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EXCELLENCE
IN ENERGY
ASSESSMENT

Elmhurst Energy's response to the
“ The future of Building Regulation enforcement”
consultation
In Confidence

Prepared for: MHCLG

31st July 2019



Domestic

Commercial

On Construction



Introduction

Elmhurst Energy are pleased that MHCLG Government are seeking a consultation on the future of Building Regulation compliance in light of the recommendations made by Dame Judith Hackitt we are delighted to to be invited to submit our views

We have provided an overview of the issues and our proposals, then responded to all the questions on which we have sufficient experience to comment.

We hope you find the responses constructive and useful for taking the changes forward.

1. Elmhurst response

The principles that run throughout our response are;

- It should be remembered that fire kills but so does noncompliance with aspects of buildings regulation such as electrical safety and fuel poverty (and overheating) caused by inefficient buildings.
- Any strategy should create a single framework with elements that can be reduced for low risk construction
- No builder should be able to choose their regulator
- Enforcement between requirements of the regulations should be balanced so not to distort the emphasis.
- Regulations should be outcome based so the remove the subjectivity of compliance and to create a feedback loop to continually improve the methodologies used in setting regulations and tools used in the design process, such as SAP.
- The implementation (transition period) for new regulations must be kept to a minimum and not extended by virtue of planning.
- The system should give public visibility to regulatory and supporting documentation. Sunlight is the best disinfectant.
- Timely guidance is needed to cater for the introduction of new technologies and the impact they might have on the building e.g. battery storage and charging of electric vehicles



Elmhurst propose that;

Framework

The new regulatory framework should be designed to cater for all building works with principles of responsibility and enforcement that are applied in a common way, scaled by the risk.

Responsibility

The responsibility for building regulation compliance should always be with the builder, whether that is a new porch on an existing home or a new build high rise residential building.

Builders must, based upon their own competence and the risks of the building works, sign off compliance against all appropriate parts of the building regulations.

Where proving compliance is beyond their competence then the builder may contract expertise to provide external opinion on compliance. Such contractors shall be controlled through Competence Persons Schemes or similar.

Statements of conformity

Statements of conformity, signed to address each part of the regulations, should be submitted to the central regulator at key stages of the build, together with details of the work done and supporting independent testing and advice on which compliance was measured.

Oversight

On a risk based approach (based upon building type, builder experience, level of independent expertise employed by the builder, systems installed etc.) the Regulator should consider what regulatory involvement may be necessary and inspect the elements to ensure compliance has been achieved. If problems arise, from the independent inspection, from complaints or from building failure, the builder is always accountable. Use of independent contractors to support compliance statements may mitigate responsibility.

Visibility

Statement of conformity should be placed in a central repository (similar to the Data warehouse designed and built for PAS 2035) which is accessible by all authorised stakeholders (including regulators, fire brigade and building owners) to provide both information and link to the responsible person responsible for declaring regulatory compliance.

Guidance

Regulations should remain vertical in nature (Part A Structure, Part B Fire etc) but be limited to the performance based outcomes required. Guidance can be provided horizontally, by activity (e.g. Guidance on Building regulations that might apply when building a house extension) which signpost back to the regulations.

2. Questions and Answers

Elmhurst is an approved EPBR accreditation body involved with the issuing of Energy Performance Certificates and runs a number of competency schemes, one of which is recognised by government as a Competent Persons Scheme. We have limited our opinions based upon that experience and answered questions from chapters 2, 3a, 5 and 6 only. We do not feel competent to give opinions on questions relating to other chapters.

Chapter 2: Stronger requirements for multi-occupied high-rise residential buildings

Q. 1.1 Do you agree that the new regime should go beyond Dame Judith's recommendation and initially apply to multi-occupied residential buildings of 18 metres or more (approximately 6 storeys)? Please support your view.

Yes. The regulatory regime should be capable of being applied to all residential building works, from the building of a porch to a new high rise apartment block. It makes sense to pilot this regime with a subset of projects of highest risk

Q. 1.2 How can we provide clarity in the regulatory framework to ensure fire safety risks are managed holistically in multi-occupied residential buildings?

Give total visibility to the products, design and nature of construction, including the companies that supplied them and the identities of accountable persons. Independent measurement and verification of all buildings, verifying that intended design targets and performance thresholds have been delivered also has a vital role to play. This also has the benefit of providing a mechanism for feedback and continuous improvement i.e. helping Government and industry at large determine what systems and construction practices consistently deliver the best results.

Q. 1.3 If both regimes are to continue to apply, how can they be improved to complement each other?

Responsivity of the new regulatory regime should apply to all aspects of building regulation for buildings in scope. Inconsistency of enforcement will create bad practice, and confusion. Bringing new properties within scope should be done quickly.



Q. 1.4. What are the key factors that should inform whether some or all non-residential buildings which have higher fire rates should be subject to the new regulatory arrangements during the design and construction phase? Please support your view.

The new regulatory regime should apply to all building regulations (not just fire), and across all building types. Anything less will cause confusion.

Q.1.5. Linked to your answer above, which of the ‘higher-risk workplaces’ in paragraph 42 would you consider to be higher-risk during the design and construction phase?

No strong opinion

Q. 1.6. Please support your answer above, including whether there are any particular types of buildings within these broad categories that you are particularly concerned about from a fire and structural perspective?

No strong opinion

Q. 1.7. On what basis should we determine whether some or all categories of supported/sheltered housing should be subject to the regulatory arrangements that we propose to introduce during the occupation stage? Please support your view.

No strong opinion

Q. 1.8. Where there are two or more persons responsible for different parts of the building under separate legislation, how should we ensure fire safety of a whole building in mixed use?

No strong opinion

Chapter 3: A new dutyholder regime for residential buildings of 18 metres or more

Q. 2.1. Do you agree that the duties set out above are the right ones?

Yes

Q. 2.2. Are there any additional duties which we should place on dutyholders?

Please list.

Duty holder's should be recorded and their identity accessible by the regulatory authorities and future building owners.

Q. 2.3. Do you consider that a named individual, where the dutyholder is a legal entity, should be identifiable as responsible for building safety? Please support your view.

The duty holder should be named “natural person” but when they work for an organisation that should also be recorded.



Q. 2.4. Do you agree with the approach outlined above, that we should use Construction (Design and Management) Regulations 2015 (CDM) as a model for developing dutyholder responsibilities under building regulations? Please support your view.

No strong opinion

Q. 2.5. Do you agree that fire and rescue authorities should become statutory consultees for buildings in scope at the planning permission stage? If yes, how can we ensure that their views are adequately considered? If no, what alternative mechanism could be used to ensure that fire service access issues are considered before designs are finalised?

When fire is a high risk, such as high rise residential buildings but as the new regulatory authority should apply to the full breadth of regulations the involvement of other similar agencies, such as the police, may be appropriate.

Q. 2.6. Do you agree that planning applicants must submit a Fire Statement as part of their planning application? If yes, are there other issues that it should cover? If no, please support your view including whether there are alternative ways to ensure fire service access is considered.

Insufficient experience to comment.

Q. 2.7. Do you agree that fire and rescue authorities should be consulted on applications for developments within the 'near vicinity' of buildings in scope? If so, should the 'near vicinity' be defined as 50m, 100m, 150m or other. Please support your view.

Insufficient experience to comment

Q. 2.8. What kind of developments should be considered?

- All developments within the defined radius,
- All developments within the defined radius, with the exception of single dwellings,
- Only developments which the local planning authority considers could compromise access to the building(s) in scope,
- Other.

Insufficient experience to comment

Q. 2.9. Should the planning applicant be given the status of a Client at gateway one? If yes, should they be responsible for the Fire Statement? Please support your view.

No strong opinion.

Q. 2.10. Would early engagement on fire safety and structural issues with the building safety regulator prior to gateway two be useful? Please support your view

Early involvement is always preferable.

Q. 2.11. Is planning permission the most appropriate mechanism for ensuring developers consider fire and structural risks before they finalise the design of their building? If not, are there alternative mechanisms to achieve this objective?

Being early in the process, and the first regulatory input, Planning is a useful gate to ensure that key aspects of safety have been considered. Unfortunately some planners may not be fully familiar with the technical requirements, nor the level of competence that may be appropriate for individuals making such a statement. It may be appropriate for planning enforcement to request input from the building regulator.

The process must also ensure that commitments given at planning are delivered and compliance confirmed and overseen. Our experience is that optimistic energy performance claims made at planning are often made by individuals who are not competent to make such judgement, and sometimes cannot be delivered.

Q. 2.12. Do you agree that the information at paragraph 89 is the right information to require as part of gateway two? Please support your view.

Duty holders should provide evidence of compliance for all aspects of building regulations

Q. 2.13. Are these the appropriate dutyholders to provide each form of information listed at paragraph 89?

No strong opinion

Q. 2.14. Should the Client be required to coordinate this information (on behalf of the Principal Designer and Principal Contractor) and submit it as a package, rather than each dutyholder submit information separately?

Using the data warehouse concept being developed for PAS2035 all application and compliance information should be uploaded to a central portal that can be accessed by the regulators, interested stakeholder and the building owner, now and in the future.

Q. 2.15. Do you agree that there should be a 'hard stop' where construction cannot begin without permission to proceed? Please support your view

Yes, retrospective permission is always going to be inferior and difficult to enforce.



Q. 2.16. Should the building safety regulator have the discretion to allow a staged approach to submitting key information in certain circumstances to avoid additional burdens? Please support your view.

Yes, as long as this does not undermine the quality of construction, or the activities of the regulator.

Q. 2.17. Do you agree that it should be possible to require work carried out without approval to be pulled down or removed during inspections to check building regulations compliance? Please support your view.

Yes

Q. 2.18. Should the building safety regulator be able to prohibit building work from progressing unless non-compliant work is first remedied? Please support your view

Yes

Q. 2.19. Should the building safety regulator be required to respond to gateway two submissions within a particular timescale? If so, what is an appropriate timescale?

Yes

Q. 2.20. Are there any circumstances where we might need to prescribe the building safety regulator's ability to extend these timescales? If so, please provide examples

Insufficient experience to comment

Q. 2.21. Do you agree that the Principal Contractor should be required to consult the Client and Principal Designer on changes to plans?

Yes

Q. 2.22. Do you agree that the Principal Contractor should notify the building safety regulator of proposed major changes that could compromise fire and structural safety for approval before carrying out the relevant work?

Yes



Q. 2.23. What definitions could we use for major or minor changes?

- Any design change that would impact on the fire strategy or structural design of the building;
- Changes in use, for all or part of the building;
- Changes in the number of storeys, number of units, or number of staircase cores (including provision of fire-fighting lifts);
- Changes to the lines of fire compartmentation (or to the construction used to achieve fire compartmentation);
- Variations from the design standards being used;
- Changes to the active/passive fire systems in the building;

Other – please specify

Insufficient experience to comment

Q. 2.24. Should the building safety regulator be required to respond to notifications of major changes proposed by the dutyholder during the construction phase within a particular timescale? If yes, what is an appropriate timescale?

Insufficient experience to comment

Q. 2.25. What are the circumstances where the Government might need to prescribe the building safety regulator's ability to extend these timescales?

Insufficient experience to comment

Q. 2.26. 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? Please support your view.

Final declaration should be one individual, the Principal Contractor, who confirms compliance. Their claim may be supported by a statements from the designer, and other experts, on which the contractor might rely in cases of dispute.

Q. 2.27. Should the building safety regulator be required to respond to gateway three submissions within a particular timescale? If so, what is an appropriate timescale?

Insufficient experience to comment

Q. 2.28. Are there any circumstances where we might need to prescribe the building safety regulator's ability to extend these timescales? If so, please support your view with examples

Insufficient experience to comment



Q. 2.29. Do you agree that the accountable person must apply to register and meet additional requirements (if necessary) before occupation of the building can commence? Please support your view.

Insufficient experience to comment

Q. 2.30. Should it be an offence for the accountable person to allow a building to be occupied before they have been granted a registration for that building? Please support your view.

Yes

Q. 2.31. Do you agree that under certain circumstances partial occupation should be allowed? If yes, please support your view with examples of where you think partial occupation should be permitted

Insufficient experience to comment

Q. 2.32. Do you agree with the proposal for refurbished buildings? Please support your view

Insufficient experience to comment

Q. 2.33. Do you agree with the approach to transitional arrangements for gateways? If not, please support your view or suggest a better approach?

Insufficient experience to comment

Q. 3.1. Do you agree that a safety case should be subject to scrutiny by the building safety regulator before a building safety certificate is issued? Please support your view.

Insufficient experience to comment

Q. 3.2. Do you agree with our proposed content for safety cases? If not, what other information should be included in the safety case?

Insufficient experience to comment

Q. 3.3. Do you agree that this is a reasonable approach for assessing the risks on an ongoing basis? If not, please support your view or suggest a better approach.

Yes, agreed

Q. 3.4. Which options should we explore, and why, to mitigate the costs to residents of crucial safety works?

Insufficient experience to comment



Q. 3.5. Do you agree with the proposed approach in identifying the accountable person? Please support your view.

Insufficient experience to comment

Q. 3.6. Are there specific examples of building ownership and management arrangements where it might be difficult to apply the concept of an accountable person? If yes, please provide examples of such arrangements and how these difficulties could be overcome.

Insufficient experience to comment

Q. 3.7. Do you agree that the accountable person requirement should be introduced for existing residential buildings as well as for new residential buildings? Please support your view.

Yes the regime should apply to all building works in all types of building, new and existing.

Q. 3.8. Do you agree that only the building safety regulator should be able to transfer the building safety certificate from one person/entity to another? Please support your view.

Insufficient experience to comment

Q. 3.9. Do you agree with the proposed duties and functions of the building safety manager? Please support your view.

Insufficient experience to comment

Q. 3.10. Do you agree with the suitability requirements of the building safety manager? Please support your view

Insufficient experience to comment

Q. 3.11. Is the proposed relationship between the accountable person and the building safety manager sufficiently clear? Please support your view.

Insufficient experience to comment

Q. 3.12. Do you agree with the circumstances outlined in which the building safety regulator must appoint a building safety manager for a building? Please support your view

Insufficient experience to comment

Q. 3.13. Do you think there are any other circumstances in which the building safety regulator must appoint a building safety manager for a building? Please support your view with examples.

Insufficient experience to comment

Q. 3.14. Under those circumstances, how long do you think a building safety manager should be appointed for?

Insufficient experience to comment

Q. 3.15. Under what circumstances should the appointment be ended?

Insufficient experience to comment

Q. 3.16. Under those circumstances, how do you think the costs of the building safety manager should be met? Please support your view.

Insufficient experience to comment

Q. 3.17. Do you agree that this registration scheme involving the issue of a building safety certificate is an effective way to provide this assurance and transparency? If not, please support your view and explain what other approach may be more effective.

Totally agree. Central registration allows for regulatory oversight and will act as a repository for future building owners to refer.

Q. 3.18. Do you agree with the principles set out in paragraphs 180 and 181 for the process of applying for and obtaining registration?

Yes

Q. 3.19. Do you agree with the suggested approach in paragraph 183, that the building safety certificate should apply to the whole building? Please support your view.

Insufficient experience to comment

Q. 3.20. Do you agree with the types of conditions that could be attached to the building safety certificate? Please support your view.

Insufficient experience to comment

Q. 3.21. Do you agree with the proposals outlined for the duration of building safety certificates? If not, please support your view.

Insufficient experience to comment

Q. 3.22. Do you agree with the proposed circumstances under which the building safety regulator may decide to review the certificate? If not, what evidential threshold should trigger a review?

Insufficient experience to comment



Q. 6.1. Should the periodic review of the regulatory system be carried out every five years/less frequently? If less frequently, please provide an alternative time-frame and support your view.

To achieve net zero carbon commitments the rate of adoption of new technologies will need to increase rapidly. New technology, such as electric vehicles and battery storage of electricity in dwellings, will create new risks that need to be addressed quickly. We would suggest that regulations should be under constant review with major reviews at no more than five yearly intervals for key aspects of regulation such as fire and energy efficiency.

Q. 6.2. Do you agree that regulatory and oversight functions at paragraph 315

- **are the right functions for a new building safety regulator to undertake to**
- **enable us to achieve our aim of ensuring buildings are safe? If not,**
- **please support your view on what changes should be made.**

No strong opinion other than the principle of no building choosing their own regulator should be maintained.

Q. 6.3. Do you agree that some or all of the national building safety regulator functions should be delivered ahead of legislation, either by the Joint Regulators Group or by an existing national regulator? Please support your view.

No strong opinion

Q. 7.1 Government agrees with the Competence Steering Group's recommendations for an overarching competence framework, formalised as part of a suite of national standards (e.g. British Standard or PAS). Do you agree with this proposal? Please support your view.

No strong opinion

Q. 7.2. Government agrees with the Competence Steering Group's recommendations for establishing an industry-led committee to drive competence. Do you agree with this proposal? Please support your view.

Yes the drive for competence should be industry led but with sufficient stakeholder input to ensure that commercial interests do not predominate.

Q. 7.3. Do you agree with the proposed functions of the committee that are set out in paragraph 331? Please support your view.

No strong opinion

Q. 7.4. Do you agree that there should be an interim committee to take forward this work as described in paragraph 332? If so, who should establish the committee? Please support your view.

No strong opinion



Q. 8.1. Do you agree with the approach of an 'inventory list' to identify relevant construction products to be captured by the proposed new regulatory regime? Please support your view.

Insufficient experience to comment

Q. 8.2. Do you agree that an 'inventory list' should begin with including those constructions products with standards advised in Approved Documents? Please support your view.

Insufficient experience to comment

Q. 8.3. Are there any other specific construction products that should be included in the 'inventory list'? Please list.

Insufficient experience to comment

Q. 8.4. Do you agree with the proposed approach to requirements for construction products caught within the new regulatory regime? Please support your view.

Insufficient experience to comment

Q. 8.5. Are there further requirements you think should be included? If yes, please provide examples

No

Q. 8.6. Do you agree with the proposed functions of a national regulator for construction products? Please support your view.

Insufficient experience to comment

Q. 8.7. Do you agree construction product regulators have a role in ensuring modern methods of construction meet required standards? Please support your view

Insufficient experience to comment

Q. 8.8. Do you agree that construction product regulators have a role in ensuring modern methods of construction are used safely? Please support your view.

Insufficient experience to comment

Q. 8.9. Do you agree with the powers and duties set out in paragraph 350 to be taken forward by a national regulator for construction products? Please support your view.

Insufficient experience to comment

Q. 8.10. Are there other requirements for the umbrella minimum standard that should be considered? If yes, please support your view.



No strong opinion

Q. 8.11. Do you agree with the proposed requirements in paragraph 354 for the umbrella minimum standard? If not, what challenges are associated with them?

No strong opinion

Q. 8.12. Do you agree with the proposal for the recognition of third-party certification schemes in building regulations? Please support your view.

Insufficient experience to comment

Q. 8.13. Do you agree that third-party schemes should have minimum standards? Please support your view.

Insufficient experience to comment

Q. 8.14. Are there any benefits to third-party schemes having minimum standards? Please support your view

Insufficient experience to comment

Q. 8.15. Are there challenges to third-party schemes having minimum standards? Please support your view.

Insufficient experience to comment

Chapter 6: Enforcement, compliance and sanctions

Q. 9.1. Do you agree with the principles set out in the three-step process above as an effective method for addressing non-compliance by dutyholders/accountable persons within the new system?

Yes agreed

Q. 9.2. Do you agree we should introduce criminal offences for:

(i) an accountable person failing to register a building;

(ii) an accountable person or building safety manager failing to comply with building safety conditions; and

(iii) dutyholders carrying out work without the necessary gateway permission?

Yes agreed

Q. 9.3. Do you agree that the sanctions regime under Constructions Products Regulations SI 2013 should be applied to a broader range of products? Please support your view.

Insufficient experience to comment

Q. 9.4. Do you agree that an enhanced civil penalty regime should be available under the new building safety regulatory framework to address noncompliance with building . safety requirements as a potential alternative. to criminal prosecution? Please support your view.

Yes agreed

Q. 9.5. Do you agree that formal enforcement powers to correct non-compliant work should start from the time the serious defect was discovered? Please support your view.

Insufficient experience to comment

Q. 9.6. Do you agree that we should extend the limits in the Building Act 1984 for taking enforcement action (including prosecution)? If agree, should the limits be six or ten years?

Yes agreed but we have no experience to indicate which period is more suitable.

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