

RE:UK Response to MCHLG's consultation - Improving proportionality and building safety outcomes in building control: emergency repairs under the higher-risk building regime

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Real Estate:UK

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General Comments

RE:UK welcomes the opportunity to respond to the Government's consultation on improving proportionality and building safety outcomes in building control.

Our members' experience suggests that there are practical difficulties with the current emergency repairs provisions, particularly in determining what constitutes an emergency and what works can legitimately proceed through the emergency repairs route. We therefore welcome the Government's consideration of how the regime could be made clearer and more proportionate while maintaining appropriate regulatory oversight.

A particularly strong theme from our members is the importance of clear guidance alongside any legislative change. Members have encountered circumstances where the lack of clarity around the current provisions creates uncertainty for building owners, managers and their advisers and can make it more difficult to undertake necessary safety work promptly.

Question 1: Do you think the current emergency repairs provision is proportionate?**Disagree.**

Our members' experience indicates that the current provision can be too restrictive and difficult to apply in practice.

In particular, limiting the provision to "repairs" does not always reflect the practical realities of maintaining existing higher-risk buildings. It may not be possible to repair an existing component or replace it on a like-for-like basis where equipment and systems have become obsolete.

There is also uncertainty about what constitutes an emergency, making it difficult for those responsible for buildings to determine with confidence whether work falls within the emergency repairs route or requires a Gateway 2 application.

We therefore see a case for reform of the current arrangements.

Question 2: Do you think the current scope of the provision, as explained in the background section of the document, provides a proportionate route to address genuine emergencies without undermining standards?**Disagree.**

Our members' experience suggests there can be a gap between works which require urgent attention from a building-safety perspective and the narrower category of works which qualify as emergency repairs.

This is particularly relevant where other safety processes identify work as requiring urgent action. For example, a fire risk assessment may identify an action requiring attention within a particular timeframe, while the work may not meet the current emergency repairs definition and therefore requires a Gateway 2 application.

Question 3: Are there any aspects of the provision that are difficult to interpret or apply? If so, which?

Yes.

Members identified several areas where greater clarity would be beneficial, including:

- the threshold for determining what constitutes an emergency;

- whether and when replacement or upgrading of an existing component is permissible;
- the treatment of fire stopping and compartmentation defects; and
- the meaning of "welfare" within the existing provision and the extent to which wider impacts on residents should be taken into account.

Members also highlighted examples of fire-safety components requiring urgent replacement following incidents where there had nevertheless been uncertainty as to whether the work met the definition of emergency works.

Question 4: Do you think that the current provision enables timely action to address risk in HRBs urgently?

Disagree.

Members identified circumstances where necessary safety work cannot clearly proceed through the emergency repairs route despite there being a strong case for addressing the issue promptly.

There can also be tension between the building control regime and other fire-safety obligations. A fire risk assessment or the fire and rescue service may require work within a particular timeframe, while the need to proceed through Gateway 2 can make meeting that timeframe difficult.

Question 5: If the answer to the previous question is no, please can you provide examples of where the provision has not enabled timely action to resolve risk in HRBs urgently?

Members highlighted examples involving fire-safety components requiring urgent replacement following incidents, but where there was uncertainty about whether the work qualified under the emergency works provisions.

Fire stopping and compartmentation were also raised. Smaller defects may be identified which merit prompt remediation but do not necessarily meet the existing emergency threshold.

Members also noted that the full extent of fire stopping work is not always apparent before work commences. Additional defects can be uncovered once work begins, creating practical difficulties where further Gateway 2 applications may be required to address relatively small items of additional work.

Question 6: Do you think the current emergency repairs provision should be expanded to include replacements, enhancements or improvements of an individual building element?

Agree.

Members saw a strong practical case for allowing replacements and upgrades where these are necessary as part of emergency work.

In some cases, like-for-like repair or replacement is simply impossible because the original equipment is obsolete and replacement parts or systems are no longer available.

Members felt that the regime should not inadvertently encourage building owners to seek obsolete components simply to remain within a narrow interpretation of "repair". Where an existing component needs urgent attention and a modern replacement performs the same underlying function, the regulatory framework should recognise that an upgrade may be the most appropriate and practical solution.

Question 7: Can you share any examples of emergency works that are not simply repairs, but would instead be classed as replacements or enhancements/improvements?

Members highlighted circumstances involving older building systems where equipment has failed and equivalent components are no longer available.

Fire alarm systems were one example discussed. Where legacy equipment fails, the components necessary for a like-for-like repair or replacement may no longer be available, meaning installation of modern equipment is unavoidable.

Similar issues can arise where other fire-safety components need to be replaced following an incident.

Question 8: Are there any risks to expanding the scope of the provision to include replacements, enhancements or improvements that we have not considered here?

Members recognised that an expanded route would require sufficiently clear boundaries to distinguish legitimate urgent work from larger or more substantial programmes which should proceed through the normal regulatory process.

Clear guidance would therefore be important to ensure that the provision is applied appropriately and consistently.

Question 9: Do you think expanding the scope of the provision would encourage misuse of the route?

Members recognised that there is a risk that a wider provision could be interpreted differently by different parties.

However, members' experience also suggests that ambiguity within the current system can itself encourage unintended behaviours and inconsistent interpretation. Clear definitions and guidance will therefore be particularly important if the provision is expanded.

Question 10: Do you think an additional route for critical works is needed alongside the emergency repairs route?

Members saw potential value in a separate critical works route as a proportionate mechanism for urgent safety work which does not satisfy the existing emergency threshold.

This could potentially provide a route for smaller-scale safety works which merit prompt attention without necessarily constituting an immediate emergency.

However, members did not reach a definitive collective view on whether a separate critical works route would ultimately be preferable to widening the existing emergency works provision.

If a separate route is introduced, the distinction between emergency and critical works, and the processes applying to each, would need to be very clear.

Question 11: What types of work would you consider to be critical works?

Members identified smaller-scale fire stopping and compartmentation works as potentially suitable examples.

Relatively small defects can be identified which do not constitute an immediate emergency but which should nevertheless be addressed promptly as part of maintaining a building's fire-safety arrangements.

Members also considered that fire risk assessments could be relevant in identifying critical work. Where an assessment identifies an action as requiring urgent attention, consideration should be given to the role that assessment could play in determining whether work should be able to proceed through an expedited route.

Question 12: Are there any risks to creating a route for critical works that we have not considered here?

A key issue will be ensuring that the boundaries of a critical works route are sufficiently clear.

Members recognised that appropriate safeguards would be needed to prevent the route being used as an alternative to the normal Gateway process for works which properly belong within that process.

There is also a risk of introducing further uncertainty if the relationship between "emergency" and "critical" works is not clearly defined.

Question 13: Do you think creating a new critical works route would encourage misuse of the route?

There is a potential risk of misuse, particularly if the scope of critical works is not clearly defined.

Members' experience of the current regime demonstrates that uncertainty about the appropriate route for urgent safety works can lead those responsible for buildings to consider whether other regulatory mechanisms could affect whether work qualifies as an emergency.

Members did not support inappropriate use of other regulatory mechanisms for this purpose. However, the fact that these questions arise in practice reinforces the importance of a clear and workable route, supported by well-defined boundaries and guidance.

Question 28: Would further guidance on the interpretation and use of the emergency repairs provision be beneficial?

Yes.

This was one of the strongest themes emerging from our member discussion.

Members considered that clearer guidance could make a significant practical difference alongside any changes to the underlying legislation. Experience of the regime has demonstrated areas where those responsible for buildings struggle to determine confidently what is and is not an emergency repair.

The lack of clarity can encourage inconsistent interpretations and unintended behaviours as those responsible for buildings seek to determine how necessary safety works can be undertaken.

Clear guidance would support more consistent decision-making and help ensure urgent work is undertaken through the appropriate route.

Question 29: If yes, what further information would you like to see that is not captured in existing guidance?

Members would particularly welcome clearer guidance on:

- the circumstances that constitute an emergency and the threshold that must be met;
- the treatment of replacements and upgrades where like-for-like repair or replacement is impossible because equipment is obsolete;
- the treatment of fire-safety components requiring replacement following incidents;
- the circumstances in which fire stopping and compartmentation work may qualify;
- the relationship between emergency works and mandatory occurrence reporting;
- the role and relevance of fire risk assessments when determining the urgency of work; and
- the interaction between the building control regime and requirements or enforcement action from fire and rescue services.

Members also highlighted the importance of the BSR learning from the emergency works notifications and regularisation applications it has received to date and using that experience to provide practical examples of what is and is not considered to fall within the provision.

Additional issue: regularisation applications

We would also like to highlight members' experience of the regularisation process following emergency work.

Members reported submitting regularisation applications following emergency works but subsequently receiving limited feedback or visibility on their progress. In some cases, applications were reported to have remained outstanding for extended periods.

This creates uncertainty for those responsible for buildings after emergency work has been undertaken. Alongside any reform of the scope of emergency or critical works, we would therefore welcome greater clarity around the regularisation process, including how and when applicants can expect confirmation of the outcome of an application.