



Government Response to the Report of the House of Commons Women and Equalities Committee Building for Equality: Disability and the Built Environment

Presented to Parliament

by the Secretary of State for Housing, Communities and Local Government
by Command of Her Majesty

March 2018

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Note: The Ministry of Housing, Communities and Local Government (formerly the Department for Communities and Local Government) announced a name change on 8 January 2018. MHCLG is used throughout this document rather than the former abbreviation DCLG.

Note: The Department of Health and Social Care was formerly the Department of Health.

Introduction

The Government welcomes the report of the Women and Equalities Committee (WEC) inquiry into disability and the built environment. The inquiry looked closely at a wide range of issues affecting disabled people, and the Government has considered the findings and recommendations carefully in formulating its response.

It is important that the built environment does not create unnecessary barriers for disabled people to be able to live, work and enjoy leisure activities. This is a matter of basic fairness. It is also important for local economies – families which include a disabled person have an estimated spending power of £250 billion and it is in the interest of business and society as a whole to ensure that places of work, shops, hotels, restaurants and pubs, public places, stadia and cultural buildings are accessible to all. The Government has committed to reviewing disabled people's access and to amend regulations if necessary to improve disabled people's access to licensed premises, parking and housing.

This paper sets out the Government's response to the recommendations in the Committee's report.

Strategic leadership

Strategic leadership and greater coordination is needed across Government in order to join up the different parts of the jigsaw, including planning, the building regulations, the Equality Act, Disabled Facilities Grants, ways for disabled people to find accessible housing and facilities and the activities of other Government Departments, such as the Department for Transport (paragraph 27).

We recommend that a cross-departmental strategy be established to bring together all aspects of built environment policy affecting accessibility. The Ministry of Housing, Communities and Local Government (MHCLG) should be accountable for this strategy. MHCLG should also convene a stakeholder forum of, among others, disabled people, to influence and provide feedback on this strategy annually (paragraph 28).

The Government accepts this recommendation in part. In its report, the Select Committee recognised that the essential policy framework is already in place to deliver an accessible and inclusive environment for disabled people, but that more needs to be done to ensure that the individual components of this framework are mutually supportive and work well in practice. The Government agrees that the fundamentals are sound, and that Building Regulations, equality legislation and planning policy in particular have delivered significant improvements in accessibility over recent years. We want to see this progress continue and so ensure that the built environment works for everyone.

To do this, the Government has decided to focus its efforts on making sure that the existing framework of legislation and policy is effective rather than by undertaking the development of a new strategy. To ensure that the necessary progress is being made, and that implementation is properly coordinated, a cross Whitehall group chaired by the Minister for Housing and Planning will be established to facilitate a more cohesive and joined up approach to disability and the built

environment across Government Departments. As well as UK Government Departments, the Devolved Administrations and the Local Government Association will be invited to participate.

The Government agrees also that it is important that this group makes use of external expertise and the experience and knowledge of disabled people and other stakeholders to ensure that it has identified key issues and effective solutions. To help monitor and review progress, therefore, the Government proposes to convene a panel of built environment experts, access experts and disabled people to seek their views and input. This will be in addition to the consultation and engagement undertaken in relation to the development of individual policies and will be integral to the wider policy work to promote sustainable high quality design in all new development.

As the Select Committee set out, other forms of leadership are also important. The Minister for Disabled People has appointed a number of high profile Sector Champions from private sector organisations, to lead initiatives within their own industries that will improve the provision of goods, services and facilities for disabled people. Elsewhere in this response, we report on action with the construction industry to promote a more inclusive environment. This construction industry action plan sets out the specific commitments made by key construction professions and organisations to take a range of actions to improve delivery of inclusive built environments. This includes improving skills and awareness, celebrating successful schemes and projects, championing inclusion, improving continual professional development, promoting best practice and collaborating in continual improvement across industry.

The Government will therefore invite construction clients to sign up to the existing Built Environment Action Plan (or develop their own action plan), to ensure that those who commission and manage buildings are also playing their part in making the built environment more accessible and will continue to convene an annual meeting to review progress on the industry action plan.

Involvement of disabled people

36. Engagement with disabled people is happening at the local level, and there is good practice that shows what can be achieved when people are engaged meaningfully. However, all too often engagement is experienced as an afterthought or a mechanistic process with little effect on the outcome.

We recommend that best practice guidance is produced by MHCLG in partnership with disabled people's organisations to provide guidance for local authorities and built environment professionals on how and when to involve disabled people in the processes which lead to the creation of built or external environments (paragraph 36).

Response:

The Government agrees that the input of disabled people can be a positive factor in ensuring that buildings and the wider built environment are inclusive. This has been demonstrated to good effect in projects such as the development of the 2012 Olympic Park. The Government believes that the involvement of disabled people needs to be tailored for the different stages in the development process and in relation to different regulatory and legal regimes. The extent to which consultation with disabled people is possible will also vary depending on the scale and type of building work.

In principle, the planning system is well suited to integrating consultation with disabled people because of its open and transparent nature. Local planning authorities are required to undertake a formal period of public consultation, prior to deciding a planning application. This is prescribed in article 15 of the Development Management Procedure Order. The plan-making process also involves public engagement.

As the report notes there is existing good practice on engagement in the planning system and we are happy to work with disabled people's organisations and the local government sector to identify and promote best practice more widely.

There are established consultative processes for making changes to the Building Regulations or the accompanying statutory guidance, through the Building Regulations Advisory Committee (BRAC). The Government will ask BRAC to review its processes for further involving disabled people in the development of any new Part M guidance.

The Department for Transport has recently consulted on proposals for improving the travel experience of disabled people. The draft Accessibility Action Plan, published on 24th August 2017, covered rail, bus, taxi, aviation and maritime policies as well as the Department's policy responsibility in relation to street design and the wider public realm. The consultation closed on 22nd November. The Government's response to the consultation will be published shortly and the final Accessibility Action Plan will be published later in the year.

The use of public money

Reliance on the minimum standards of the building regulations is not sufficient to secure an inclusive built environment. We explore below concerns that these minimum standards are themselves out of date. Regardless of that, we should expect more of our public services than adherence to a minimum. The model of the 2012 Olympic and Paralympic Games shows what can be achieved when ambitions are set high, and British Standards provide a clear statement of what those ambitions should be (paragraph 43).

We recommend that the Government ensures, as a minimum, compliance with existing regulations by proactively setting out inclusive design and accessibility standards to be required of all publicly-funded works. In doing so it should use the most recent versions of BS8300 (Design of buildings and their approaches to meet the needs of disabled people), updating requirements as those standards change, and use its commissioning and procurement systems to ensure that appropriately high standards are adhered to (paragraph 44).

Response:

The Government agrees that the public sector has an important role as a client and that procurement is an important tool. As the Committee notes, the London 2012 Olympic and Paralympic Games and its legacy provide an example of this.

It is for individual public bodies to determine their approach to procuring buildings. In doing so, they will need to take account of their responsibilities to meet the Public Sector Equality Duty and

to meet relevant regulatory requirements.

The Government notes the recommendation that BS 8300 (Design of buildings and their approaches to meet the needs of disabled people) should be mandated as a requirement for all publicly funded works. The British Standards Institute has recently concluded a consultation on a revised BS 8300. Following this review process, BS 8300 published a revised standard in two volumes on 10 January 2018, BS8300-1:2018 and BS8300-2:2018, and officials from the Ministry of Housing, Communities and Local Government have participated in the process. The Government will consider how to use the revised version of BS 8300 in future procurement guidance.

Fiscal incentives

We recommend that the Government undertake a review into the possibility of using tax exemptions, and specifically VAT exemptions, for the installation of specific physical features that improve accessibility to incentivise building works which improve access for disabled people to, from and within buildings and facilities (paragraph 48).

Response:

The Government recognises the importance of minimising financial barriers to improving accessibility and inclusion in the built environment. So, for example, if a householder needs a larger property than otherwise might be the case because they or another occupant are disabled, they may qualify for a reduction in their Council Tax banding.

There are already a number of ways in which VAT is administered which support this objective. The construction of all new homes is zero rated for VAT purposes which helps to ensure that the costs of building to accessible housing standards are minimised, particularly for self-builders who might not be able to reclaim VAT.

<https://www.gov.uk/government/publications/vat-notice-708-buildings-and-construction/vat-notice-708-buildings-and-construction>

Improvements to buildings for disabled access may already be zero rated for VAT if they meet the conditions in section 6 of Notice 701/7. This notice mainly covers domestic buildings and residential buildings run by Charities:

<https://www.gov.uk/government/publications/vat-notice-7017-vat-reliefs-for-disabled-people/vat-notice-7017-vat-reliefs-for-disabled-and-older-people>

In broader terms buildings and land are “exempt” under the law, although services like building work are not. When considering if further exemptions might be relevant there are a number of considerations. The word “exemption” has a specific meaning in the VAT Act which is based on the 6th Directive¹. Until the UK leaves the EU, the UK must continue to conform with the requirements of the Directive.

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax consolidates all further amendments to the VAT Directive.

In that context, building work can be standard rated, reduce rated (5%) or zero rated depending on what it is:

<https://www.gov.uk/guidance/rates-of-vat-on-different-goods-and-services#building-and-construction-land-and-property>

Generally, building work on commercial buildings is standard rated for VAT purposes.

If a VAT registered business wants to carry out improvements that facilitate disabled access and they use the property for making taxable supplies (e.g. shops, hotels, offices etc.) they will be able to reclaim the VAT incurred as it relates to their taxable supplies. Further information on business that can benefit from this can be found at the link below:

<https://www.gov.uk/government/publications/vat-notice-700-the-vat-guide>

The Government therefore takes the view that in most circumstances it is likely that VAT is recoverable to any VAT registered business incurring costs when making commercial properties more accessible, and that VAT is therefore unlikely to constitute a significant barrier to such works being undertaken. So the Government does not accept the recommendation to review tax and specifically VAT exemptions. Businesses and property owners should contact HMRC to determine the correct tax treatment when undertaking works to make buildings more accessible.

Buildings where public services are delivered

We agree that the proposal for a kite mark or certificate setting out information on the access features of a public building is a good one, especially for buildings used by public bodies who should already be leading by example and demonstrating they actively consider, assess, and plan access and inclusion for disabled people. Those meeting their existing legal obligations will already be doing this, and greater transparency can act as a spur to others (paragraph 51).

Taking British Standard 8300 as the starting point, the Government should require public authorities to publish information on the accessibility of buildings owned or used by them, along with information on how accessibility is managed and maintained (paragraph 52).

Response:

As noted above, the Government agrees that the public sector can play an important leadership role and agrees also that it is important that information about accessibility features is available for building users. However, the Government is not convinced that a kite mark scheme offers the best way forward.

Developing a robust scheme would require systems to be put in place to assess buildings against the criteria for the kitemark and then for monitoring and ongoing assessment. Buildings in their use can change and evolve. Maintenance decisions can quickly knowingly or unknowingly alter a compliant access feature. Unintended consequences can follow when, for example, all disabilities are expected to fit within a tick box kite marking or rating system. Adaptations or specialist fittings

in a home or a building often require specialist and unique solutions, tailored to support an individual's need. The Government's concern is how that then fits into a kite mark approach based on differentiating between common accessibility features characteristics rather than one tailored to individual needs.

Inclusive design and the National Planning Policy Framework

The National Planning Policy Framework tells local authorities that inclusive design is important but does not make its legal status sufficiently clear, with the result that inclusive design is being treated as a 'nice-to-do' and not a statutory requirement. Even putting aside the significance of inclusive design to our future built environment, this leaves local authorities at risk of breaching their obligations to anticipate the need for reasonable adjustments and of failing in their public sector equality duty (paragraph 64).

We recommend that the Government amend the National Planning Policy Framework and the National Planning Practice Guidance to incorporate a dedicated section on access for disabled people and inclusive design for local planning authorities and decision-takers. This should provide details of the requirements on how local planning authorities should address these subjects in terms of planning and design of the built environment and public spaces as well as housing (paragraph 65).

Response:

The Government recognises the importance of inclusive design in the wider built environment and national planning policy is clear that this means designing buildings and their surrounding spaces to ensure that they can be accessed by everyone. The Government agrees with the spirit of this recommendation that the National Planning Policy Framework should support the importance of inclusive design.

We set out proposals in our Housing White Paper to amend the National Planning Policy Framework to increase the emphasis on design and community engagement in local and neighbourhood plans and other development plan documents, to ensure that more certainty is given on design. We also proposed to strengthen the importance of early pre-application discussions between applicants, authorities and the local community about design and the types of homes to be provided.

These proposals have been incorporated into the draft revised National Planning Policy Framework, which can be found at the link below:

<https://www.gov.uk/government/consultations/draft-revised-national-planning-policy-framework>

The consultation on the draft revised Framework closes on 10 May.

To improve the consistency of accessible housing delivery, section 8 of the Neighbourhood Planning Act 2017 will, (once it is commenced), require the Secretary of State to produce guidance for local planning authorities on how their local development documents should meet the housing needs of older and disabled people. This planning guidance will set a clear expectation that all

planning authorities should set out policies using the Optional Building Regulations for access which came into force in October 2015 to bring forward an adequate supply of accessible housing to meet local need. We have undertaken stakeholder engagement to draw on expertise from a variety of stakeholders, particularly disabled people and the groups that represent them. The guidance is expected to be published alongside the final revised National Planning Policy Framework in the Summer.

The role of the Planning Inspectorate on Local Plans

We recommend that the Equality and Human Rights Commission undertake a formal investigation into and/or assessment of the compliance of the Planning Inspectorate with the Equality Act 2010 (paragraph 70).

We recommend that, while this work is ongoing, the Government direct the Planning Inspectorate to pay closer attention to ensuring, as the NPPF sets out, that plans are founded on an inclusive design approach, and specifically that no Local Plan documents are to be judged ‘sound’ without evidence that they address access for disabled people in terms of housing, public spaces and the wider built environment (paragraph 71).

Response:

The Equality and Human Rights Commission (EHRC) is an independent body and it is for the Commission, which has the powers to enforce equality laws, to decide on specific investigations. The EHRC has since approached the Planning Inspectorate to investigate related matters.

The Government understands the importance of setting clear design expectations in local plans and, as noted above, is strengthening the approach in the National Planning Policy Framework (NPPF). When a Planning Inspector examines a plan, they test whether a plan is legally compliant and whether the plan is ‘sound’. The NPPF sets out what is required of a plan to be ‘sound’. This includes whether a plan is positively prepared, justified, and effective as well as whether the plan is consistent with national policy, which includes policy on design. The NPPF also requires local planning authorities to underpin their plans with robust evidence to support their policies. Once changes are made to the NPPF, inspectors will need to factor these amendments into the process of examining a plan and the Government is confident they fully understand their role in this process.

The Planning Inspectorate provided advice to Local Plan Inspectors in May and updated its advice contained in the Inspector Training Manual in June in light of the emerging recommendations from the committee. The Planning Inspectorate keeps this advice under review.

Planning applications

While it may be true that, in making planning decisions, trade-offs will be required, provision for accessibility and inclusion should not be discounted without serious consideration—not least because this is a requirement of the public sector equality duty and the anticipatory reasonable adjustment duty (paragraph 75).

We recommend that the Government make clear in the revisions to the NPPF (recommended above) that planning consent should only be given where there is evidence that a proposal makes sufficient provision for accessibility and inclusion (paragraph 76).

We share concerns that there has been a loss of expertise on inclusive design and access at local level over recent years. The White Paper on housing offers an opportunity for the Government to work with local authorities on ensuring access to the specialist expertise necessary to support the creation of an accessible and inclusive built environment, and we fully expect it to take that opportunity (paragraph 80).

Response:

The Government recognises the importance of accessibility and inclusion considerations when making planning decisions, and expects local planning authorities to have regard to such matters in reaching their decisions. However as worded this recommendation is too broad and could run counter to the plan-led system and ability of decision-takers to give weight to a range of considerations when determining planning applications. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. We therefore do not accept this recommendation.

The National Planning Policy Framework is clear that local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. Local planning authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals and reviewed on a frequent basis. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.

Planning guidance explains that provided an application has regard to all material considerations, it is for the decision maker to decide what weight is to be given to the material considerations in each case.

The Government welcomes the endorsement of its proposals to ensure that the planning system has the skilled professionals it needs. We are committed to providing £25m of new funding to boost the capacity and capability of local authorities. This will open up the opportunities to support and provide design resources to local authorities, to help them meet their local housing need. In our Housing White Paper we proposed that nationally set planning fees would increase by 20 per cent for those local authorities that committed to invest the additional fee income in their planning department. All planning authorities have accepted the fee increase, which is to be ring-fenced for investment in planning services. The increase came into force on 17 January 2018.

Training for built environment professionals

84. We welcome evidence of strong government support for initiatives to improve training and education of built environment professionals in inclusivity and accessibility. We also welcome the work being done by the Design Council to produce an online Inclusive Design CPD module for built environment professionals by Summer 2017.

We recommend that the Government assist the Design Council in securing funding to

deliver an online Inclusive Design CPD module (paragraph 84).

Response:

The Government welcomes the Committee's support for the initiatives which have been undertaken to improve the skills and competence of built environment professionals in relation to inclusivity and accessibility and agrees with the recommendation to continue to support these initiatives.

The Ministry of Housing, Communities and Local Government (MHCLG) has funded the development of the Inclusive Design Hub at Design Council CABE, the world's first on line peer reviewed library of inclusive design guidance, including the initial development of an online Inclusive Design CPD module. The Department has now issued further grant funding in this year of £70,000 which will not only enable Design Council CABE to complete development of this cross-disciplinary training package, but also to support promotion, roll out and dissemination of the module to ensure it has the greatest possible impact.

The Department's grant funding to Design Council CABE will help embed and develop training across all the construction professions. Design Council CABE are continuing to work on the content of these training modules. These will be of use to all construction professionals but helpful also to clients, commissioners and users all looking to learn what is best practice.

The Government is continuing to support the Built Environment Education Project (BEPE). The BEPE programme was led formerly by the Department for Work and Pensions and its Office for Disability Issues but is now being taken forward by the Construction Industry Council (CIC), to demonstrate industry leadership. The CIC is now also hosting the National Register of Access Consultants (NRAC). The Department has chosen to further support BEPE with £30,000 to embed inclusive design into the training and professional education curricula of many construction professions (architects, building surveyors, planners, landscape architects, building controllers etc.). Their work continues to shape each route into becoming a construction professional to cover inclusive design as part of a course's accreditation and entry requirements.

As part of this work, the CIC published in July 2017 a Teaching and Learning Briefing Guide with a joint foreword by the Minister of State for Disabled People and the Minister of State for Housing and Planning.

<http://cic.org.uk/news/article.php?s=2017-07-20-cic-publishes-a-teaching-and-learning-briefing-guide>

Government policy on increasing the supply of housing

We welcome the Government's acknowledgement that accessibility is an important element in ensuring that the country has adequate housing supply, and the expected new guidance on local policies for accessible housing. However, many local authorities already have their Local Plans in place, and may not recognise the need to review their housing policies (paragraph 85).

We recommend that, once the new guidance under the Neighbourhood Planning Bill is adopted, the Ministry of Housing, Communities and Local Government undertake an audit of local plans to identify those that do, or do not, meet that guidance. Where this audit reveals gaps in accessible housing policies, the Government must take action to press local authorities to amend their Local Plans in line with the new guidance as a matter of urgency (paragraph 86).

Response:

As noted above, the Government is currently preparing guidance for local planning authorities on how their local development documents should meet the housing needs of older and disabled people. However it is for local planning authorities to draw up local plans which will be examined by the Planning Inspectorate. The examination will cover whether the local authority has had regard to national policy and guidance in preparing the plan. The plan will therefore need to comply with guidance on meeting the housing needs of older and disabled people. If a local plan does not meet the test of soundness, the Planning Inspectorate will recommend non-adoption of the document. The local planning authority will then need to amend the plan accordingly.

Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. National policy or guidance will be a material consideration. Local planning authorities are also expected to ensure that the local plan is up to date. If there is a significant change in the identified housing needs in a local area, the local planning authority would be expected to take this into account in reviewing their plan. This could include a full or partial review of the plan, or in how it determines specific planning applications. The Government has now made it clear that the requirement is for plans to be reviewed every five years. At this point, local authorities must either start to revise their plan or publish their reasons for not doing so. This affords the opportunity for local planning authorities to review their housing policies as appropriate.

The Government considers that these mechanisms are sufficient to ensure that plans deliver appropriate outcomes and therefore has no plans to audit individual local plans.

Limits of application

While we recognise that some, small-scale, conversions of existing buildings to housing may not be able to meet the standards of Part M, we do not agree that this means none can. Significant developments are currently able to go ahead without any provision for accessible housing—not even the minimum ‘visitability’ standard. It is not beyond the ability of Government to create, within the Building Regulations, a presumption that the relevant standards will apply unless there is good evidence to show that they cannot do so (paragraph 103).

104. We recommend that the limits of application of the Building Regulations applicable to Part M Vol. 1 be amended so that Part M and its optional requirements apply to all new dwellings—both new build and conversions (paragraph 104).

Response:

The Government accepts this recommendation in part. Currently, the requirements of Category 1 (M4(1)) apply to new buildings, material changes of use, and material alterations but not to extensions. Optional requirements (Categories 2 and 3 (M4(2) and M4(3)) only apply to new buildings. As recognised by the Committee, this has been because of the practicalities of trying to apply some of the Part M provisions if these had not been designed in from the start, particularly for older or smaller properties, for example the wider stair cases required under current guidance. Conversions make an important contribution to expanding housing supply and the Government is also mindful of the need to avoid increasing the costs of extensions and conversions.

Furthermore, where refurbishment takes place, the scope of works may, in some cases, not always be judged as building works and so would not be subject to Building Regulations' requirements. Limits of application cannot extend to works beyond the scope and powers of the Building Act 1984, or the Building Regulations 2010 as amended.

However, the Government accepts that it would be possible for the provisions of Part M guidance to be capable of being met in some extensions or when a dwelling is being renovated. The challenge is finding the right way to distinguish between buildings where this is practical and where it is not. The Government intends to consider this matter further and will commission further work on the impacts of changing the limits of application.

Enabling local authorities to apply the standards

We agree that local authorities need to understand the housing needs of their local population, and welcome the Government's changes to the Neighbourhood Planning Bill that seek to ensure that this happens. However, we do not see why a local authority should be required to prove such need if it wants to prevent inaccessible housing from being built. Even in the unlikely event that, currently, few residents need accessible homes the reality is that this will change—whether through disabled people being born or moving into the area, or existing residents acquiring disability through illness, accident or the natural ageing process (paragraph 109).

Wherever people live or choose to live in the future, there should be real choice in the housing available to them. For this to happen we need to 'future-proof' our housing policy by changing the starting point: rather than requiring a local authority to prove that there is a current need to be met, we should start from the assumption that there is such a need (paragraph 110).

The Government should remove the requirement on local authorities to prove an immediate need for accessible housing when applying optional access standards to proposed housing within their area. Developers should be able to obtain exemptions from these standards only in specific cases where they can bring forward evidence that such a need does not exist (paragraph 111).

Response:

The new framework for Optional Requirements for access in the Building Regulations came into force in October 2015. It is therefore still early to take a view about the effectiveness of this new framework in terms of the provision of accessible housing. The Government notes however, that some planning authorities have been able to make the case for using the higher standards, for example in the London Plan.

However, it is fundamental to the development of sound local planning policies that policies are sound and are justified. The Government's view remains that local authorities need to bring forward appropriate policies, taking account of local needs, and subject to viability testing.

Where policies are justified and are then included in the local plan, the local planning authority will use this to determine individual planning applications. It would be for the developer to set out why the policy should not be applied in their particular case. The Government therefore does not intend to change this well established approach.

The Government has provided guidance for local planning authorities on how to assess housing need and specific information to help with the assessment of needs for accessible housing. As noted above, the Government is consulting on changes to the National Planning Policy Framework.

The appropriate minimum standard

The evidence to us is clear that the minimum standard set in Approved Document M4(1) is simply too low to meet the needs of the population, and should be retained only for those properties where the higher standards would demonstrably make development unviable. While we recognise that there are additional costs involved, those resulting from meeting M4(2) make up only a fraction of the cost of building a new home (paragraph 121).

We recommend that the Government amend the default minimum baseline standard for all new homes under Part M of the Building Regulations (vol. 1) to Category 2 (M4(2)). We accept that there may be a need for exceptions to this policy, but the minimum of 'visibility' under M4(1) should only be available where an applicant for planning permission can prove that it would not be feasible to meet the new minimum standard (paragraph 122).

Response:

The Government recognises that the last major changes to the minimum baseline access standards which are now set out in Category 1 (M4(1)) visitable dwellings, were made in 2004. Although new Optional Requirements were introduced in 2015, changes were not made to Category 1 (M4(1)). However, as noted above the new framework for Optional Requirements was only introduced in October 2015 so it is still early to judge how Optional Requirements are being applied in practice.

The Government welcomes the Committee's recognition that extra costs would be imposed

on house builders if the Category 2 (M4(2)) standard were to be set as the statutory minimum for all new dwellings. Although it is true that these extra costs would be small in relation to the overall build cost of a new home, the cumulative effect of extra costs can impact on the viability of development, particularly in parts of the country where land values are low, and viability is therefore marginal. Therefore it is important that a full analysis of costs and benefits should be undertaken before decisions are taken.

Also, much of the evidence underpinning the guidance in Approved Document M dates back to that last full review and further work is needed to understand changes in demographics and the way we live now, to see how this might impact on the standards for a visitable home.

For these reasons, the Government considers that it would be premature at this point to upgrade the minimum standard from Category 1 to Category 2, as recommended by the Committee. Instead, the Government is asking the Building Regulations Advisory Committee (BRAC), the statutory committee which advises on Building Regulations' matters, to review the potential scope for a wider review of the standards in Category 1 (M4(1)).

Following the Grenfell Tower tragedy, the Government has set up an independent review of Building Regulations and fire safety, being led by Dame Judith Hackitt. Although the focus is on fire safety and high rise buildings, that review may raise issues which have wider implications for the Building Regulations and building control system.

The review published its interim report on 18 December 2017 and will publish the final report in Spring 2018. The Government will consider its overall programme for reviewing and if necessary making changes to Building Regulations' requirements generally in the light of the conclusions and recommendations of the review, in particular the recommendation in the interim report that Government should consider how the suite of Approved Documents which support the Building Regulations should be structured and ordered.

Building regulations for buildings other than dwellings

Approved Document M of the Building Regulations (Volume 2) (buildings other than dwellings) should be updated to ensure it is still relevant and adequately addresses access for disabled people today, adopting an inclusive design, pan-impairment approach. The starting point for this should be guidance in the emerging British Standards on the subject, with the aim of 'levelling up' Approved Document M guidance as new standards are developed (paragraph 134).

Response:

The Government agrees that it is important that accessibility standards for buildings other than dwellings need to be considered and agrees that the guidance in Volume 2 of Approved Document M needs to be looked at. The last full review of the standards set out in Approved Document M (Volume 2) buildings other than dwellings was conducted in 2004.

As previously reported to the Select Committee inquiry, the Department commissioned PRP Architects to undertake an initial research project to assess how well the current guidance in

Approved Document M Volume 2 is meeting disabled people's needs. The Government intends to publish the results of that research shortly.

The research concluded that emerging issues that may need to be addressed by the guidance include the needs of an older population, and the needs of people with complex and multiple disabilities, bariatric issues, people with cognitive impairments and those of a smaller/taller stature.

The guidance may also need to be updated to reflect current technological advances and building management practices particularly in relation to use of the built environment by visually and hearing impaired people.

The issue of enforcement of current guidance was identified as a critical issue. This was particularly important in relation to provision of sanitary accommodation where a wide discrepancy from prescribed guidance was identified.

The Government will be considering the findings of this research as part of the further work on Part M.

The Government notes the Committee's view that new standards should be based on the new BS 8300. As noted above, work to develop BS 8300 following the BSI public consultation period, has led to the publication of two new volumes, the first on external environments and the second on buildings. However, it is important to note that although BS 8300 may represent best practice, in developing guidance which has statutory force (which is the case with guidance set out in Approved Documents), the Government needs to take account of all impacts, costs and benefits before taking any decision to use BS 8300 as the basis for regulatory standards.

As noted above, much of the evidence underpinning the guidance in Approved Document M including Volume 2 dates back to that last full review and further work is needed to understand changes in demographics and the way we live now, to see how this might impact on the standards.

As part of the request to the Building Regulations Advisory Committee (BRAC) to advise on the scope for reviewing Part M Guidance for dwellings, therefore, the Government will also ask BRAC to consider the scope of a review of the guidance in Volume 2, including the relationship with BS 8300.

Changing Places toilets

We recommend that the update to the requirements of Part M Vol. 2's approved document include a requirement to provide a Changing Places toilet in all large building developments which are open to the public, unless it can be demonstrated that adequate provision is already in place locally. This will require MHCLG to undertake an assessment of what is reasonable to define as a 'large' development for these purposes—but we expect that as a minimum the requirement will apply to, for example, large shopping centres (paragraph 142).

We further recommend that the action plan on the accessibility of public transport,

currently being developed by the Department for Transport, include action to improve the availability of accessible and Changing Places toilets in transport infrastructure (paragraph 143).

Response:

Ensuring the availability of adequate accessible toilets is a matter of great importance and has significant impacts on many people's quality of life. We need public amenities in the right place, that they are well managed, clean and open, and that they have the right layout to meet all needs. The Government therefore agrees with the intention of this recommendation.

Building Regulations' guidance already set out minimum standards for accessible toilets in new public buildings, including public buildings. That includes standards for unisex accessible toilets even in small buildings and additional provision in larger buildings. However, the number of people who need specialised toilet accommodation has increased in line with broader demographic and social change. The Government recognises that the availability of facilities such as Changing Places toilets helps people to plan activities away from home.

The Ministry of Housing, Communities and Local Government has worked with MENCAP, the Changing Places Consortium, and PAMIS (Promoting a more inclusive society) and the British Toilet Association to promote increased supply of Changing Places on a voluntary basis. The Department, with contributions from Devolved Administrations, has funded the development of a new website so that anyone can find a "Changing Places" toilet quickly and easily. The number of Changing Places has increased since 2007 from around 140 in 2007 to more than 1000 currently in the UK today.

Over 300 stations (around 12% of the national estate, but accounting for around 60% of passenger journeys) have accessible toilet facilities. Where station toilet facilities are installed, replaced or renewed, current EU and UK accessibility standards must be met. For new facilities, this must include the installation of an accessible toilet. Although there is no legal requirement to install toilets, accessible toilets, or Changing Places toilets at stations, Network Rail has committed to installing Changing Places toilets at its largest stations as part of refurbishment. For example, a Changing Places toilet has been installed at London Bridge station as part of the station upgrade. The Department for Transport is also inviting proposals from bidders to install Changing Places toilets at larger rail stations as part of the Invitation to Tender stage of the franchise competition process.

The Department for Transport will consider the recommendation further in developing the final version of the Accessibility Action Plan and Ministers and officials have already met the Changing Places Consortium on this.

As noted above, the Government has asked the Building Regulations Advisory Committee (BRAC) for advice on the scope of a review of guidance in Approved Document M Volume 2. This will include consideration of requirements in relation to provision of Changing Places toilets for certain types of buildings such as motorway service stations, shopping complexes and large stadia or auditoria.

The requirement of the Equality Act and enforcement of those requirements

Our evidence supports the view of the House of Lords Committee on the Equality Act 2010 and Disability that action is needed to reduce the burden of enforcement on disabled people. We appreciate the desire of the Government not to duplicate existing protections, but do not agree that proposals to amend the Licensing Act 2003 to require the reasonable provision of a basic level of accessibility in licensed premises would do so. Such amendments would not change the legal obligations of a licence holder, but would make those obligations more likely to be complied with (paragraph 153).

We recommend that the Government amend the Licensing Act 2003 to mandate local authority Licensing Officers to act on failures to make licensed premises accessible (paragraph 154).

Response:

The Government is sympathetic to the issues that have been raised in relation to accessibility for disabled people and the problems with ensuring businesses and service providers comply with the requirements in the Equality Act 2010. Licensed premises are places where many of us choose to socialise and are therefore an important part of our daily lives, and too many of these venues are difficult for disabled people to access.

A House of Lords Select Committee on the Licensing Act 2003 published its report in April 2017 and recommended that the 2003 Act should be amended to require that an application for a premises licence is accompanied by a disabled access and facilities statement. In its response in November 2017 the Government noted that it agreed with the Committee that adding to the licensing objectives is not the answer. The Act, and the licensing objectives, must be used to address issues that apply to the licensable activities and are therefore unique to licensed premises. The Act should not be used to control other aspects of licensed premises; this would be outside the scope of the licensing regime and contrary to the principles of better regulation. We will consult disabled peoples' organisations to understand better the extent of the problem from the perspective of those with a broad range of disabilities, their carers and families. We will work with the National Association of Licensing Enforcement Officers (NALEO) who gave evidence to the Equality Act 2010 and Disability Committee on this matter, and the representatives of the licensed trade to explore what practical measures can be taken. We hope this will result in significant improvements for disabled people without the need for additional regulations.

The Government made a commitment in 2016 to review commencement of the remaining provisions of Section 36 of the Equality Act 2010, following a report by the House of Lords Committee on Disability and the Equality Act, which called for commencement to take place "forthwith". These provisions would require landlords and commonhold associations to make reasonable adjustments to the common parts of residential premises (hallways, entrances stairs etc.) to improve disabled people's ability to access and exit their homes and play an active role in their communities.

The Government Equalities Office, Ministry of Housing, Communities and Local Government and the Department of Health and Social Care have been closely engaged on this review. In light of this work, Government intends to commence Section 36, subject to Parliamentary passage of

any regulations, should these prove necessary. Further work on identifying and assessing any additional burdens on local authorities is first required, after which an announcement on timing of the commencement will be made.

Transport – Shared Spaces

The Government should not shy away from the debate on ‘shared spaces’ and take leadership. In light of the evidence that such schemes are excluding disabled people from the areas in which they are used, urgent action is needed (paragraph 172).

We recommend that the Government require local authorities to call a halt to the use of shared space schemes, pending clear national guidance that explicitly addresses the needs of disabled people. This should, in particular, instruct local authorities that controlled crossings and regular height kerbs are to be retained and that they should undertake an urgent review of existing schemes, working with disabled people in their area to identify the changes that are necessary and practicable (paragraph 173).

We were concerned to hear that the Government now appears to expect the results of the review of shared spaces by the Chartered Institute of Highways and Transportation to be the identification of gaps in evidence—not new guidance—leaving no clear plan to address the lack of a common approach on shared spaces that takes full account of the extensive concerns of disabled people and the organisations that represent them. The Government does not seem to have grasped the seriousness of the barrier to inclusion that certain features (or the lack of certain features) present to so many disabled people (paragraph 180).

We recommend that the Government takes a clear lead and urgently replaces the 2011 Local Transport Note on shared spaces with new guidance, founded on an inclusive design approach, to ensure that any resultant schemes are inclusive, navigable and welcoming for disabled people. This guidance should:

- a) be developed with disabled people;***
- b) explicitly address the needs of all disabled people, including but not limited to people who are blind and partially sighted, people who have ambulant mobility difficulties and people with a neuro-diverse condition or learning disability;***
- c) lay down consistent national standards so that disabled people can navigate, learn and independently use such schemes anywhere in the country;***
- d) be clear that safety and usability requirements, such as controlled crossings and kerbs, are not optional;***
- e) provide details on how the requirements of the public sector equality duty and the duty to make reasonable adjustments apply to the design and implementation of such schemes (paragraph 172).***

Adequate guidance is important, but individuals also need an accessible means to challenge decisions when such guidance is not adhered to. We recommend that the Government bring forward Regulations under section 22(2)(a) of the Equality Act 2010 to specify that organisations which fail to comply with the new guidance recommended

above will not be considered to have taken reasonable steps for purposes of the duty to make reasonable adjustments. This will make it easier for disabled individuals to establish discrimination contrary to section 21 of the Equality Act 2010 (paragraph 182).

The Government should also ensure that advice is readily available for individuals on how to challenge local authorities on existing or new schemes which exclude or have the potential to exclude disabled people (paragraph 183).

Response:

We are aware of and understand the issues raised in the evidence submitted to the Committee around navigation within shared space. Our guidance published in Local Transport Note 1/11: Shared Space already stresses the importance of engaging with groups representing disabled people during the development of any shared space scheme. It also refers to the need for authorities to ensure their designs are inclusive and reminds them of their duties under the Equality Act 2010.

Local traffic authorities are responsible for the design of streets in their care, and do not have to seek Department for Transport approval to install street design schemes, whether they incorporate shared space or not. Similarly, provision of kerbs and controlled crossings are not regulated by central Government but are decisions for local authorities to make. This is the case for all highway schemes, not just shared space.

There is no definitive “shared space” design. Each site is different and design is dependent on its individual characteristics, the features included and how these features work in combination. “Shared space” schemes use measures which are not regulated in law and include features commonly used in other traffic management schemes, not just those labelled as “shared space” schemes. However, the Government welcomes the Committee’s contribution to this important debate and is absolutely clear that the needs of the whole community, including disabled people, need to be considered by councils looking to introduce any public realm scheme, including shared space.

The Chartered Institution of Highways and Transportation has now reported back to the Government on its review of shared space. It published “Creating better streets: Inclusive and accessible places” in January 2018.

<http://www.ciht.org.uk/en/document-summary/index.cfm/docid/BF28B40D-9855-46D6-B8C19E22B64AA066>

The review has considered many of the issues raised by the Committee, and the report made recommendations for further work, including on guidance. The Government will consider those recommendations, and set out how it will take them forward in due course.

Shared space is only one approach to managing public realm, and we believe it is important to ensure all streets are accessible, not just those labelled shared space. ‘Inclusive Mobility’ is the key piece of guidance in this area, enabling local authorities to deliver accessible public realm environments of all types. The Government is working to update ‘Inclusive Mobility’, particularly to cover the much greater knowledge and understanding now available of the needs of those with

hidden disabilities, including autism, dementia and mental health conditions. The draft Accessibility Action Plan includes an action to commission research to set out the scope of an update to 'Inclusive Mobility'. We have recently let a research contract to establish the scope of the revisions needed, and we anticipate this research being completed later this year.

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