

# 2012 consultation on changes to the Building Regulations in England

## **Section four**

The building control system



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# Summary form

## Scope of the consultation

<b>Topic and scope of this consultation:</b>	<p>The Building Regulations and the associated statutory guidance set out in Approved Documents seek to ensure buildings meet certain standards for minimum health, safety, welfare, convenience and sustainability. The supporting building control system helps to ensure that compliance is achieved.</p> <p>This document is one of four sections of a consultation package that covers a number of proposed changes to the Building Regulations regime and the building control system.</p> <p>The proposed changes to the building control system are set out in chapters 2-6 of this section.</p>
<b>Geographic scope:</b>	<p>The consultation relates to Building Regulations for England only. The previous application of Building Regulations to England and Wales ceased on 31 December 2011 when powers for making Building Regulations in relation to Wales were transferred to the Welsh Ministers.</p>
<b>Impact Assessment:</b>	<p>An Impact Assessment has been produced to accompany the proposals contained in chapters 2 to 6 of this section of the consultation. The other three sections of the consultation package are also accompanied by their own Impact Assessments.</p>
<b>IA Number</b>	<p>DCLG/0086</p>

## Basic consultation information

<b>To:</b>	<p>This consultation is aimed primarily at firms, individuals and their representative bodies within construction and construction-related industries and the building control bodies that enable the building control system to operate. Specific elements may be of interest to members of the public.</p> <p>The Department has published an easier to read summary of the proposals which provides a useful introduction to the consultation package and highlights those aspects of the consultation which may be of interest to consumers.</p> <p>This is available at:</p> <p><a href="http://www.communities.gov.uk/planningandbuilding/buildingregulations/buildingregulationschanges/">www.communities.gov.uk/planningandbuilding/buildingregulations/buildingregulationschanges/</a></p>
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<b>Body/bodies responsible for the consultation:</b>	The Building Regulations and Standards Division within the Department for Communities and Local Government (DCLG).
<b>Opening date:</b>	31 January 2012
<b>Closing date:</b>	27 April 2012
<b>Enquiries about the subject being consulted or the policy being considered:</b>	<p>Email: <a href="mailto:building.regulations@communities.gsi.gov.uk">building.regulations@communities.gsi.gov.uk</a> or write to:</p> <p>Building Regulations Consultation Building Regulations and Standards Division Department for Communities and Local Government Zone 5/G9 Eland House Bressenden Place London SW1E 5DU</p>
<b>How to respond to this consultation:</b>	<p>A response form for Section four of the consultation is provided at Annex A of this document. It has also been published separately as part of the consultation package on the Department's website at: <a href="http://www.communities.gov.uk/publications/planningandbuilding/brconsultationsection4">http://www.communities.gov.uk/publications/planningandbuilding/brconsultationsection4</a></p> <p>Response forms for the other three sections of the consultation can also be found on our website.</p> <p>Consultees are invited to email responses to: <a href="mailto:building.regulations@communities.gsi.gov.uk">building.regulations@communities.gsi.gov.uk</a>.</p> <p>Those who prefer to submit a paper copy of their response should send these to:</p> <p>Building Regulations Consultation Building Regulations and Standards Division Department for Communities and Local Government Zone 5/G9 Eland House Bressenden Place London SW1E 5DU</p>

<p><b>Additional ways to become involved:</b></p>	<p>The Department will continue to engage with external partners throughout the consultation period and beyond on the range of consultation proposals. In particular, we will seek out opportunities presented by our partners to engage with relevant sectors on specific issues at relevant industry events around the country. The views of the public are also welcomed.</p> <p>If you require this publication in an alternative format please email: <a href="mailto:alternativeformats@communities.gsi.gov.uk">alternativeformats@communities.gsi.gov.uk</a></p>
<p><b>After the consultation:</b></p>	<p>The Department will consider the responses to the consultation and finalise regulatory proposals. We will also publish a summary of responses on our website, in line with consultation protocols.</p> <p>The general aim is for deregulatory changes to come into force in April 2013, which includes the proposals relating to the building control system, with provisions which have a regulatory impact coming into force in October 2013.</p>
<p><b>Compliance with the Code of Practice on Consultation:</b></p>	<p>This consultation complies with the Government's Code of Practice on Consultation which can be downloaded from: <a href="http://www.bis.gov.uk/policies/bre/consultation-guidance">www.bis.gov.uk/policies/bre/consultation-guidance</a></p>
<p><b>How to complain or make comment about the process of this consultation and/or whether it adhered to the Code of Practice on Consultation:</b></p>	<p>Should you want to raise any issues in this respect, you should write to:</p> <p>Consultation Coordinator  Department for Communities and Local Government  Zone 4/H3  Eland House  Bressenden Place  London SW1E 5DU</p> <p>or email: <a href="mailto:ConsultationCoordinator@communities.gsi.gov.uk">ConsultationCoordinator@communities.gsi.gov.uk</a></p>

## Background

<p><b>Getting to this stage:</b></p>	<p>In July 2010 the Department invited external partners to submit ideas and evidence on ways to improve the Building Regulations and the building control system, on reducing the regulatory burdens and on ways to deliver even better levels of compliance. We received several hundred responses which we used, along with contributions gathered at seminars and workshops, in developing a programme of work to review a number of areas of the regulations. In December 2010 the Building Regulations Minister, Andrew Stunell, announced a programme of work to develop proposals for consultation in advance of changes in 2013.</p> <p>This document is one of four sections of a consultation on proposed changes to the technical aspects of the Building Regulations and the building control system which are the result of that work. The consultation package is largely deregulatory in nature.</p>
<p><b>Previous engagement:</b></p>	<p>Through 2011 we have continued to work with a variety of external partners, including the Building Regulations Advisory Committee, various Working Parties and Advisory Groups to develop detailed proposals for consultation.</p>

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# Code of Practice on Consultation, Freedom of Information and Data Protection

## Code of Practice on Consultation

The Code of Practice on Consultation is issued by the Better Regulation Executive (BRE) in the Department for Business, Innovation and Skills (BIS). The Code sets out seven consultation criteria, to which formal public consultation must adhere:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome;
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation;
7. Officials running consultations should seek guidance on how to run an effective consultation exercise and share what they have learned from the experience.

Where this consultation does not adhere to the Code, it will be explained in the Consultation Profile.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

If this is a formal, written, public consultation, are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please write to:

DCLG Consultation Co-ordinator  
Zone 4/H3  
Eland House  
Bressenden Place  
London  
SW1E 5DU

or email:

[consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk).

## Freedom of information and data protection applicable to consultation

Representative groups are asked to indicate the people and organisations they represent and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these being primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

# Chapter 1

## **Introduction to the consultation, in particular to Section four – the building control system**

### Background

1. Building Regulations control certain types of building work, principally the erection or extension of buildings, the provision or extension of certain services or fittings, as well as certain alterations or changes of use, chiefly to ensure that buildings meet certain standards of health, safety, welfare, convenience and sustainability.
2. Compliance with the Building Regulations is the responsibility of the person carrying out the work and the building control system helps to ensure that the required level of performance has been met. The role of a building control body, either the local authority or a private sector Approved Inspector, is to act as an independent third party check to help achieve compliance. As an alternative to third party checking by building control, some types of work may be self-certified as being compliant by installers who are registered as a member of a competent person self-certification scheme and have been assessed as competent to do so.
3. Building Regulations greatly influence how our buildings are constructed and used. As such, they help to deliver significant benefits to society. Regulation can also impose costs on both businesses and individuals. The “functional” nature of the Building Regulations, by having regulation setting out the broad requirement rather than prescribing how it must be achieved, seeks to minimise this cost and also ensure innovation is not hindered. Guidance in the Approved Documents that accompany the regulations then sets out some of the ways that these requirements can be met, although it does not have to be followed provided the required level of performance can be shown to be achieved in a different way. This approach provides clarity for building control bodies and industry alike.
4. To avoid the risk of unnecessarily onerous and costly standards being imposed on industry it is important that a proper cost/benefit assessment and consultation with industry has been undertaken by Government to assess what reasonable minimum standards are appropriate.

5. It is also important to ensure that the Building Regulations regime and the supporting building control system remain current and fit-for-purpose. That is why the Department for Communities and Local Government undertook an exercise in the latter half of 2010 to determine what changes were necessary to the Building Regulations and the building control system. The exercise emphasised a desire to identify measures that would reduce the cost of regulation to business. It also asked for evidence and ideas about what other 'must do' regulatory changes there were, as well as seeking ideas as to how we might deliver even better levels of compliance in the future. There were 248 responses from external partners to this exercise. In addition, the Department drew upon ideas and suggestions submitted to the Cabinet Office's *Your Freedom*<sup>1</sup> and the Department's own *Cut Red Tape*<sup>2</sup> websites, plus other reviews and sources of evidence.
6. Few responses or representations received questioned the principle of regulations setting national standards that ensure buildings are built to baseline standards and the need for a supporting building control system to help ensure compliance. Many specifically recognised the positive role Building Regulations played and welcomed the fact that there was a nationally applied set of minimum requirements. A key theme to emerge was that the building control system was considered to be generally fit for purpose. However, the exercise did suggest that there were areas where aspects of the regime might be streamlined to reduce the burden on business and others where compliance and procedures might be improved yet further or where there was a strong case for considering further regulation.
7. In the light of the ideas submitted, Building Regulations Minister, Andrew Stunell, set out in December 2010 the areas of work that the Department would take forward in advance of consultation on detailed proposals.

## The consultation package

8. This document is one of four sections of a consultation package that now sets out those detailed proposals. On 31 December 2011, responsibility for the Building Regulations for Wales transferred to the Welsh Ministers. The proposals in this consultation package therefore relate to England only.
9. The four sections of the consultation along with accompanying Impact Assessments, can be found via the Department's website: <http://www.communities.gov.uk/planningandbuilding/buildingregulations/buildingregulationschanges/>. They cover:
  - Section one – Parts A, B (including Local Acts), C, K, M and N, Access Statements, Security, Changing Places toilets and Regulation 7

<sup>1</sup> <http://webarchive.nationalarchives.gov.uk/20100824180635/http://yourfreedom.hmg.gov.uk/>

<sup>2</sup> <http://www.communities.gov.uk/localgovernment/about/helpcutredtape/>

- Section two – Part L (Conservation of fuel and power)
- Section three – Part P (Electrical safety – dwellings)
- Section four (this document) – the building control system.

## Main issues covered in Section four of the consultation

10. This section of the consultation considers proposed changes to the *building control system*. It can be accessed directly on the Department's website with other related documents: <http://www.communities.gov.uk/publications/planningandbuilding/brconsultationsection4>
11. In light of the feedback from the engagement with external partners referred to above, the Department has developed detailed proposals for consultation on incremental changes to improve the building control system. The Building Regulations Advisory Committee (BRAC) has been consulted on the proposals and its views have been taken into account.
12. The proposed changes aim to improve the efficiency of the building control system by reducing burdens, improving compliance with the Building Regulations and encouraging industry to take greater responsibility for their actions. The changes will reduce costs affecting both building control bodies and those carrying out building work by removing, simplifying or improving processes and by introducing voluntary alternative/self-regulatory mechanisms. The changes will also help incentivise businesses to improve compliance without imposing significant additional costs, help building control to focus resources where they have the most impact, and level the playing field between building control bodies where possible to help improve competition.
13. The proposals are grouped under the following five areas and considered in detail in chapters 2-6 of this section of the consultation. They cover:
  - improving local authority building control processes
  - improving private sector Approved Inspector arrangements, including removing the Warranty Link Rule
  - strengthening enforcement
  - extending the competent person self-certification schemes framework and introducing specialist third party certification schemes; and
  - introducing Appointed Persons.

14. As indicated in the Ministerial announcement in December 2010, we have also given consideration to alternative approaches to those changes proposed above and how the interface between building control and planning and other relevant regulatory/ standards regimes could be improved. Details can be found in chapter 7.

## How to respond and after the consultation

15. Respondents are asked to reply to this section (i.e. 4) of the consultation package using the response form at **Annex A**, which is also available separately on the Department's website – see address in paragraph 10 above.
16. Responses should reach the Department by 27 April 2012 and should preferably be submitted via email to: [building.regulations@communities.gsi.gov.uk](mailto:building.regulations@communities.gsi.gov.uk), although a postal address is also given in the response form for paper copies. Any enquiries should also be sent to these addresses.
17. Following consideration of the responses to the consultation, if the proposed changes to the building control system are taken forward, we are aiming to amend the Building Regulations 2010 and the Building (Approved Inspectors etc.) Regulations 2010 (and other regulations if necessary) in advance of bringing the changes into force from April 2013. We will also publish a summary of responses on the Department's website, in line with consultation protocols.

# Chapter 2

## Improving local authority building control processes

### Introduction

18. This chapter considers proposals to change some aspects of current local authority building control processes.

**Proposal: To make the issue of completion certificates by local authorities mandatory, and within a specified time period, where building work is completed and considered compliant**

19. A completion certificate is evidence, although not conclusive proof, of compliance of building work with the applicable requirements of the Building Regulations. Under regulation 17 of the Building Regulations 2010, local authorities are currently required to issue a completion certificate where the building is in scope of the Regulatory Reform (Fire Safety) Order 2005 (i.e. non-domestic buildings and blocks of flats) or for work on buildings (usually houses) where at the time of submitting full plans the applicant has requested a completion certificate. In most cases where the work complies local authorities issue these certificates, but in some cases they do not.
20. When they are not issued, problems can occur when the building owner wishes to sell the property. We therefore propose to make the issuing of completion certificates mandatory where the local authority has been notified that the work is completed and is satisfied that it complies.
21. We also consider that it would be appropriate to require such certificates to be issued or, in the case of non-compliance, refused, within a specified time period, for example within eight weeks of the local authority being notified of the completion of the work, which is analogous to the time for an Approved Inspector to issue a final certificate. This would meet the Government's ambition, as stated in *the Implementation of the Penfold Review* (published on the Department for Business, Innovation & Skills' website<sup>3</sup>), that all development consent applications should be determined within a maximum of 13 weeks.

<sup>3</sup> <http://www.bis.gov.uk/penfold>

22. There is no additional measurable cost to the local authority when issuing a completion certificate as it is part of the existing administration costs incurred when dealing with a Building Regulations application. Although it would not be possible for a local authority to issue a completion certificate without carrying out at least one inspection, it is unlikely that there would be any further inspections needed as a result of this proposal, as an inspection is normally carried out at some stage in the work to ascertain that the work complies.
23. Although it would depend on the level and type of work involved, the main benefit of this proposal would mean that the person selling their property would be likely to sell it at a higher price, or sooner, than if they had not possessed a completion certificate. Purchasers will have confidence that they will not need to bear the cost of putting right any non-compliant work discovered after the purchase of a property. The vendor would also not have to purchase building regulations indemnity insurance which they currently may have to do when a certificate has not been issued. We understand this to be a significant cost.

### Question 2.1

Do you support the proposal to require local authorities to issue a completion certificate in all cases where the building work complies and within a specified time period from notification of completion?

### Proposal: To amend the wording on local authority completion certificates and their equivalents

24. We also propose to amend the wording on completion certificates and their equivalents (Approved Inspector final certificates and competent person building regulations compliance certificates) to reflect the legal position that the certificates are evidence of compliance but not conclusive proof of compliance with the Building Regulations.
25. There have been misunderstandings about the role of these certificates. They are sometimes issued where they should not have been as the building work was later found not to comply. This may occur where the building control process has not been carried out correctly or more commonly in cases where building control considered that the work complied at the time of issuing but a problem became apparent later.
26. This can cause problems. For example, if a building owner later becomes aware that the work was found not to comply and attempts to get redress from the person who carried out the work they can be hindered if the certificate is understood incorrectly to be conclusive proof of compliance. This is likely to be a result of a lack of understanding of the force of the certificates by the courts and others.

27. Such a change in the wording would likely benefit the building owner by enabling them to get redress against the builder where they might not currently be able to do so.
28. There would likely be only a minimal transitional cost to building control bodies and competent person schemes in making the proposed changes to the certificates in that all that would be required is additional clarifying wording.

### **Question 2.2**

Do you support amending the wording on completion certificates, Approved Inspector final certificates and competent person building regulations compliance certificates to reflect more clearly the force of these certificates?

### **Proposal: To reduce the number of statutory notifications required by introducing a requirement to prepare 'service plans'**

29. Statutory notifications are stages in the building work where the person who is carrying out the work is required to notify the local authority (where it is the building control body) that they have reached a particular stage of the work. In most cases the person carrying out the work is then required to wait up to two days for the local authority to carry out an inspection should they wish to do so.
30. The nine current statutory notification stages are:
  - (i) intention to start work
  - (ii) intention to commence work which will cover up any excavation for a foundation
  - (iii) intention to commence work which will cover up any foundation
  - (iv) intention to commence work which will cover up any damp-proof course
  - (v) intention to commence work which will cover up any concrete or other material laid over a site
  - (vi) intention to commence work which will cover up any drain or sewer to which the Building Regulations apply
  - (vii) completion of work which involved laying, haunching or covering any drain or sewer where a requirement is imposed by the drainage and waste disposal requirement of the Regulations
  - (viii) intention to occupy a building or part of a building before completion
  - (ix) completion of all the work.
31. Notification would of course be required only where the notification applied to work being carried out. For example, if the project involved no work on drains, stages (vi) and (vii) above would not apply.

32. The statutory notification stages do not apply where the building control function is carried out by Approved Inspectors. Instead they draw up a contract with their clients which may set out the stages at which they would wish to be notified so that they would better know when to inspect.
33. As the person carrying out the work when using local authority building control has no indication whether or when the local authority will inspect the work, time may be wasted waiting for inspections which do not in fact occur. Additionally there may be work which the local authority does wish to inspect but which is not linked to any of the statutory notifications, for example aspects of energy efficiency which tend to occur later in the building process than the current statutory notification stages.
34. We therefore propose to keep only commencement and completion (in full) in the Building Regulations as specified statutory notification stages, and replace the others with a requirement for a 'service plan'. A service plan would be drawn up by the local authority for each job setting out when it wished to be notified that work had reached certain stages. This is similar to the contract an Approved Inspector has with their client. It is likely that LABC (the body that represents local authority building control departments) would draw up suitable templates for use by individual local authorities. The costs of individual service plans would be recovered from the person carrying out the work through building control charges.
35. It is proposed that a service plan would set out the stages when the local authority wished to be notified and would be drawn up on a risk assessed basis between the authority and the person carrying out the work. The service plan would also set out the length of time the person carrying out the work should expect to wait for inspection after notifying the local authority. Some local authorities are already working on a risk assessed basis in deciding when to inspect. The Department has commissioned guidance on risk assessment for building control, building on good practice in the industry. The voluntary guidance, which can be used by both local authorities and Approved Inspectors, can be found on the Department's website (see address in paragraph 10, chapter 1).
36. The benefits of having a service plan in place are that the person carrying out the work will not have to wait unnecessarily for inspections and a likely reduction in the number of inspections will reduce costs for that person. There should also be greater levels of compliance as a risk based approach should ensure that the relevant parts of the building work are inspected. Any non-compliant work may be detected at an earlier stage and reduce the costs in putting it right.

### Question 2.3

Do you support the replacement of most of the statutory notification stages by a 'service plan' agreed between the local authority and the person carrying out the building work on a risk assessed basis?

#### **Not proposed: To restrict the use of Building Notices**

37. We also looked at the possibility of restricting the type of building work which can be carried out using a building notice to exclude projects such as new build houses, domestic extensions or loft conversions. This would mean that the deposit of full plans would be required for these types of work. However, we are not proposing to take this forward for several reasons.
38. If we restrict the use of the building notice procedure this could cause significant additional costs to consumers and builders (i.e. businesses) due to the need for them to prepare full plans. It would particularly impose additional costs on small and micro businesses where they may need to contract out to find the expertise to prepare these, potentially putting them at a competitive disadvantage.
39. There would be a further inconvenience to the micro business by requiring them to wait up to eight weeks for full plans to be approved, conflicting with their current working practices where they are not used to this wait.
40. If a local authority is concerned that a building notice does not contain enough information for it to check on the compliance of the work it already has powers to require further information to be submitted as necessary and is able to carry out more inspections to ensure compliance of the work. Local authorities also have powers under the Building (Local Authority Charges) Regulations 2010 to recover the costs of carrying out further inspections.
41. Restricting the use of building notices would also distort the level playing field between local authorities and Approved Inspectors, as there are no powers to require the submission of the equivalent of full plans for the work Approved Inspectors are supervising. This could have the effect of those carrying out the building of houses, extensions or loft conversions opting to use an Approved Inspector rather than the local authority simply to avoid the cost of preparing a full plans application.

# Chapter 3

## Improving private sector Approved Inspector arrangements, including removing the Warranty Link Rule

### Introduction

42. This chapter considers proposals to make minor amendments to the Approved Inspector Regulations and the removal of the Warranty Link Rule.

#### **Approved Inspector Regulations**

43. The Building (Approved Inspectors etc) Regulations 2010 apply the Building Regulations 2010 in the context of supervision of building work by the Approved Inspector, and expand upon many of the procedural requirements for Approved Inspectors provided in the Building Act 1984. The Regulations largely govern the relationship between Approved Inspectors and local authorities (the relationship between an Approved Inspector and their client is covered by their contractual arrangements).
44. The Regulations also set out the functions of Approved Inspectors, i.e. to take all reasonable steps to satisfy themselves within the limits of their professional skill and care that the requirements of the Building Regulations have been complied with when carrying out their building control functions.

#### **Warranty Link Rule**

45. The Warranty Link Rule was introduced in 2005 at the time that the new home building control market was opened up to Approved Inspectors other than NHBC (who had been operating in the sector since 1985) to alleviate concerns that they did not have experience of supervising such types of work.
46. The Warranty Link Rule requires that, where the building control function for a new home for private sale or rent is carried out by an Approved Inspector, a designated warranty approved by this Department must be in place. These designated warranties have an additional requirement over and above a 'standard' new home warranty, which provides a no-fault redress for the homeowner where there has been a breach of certain parts of the Building Regulations and there is an imminent danger to life and safety. They also cover issues in relation to contaminated land.

### **Proposal: To amend the Approved Inspector Regulations**

47. If an Approved Inspector is engaged to provide the building control function, the client and the Approved Inspector must give the local authority an Initial Notice. Once this notice has been accepted (within five days) or deemed to be accepted by the passing of five days without notice of rejection, the Approved Inspector is responsible for supervising the building work and certificating its compliance with the requirements of the Building Regulations.
48. We have considered a number of suggested changes to the Approved Inspector Regulations and have identified three minor changes that we propose making that would reduce the burdens of the processes involved both on Approved Inspectors and local authorities. The proposed changes are to:
  - (i) remove the need for Approved Inspectors to send a copy of their approval certificate and certificate of insurance to the local authority with every Initial Notice
  - (ii) combine the two classes (individual person and corporate) of Approved Inspectors; and
  - (iii) ensure all the definitions are up-to-date and make a few clarifications for ease of interpretation.
49. In place of sending their approval certificate and certificate of insurance with each Initial Notice, which is an unnecessary burden, the Construction Industry Council, which approves Approved Inspectors on behalf of the Secretary of State, would maintain a public website with this information for each of the Approved Inspectors. This website could be consulted by local authorities where they needed to make sure of approval and insurance arrangements. It would also be available to members of the public wishing to see this information.
50. At present there are two classes of Approved Inspectors – corporate and individual. There is no need for this distinction as both are approved to carry out building control functions for all types of building work. We therefore propose in future to have only a single class of approval.
51. A number of more significant changes to Approved Inspector procedures were suggested by external partners, such as sending Initial Notices to a third party to deal with and not the local authority, but these would require changes to primary legislation and would impose costs on business, so we are not proposing to take them forward at this time.

**Question 3.1**

Do you support the three proposed changes to the Approved Inspector Regulations indicated in paragraph 48 above?

**Proposal: To remove the Warranty Link Rule**

52. Research commissioned by the Department found that Approved Inspectors are not the subject of more complaints than local authority building control. This suggests that the concerns which led to the Warranty Link Rule being put in place have not occurred in practice. The research also found that Approved Inspectors have been discouraged from carrying out the building control function on new homes for private sale and rent due to the additional burdens associated with the Warranty Link Rule. A copy of the final research report can be found on the Department's website (see address in paragraph 10, chapter 1).
53. Where no warranty is in place the Approved Inspector cannot continue as the building control body and the building control function must revert to the local authority. This occurs:
  - (i) where the intended use of the dwellings under construction or conversion changes from one that does not require a warranty (for example, student accommodation or social or public sector rental) to dwellings for sale or private rental which do require a warranty; and
  - (ii) when a warranty provider decides it cannot issue a warranty once construction has begun.
54. We are therefore proposing to remove the Warranty Link Rule. This would have little adverse impact as the vast majority of new homes will continue to have a warranty for other reasons, such as the Council of Mortgage Lenders' requirements. Removal would also help to level the playing field between Approved Inspectors and local authorities (where the provision of a warranty is not required) and reduce a regulatory burden. It would also improve consumer choice in the warranty market by removing the need to use a designated warranty provider.
55. If we do not remove the Warranty Link Rule, Approved Inspectors will continue to be discouraged from entering the market for new homes for private sale and rent, thereby distorting competition and limiting consumer choice.
56. The research also identified a number of complex issues primarily in respect of the contaminated land criterion in warranty provision and the designated warranty approval process that would require revisions to both, increasing costs on both the warranty providers and house builders.

57. It has also been suggested by some that as an alternative to removing the Warranty Link Rule we should extend it to require designated new home warranties in all circumstances, including where the local authority carries out the building control function. To impose such a requirement would constitute a new regulatory burden on business and would need legislation as it could not be imposed on local authorities through conditions of approval. Nor do we have the powers to do this, as it would be requiring a new home warranty for consumer protection purposes, rather than to underpin the effective working of the building control system, and so primary legislation would be needed to take this forward.
58. More importantly, unless there is an over-riding policy objective, it is not Government policy to force citizens to purchase insurance or warranty protection where they do not choose to do so. In many cases, building owners who use the local authority to carry out the building control function already choose to purchase a new home warranty and we do not expect this to change. Therefore, we can see no justification for Government regulating in this area and restricting consumer choice.

**Question 3.2**

Do you support the removal of the Warranty Link Rule?

# Chapter 4

## Strengthening enforcement

### Introduction

59. This chapter considers proposals to make changes to the current building control enforcement mechanisms and the introduction of new mechanisms.
60. Most enforcement of the Building Regulations is carried out on an informal basis through advice and guidance from building control bodies to those carrying out building work. This is generally successful, in part because there is the knowledge that there are formal enforcement mechanisms available if informal methods do not achieve compliance, i.e. the deterrent effect. However, we consider that the current formal enforcement methods are no longer acting as a sufficient, effective or flexible deterrent and therefore should be strengthened.
61. If persons carrying out building work fully comply with the requirements of the Building Regulations, or follow informal advice and guidance given by building control bodies, they will incur no costs arising from formal enforcement.
62. Although building control functions can be carried out by either the local authority or a private Approved Inspector, formal enforcement of compliance with the Building Regulations can be carried out only by the local authority under current legislative powers.
63. There are currently two mechanisms under the Building Act 1984 for enforcing the Building Regulations. However, there are some problems and restrictions associated with these which diminish their effectiveness. We are therefore suggesting changes to these as well as the introduction of additional mechanisms available under the Regulatory Enforcement and Sanctions Act 2008.

### **Proposal: To extend the time limit and increase the fine limit under sections 35 and 35A of the Building Act 1984**

64. Sections 35 and 35A of the 1984 Act provide powers for the local authority to prosecute a person who contravenes Building Regulations. The time limit for bringing a prosecution is up to two years after the building work has been completed, but, within that time, a period of six months from having sufficient evidence to justify a prosecution. Prosecution currently carries a fine of up to level five on the standard

magistrates' court scale (currently £5000) and a continuing daily fine of up to £50 following conviction while the breach continues.

65. There are practical limitations to prosecution which make it less effective than it could be. It can only be used once the work has been completed (with the exception of procedural breaches). It is costly to the local authority to bring a prosecution, and the fine level means that a fine often does not effectively penalise the seriousness of the offence.
66. We therefore propose to increase the fine limit to act as a sufficient deterrent. We also propose to extend the time limit for bringing a prosecution to three years, and the period within that of knowledge of sufficient evidence to justify proceedings from six months to one year. We hope that this will allow more instances of non-compliant work, particularly those identified some time after work has been completed, to be prosecuted in appropriate cases. We propose to do this when an opportunity arises to amend the 1984 Act.

#### **Question 4.1**

Do you support the proposed extension to the time limit for bringing a prosecution under sections 35 and 35A of the Building Act 1984 from two to three years (and from six months to one year from the time that sufficient evidence is available)?

#### **Question 4.2**

Do you agree that the fine level for prosecution under sections 35 and 35A should be increased?

#### **Proposal: To extend the time limit under section 36 of the Building Act 1984**

67. Section 36 of the 1984 Act provides powers for the local authority to require by notice a building owner to pull down, remove or alter non-compliant building work. The time limit for serving such a notice is up to one year after the work has been completed.
68. However, a notice can be given only once the work has been completed and after a local authority becomes aware of non-compliant work. Breaches may come to light only after a considerable period of time and the local authority may be unable to use this enforcement mechanism as the time limit has expired.
69. We therefore propose to extend the time limit for this mechanism to three years after the work has been completed. We anticipate that this will allow local authorities to require more instances of non-compliant work to be rectified. It will also bring it into line with the proposed changes to the time limit for section 35 and 35A giving local

authorities more flexibility in deciding which approach would be more appropriate. We propose to do this when an opportunity arises to amend the 1984 Act.

### Question 4.3

Do you support the proposed extension to the time limit for issuing a notice to rectify non-compliant building work under section 36 of the Building Act 1984 from one year to three years?

### Proposal: To introduce the enforcement sanctions available under the Regulatory and Enforcement Sanctions Act 2008

70. Feedback we have received indicates that a significant problem with the current building control enforcement mechanisms is that no formal enforcement can be carried out during the process of the building work, except for procedural breaches. This denies local authorities the opportunity to intervene formally at the time of discovery of breaches and to require that work be put right at an earlier stage where it may be easier to do so. This can be expensive and time-consuming.
71. To help overcome these drawbacks, we are proposing to introduce some or all of the civil sanctions available under the Regulatory Enforcement and Sanctions Act 2008. This Act allows a Minister, by order, to give powers to a regulator (such as a local authority) to access new civil sanctions, as an alternative to prosecution, as follows:
- **Fixed monetary penalties (FMP)** are set penalties for specific breaches of legislation. We consider that these would be particularly suitable for breaches of the procedural requirements of the Building Regulations.
  - **Variable monetary penalty (VMP).** These would be determined by the local authority. They can set a range for different circumstances where they may take into account for example whether a breach is a first time breach or a persistent breach. However, the range could not exceed £5,000. These might be appropriate where none of the notice measures below were considered applicable or likely to be effective.
  - **Compliance notice.** These require the person who has breached the Regulations to take steps within a specific period to ensure the offence does not continue, or happen again. We anticipate these being used for non-compliance of technical requirements where the work on the offending part of the building has not yet been completed.
  - **Restoration notice.** This is a requirement to take steps within a specific period to ensure that the situation is put back to how it would have been if the offence had not been committed. We anticipate these being used for non-compliance of technical requirements where the work on the offending part of the building has been completed.

- **Stop notice.** These prevent the person carrying out building work from carrying out any further work until the non-compliant work is remedied. Stop notices are intended to be only where there is a significant and imminent risk of causing serious harm to human health, the environment or the financial interests of consumers.
  - **Enforcement undertakings.** These are voluntary agreements with the local authority at the request of the person carrying out the work to carry out specific actions to ensure that a breach of the Building Regulations does not occur or continue. They may be used where there are reasonable grounds to suspect that an offence may have been committed. As these are voluntary we anticipate them being used for suspected non-compliance of less serious breaches of the technical requirements.
72. If we were to adopt any of the above sanctions we anticipate that they would be used mainly where informal methods which are currently used have failed. The benefits of introducing these are that a more flexible range of enforcement mechanisms are available to suit the breach. This should have a better deterrent effect and therefore lead to higher levels of compliance. It is also likely that these might be used in some instances instead of the current enforcement mechanisms, which could reduce the costs to both the person carrying out the work and to the local authority.
73. At this stage we are consulting only on whether there is support for the introduction of the above sanctions for breaches of the Building Regulations. If responses to our consultation suggest that some or all of the sanctions would be beneficial, provisions in the Regulatory Enforcement and Sanctions Act mean that we would need to carry out a further consultation on detailed proposals for the introduction of each.
74. As mentioned above only local authorities have the right to exercise formal enforcement powers under the Building Act 1984. We are not proposing to change this but we consider that there should be a way for local authorities to issue a civil sanction where an Approved Inspector is the building control body and the Approved Inspector has asked the local authority to do so. At present the 1984 Act prevents local authorities carrying out any enforcement activities in these circumstances unless the Approved Inspector's initial notice is cancelled and the building control work reverts to the local authority. This restriction continues even after the Approved Inspector has given a final certificate.
75. We consider that civil sanctions will operate as an effective deterrent only if they can be applied also where an Approved Inspector is the building control body. We are therefore proposing to amend the 1984 Act when an opportunity arises to allow a local authority to issue a civil sanction without the need to cancel the initial notice. This proposal would also help ensure a more level playing field for building control bodies.

**Question 4.4**

Do you support the adoption for building control of any or all of the civil sanctions available under the Regulatory and Enforcement Sanctions Act 2008?

**Question 4.5**

If you support the proposal, please indicate which of the following sanctions you consider should be adopted:

Fixed monetary penalty	Variable monetary penalty
Compliance notice	Restoration notice
Stop notice	Enforcement undertaking

**Question 4.6**

If you support the proposal, please indicate which sanction you consider would be appropriate for the types of breaches of the Building Regulations referred to below, and where applicable the suggested penalty:

Fixed monetary penalty:		
Procedural <sup>4</sup>	Minor Technical <sup>5</sup>	Serious Technical <sup>6</sup>
Variable monetary penalty:		
Procedural	Minor Technical	Serious Technical
Compliance notice:		
Procedural	Minor Technical	Serious Technical
Restoration notice:		
Procedural	Minor Technical	Serious Technical
Enforcement undertaking:		
Procedural	Minor Technical	Serious Technical

**Question 4.7**

Should the Building Act 1984 be amended to allow Approved Inspectors to refer non-compliant building work to the local authority for purposes of the issue of a civil sanction?

<sup>4</sup> A breach that is considered by a building control body to be a procedural breach of the requirements of the Building Regulations. For example, it has been suggested that this could be failure to provide the required fire safety information to the building owner or failure to notify completion of work.

<sup>5</sup> A breach considered by a building control body to be a minor technical breach of the requirements of the Building Regulations. For example, it has been suggested that this could be failure to commission a heating or hot water system, failure to lag pipes under floor boards or failure to provide adequate manifestation on glass panels.

<sup>6</sup> A breach considered by a building control body to be a major breach of the technical requirements of the Building Regulations. For example, it has been suggested that where failure to comply presents a serious risk to health and safety or to conservation of fuel and power, this could be failure to provide an appropriate means of escape in case of fire, failure to provide for the structural stability of a building or failure to insulate the external walls of a new building.

# Chapter 5

## Extending the competent person self-certification schemes framework and introducing specialist third party certification schemes

### Introduction

76. This chapter considers proposals to extend the existing competent person self-certification schemes framework and to introduce specialist third party certification schemes.
77. If taken forward, such schemes would be authorised in the Building Regulations following application exercises carried out by the Department. This would require applicants to demonstrate that they have the managerial, financial and technical ability to operate a scheme and are able to comply with certain conditions of authorisation.
78. The Ministerial announcement in December 2010 also referred to the work we are doing to improve the robustness of competent person schemes and to align them with other related schemes across government (such as the Green Deal and the Microgeneration Certification Scheme, administered by the Department of Energy and Climate Change), which is being taken forward separately. In particular, we are proposing to introduce new and more robust conditions of authorisation shortly for competent person schemes to ensure quality assurance and improve consistency, monitoring and compliance with the Building Regulations. This will include a requirement to achieve accreditation to British Standard EN 45011 and commit to monitoring by the United Kingdom Accreditation Service (UKAS).

### **Proposal: To extend the competent person self-certification schemes framework**

79. Following consultation and in response to a significant increase in the amount and types of building work subject to the Building Regulations, the Government first introduced competent person schemes in 2002 to allow – on a voluntary basis – installers registered with schemes and assessed as competent to self-certify certain types of work as compliant with the Regulations.

80. Members of competent person schemes are authorised to self-certify their own work, i.e. they are not required to notify in advance and pay a building control body to check the work, but they are required to give a post-completion of work notice to building control (i.e. the local authority) within 30 days of completion. This removes a burden on installers and consumers, and also on building control bodies as it frees up their resources to concentrate on areas of higher risk.
81. The number of schemes and types of work they are authorised to self-certify has expanded significantly since 2002. Information provided by scheme operators indicates that about 2.5–3.0 million jobs are currently self-certified under competent person schemes each year, compared to an estimate of around half a million other notifiable jobs in total.
82. However, self-certification has been restricted to date to certain types of high volume work with a low incidence of risk to health and safety associated with non-compliance, such as replacement windows and roofs, installation of combustion appliances and ventilation systems and certain plumbing and electrical work in dwellings. A full list of competent person schemes and the types of work they are authorised to self-certify can be found in Schedule 3 of the Building Regulations 2010 (as amended) and on the Department's website<sup>7</sup>.
83. Monitoring of the performance of existing competent person schemes has indicated that self-certification has proved to be an effective, alternative and deregulatory means of ensuring compliance with the Building Regulations. The system will be further strengthened by new conditions of authorisation referred to in paragraph 78.
84. We are therefore seeking views on the principle of extending the scope of self-certification through the competent person schemes framework to cover new types of building work that are not currently authorised, which could include aspects of areas where it was previously thought that the level of risk was considered to be too high, i.e. relating to structure (Part A) or fire safety (Part B).
85. The Department is proposing to invite applications in 2012 to operate new or extended competent person schemes within the current framework, which will primarily support the proposed introduction of the Green Deal in October 2012. Following this consultation, if a decision is taken to extend the scope of the competent person schemes framework, applications will be invited for this purpose.

### Question 5.1

Do you support an extension of the current competent person self-certification schemes framework to cover further types of building work?

<sup>7</sup> <http://www.communities.gov.uk/planningandbuilding/buildingregulations/competentpersonsschemes/existingcompetentperson/>

### Question 5.2

If you support the proposal, which further types of work do you consider would be appropriate for self-certification, and why?

#### Proposal: To introduce specialist third party certification schemes

86. Building control bodies are in effect third party certifiers of building work carried out by others. We consider that there may be a case for specialist organisations to take responsibility for checking and certifying certain work carried out by developers as compliant with the Building Regulations, as an aid to building control bodies. This may be most beneficial in areas where building control bodies may not always have the necessary in-house knowledge or expertise or where the buildings are particularly complex. The specialist third party certifier may be a qualified practising engineer or other professional contracted in by the developer.
87. We are aware that some specialist third party certification schemes, which developers may choose to use during the construction process, already exist in the market place. As mentioned in the Ministerial announcement in December 2010, there is such a scheme relating to structural design operated in Scotland (and Jersey) by the Structural Engineers Registration Ltd (SER). We have since discussed the scheme with representatives from SER and details are referred to in the impact assessment (see chapter 8) by way of an example, although it should be noted that the building control system in England has significant differences to that in Scotland.
88. Building control bodies may currently choose to take specialist third party certification into account in checking whether building work complies with the Building Regulations. But, if third party certification schemes were formally authorised in the Building Regulations, building control bodies would be authorised to accept such certification as evidence of compliance. The Building (Local Authority Charges) 2010 could then be amended to recognise the savings in building control time by requiring local authorities to take into account third party certification schemes as a further factor in setting their charges.
89. For cost effectiveness reasons, we believe that specialist third party certification might particularly be used to check parts of larger building projects (including plans) comprising for example: new build and major renovation in large housing estates; blocks of flats; or complex non-domestic buildings. This could include work in areas such as: structural design; fire engineering design and as-built fire safety arrangements; or fixed building services such as heating, hot and cold water, ventilation or air-conditioning systems. However, such certification could potentially also be used for building work in existing buildings which is not part of a larger project, thus freeing up building control from any involvement in the checking process.

90. As in the case of competent person schemes, we propose that membership and use of specialist third party certification schemes would be voluntary, i.e. developers can instead continue to use building control bodies if they wish to do so. Therefore they will only be joined and used where there are clear benefits. The costs and benefits of authorising third party certification schemes are considered in the impact assessment. Although there should be savings in building control charges, these would need to be offset against the requirement to pay the third party certifier for their service.
91. We recognise that there may be some concerns about the proposal, such as a further fragmentation of the building control system, but we would look to address these by developing specialist third party certification similarly to the competent person scheme framework. Operators and members of schemes would need to satisfy robust conditions of authorisation before being authorised by the Department and would be similarly monitored.

### **Question 5.3**

Do you support the introduction of specialist third party certification schemes into the Building Regulations, as an aid to building control bodies?

### **Question 5.4**

If you support the proposal, which types of building work do you consider would benefit from specialist third party certification and why?

# Chapter 6

## Introducing Appointed Persons

### Introduction

92. This chapter considers a proposal to introduce Appointed Persons. The Sustainable and Secure Buildings Act 2004 amended the Building Act 1984 to allow for the introduction of Appointed Persons who would be persons employed by those carrying out building work and could be given specific responsibility for co-ordinating (and have the powers to require) compliance on site and act as an interface with building control, with the benefit of improving compliance with the Building Regulations. The statutory provisions are set out for ease of reference at the end of this chapter.

### **Proposal: To introduce the option for developers to use Appointed Persons to manage compliance on construction sites**

93. The 1984 Act (as amended) allows Building Regulations to be made to provide for the role of an Appointed Person in relation to any type of building work carried out in specified circumstances, and for the scope, powers and duties of the role, and criteria for who could be an Appointed Person (qualifications, experience etc) to be specified. Regulations may provide for a person to be self-appointed. We considered whether to make an Appointed Person a mandatory requirement in respect of some types of work (for example large, complex projects) or whether it should be voluntary in circumstances where it would be seen as beneficial by the person carrying out the work.

94. There will be costs associated with employing an Appointed Person and these could be justified only where the benefits on a particular site would outweigh the costs. Requiring an Appointed Person on sites where their appointment would not materially aid compliance would be an unnecessary additional cost without significant benefit. For example, in smaller developments where only one or two contractors were involved, it would not be cost effective to bear the additional cost of an Appointed Person. We therefore concluded that making Appointed Persons mandatory could not be justified.

95. However, we consider that there may be a role for Appointed Persons to be employed voluntarily on some sites where the person carrying out the work (e.g. developers, builders, building owners) considers that they would effectively help manage the work so that it better complied with the Building Regulations, resulting in non-compliance being prevented or identified at an earlier stage when it would cost less to put right. Having an Appointed Person could result in lower building control charges as building control may need to inspect less frequently. The appointment of an Appointed Person could also be added to the list of factors in the Building (Local Authority Charges) Regulations 2010 that local authorities are required to take into account when setting their charges. It would be for the person carrying out the work to take all these issues into account in deciding whether to employ an Appointed Person on a particular site and it is likely that they would do so only where they judged that the benefits would outweigh the employment costs.
96. For Appointed Persons to carry out their role effectively they would need to have a high level of competence in construction techniques and awareness of the requirements of the Building Regulations. We consider that regulations prescribing Appointed Persons would therefore need to set out minimum competence levels of those wishing to carry out the role.
97. Introducing Appointed Persons on a voluntary basis would mean that there would be no need to specify the type or size of project on which they could be employed, leaving it to those carrying out building work to decide where an Appointed Person would be appropriate or beneficial.

**Question 6.1**

Do you support the introduction of Appointed Persons on a voluntary basis?

**Question 6.2**

If you support the proposal, what do you think are the appropriate qualifications/competences needed for someone carrying out the role of an Appointed Person?

**Question 6.3**

If you support the proposal, what powers and responsibilities do you think an Appointed Person should be given?

**Building Act 1984, Schedule 1, paragraph 4B (as inserted by the Sustainable and Secure Buildings Act 2004)**

**Appointed person and management of works**

- (1) Building regulations may provide that in relation to any work of any type that is being, or that is proposed to be, carried out in prescribed circumstances, there shall be a person appointed for the purposes of this paragraph (the 'appointed person').
- (2) The appointed person in relation to any work shall be a person of a prescribed class or description who is appointed by a person determined in accordance with building regulations; and such regulations may make provision for a person to appoint himself.
- (3) Building regulations may -
- (a) require appointments for the purposes of this paragraph to be made within such periods or at such times as may be prescribed;
  - (b) make provision in relation to -
    - (i) the termination of a person's appointment;
    - (ii) the replacement of an appointed person.
- (4) Building regulations may -
- (a) provide that the appointed person in relation to any work shall have such duties in relation to the planning and management of the carrying out of that work as may be prescribed for purposes connected with facilitating compliance with the requirements of building regulations in relation to that work;
  - (b) for those purposes impose duties in relation to -
    - (i) the appointed person, or
    - (ii) anything that he does, or proposes to do, in connection with his duties, on persons who are participating, or who are to participate, in the carrying out of that work.
- (5) The duties that building regulations may impose on persons who are participating, or who are to participate, in the carrying out of any work include -
- (a) duties to comply with directions given to them by the appointed person;
  - (b) duties that are framed by reference to determinations made by that person.

# Chapter 7

## The building control system – other considerations

### Introduction

98. This chapter explains other approaches the Department has considered to change the building control system and how the interface between building control and planning and other relevant regulatory/standards regimes could be improved.

### Other approaches considered

99. In addition to the proposed changes referred to in earlier chapters, we have considered several possible alternative approaches, such as abolishing the building control system and relying on a system based on insurance or builder registration to ensure Building Regulations compliance. We also considered suggestions that building control should be fully privatised, or that it should be returned wholly to local authorities, as well as the potential for licensing building control.
100. As indicated in paragraph 6, chapter 1, there was very little support from external partners in the exercise carried out in 2010 for any fundamental changes to the building control system, particularly as any alternative approach would be likely to have similar or even higher costs, as well as the additional transitional costs of moving to a new system in the current economic climate.
101. There was some support for compulsory builder registration but only in addition to the current building control regime. However, as well as being a considerable burden, this would require a major expansion in the capacity of the construction training sector and have implications for those undertaking DIY.
102. There was little support for moving to an insurance based approach such as that used in France. Not only would it be difficult to adopt in this country due to the differences in our legal system, the insurance industry's main priority is to assess the level of risk involved in areas where claims might later be made. It is clear that they would not have sufficient incentive or expertise to cover all aspects currently covered by Building Regulations. We have sought the views of the insurance industry on the potential for insurance to play a greater role in securing compliance, for example whether having a new home warranty/latent defects policy in place would provide sufficient

reassurance to allow for a reduced level of building control inspection. However, there are issues regarding when insurers inspect, depending on the perceived level of risk and whether they would release information to third parties such as building control bodies, which would mean a reduction in building control costs and charges could not be realised.

103. In respect of whether building control should be carried out by the public or private sector there are pros and cons to both. Returning to a local authority-only building control service could help to ensure building standards remain high by removing a perception that developers might ‘shop around’ to find a building control body prepared to entertain a lower standard and also reduce burdens by facilitating joining-up with the planning system to make the overall system more effective in the long term. But it would remove any element of consumer choice and, for companies that operate on a wider geographical basis, the efficiencies from dealing with a single building control provider.
104. If building control were to be fully privatised this could cause problems where Approved Inspectors choose not to operate in every part of the country or to cover all types of building work (especially small scale-domestic work), or even deal with particular individuals. (Local authorities are the statutory ‘backstop’ provider; they have a duty to provide a building control service in their area and cannot turn down any application no matter how small, difficult or complex.) A mechanism would need to be found to ensure that every job that required building control supervision would have an Approved Inspector to supervise it, for example by compelling Approved Inspectors to accept any application that was submitted to them. However, such an obligation would be extremely difficult to impose in practice and would interfere with the traditional right of a private company to contract with whomever they wish.
105. With respect to licensing of building control, there is no evidence to justify Government introducing such an approach at the current time. However, we note that the building control industry is working with Construction Skills to develop a set of National Occupational Standards for building control officers and welcome this initiative.
106. In view of the above, the Department is focussing on the specific proposed improvements referred to in paragraph 13, chapter 1 and detailed in chapters 2-6. Notwithstanding this, if consultees have any views on other changes to the building control system they consider are necessary, these can be included in the *Any other comments* part of the response form.

## Improving the interface between building control and planning and other regulatory regimes

107. As part of the review of the Building Regulations, the Department has also considered how the interface between building control and planning, and other regulatory/standards regimes that impact on the design and construction of a building, could be improved. This also ties in to the planning reform agenda.
108. We have had regard to previous work in this area, including the AECOM 2010 report on *Mapping the Interfaces Between Building Control and Other Regulatory Regimes Which Impact on a Building* which can be found on the Department's website (see address in paragraph 10, chapter 1) and the National Planning Forum's 2010 report on *Improving the connection between the two regimes*. We have looked in particular at whether there are any areas for potential simplification such as removal of duplication or conflicts.
109. Building control and planning are separate regimes with differing but complementary purposes and we recognise that there has been increasing overlap in some areas in recent years, particularly in setting sustainability standards for buildings. The Planning and Energy Act 2008 provides specific legislative powers for local planning authorities to set reasonable requirements for local renewable and low-carbon energy use in new development and energy efficiency standards that exceed the energy requirements in the Building Regulations.
110. The trend in local planning authorities to set local requirements for building sustainability, including on energy, has led to concerns in the construction industry about the extent of detailed design work required at the planning application stage and the potential for conflict with Building Regulations requirements. This concern was recognised in the 2010 *Penfold Review of non-planning consents* (see footnote to paragraph 21, chapter 2, for website address) which included a recommendation to clarify the roles of planning authorities and building control in relation to energy efficiency.
111. We are keen that local approaches should integrate with and support the Government's zero carbon policy. We are also keen to cut overlapping information and compliance requirements to reduce burdens on the construction industry. We therefore wish to encourage greater levels of knowledge and awareness amongst planners of how local planning can best support our zero carbon policy. We also wish to ensure that the implications of local measures are fully understood and avoid adding unnecessarily to development costs or making new development unviable.

112. Local planning authorities and building control bodies (either a local authority or private sector Approved Inspector) may wish to consider more effective involvement of building control during the planning process to help in securing a more integrated and joined-up approach and avoid unnecessary overlap, e.g. by contributing to the development of local planning approaches; attending pre-application meetings; and potentially also by checking that areas of development schemes are implemented in accordance with planning permission. In addition to Approved Inspectors, local authority building control are now authorised to charge applicants for giving pre-application advice related to proposed building work.
113. Whilst the full integration of planning and building control decisions may not be feasible, due to the legal requirement for planning decisions to be made by democratically accountable bodies (normally the local planning authority), we will explore the scope to better integrate planning and building control applications, via the Planning Portal, having regard to the need to maintain the level playing field between local authorities and Approved Inspectors in carrying out their building control functions.
114. Another example of overlap we are looking at is the use of access statements, used both when a planning application is submitted (as part of the Design and Access Statement in developments where this is a mandatory requirement) and with relevant building control applications (where this is recommended only). Access statements were intended to improve communications between applicants and statutory bodies, and to help ensure that adequate consideration of access issues formed part of the design process.
115. However, it has been suggested by external partners that the quality and usefulness of access statements varies considerably and that there was confusion as to how planning and building control stages overlapped or were intended to work together. This has been reviewed as part of the overarching review of the Building Regulations and more detail can be found in Section one of this consultation.
116. More generally, we are working with a group led by industry and local authorities and chaired by Sir John Harman, which is developing advice on: how local authorities and developers can fulfil the viability policy in the proposed National Planning Policy Framework; the simplification, improvement and harmonisation of housing standards; and how standards compliance regimes can be simplified.
117. We are also considering whether there are any areas that might benefit from simplification between the Building Regulations and health and safety at work legislation, which is currently the subject of its own review, in particular the Construction (Design and Management) Regulations. This includes the scope for combining information provided to building owners covering both regimes and the

notifications required and making health and safety at work information more readily available through the Planning Portal.

118. We will continue to explore opportunities to improve the interface between building control and planning and other regulatory regimes. If consultees have any views or suggestions on how best to improve the interface, these can also be included in the *Any other comments* part of the response form.

## Chapter 8

### **Impact Assessment on Section four proposals – the building control system**

119. As part of this section of the consultation, we have published an Impact Assessment on the Department's website to cover the proposed changes to the building control system set out in chapters 2 to 6 (see address in paragraph 10, chapter 1).
120. Similarly, Impact Assessments have been prepared to support the proposals set out in the other three sections of the consultation (see address in paragraph 9, chapter 1). As stated previously, the Department is particularly keen to explore the opportunity to deliver deregulatory savings as part of this review.
121. The Impact Assessment for the proposed changes to the building control system considers the impacts and the monetised and non-monetised costs and benefits that would arise if the changes were implemented. It concludes that at consultation stage the proposed changes will have an estimated total present value cost of £10.07m over ten years and an estimated total present value benefit of £20.04m over ten years, providing a total net present value benefit of £9.96m.
122. However, the Impact Assessment acknowledges that further work is needed to monetise the costs and benefits of the proposals, in particular relating to local authority processes, enforcement, competent persons schemes and specialist third party certification schemes. Comments, information and evidence from consultees would therefore be appreciated, and will be considered and taken account of before the Impact Assessment is finalised following consultation.

**Question 8.1**

Do you consider that the Impact Assessment on the proposed changes to the building control system fairly represents the relevant impacts and the types and levels (where included) of the costs and benefits that would arise from the five proposals to:

- (i) improve local authority building control processes
- (ii) improve private sector Approved Inspector arrangements, including removing the Warranty Link Rule
- (iii) strengthen enforcement
- (iv) extend the competent person self-certification schemes framework and introduce specialist third party certification schemes
- (v) introduce appointed persons?

For each of the above proposals:

If you have answered yes, please comment and provide any information or evidence you have in the relevant box.

If not, please comment on the issues you consider should be (or should not be) included and provide any information or evidence you have in the relevant box.

# Annex A

## Response form

### Section four: The building control system

We are seeking your views on the following questions on the Government's proposed changes to the Building Regulations and the building control system.

If possible, please could you respond by email to:

[building.regulations@communities.gsi.gov.uk](mailto:building.regulations@communities.gsi.gov.uk)

Alternatively, responses can be sent by post to:

Building Regulations Consultation  
Building Regulations and Standards Division  
Department for Communities and Local Government  
Zone 5/G9  
Eland House  
Bressenden Place  
London SW1E 5DU

## About you:

### (i) Your details

Name:	
Position:	
Name of organisation (if applicable):	
Address:	
Email:	
Telephone number:	

### (ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response  Personal views

### (iii) Are your views expressed on this consultation in connection with your membership or support of any group? If yes, please state name of group:

Yes  No

Name of group:

(iv) Please tick the **one** box which best describes you or your organisation:

<p><b>Builders/Developers:</b></p> <p>Builder – Main contractor <input type="checkbox"/></p> <p>Builder – Small builder (extensions/repairs/maintenance, etc) <input type="checkbox"/></p> <p>Installer/specialist sub-contractor <input type="checkbox"/></p> <p>Commercial developer <input type="checkbox"/></p> <p>House builder <input type="checkbox"/></p>	<p><b>Property Management:</b></p> <p>Housing association (registered social landlord) <input type="checkbox"/></p> <p>Residential landlord, private sector <input type="checkbox"/></p> <p>Commercial <input type="checkbox"/></p> <p>Public sector <input type="checkbox"/></p>
<p><b>Building Occupier:</b></p> <p>Homeowner <input type="checkbox"/></p> <p>Tenant (residential) <input type="checkbox"/></p> <p>Commercial building <input type="checkbox"/></p>	<p><b>Building Control Bodies:</b></p> <p>Local authority building control <input type="checkbox"/></p> <p>Approved Inspector <input type="checkbox"/></p>
<p><b>Designers/Engineers/Surveyors:</b></p> <p>Architect <input type="checkbox"/></p> <p>Civil/Structural engineer <input type="checkbox"/></p> <p>Building services engineer <input type="checkbox"/></p> <p>Surveyor <input type="checkbox"/></p>	<p><b>Specific Interest:</b></p> <p>Competent person scheme operator <input type="checkbox"/></p> <p>National representative or trade body <input type="checkbox"/></p> <p>Professional body or institution <input type="checkbox"/></p> <p>Research/academic organisation <input type="checkbox"/></p>
<p><b>Manufacturer/Supply Chain</b> <input type="checkbox"/></p>	<p><b>Energy Sector</b> <input type="checkbox"/></p> <p><b>Fire and Rescue Authority</b> <input type="checkbox"/></p> <p><b>Other (please specify)</b> <input type="checkbox"/></p> <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>

(v) **Please tick the *one* box which best describes the size of your or your organisation's business?**

- Micro – typically 0 to 9 full-time or equivalent employees (incl. sole traders)
- Small – typically 10 to 49 full-time or equivalent employees
- Medium – typically 50 to 249 full-time or equivalent employees
- Large – typically 250+ full-time or equivalent employees
- None of the above (please specify)

(vi) **Are you or your organisation a member of a competent person scheme?**

Yes  No

Name of scheme:

(vii) **Would you be happy for us to contact you again in relation to this consultation?**

Yes  No

DCLG will process any personal information that you provide us with in accordance with the data protection principles in the Data Protection Act 1998. In particular, we shall protect all responses containing personal information by means of all appropriate technical security measures and ensure that they are only accessible to those with an operational need to see them. You should, however, be aware that as a public body, the Department is subject to the requirements of the Freedom of Information Act 2000, and may receive requests for all responses to this consultation. If such requests are received we shall take all steps to anonymise responses that we disclose, by stripping them of the specifically personal data – name and email address – you supply in responding to this consultation. If, however, you consider that any of the responses that you provide to this survey would be likely to identify you irrespective of the removal of your overt personal data, then we should be grateful if you would indicate that, and the likely reasons, in your response, for example in the relevant comments box.

## Questions:

### <sup>1</sup>Chapter 2: Improving local authority building control processes

- 2.1 Do you support the proposal to require local authorities to issue a completion certificate in all cases where the building work complies and within a specified time period from notification of completion?

Yes  No  Don't know

Please give your reasons:

- 2.2 Do you support amending the wording on completion certificates, Approved Inspector final certificates and competent person building regulations compliance certificates to reflect more clearly the force of these certificates?

Yes  No  Don't know

Please give your reasons:

- 2.3 Do you support the replacement of most of the statutory notification stages by a "service plan" agreed between the local authority and the person carrying out the building work on a risk assessed basis?

Yes  No  Don't know

Please give your reasons:

<sup>1</sup> Chapter numbers correspond to those in Section four of the consultation.

## Chapter 3: Improving private sector Approved Inspector arrangements, including removing the Warranty Link Rule

3.1 Do you support the three proposed changes to the Approved Inspector Regulations indicated in paragraph 48 of the consultation document?

Yes  No  Don't know

Please give your reasons:

3.2 Do you support the removal of the Warranty Link Rule?

Yes  No  Don't know

Please give your reasons:

## Chapter 4: Strengthening enforcement

4.1 Do you support the proposed extension to the time limit for bringing a prosecution under sections 35 and 35A of the Building Act 1984 from two to three years (and from six months to one year from the time that sufficient evidence is available)?

Yes  No  Don't know

Please give your reasons:

4.2 Do you agree that the fine level for prosecution under sections 35 and 35A should be increased?

Yes  No  Don't know

Please give your reasons:

4.3 Do you support the proposed extension to the time limit for issuing a notice to rectify non-compliant building work under section 36 of the Building Act 1984 from one year to three years?

Yes  No  Don't know

Please give your reasons:

4.4 Do you support the adoption for building control of any or all of the civil sanctions available under the Regulatory and Enforcement Sanctions Act 2008?

Yes  No  Don't know

Please give your reasons:

4.5 If you support the proposal, please indicate which of the following sanctions you consider should be adopted:

Fixed monetary penalty	<input type="checkbox"/>	Variable monetary penalty	<input type="checkbox"/>
Compliance notice	<input type="checkbox"/>	Restoration notice	<input type="checkbox"/>
Stop notice	<input type="checkbox"/>	Enforcement undertaking	<input type="checkbox"/>

- 4.6 If you support the proposal, please indicate which sanction you consider would be appropriate for the types of breaches of the Building Regulations referred to below, and where applicable the suggested penalty:

Fixed Monetary Penalty:

Procedural <sup>2</sup>	<input type="checkbox"/>	Penalty	<input type="text"/>
Minor Technical <sup>3</sup>	<input type="checkbox"/>	Penalty	<input type="text"/>
Serious Technical <sup>4</sup>	<input type="checkbox"/>	Penalty	<input type="text"/>

Variable Monetary Penalty:

Procedural	<input type="checkbox"/>	Penalty	<input type="text"/>
Minor Technical	<input type="checkbox"/>	Penalty	<input type="text"/>
Serious Technical	<input type="checkbox"/>	Penalty	<input type="text"/>

Compliance notice:

Procedural	<input type="checkbox"/>	Minor Technical	<input type="checkbox"/>	Serious Technical	<input type="checkbox"/>
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Restoration notice:

Procedural	<input type="checkbox"/>	Minor Technical	<input type="checkbox"/>	Serious Technical	<input type="checkbox"/>
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Enforcement undertaking:

Procedural	<input type="checkbox"/>	Minor Technical	<input type="checkbox"/>	Serious Technical	<input type="checkbox"/>
------------	--------------------------	-----------------	--------------------------	-------------------	--------------------------

<sup>2</sup> A breach that is considered by a building control body to be a procedural breach of the requirements of the Building Regulations. For example, it has been suggested that this could be failure to provide the required fire safety information to the building owner or failure to notify completion of work.

<sup>3</sup> A breach considered by a building control body to be a minor technical breach of the requirements of the Building Regulations. For example, it has been suggested that this could be failure to commission a heating or hot water system, failure to lag pipes under floor boards or failure to provide adequate manifestation on glass panels.

<sup>4</sup> A breach considered by a building control body to be a major breach of the technical requirements of the Building Regulations. For example, it has been suggested that where failure to comply presents a serious risk to health and safety or to conservation of fuel and power, this could be failure to provide an appropriate means of escape in case of fire, failure to provide for the structural stability of a building or failure to insulate the external walls of a new building.

4.7 Should the Building Act 1984 be amended to allow Approved Inspectors to refer non-compliant building work to the local authority for purposes of the issue of a civil sanction?

Yes  No  Don't know

Please give your reasons:

## Chapter 5: Extending the competent person self-certification schemes framework and introducing specialist third party certification schemes

5.1 Do you support an extension of the current competent person self-certification schemes framework to cover further types of building work?

Yes  No  Don't know

Please give your reasons:

5.2 If you support the proposal, which further types of work do you consider would be appropriate for self certification, and why?

5.3 Do you support the introduction of specialist third party certification schemes into the Building Regulations, as an aid to building control bodies?

Yes  No  Don't know

Please give your reasons:

- 5.4 If you support the proposal, which types of building work do you consider would benefit from specialist third party certification and why?

## Chapter 6: Introducing Appointed Persons

- 6.1 Do you support the introduction of Appointed Persons on a voluntary basis?

Yes  No  Don't know

Please give your reasons:

- 6.2 If you support the proposal, what do you think are the appropriate qualifications/competencies needed for someone carrying out the role of an Appointed Person?

- 6.3 If you support the proposal, what powers and responsibilities do you think an Appointed Person should be given?

## Chapter 8: Impact Assessment on Section four proposals – the building control system

8.1 Do you consider that the Impact Assessment on the proposed changes to the building control system fairly represents the relevant impacts and the types and levels (where included) of the costs and benefits that would arise from the five proposals to:

(i) improve local authority building control processes;

Yes  No  Don't know

Comments:

(ii) improve private sector Approved Inspector arrangements, including removing the Warranty Link Rule;

Yes  No  Don't know

Comments:

(iii) strengthen enforcement;

Yes  No  Don't know

Comments:

(iv) extend the competent person self-certification schemes framework and introduce specialist third party certification schemes;

Yes  No  Don't know

Comments:

(v) introduce Appointed Persons?

Yes  No  Don't know

Comments:

For each of the above proposals:

If you have answered yes, please comment and provide any information or evidence you have in the relevant box.

If not, please comment on the issues you consider should be (or should not be) included and provide any information or evidence you have in the relevant box.

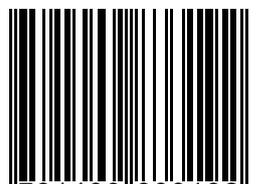
## Any other comments

If you have any other comments or suggestions on possible changes to the building control system, please include them here:

Comments:

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