommends that the term 'reasonable steps' is applied all duties unless they only relate to providing specific information, as below.

Designer duties:

- When carrying out design work the designer must **take all reasonable steps to** ensure that, if built, the building work to which the design relates would be in compliance with all relevant requirements;
- Where a designer is carrying out only part of the design of the building work which comprises a project, the designer must **take all reasonable steps to** consider other design work which directly relates to that building work and report any concerns as to compliance with all relevant requirements to the Principal Designer; and

Principal Designer Duties:

- Co-ordinate matters relating to the design work **taking all reasonable steps** to ensure that, if built, the building work to which that design relates will comply with building regulations;

The second duty listed above will require new guidance on what reasonable steps might be in the consideration of other designer's work, most likely produced by each design role's professional body.

The draft duties for the Principal Designer included in the Draft APICD were more expansive and draft Principal Designer duty 2 begins '*The principal designer must take all reasonable steps to ensure:...*' (see page 9 in Draft APICD 2021).

Do you agree or disagree with the proposed duties that will apply to contractors and the Principal Contractor during design and construction?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The RIBA recommends that the term 'reasonable steps' is applied all duties unless they only relate to providing specific information.

Do you agree or disagree with the proposal for organisations appointed as the Principal Designer or Principal Contractor to take reasonable steps to ensure that the individual/s designated, to manage the functions of the Principal Designer or Principal Contractor for that specific project have the relevant competence to do so?

Agree

Do you agree or disagree that regulations should include the requirement on individuals or organisations to notify the relevant dutyholders and those who appoint or ask them to carry out the work where they cease to satisfy the competence requirements?

Agree

Do you agree or disagree with the additional requirements proposed for dutyholders involved in work on higher-risk buildings?

Disagree

Please explain your answer. If you answered disagree, please outline what changes you think should be made.

The client must be required to ensure that the Principal Designer and Principal Contractor have reasonable authority, over relevant parties, defined in their contracts to enable them carry out their duties.

Do you agree or disagree with the requirement on the client to record the steps they took to satisfy themselves that the appointed Principal Designer and Principal Contractor have the relevant competence for the role and include it with the competence declaration required with the building control approval application for higher-risk building work?

Agree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The RIBA does not agree with the statement under clause 2.35 that ‘...the Principal Designer and Principal Contractor will have the overall responsibility for, and are pivotal to, ensuring compliance with building regulations’ requirements including building safety during design and construction...’.

These roles are certainly pivotal, but it is important that regulations and guidance make clear that all designers, contractors and the client are responsible. Neither the Principal Designer nor any other designer should be required to take responsibility for the design work of others.

Do you agree or disagree that anyone making appointments for building work on a HRB should consider whether a serious infraction might call into question a person’s skills, knowledge, experience and behaviours?

Agree

Do you agree or disagree with the proposed meaning of serious infraction?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The definition of serious infraction should also include suspension or expulsion from a professional/trade body.

Do you agree or disagree that the consideration of serious infractions be limited to the last five years?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

Time constraints should be associated with sanctions given following the decision that an infraction has occurred. For example, if a body suspends a member for 2 years, then after this timeframe they should not be restricted by an additional sanction.

Do you agree or disagree that special provisions set out above should be made for domestic clients?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The RIBA recommends that domestic clients must be required to allocate sufficient time and fees so that compliance with all relevant requirements can be achieved by the contracted parties. Those contracted parties will have a duty to make their client aware of this.

Do you agree or disagree that the dutyholders and competence regulations should not apply to work prescribed in Schedule 4 of the Building Regulations 2010?

Agree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

It is impractical and would have limited safety effect to apply these regulations on work where no building notice or deposit of full plans are required.

A series of robust hard stops (“gateway points”) to strengthen regulatory oversight before a higher-risk building is occupied

Do you agree or disagree that the client, Principal Contractor or Principal Designer should be able to submit the required building control approval application to the Building Safety Regulator for higher-risk building work?

Agree

Please provide an explanation for your answer. If you have answered disagree, please outline what changes you think should be made.

The client must ensure that the Principal Designer and Principal Contractor have been given opportunity to comment on the final application, regardless of which dutyholder submits the application.

Do you agree or disagree with the proposed information that must be contained within a competence declaration?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

Under clause 3.21, the proposals use the term ‘Principal Designer (or sole or lead designer)’. This should be ‘Principal Designer (or sole designer)’. If there is a lead designer in the project (i.e. there

are multiple designers) then there should be a Principal Designer. It is important to not confuse the contractual role of lead designer with the statutory role of Principal Designer in the Regulations, these roles will likely be carried out by the same organisation but that will vary by procurement route.

Do you agree or disagree with the proposed list of information that must be contained within a design and build approach document?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes should be made.

The title is misleading, the term 'design and build' is widely understood to relate to a procurement route, which is used on most building projects that fall under the current definition of higher risk buildings.

Do you agree or disagree with the proposed list of information that must be contained within a fire and emergency file?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes should be made.

Under clause 3.33, second bullet point: *'The proposals adopted and approach taken in relation to designing the proposed building to ensure compliance with the applicable requirements of the building regulations relating to the building safety risks and why it is appropriate'*. This is the same information as clause 3.31, first bullet point under the design and build approach document but limited to fire safety only. There should be one place where information is maintained on the design approach taken and its reasons so that this can be used during operation of the building for all safety risks, and to avoid inconsistencies.

Do you agree or disagree with the proposed list of information that must be contained within a construction control plan?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

There should be a requirement detailing how an autonomous scrutiny of works by the project team will be carried out, and the approach that will be taken to document relevant evidence demonstrating that the building, when built, will be in compliance with relevant requirements.

Do you agree or disagree that the Construction Control Plan should set out plans for how the client will maintain and manage the golden thread?

Agree

Do you agree or disagree that the Building Safety Regulator should consult the fire and rescue authority on compliance with the Fire Safety Order on building control approval applications, change control applications and completion certificate applications?

Yes

Do you agree or disagree that a building control approval application must not be determined before 15 working days after the date on which the plans are given to the fire and rescue authority?

Disagree

Please provide an explanation for your answer. If you have answered disagree, what do you consider a reasonable timeframe?

We are concerned that there is a possibility for an application to be deemed approved by the fire and rescue authority if they do not provide a response within 15 days. We recommend that the government sets an appropriate timeframe and ensures that no project is allowed through this process without fire and rescue authority approval.

Do you agree or disagree that 12 weeks is an appropriate timeframe to require the Building Safety Regulator to determine a building control approval application?

Agree

Please provide an explanation for your answer. If you have answered disagree, please explain what you deem to be an appropriate timeframe.

Ensuring that proposals that have not been subject to appropriate regulatory oversight are not approved by default is an important shift in the regulatory process.

Do you agree or disagree with the proposed approach to site inspections of higher-risk building work, including the requirement for the Building Safety Regulator to inspect completed higher-risk building work before determining a completion certificate application?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

As stated under Clause 3.87 'The completion certificate application stage will increase regulatory oversight by introducing a more thorough assessment of 'as-built' (rather than 'as-planned')'. One of the failings of the current system is the abdication of responsibility to the regulator to sign off the work. The proposals place greater responsibility on the project team to provide evidence of compliance and this will require a significant inspection regime or autonomous scrutiny of built work provided by the project team rather than the regulator and this differentiation must be clear in the regulations and guidance.

Best practice guidance will be required on how 'as-built' information should be collected, including need for autonomous scrutiny of as-built works, their likely frequency, surveys of built work and any documentary evidence of built quality that should be provided as part of an application for a completion certificate.

Should typical stages of inspection of building work be set out in guidance to help provide industry with more certainty?

Yes

Please provide an explanation for your answer. If you answered yes, please outline what those stages should be?

Key, safety critical element should be part of the inspection regime by the regulator and expected as part of the project teams' approach to autonomous scrutiny of built work. This may include:

- Elements that stop the spread of fire and smoke, e.g. fire breaks, cavity barriers, fire curtains, fire-stopping, fire doors and any penetrations through them, fire and smoke alarms, sprinkler systems.
- Fixings that prevent people falling or that secure items that themselves could fall from, blow off or cause collapse of a building, e.g. guarding fixings, balcony fixings, restraint systems for maintenance, member connections in structural frameworks, wall ties, restraint ties, cladding fixings, fin fixings, brise soleil fixings, suspended ceiling fixings, solar array mounts.
- Elements that prevent instability or collapse, e.g. reinforced concrete pours, post-tensioning systems, piles.

Do you agree or disagree with the proposed requirement that the client, or someone on behalf of the client, must notify the regulator in writing that the higher-risk building work has been completed in addition to making a completion certificate application?

Agree

At what point should a dutyholder be able to submit a completion certificate application?

- When all notifiable building work has been completed
- When all work (including snagging etc.) is completed
- Other
- Don't know

When all work (including snagging etc.) is completed

Please provide an explanation for your answer.

The submission of a completion certificate should be made following a rigorous final inspection process, which should not just be one visit by the regulator, but a series based on the commissioning process and should come after snagging and any contractual statement of practical completion.

Do you agree or disagree that the prescribed information and documents outlined above should be required in a completion certificate application?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

As explained earlier, the 'design and build approach document' should be given new title.

The construction control plan should include reasonable evidence that the works have been built in compliance with the regulations.

The RIBA supports the new proposed compliance declarations, and we expect these to be insurable under professional services contracts.

Is there any additional information or documentation that may be necessary for a completion certificate application?

Yes

Please provide an explanation for your answer. If you have answered yes, please outline additional information or documentation you think may be necessary.

There is a need for evidence to be collected during construction to demonstrate that of as-built elements comply with relevant requirements, based on autonomous scrutiny of build work. This documentation should be required as part of the updated construction control plan.

Do you agree or disagree that the Building Safety Regulator should consult fire and rescue authorities on compliance with the requirements of the Fire Safety Order?

Agree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

This is essential.

Do you agree or disagree that an application must not be determined until at least 15 working days after the date on which the plans are given to consultees unless they have both responded before the 15 working days deadline?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

We are concerned that there is a possibility for an application to be deemed approved by the fire and rescue authority if they do not provide a response within 15 days. We recommend that the government sets an appropriate timeframe and ensures that no project is allowed through this process without fire and rescue authority approval.

Do you agree or disagree with the proposed reasons for which a completion certificate application should be rejected?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

Under the proposals the regulator will assess whether ‘the higher-risk building work is complete and complies with all applicable building regulations’. We recommend that this is amended to ‘the higher-risk building work is complete, and both the inspections undertaken by the regulator and the evidence provided by the applicant demonstrate that the works comply with all applicable building regulations.’ This amended statement more accurately reflects the responsibility that the regulator is taking.

Do you agree or disagree that 12 weeks is an appropriate timescale to require the Building Safety Regulator to determine a completion certificate application?

Agree

Please provide an explanation to your answer. If you have answered disagree, please outline what you consider to be an appropriate timescale.

Ensuring that proposals that have not been subject to appropriate regulatory oversight are not approved by default is an important shift in the regulatory process.

Is there any further information that should be required as part of a partial completion certificate application?

Yes

Please provide an explanation for your answer. If you have answered yes, please explain what further information should be required.

There is a need for evidence to be collected during construction to demonstrate that of as-built elements comply with relevant requirements, based on autonomous scrutiny of build work. This documentation should be required as part of the updated construction control plan.

Do you agree or disagree with the proposed reasons for which a partial completion certificate application should be rejected?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please outline what changes you think should be made.

Under the proposals the regulator will assess whether ‘the higher-risk building work is complete and complies with all applicable building regulations’. We recommend that this is amended to ‘the higher-risk building work is complete, and both the inspections undertaken by the regulator and the

evidence provided by the applicant demonstrate that the works comply with all applicable building regulations.’ This amended statement more accurately reflects the responsibility that the regulator is taking.

A stronger change control process for higher-risk buildings

Do you agree or disagree with the list of major changes?

Agree

Please provide an explanation for your answer. Are there additional changes that you think should be added to the list?

This will be an effective approach to change management and regulatory oversight. Harmonisation with ISO 99001 will be necessary.

Golden thread of information – having the right people at the right time to have information to support compliance with all applicable building regulations

Do you agree or disagree with the proposed duties on the client in relation to the golden thread?

Agree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes should be made.

The RIBA supports the regulatory process of the golden thread.

Mandatory occurrence reporting

Do you agree or disagree that, when a dutyholder has become aware of an occurrence they must report the occurrence to the Building Safety Regulator without undue delay and provide a written report within 10 calendar days?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The RIBA recommends that a central process and system is mandated to gather building safety occurrences. This should not be unique to each project or client. The RIBA recommends the consideration of Collaborative Reporting for Safer Structures (CROSS): <https://www.cross-safety.org/uk/about-cross-uk>, as a possible or model system.

Do you agree or disagree with the proposed definitions of safety occurrence and risk condition?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

Gathering data on design safety occurrences that are listed in a risk register of residual building safety risks that are dealt with through the design risk management process would be an unnecessary burden and would not lead to any useful intelligence, but these risks appear to fit into the current definition of safety occurrences so a more careful definition is required.

Do you agree or disagree that the proposed information required when reporting a safety occurrence is appropriate?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The details of the occurrence, including the nature of the risk needs expanding to answer the following question (based on CROSS):

- What went wrong, or could go wrong, and what is the impact of this?
- What do you think is the underlying cause of the safety issue?
- Describe and learning outcomes, solutions or further thoughts on this safety occurrence.

More rigorous enforcement powers. A wider and more flexible range of powers will be created to focus incentives on the creation of reliably safe buildings from the outset. This includes compliance and appeals.

Do you agree or disagree that the Building Safety Regulator should not be able to disapply or relax energy efficiency requirements for higher-risk buildings?

Disagree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

The regulator should not be able to relax energy efficiency requirements for any higher risk buildings, these requirements should not be balanced against building safety, both requirements must be met.

Transitional provisions for higher-risk buildings

Do you agree or disagree with the proposal for transitional provisions to only apply to individual buildings as opposed to multi-site projects?

Agree

Please provide an explanation for your answer. If you have answered disagree, please explain what changes you think should be made.

Consideration should be given to the small number of projects that might include multiple buildings, constructed in phases under the same contract.

Do you agree or disagree with the proposed transitional provisions?

Agree