

# Implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings

## NHF submission to the Department for Levelling Up, Housing and Communities consultation

12 October 2022

### Introduction

The National Housing Federation (NHF) is the voice of housing associations in England. We represent almost 600 housing associations that own and manage more than two and a half million homes for around six million people. Our members also provide vital care, support and community services.

Housing associations represent an incredibly diverse sector of independent, not-for-profit organisations driven by their social purpose – to ensure everyone in the country has the opportunity to live in a good quality and safe home that they can afford.

The National Housing Federation welcomed the government's proposals to improve safety in higher-risk buildings and we contributed our expertise and experience to [Dame Hackitt's review that set out the need for a new regulatory system](#) for building safety. Housing associations' first priority is the safety of their residents and in recent years the sector has been working tirelessly to replace unsafe cladding, carry out in-depth safety checks and put in place interim safety measures where necessary to ensure resident safety. Our members are amongst those already piloting some of the key parts of the new regulations.

We have actively engaged with our members on the questions raised in this consultation. Organisations implementing the proposals may be better placed to respond to individual questions, so we have focussed on the overarching themes that emerge from the consultation.

The issues broadly break into three themes: Dutyholders and competency, Development Gateways, and, the introduction of the new regime and resourcing.

We would welcome any opportunity to work with the government to ensure the objectives of new building control regime work well in practice whilst also enabling housing associations to continue their other essential work to tackle the housing crisis. [Please contact Victoria Moffett](#), Head of Building and Fire Safety Programmes for more information.

## **Dutyholders and competency**

Members we spoke to broadly support the Dutyholder responsibilities as set out in the consultation. However, there is some concern that some parts of the new regulations may not have been as well publicised as those relating the higher-risk regime, which could mean some organisations and individuals that will have dutyholder roles won't yet be as conversant with their responsibilities. We would welcome further guidance for those in such a position and would recommend targeted communications either by the Regulator or DLUHC to reach them.

Our members who develop new affordable housing are already conversant with the competency requirements in the Construction (Design and Management) Regulations 2015 (CDM) and already carry out due diligence on the contractors and designers they appoint. The principle of a signed declaration of competency is supported by our members but some have concerns around the ability of non-professional clients, who might be commissioning works to their own homes, to carry out competency assessments consistently and efficiently.

Members have also told us of some apprehension about how clients without specific technical knowledge can certify competency. Therefore we welcome clarification that further guidance will be issued based on work the British Standards Institution is undertaking with experts and other stakeholders. In order for the sector to be as prepared as possible when the regulations take effect, the National Housing Federation asks that this guidance is made available at the soonest opportunity.

In relation to work to be carried out in an existing higher-risk building, our members agree that certification notices should be submitted to the Building Safety Regulator. However, there isn't enough information on the benefits or otherwise of providing notices to a local authority outside of any building control purpose – we'd like to better understand these so we can fully support the suggestion. We do support the suggestions that, like as with new developments, the notices should form part of the golden thread.

## **Development Gateways**

The development gateway regime is welcomed by our members, as is the acknowledgement that robust building control processes need to be in place. There is support for various proposed information that should be submitted to the Regulator with applications and also for the suggested categories of refurbishment work. Alongside this there is support for allowing the Client, Principal Contractor, or Principal Designer to submit the required building control approval application to the Building Safety Regulator for higher-risk building work. Members support the principles of the new development gateways but are keen to understand how some aspects will work in practice. We'd urge the government to look at these as a priority.

Resourcing is a major concern for housing association developers, both in terms of their businesses, but also within local authorities and the new Building Safety Regulator. Of particular concern are the proposed lengths of the determination periods involved in Gateway Two and Gateway Three, and in situations where "notifiable changes" are involved.

Our members feel strongly that a 12-week determination period for Gateway Three is too long. Currently the sector is experiencing delays with development in getting planning consent or discharging conditions. This is mainly due to local authorities being under-resourced. The cost pressures brought by these delays and inflation on materials running so high means that projects can rapidly become unviable.

In addition, our members are worried that developers will be forced to accept extensions to the determination to avoid incurring the extra costs associated with an application to the Secretary of State under the non-determination procedure in section 30A of the Building Act 1984.

Whilst our members are concerned about the resourcing of the Building Safety Regulator and how the determination process will work, housing associations welcome other proposals, including the requirement to submit more information to the Regulator before any work commences. There is also strong support in the sector for the staged approach to approvals by building control. We believe there's a case for the Regulator taking this approach as standard for complex builds.

We believe that in order to properly prepare for their new responsibilities, housing associations urgently need further detail about the level of information expected in each document by the Regulator. We would urge the government to consider the level of information required for each type of submission depending on the associated risks.

Our view is that the regulations should allow for a completion certificate to be submitted when all building safety specific works are completed. This would allow for other minor internal finishing or decorating work to be undertaken whilst the Building Safety Regulator determines the application. We and our members would be willing to discuss what other alternate approaches could be taken, perhaps with the aim of creating an ongoing process of sign off between Gateways Two and Three, to reduce the 12-week period and prevent the risk of large amounts of information delivered at a single moment from creating bottlenecks.

## **Introduction of the new regime and resourcing**

The National Housing Federation understands the government's desire to implement the new regulatory regime as quickly as possible, and supports working at pace to ensure that residents in brand new developments can have confidence in the safety of their buildings. It is important that the sector has time to prepare for implementation given the rightful scale of change and we and other stakeholders would like to see secondary legislation and supporting guidance to enable further implementation as quickly as possible.

Housing associations have engaged with the government over the principles of the new regulatory regime and many of our members have been preparing to implement the recommendations. However, until the full detail of the regulations and requirements of the Building Safety Regulator are known, there are key systems that cannot be set up.

There is also confusion and concern about the timescales for these new regulations to come into effect. Discussions with the Department for Levelling Up, Housing and Communities consultation, as well as the consultation document, suggest that this will happen between April 2023 and October 2023 – 12 to 18 months from the Building Safety Bill receiving Royal Assent. With so many areas of the regulations not yet confirmed, our members find themselves in a position where they cannot prepare certain things (for example, procedures involving the new competency standards and what will be expected of contractors), nor prioritise action on developments already planned, but which might require changes to contracts and procedures after coming under the remit of the new regulations. As stated above, it is important that secondary legislation and supporting guidance are published as soon as possible, to enable those responsible to prepare effectively for regulations coming into effect. Concerns have been raised by several members about the willingness for some contractors to commit to implementing areas of the new

regulations until they come into effect. For example, some contractors do not have appetite to begin working with our members towards implementing the golden thread of information. Conversations on cross-sector collaboration might be eased by the publication of secondary legislation.

We recognise that the transitional arrangements set out by government are intended to ensure that new buildings are subject to the same more stringent arrangements in their construction, which we support. Some of our members have raised concern about the cumulative impact of the arrangements on developments already in train, in terms of raising uncertainties. The National Housing Federation would welcome the opportunity to work with the government to find a practical resolution to this challenge which recognises the importance of implementing the new system, with mitigating uncertainty over new developments already in train.

There are also concerns in the sector about resourcing in the bodies involved with contributing to and enforcing the new regime. As mentioned previously, our members are experiencing growing pressure on development delivery due to delays in planning caused by the lack of capacity in local authorities. These delays cause extra costs due to inflation rising at such frequent and high levels. This in-turn creates problems with the financial viability of affordable housing schemes.

In order to be successful, the Building Safety Regulator and other authorities must be well-resourced. Our experience is that building control bodies, fire authorities and others involved in the regulatory process do not have enough staff to cope with demand, and that this pressure often leads to a loss of expertise over time. There are already limitations in the industry due to a lack of suitably skilled staff and the limited timelines proposed to implement the new regime risk making that worse. This is another issue where we would like the opportunity to work with government to ensure the new regime is successful.

The National Housing Federation are committed to the new building safety regime and want to ensure it delivers for social housing residents. Our members have been implementing changes where possible and seeking to work with other stakeholders where necessary to ensure we can be as prepared as possible ahead of legal requirements taking effect. Housing associations have sometimes found that key stakeholders they would need to work with in the new regime show less appetite to prepare in advance of regulatory changes becoming legal requirements, which can hamper the extent to which housing associations as clients can prepare. We would welcome any opportunity to work with the government and, in turn the Building

Safety Regulator, to develop guidelines and share best practice in the future, and we are seeking conversations with other key stakeholders to support our members in their work to establish new ways of working ahead of time.

For any queries relating to this response, [please contact Victoria Moffett](#), Head of Building and Fire Safety Programmes.