

24 November 2022  
BY EMAIL ONLY

Dear Approved Inspectors,

**CICAIR update to AIs on their continuing obligation to consult Thames Water**

As you will be aware, Thames Water recently announced that it will not review or respond to H4 Consultations<sup>1</sup> after Friday 21 October 2022. Applications for Build Over Agreements are not covered by this and will continue to be reviewed by Thames Water.

Despite this announcement, CICAIR advises that Approved Inspectors (“AIs”) continue to send all H4 Consultations to Thames Water for the reasons set out below.

AIs should wait the prescribed 15-day period after submitting their H4 Consultations to Thames Water before issuing:

- Plans Certificates; and/or
- Final Certificates.

AIs should submit their H4 Consultations for Initial Notices and/or Amendment Notices either before issuing the Notices or as soon as practicable afterwards.

Please find extracts of the legislation referred to in this guidance set out on the final page.

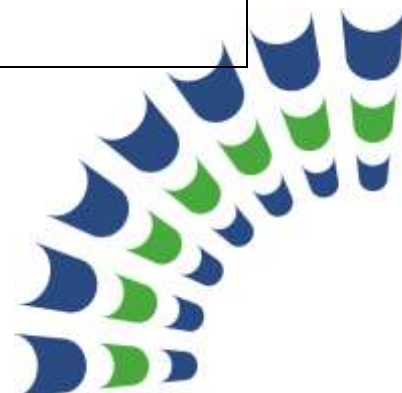
**1. Your statutory obligation to consult Thames Water in all cases that fall under paragraph H4 of Schedule 1 to The Building Regulations 2010 (“paragraph H4”)**

There is a requirement for an AI to consult the sewerage undertaker where an Initial Notice or Amendment Notice is to be given or has been given in respect of work<sup>2</sup> that is:

- carried out over a drain, sewer or disposal main shown on a map of sewers<sup>3</sup>; OR
- that may result in a drain sewer or disposal main shown on a map of sewers being interfered with or access to it being obstructed<sup>4</sup>.

When must this be done by an AI?

When giving an Initial Notice in relation to the work	Before or as soon as practicable after <sup>5</sup>
When giving an Amendment Notice in relation to the work	Before or as soon as practicable after <sup>6</sup>
When giving a Plans Certificate (whether or not combined with an Initial Notice)	Before <sup>7</sup>
When giving a Final Certificate	Before <sup>8</sup>



- 
- <sup>1</sup> The Building Regulations 2010 – Schedule 1, paragraph H4  
<sup>2</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(2)  
<sup>3</sup> The Building Regulations 2010 – Schedule 1, paragraph H4(a)  
<sup>4</sup> The Building Regulations 2010 – Schedule 1, paragraph H4(b)  
<sup>5</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(2)(a)  
<sup>6</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(2)(b)  
<sup>7</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(2)(c)  
<sup>8</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(2)(d)

Is there anything specific that the AI needs to provide in the consultation?

Paragraph H4 essentially states that work involving:

- the erection of a building; or
- the extension of a building; or
- the underpinning of a building;

must be carried out in a way that is not detrimental to the continued maintenance of the drain, sewer or disposal main.<sup>9</sup>

This means that:

- If the consultation relates to an **Initial Notice** or an **Amendment Notice** – plans must be provided demonstrating that the work would be carried out in a way that is not detrimental to the continued maintenance of the drain, sewer or disposal main.<sup>10</sup>
- If the consultation relates to a **Plans Certificate** – a copy of the plans relating to the work that will be covered by the certificate must be provided.<sup>11</sup>

What happens next?

- If the sewage undertaker responds, the AI should take their views into account.<sup>12</sup>
- As Thames Water have indicated that they won't be responding the AI should still consult and wait at least 15 days before issuing a Plans Certificate or Final Certificate.<sup>13</sup>

**2. Why do AIs still need to consult where Thames Water has decided not to review H4 consultations?**

There is a duty under the Building (Approved Inspectors etc.) Regulations 2010 (“**the AI Regulations**”), for AIs to consult with sewage undertakers in the circumstances set out above. Regulation 13 of the AI Regulations does not impose a duty on the sewage undertaker to review or respond to the consultation documents – the duty lies with the AI. As the duty lies with the AI, there remains an obligation to consult Thames Water regardless of it advising that it will no longer review H4 consultations.

Where the AI is consulting in relation to an Initial Notice and/or an Amendment Notice, the H4 Consultation can be sent to Thames Water either before it is issued or as soon as practicable thereafter. Therefore, continuing to comply with the duty to consult in relation to Initial Notices and/or Amendment Notices should not delay the AI in issuing the notice.

The approach to granting Plans Certificates and/or Final Certificates is slightly different. The duty to consult in relation to certificates means that AIs must consult the sewage undertaker before any certificates can be issued. The legislation allows for the possibility of a sewage undertaker not responding and gives AIs a 15-day waiting period before they can issue certificates if they have not heard back from the sewage undertaker<sup>14</sup>



<sup>9</sup> The Building Regulations 2010 – Schedule 1, paragraph H4 (1)

<sup>10</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(3)(a)

<sup>11</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(3)(b)

<sup>12</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(4)(a)

<sup>13</sup> The Building (Approved Inspectors etc.) Regulations 2010, regulation 13(4)(b)

<sup>14</sup> Ibid

**On this basis, CICAIR advises that AIs continue to submit all H4 Consultations to Thames Water in line with the summary below:**

Document Type	When must the AI consult the sewage undertaker?
Initial Notices; and/or	<b>Before giving the Notice or as soon as practicable afterwards.</b>
Amendment Notices	Ideally, the AI must consult Thames Water before issuing the Notice, but if not, must submit it as soon as practicable afterwards.
Plans Certificates (whether or not combined with an Initial Notice); and/or	<b>Before giving a certificate.</b>
Final Certificates	The certificate can only be issued once 15 days have passed from date on which the AI consulted Thames Water.

Extracts of legislation

Relevant legislation	Extract
The Building (Approved Inspectors etc.) Regulations 2010	<p>13.—(1) This regulation applies where an initial notice or amendment notice is to be given or has been given in respect of work in relation to which paragraph H4 of Schedule 1 to the Principal Regulations imposes requirements.</p> <p>(2) Where this regulation applies, the approved inspector shall consult the sewerage undertaker—</p> <p>(a) before or as soon as practicable after giving an initial notice in relation to the work;</p> <p>(b) before or as soon as practicable after giving an amendment notice in relation to the work;</p> <p>(c) before giving a plans certificate (whether or not combined with an initial notice); and</p> <p>(d) before giving a final certificate.</p> <p>(3) An approved inspector who is required by paragraph (2) to consult the sewerage undertaker shall give to the sewerage undertaker—</p> <p>(a) in a case where the approved inspector is consulting them in connection with an initial notice or an amendment notice, sufficient plans to show whether the work would, if carried out in accordance with those plans, comply with the applicable requirements of paragraph H4 of Schedule 1 to the Principal Regulations; and</p> <p>(b) in a case where the approved inspector is consulting them in connection with the giving of a plans certificate, a copy of the plans in relation to which the approved</p>



	<p>inspector intends to give the certificate.</p> <p>(4) An approved inspector who is required by paragraph (2) to consult the sewerage undertaker—</p> <p>(a) shall have regard to any views they express; and</p> <p>(b) shall not give a plans certificate or a final certificate until 15 days have elapsed from the date on which the approved inspector consulted them, unless they have expressed their views to the approved inspector before the expiry of that period.”</p>
<p>The Building Regulations 2010 – Schedule 1</p>	<p>H4.—(1) The erection or extension of a building or work involving the underpinning of a building shall be carried out in a way that is not detrimental to the building or building extension or to the continued maintenance of the drain, sewer or disposal main.</p> <p>(2) In this paragraph “disposal main” means any pipe, tunnel or conduit used for the conveyance of effluent to or from a sewage disposal works, which is not a public sewer.</p> <p>(3) In this paragraph and paragraph H5 “map of sewers” means any records kept by a sewerage undertaker under section 199 of the Water Industry Act 1991.</p> <p>Requirement H4 applies only to work carried out—</p> <p>(a) over a drain, sewer or disposal main which is shown on any map of sewers; or</p> <p>(b) on any site or in such a manner as may result in interference with the use of, or obstruction of the access of any person to, any drain, sewer or disposal main which is shown on any map of sewers.”</p>

If you have any questions, please do not hesitate to contact me via email at [cicair@cic.org.uk](mailto:cicair@cic.org.uk).

Yours faithfully



**Karen Holmes**  
**Registrar**  
**For and on behalf of CICAIR Ltd**

