



# Proposed changes to the building control system

Consultation stage impact assessment





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# Summary: Analysis & Evidence

# Policy Option 2

Description:

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 9.96

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	7.37
High	Optional	Optional	13.17
Best Estimate	0.30	1.13	10.07

### Description and scale of key monetised costs by 'main affected groups'

Monetised costs include the voluntary cost of introducing appointed persons £9.37m (primarily from their salary costs £9.12m but also from their training and assessment £0.25m), improvements to Local Authority processes £0.16m, costs associated with augmenting enforcement £0.54m, improving Approved Inspector arrangements £0.005m. It is anticipated that most of the costs will fall on businesses, although those associated with enforcement would mainly fall to Local Authorities.

### Other key non-monetised costs by 'main affected groups'

Some costs associated with Local Authority processes, enforcement, competent person schemes and 3<sup>rd</sup> party certification have not yet been monetised. Further work is planned to firm up proposals and assess costs during consultation. It is expected that such costs could fall to businesses and/or Local Authorities.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	18.27
High	Optional	Optional	21.80
Best Estimate		2.33	20.04

### Description and scale of key monetised benefits by 'main affected groups'

Monetised benefits include savings from improved Approved Inspector arrangements £17.66m, due to the removal of the warranty link rule £14.2m and changes to simplify the Approved Inspector processes £3.45m, as well as the voluntary arrangements for appointed persons which would lead to reduced building control charges £2.38m. It is anticipated that most benefits will accrue to business (and those from removing the warranty link rule primarily to housebuilders) although some would go to Local Authorities.

### Other key non-monetised benefits by 'main affected groups'

Further work on monetising benefits is planned for all the proposals – again further information will be sought during consultation. However, it should be noted that as the self-regulation approaches (appointed persons and competent persons) and specialist third party certification are all voluntary, it is expected these will not be used in practice unless the benefits to participating businesses exceeded the costs. It is expected that benefits could fall to businesses and/or Local Authorities.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5%
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Appointed Person costs are indicative estimates only, with ranges on salary costs of £6.7m-£11.9m. However, as with other voluntary measures eg self-certification these will only be introduced where benefits to business exceed costs. Enforcement costs will be constrained by limits on penalties and Local Authority take up. Costs of changes to Local Authority processes, although uncertain, are likely to be small. Further work on costs and benefits will be carried out during consultation. The direct impact on business (excluding enforcement costs) is a small 'out' of £1.85m mainly due to removing the warranty link rule.

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> 0.00	<b>Benefits:</b> 1.85	<b>Net:</b> 1.85	Yes	Out

# Evidence Base

## General Introduction

The Building Regulations 2010 are made under powers contained in the Building Act 1984, as amended. They set out what is controlled building work, typically the erection, extension or alteration of a building, or a controlled service or fitting, as well as certain changes of use (eg from a non-domestic building to a dwelling). They set minimum standards for the design and construction of buildings, primarily for the purposes of the health and safety of people, energy efficiency and accessibility. These standards are performance based, in terms of what is reasonable, adequate or appropriate. Statutory guidance on ways of complying with these technical requirements is set out in a series of 'Approved Documents', although it does not have to be followed provided the required level of performance can be achieved in a different way. Compliance with the regulations is the responsibility of the person carrying out the work.

The building control system helps to ensure that the required level of performance has been met. The role of building control, either the local authority or a private sector Approved Inspector, is to act as an independent third party check to help achieve compliance, which is usually carried out through plan checking and/or onsite inspections. Competition in the provision of building control was introduced in 1985 primarily to drive efficiencies but also to enable those builders who operate across different local authority areas to be able to deal with a single building control provider if they wished to do so.

Although their functions are broadly the same (the key difference being that only local authorities can take formal legal enforcement action), the procedures for the two types of building control body differ due to the basis on which they operate. The Building Act places a statutory duty on local authorities to provide a building control service. Because of this, the Act and the supporting regulations prescribe a number of procedural matters eg a local authority must approve or reject a full plans application within a specified time limit. For Approved Inspectors, there is no statutory duty to provide a building control service so the relationship between the Approved Inspector and the person carrying out the work is governed by their contract. The statutory provisions in the Act and supporting regulations (primarily the Building (Approved Inspectors etc.) Regulations 2010) therefore largely cover the approval and functions of Approved Inspectors and their relationship with local authorities.

In addition to third party checking by building control, some types of work (where the volume is high and the risk associated with non-compliance is low) may be self-certified as being compliant by the installer where the installer is a member of a competent person self-certification scheme and has been assessed as competent to do so. Since its introduction in 2002 this voluntary "self-regulation" approach has proved a successful alternative and the range of work covered has expanded significantly, including the installation of combustion appliances, replacement windows, electrical work in dwellings and insertion of cavity wall insulation.

Compliance with the regulations is generally considered to be good, although it could be improved, especially in areas such as energy efficiency. Most enforcement by building control is achieved through informal interventions which are frequently successful (eg identifying an area of non-compliance during an inspection, informing the person carrying out the work and, often, providing advice on how to comply). Where non-compliance persists, or where unauthorised work is carried out (ie without required supervision by building control), formal legal enforcement action can be taken by the local authority.

It should be noted that the power to make Building Regulations was devolved to Wales on 31 December 2011; Scotland and Northern Ireland have competence to make their own building legislation. This Impact Assessment therefore only covers England.

## **Problem under consideration, rationale for intervention and policy objectives**

In 2010 we informally invited external partners to submit ideas and evidence on possible changes to the Building Regulations and to the building control system that supports them. The emphasis was on areas where we could deregulate and/or reduce burdens, whilst delivering high levels of compliance. We also sought views on measures to help the Government meet its climate change commitments and to address known health and safety risks. As part of this exercise we also asked for views on possible alternative approaches, such as abolishing the building control system and relying on a system based on insurance or builder registration.

A key theme to emerge was that the building control system was considered to be generally fit for purpose but could benefit from some improvements to make it more efficient and less burdensome. There was also support for measures to improve compliance and to help level the playing field between public and private sector building control bodies. However, there was very little support for any fundamental changes to the regime, particularly as an alternative approach would be likely to have similar costs, as well as the transitional costs of moving to a new system in the current economic climate.

In the light of this feedback, we have therefore developed detailed proposals for consultation on incremental changes to improve the building control system. These sit alongside proposed changes to the technical aspects of the Building Regulations. It is intended that, if taken forward, the changes will be implemented in 2013.

This impact assessment therefore considers proposed changes to the building control system which aim to reduce burdens, improve compliance and encourage 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 introducing voluntary alternative/self-regulatory mechanisms. We also propose to incentivise businesses to improve compliance without imposing any significant additional costs, to help building control to focus resources where they have the most impact, ensuring a proportionate approach and to level the playing field where possible to help improve competition.

The proposals are grouped and considered in detail under five sections in the impact assessment which each set out the costs and benefits and the preferred option. They are:

- Improving local authority building control processes
- Improving private sector Approved Inspector arrangements, including removing the Warranty Link Rule
- Augmenting the range of enforcement options
- Extending the competent person self-certification schemes framework and introducing specialist third party certification schemes
- Introducing the option for developers to use 'Appointed Persons' to act as a compliance co-ordinator on construction sites.

## Summary Table for 2013 Changes to the Building Control System IA.

	<b>PV Cost</b>	<b>PV Benefit</b>	<b>PV OIIO cost to business</b>	<b>PC OIIO benefit to business</b>
Appointed Persons	£9.37m	£2.38m		
Local Authority Processes	£0.16m	-		
Enforcement	£0.54m	-		
Approved Inspectors	£0.005m	£17.66m	£0.005m	£15.93m
CPS/ 3 <sup>rd</sup> Party Certification	-	-		
<b>Total</b>	<b>£10.07m</b>	<b>£20.04m</b>	<b>£0.005m</b>	<b>£15.93m</b>
AENBB (2011 prices)				£1.85m

Where costs and benefits have not been fully monetised we have sought to provide indicative figures where possible. These will be fully monetised for the final impact assessment.

### One In One Out (OIIO) Note:

- Appointed persons and competent person self-certification schemes / specialist third party certification changes will be voluntary hence will only be undertaken when a business concludes that benefits are greater than costs – so no regulatory burden for One In One Out
- Local authority process changes impacting on business will be fully monetised for final impact assessment
- Enforcement improvements without change to regulation are out of scope for One In One Out
- For Approved Inspectors, the total present value (pv) benefit includes a pv saving of approx £1.72m for local authority building control.



# LOCAL AUTHORITY BUILDING CONTROL PROCESSES

## Background

### Completion Certificates

Completion certificates are issued by the local authority once it has been notified that the building work has been completed and, having taken all reasonable steps, it is satisfied that the work complies with the regulations. At present completion certificates are only required to be issued where the building is in scope of the Regulatory Reform (Fire Safety) Order 2005 (ie non-domestic buildings and blocks of flats) or, in respect of work on houses, where the applicant has requested a completion certificate at the time of submitting full plans. Where work is carried out on a house under a building notice or where a certificate was not requested at the time of submission of full plans there is no requirement for the local authority to issue a completion certificate.

Where an Approved Inspector is the building control body the equivalent is a final certificate which must be issued in all cases. Competent Person scheme members must issue a certificate of compliance for all work that they carry out under their scheme. These certificates have the same effect as a local authority completion certificate.

Completion certificates are evidence, but not conclusive proof, of compliance with the Building Regulations (ie they are not a guarantee of compliance) as building control is only a spot-checking process intended to help the person carrying out the work to comply.

### Statutory Notifications

Where the local authority is providing the building control function, the regulations place a requirement on the person carrying out building work to notify the local authority that the work has reached certain stages in the building process. These are referred to as “statutory notifications” and trigger the local authority to decide whether it needs to inspect the work. The person carrying out the work will not know whether the local authority will wish to inspect, but should wait up to two days to allow it time to inspect should it decide to do so. There is no requirement on the local authority to inspect after each notification; whether to do so will be a matter of judgement for the local authority, generally based on the risk.

The nine current statutory notification stages are:

1. Intention to start work,
2. Intention to commence work which will cover up any excavation for a foundation
3. Intention to commence work which will cover up any foundation
4. Intention to commence work which will cover up any damp- proof course
5. Intention to commence work which will cover up any concrete or other material laid over a site
6. Intention to commence work which will cover up any drain or sewer to which the Regulations apply
7. Completion of work which involved laying, haunching or covering any drain or sewer in relation to where a requirement is imposed by the drainage and waste disposal requirement of the Regulations
8. Intention to occupy a building or part of a building before completion;or
9. Completion of the work.

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 6 and 7 would not apply.

## **Problem under consideration**

### Completion Certificates

As explained above, there is no statutory requirement for a local authority to issue a completion certificate where work is carried out under a building notice (which accounts for the vast majority of work carried out on houses) or for work on houses where the applicant chose to use the full plans route but did not request a completion certificate at the time the plans were submitted. Where such a request is not made it may be because the householder lacks the information on the benefits of a completion certificate. However, the choice of whether to use a building notice or full plans is driven by other factors such as the need to prepare detailed plans up front.

Where a completion certificate has not been issued simply because there is no requirement on the local authority to do so, evidence, from correspondence, enquiries etc, shows that problems can arise when selling the property, as it is not clear to the purchaser whether the building work complied with the regulations or not. The absence of a completion certificate can therefore result in a reduced purchase price, delays, or even loss of the sale. This has only become an issue in recent years as the introduction of Home Information Packs (HIPs) in 2007 placed a requirement for such certificates to be provided as part of the conveyancing process. Although the need for a HIP has since been removed, solicitors and purchasers still expect completion certificates in relation to building work to be provided during conveyancing.

In circumstances where there is no statutory entitlement to a completion certificate, building owners however can and frequently do request a certificate from the local authority either on completion of the work or at a later date (eg when a problem arises on sale of the property). Although local authorities are not required to do so, evidence from a recent survey by the Building Control Alliance suggests that completion certificates are issued by local authorities in the vast majority of cases where work complies, irrespective of whether there is a requirement on them to do so as they recognise that this is at minimal cost to them and brings benefits to the householder. However, there are a few cases (around 3%) where the local authorities do not do so because they have no specific incentive and a policy of not going beyond the statutory requirements, which can have a significant impact on the householder.

Conversely, where certificates have been issued and it later comes to light that the work did not in fact fully comply, the building owner may have difficulties in getting redress. There have been cases where the civil courts have dismissed claims by the building owner against the person who carried out the work on the basis that a certificate had been issued at the time of completion, even though it was later found that the work did not comply. This probably results from a misunderstanding by the civil courts of the effect of a completion certificate ie that it is not conclusive proof of compliance.

### Statutory Notifications

The current statutory notification stages are not relevant to all types of work. Where a person carrying out building work notifies the local authority of a statutory notification stage they are in most cases required to wait 2 days in case the local authority wishes to inspect. However, the person carrying out the work has no indication of whether the local authority will inspect. This delay may therefore be unnecessary and involve wasted time.

On the other hand, there are some stages in building work where the local authority might wish to be notified as it wishes to inspect, but statutory notification stages are not in place. For example work involving energy efficiency, much of which tends to be carried out at later stages in the project. Many local authorities will currently ask to be notified when work has reached such stages as they operate a risk-based approach to inspections but these notifications do not have statutory force and some applicants do not therefore notify building control at the appropriate time. Many authorities are also already using a formal service/inspection plan

approach but these cannot exclude the statutory notifications as they are required by law and therefore where the local authority does not desire a notification at that stage, this poses unnecessary burdens on the person carrying out the work.

Statutory notifications are not required when an Approved Inspector is the building control body. Instead the Approved Inspector will agree in their contract with the customer the stages where they wish to be notified on a risk assessed basis according to the type of building work.

Following the Future of Building Control review in 2008, which showed strong support for the development of a risk-based service plan approach, the Department commissioned research to develop a risk assessment decision making tool for building control bodies. The research showed that those building control bodies who piloted the tool found it a practical and useful approach which took a reasonable amount of time to complete and owners and builders found the generation of service schedules a means of making decisions more transparent and better communicating notification needs. The tool produced as a result of this project is being published alongside the consultation as guidance which building control bodies may adopt if they wish and includes an example of a service plan.

### **Rationale for intervention**

Where we are aware of problems in regulations leading to lack of clarity or which create unnecessary burdens, we need to intervene to change the regulations to reduce confusion and any unnecessary burden. As one of the objectives of the Building Regulations Review 2012 is to improve compliance with the requirements of the Building Regulations, it is important that compliance mechanisms are appropriate and effective.

### **Policy objective**

The primary policy objective is to ensure that the procedural requirements of the Building Regulations are clear and simple to achieve the maximum level of compliance with minimum burden on those carrying out the building work or on local authorities.

### **Description of options considered (including do nothing)**

We have considered two options:

#### **Option 1 - Do nothing**

**Option 2 - Consult on the following changes to the current local authority building control processes:**

- (i) To make the issuing of completion certificates mandatory in all circumstances for local authority building control, when they have been informed that the work has been completed and when they are satisfied that the work complies
- (ii) To amend the wording on the completion certificate (and also on Approved Inspectors' final certificates and competent person schemes' building regulations certificates of compliance) to clarify the status of these certificates
- (iii) To keep only commencement and completion of work as the statutory notification stages, and replace the rest with a "service plan" which would set out where the local authority and the person carrying out the work have agreed on a risk assessment basis when the local authority needs to be notified.

Option 1 would mean that the problems and unnecessary burdens associated with the current building control processes as described earlier would remain.

Option 2 is therefore our preferred option. It addresses the problems with the current building control processes without creating any substantial additional burdens or costs. Option 2(iii) is in line with the Hampton principles of using comprehensive risk assessment to concentrate resources on the areas which are most in need.

We also considered whether option 2 should include changes to restrict 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, meaning the deposit of full plans would be required for these types of building work. We identified a number of problems associated with this and therefore are not proposing to consult on such a restriction:

- Significant additional cost over giving a building notice to the person carrying out the work (and to the customer) in preparing full plans (see estimate of monetised costs for this below) and it would amount to a regulatory 'in'
- Most of the work which would fall within the restrictions on building notices (houses, extensions, loft conversions) is carried out by small and micro-businesses. Most would not have the in-house expertise to draw up full plans so the work would need to be contracted out resulting in an increased cost. This would make it less likely that building owners would choose them to do the work which would put small and micro-businesses at a competitive disadvantage
- Work subject to a full plans application can be subject to a delay of up to eight weeks whilst plans are approved, compared to only two days under a building notice. Such delays do not fit with the working pattern of many smaller builders and may also be an inconvenience to customers
- Local authorities have previously expressed concerns about building notices, where they are normally required to carry out more inspections but they were not able to charge for those additional inspections. This is because the Charges Regulations previously required the same building control charge for full plans and building notice applications. Changes to the Charges Regulations in 2010 now allow local authorities to charge according to the amount of time taken to carry out the building control function for specific jobs. Local authorities are therefore now able to charge for any additional inspections needed where work is carried out under a building notice
- Regulation 13(3) of the Building Regulations already gives local authorities powers to require such plans as are necessary to allow them to discharge their statutory building control functions when work is carried out under a building notice (although LABC, the body that represents local authority building control departments, consider that this provision is seldom used)
- Where an Approved Inspector is the building control body there would remain no requirement for full plans for houses, extensions or loft conversions. If we were to restrict building notices in this way it would be likely to result in more of this type of work going to Approved Inspectors and therefore create a less level playing field between the two types of building control body.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

### **Option 1 - To do nothing**

There are no additional costs, burdens or benefits to doing nothing.

### **Option 2 - Changes to the current building control processes:**

- (i) To make the issuing of completion certificates mandatory for local authorities, where they have been informed that the work has been completed and are satisfied it complies**

### Costs

A cost could arise where an inspection is needed in order for the local authority to be able to issue a completion certificate where one would not have ordinarily been carried out. However, LABC confirm that for the vast majority of building work a completion certificate is currently issued (even when there is no requirement to do so) and that the work would therefore have been inspected at a stage where the local authority could form a view on compliance. We therefore conclude that the number of additional inspections arising from making completion certificates mandatory would be minimal. However, we will seek further evidence of the number of inspections through consultation in order to ascertain any additional cost. In the event that the consultation identifies that some additional final inspections are needed, they would likely fall into the range of ½ to 1 hour at a cost per hour of £60 (the average hourly rate for building control charges).

Local authorities have confirmed that there is no measurable cost from issuing a completion certificate as it is already captured by the administration costs levied to deal with the building work application.

As it is already a requirement for the person carrying out the work to notify the local authority that the work has been completed, there is no additional cost for the person carrying out the work to trigger the issue of a completion certificate.

### Benefits

The benefit would be to the householder. They would have fewer problems in trying to sell their house and would in many cases sell it at a higher price, or sooner, than if they did not have a completion certificate. The completion certificate will also provide purchasers with greater confidence that they will not need to bear the cost of putting right any non-compliant work that might be discovered only after the purchase of a property. This is likely to affect only a very small minority of householders and we will do further work to establish numbers of cases and the potential reduction in price or delays avoided.

It has also become common practice in conveyancing to require the vendor to purchase building regulations indemnity insurance in situations where compliance certificates are not available and the price of the house has not been reduced to take account of this. It has been suggested that such insurance is a significant cost to the vendor which would be removed if a completion certificate was always issued. We have no evidence on the cost of such insurance or instances of its purchase but would seek these through consultation.

- (ii) To amend the wording on the completion certificates, final certificates and competent person building regulations compliance certificates to reflect better the status of these certificates**

### Costs

Costs to the local authority, Approved Inspector or competent person scheme operator would be negligible as there would be only a very minor one-off cost of adding a small amount of text to the existing certificate templates which are usually generated electronically on demand (so there is no cost in wasted out of date versions). Our estimate is that the cost is less than £500 and so is treated as *de minimis* for this assessment.

## Benefits

The benefit would be to the building owner. When bringing a claim in the civil courts they would be more likely to get compensation for the cost of putting right non-compliant work from the person who carried out the work if the courts better understood that the completion certificate was not a guarantee of compliance. It would be complicated to monetise this as we have no information on the number of civil court cases decided in the builder's/installer's favour solely on the evidence of a completion certificate. We aim to develop this further through consultation.

- (iii) **To keep only commencement and completion as named statutory notification stages, and replace the others with a “service plan” where the local authority and the person carrying out the work will agree the stages to be notified on a risk assessment basis**

## Costs

*For the Local Authority:*

From discussions with LABC, it seems very likely that local authorities would approach this matter by drawing up service plan templates for different sorts of buildings. The initial cost of drawing up templates will fall to the local authority, not to the person carrying out the work. The template could be used, and modified where necessary, in respect of individual building applications. Using an hourly rate of £60 per hour and 300 local authorities (based on the number of building control departments including those operating joint partnerships), the initial cost in drawing up service plan templates is estimated as follows:

- Large block of flats would take 3 to 5 hours giving a total cost of **£54,000-£90,000**
- For a house it would take 30 minutes to 1 hour giving a total cost of **£9,000-£18,000**
- An office block or other commercial buildings would take 3 to 5 hours giving a total cost of **£54,000-£90,000**.

It appears that some local authorities are already, in effect, operating a risk-based inspections system and service plan approach and so would bear little or no new costs as a result of this change. Furthermore, if LABC drew up model templates that could be adopted by individual local authorities, these costs could be greatly reduced, probably to little more than the cost to a single local authority.

This gives a central estimate for one-off costs of **£157,500** (High: £198,000, Low: £117,000).

*For the person/business carrying out the work:*

Local authorities are already required to estimate the amount of time they expect to spend on a job in order to set the building control charge and so are already making an assessment of the number of inspections they expect to carry out. The additional cost in expanding this to cover the stages at which the inspections will be carried out using the templates described above would therefore be minimal. As this is part of dealing with the application, the costs of this process would be borne by the person carrying out the building work as part of the building control charge itself. They are estimated as follows:

- A large block of flats is estimated to take 15-30 minutes of the local authority's time at £60 per hour and therefore be charged to the client as between **£15 - £30 per building application**
- A house is estimated to take 15 minutes of local authority's time at £60 per hour and therefore be charged to the client as approximately **£15 per building application**

- An office block or other commercial building is estimated to take 15 -30 minutes of a local authority's time at £60 per hour and therefore be charged to the client as **between £15-£30 per building application.**

There will also be a cost on the person carrying out the work in receiving, reading and agreeing a service plan. We estimate these will be similar to the local authority costs in completing individual service plans. We do not currently have sufficient evidence of the numbers of projects falling into the above categories to calculate annual costs in respect of all applicants but we will seek such evidence through the consultation process.

It is unlikely that local authorities will be able to draw up templates for service plans for many industrial buildings, as they differ so much one from another. It is likely that the cost of individual service plans would be similar to the cost of drawing up the initial templates, ie £180-£300 per application although this may be offset by the time currently spent on calculating the building control charge. As the number of new or renovated industrial buildings is relatively small, the overall additional cost to business should not be great but we will seek further evidence on this through consultation.

LABC do not anticipate that the changes will result in a significant decrease in the number of notifications for stages of work over what is currently required by the statutory notification system. However, research into the potential for greater use of risk assessment when determining building control inspections (which will be published alongside the consultation document) suggests that the number of inspections based on risk should fall. As notifications in a service plan should be triggered by risk-based inspections they too should be fewer than at present. Even where the number of inspections remain the same as at present, the changes may mean that for some work the notifications will be made at different stages of the building work than required under the current statutory notifications.

If the number of notifications required under a service plan are the same as or fewer than under the present statutory notification system there would be no additional costs (and could be a saving). In any event, almost all notifications are now made by e-mail, text or telephone so such costs are minimal.

### Benefits

Moving to a risk-based system of inspection and notification will in some cases mean that there are fewer notifications required and fewer inspections carried out. There would be a decrease in building control charges for these reasons. We do not have sufficient evidence at this stage to monetise savings but will seek such evidence through the consultation. Where there are fewer inspections there would be a saving of £30-£60 for each inspection not carried out, based on each inspection taking 30-60 minutes at a cost of £60 per hour.

Removing all statutory notification stages except commencement and completion of work would also have the effect of removing the statutory up to 2 day period which the notification must be made before starting the type of work. Local authorities will be able to set any advance notification period relevant to the work in the service plan. This will mean that in some cases the person carrying out the work will not lose up to 2 days of construction time during which they currently have to wait in case the local authority wishes to inspect (but often does not). This will help to reduce construction time and construction costs on many building projects, particularly where the nature of the project is such that workers cannot be redeployed to other tasks during the waiting period.

For example, a day of lost construction time for two workers carrying out work on a dwelling could incur an unnecessary cost of £224 at an average hourly rate of £112 for eight hours. We do not currently have sufficient evidence on the instances of these costs but we will continue work on this aspect.

As a service plan will contain notifications at those stages where local authorities consider that the risk justifies inspections rather than at fixed points, it is likely that building control will pick up non-compliant work earlier and more often than at present. The earlier non-compliant work is identified by the local authority, the less expensive it is likely to be to put right for the person carrying out the work. Overall it is likely to give a benefit of a higher level of compliance with the Building Regulations with buildings which perform better and have lower operating costs, and will therefore have a higher rental or sale value.

**Restriction on the type of building work which can be carried out using a building notice [NB not being taken forward to consultation]**

### Costs

There would be additional costs associated with restricting the use of building notices over and above the costs associated with Option 2. There would be a cost to the person carrying out the work and this would particularly affect small/micro businesses. They do not usually have the resources in-house to draw up full plans so will need to pay for extra help. In such circumstances the cost of drawing up full plans for an extension is likely to be in the range of £1,500 to £2,500 per job. This is based on between 20 hours to 35 hours of an architect's or other professional's time at a cost of £73 per hour.

There is an 'aggravation factor' for businesses, particularly small and micro-businesses, of waiting up to 8 weeks before beginning the work under approved full plans, particularly for extensions and loft conversions. This would disrupt the way in which they normally plan and carry out work as they have only been used to waiting 2 days before beginning the work under a building notice. There may be other projects which they can continue but many smaller businesses have the resources to undertake only one project at a time so may overall carry out less building work than if building notices were retained. The aggravation factor may also apply to the householders who would have to wait much longer than anticipated for their building projects to be completed.

The relationship between Approved Inspectors and their clients is not controlled but is a matter for negotiation between them. In many cases Approved Inspectors would not ask for full plans. If local authorities lost business to Approved Inspectors as Approved Inspector jobs would not require full plans, as mentioned above this would distort the level playing field between the different types of building control bodies. Distortion can have the effect of driving up costs where like-for-like competition is removed.

### Benefits

Where full plans are submitted, in most cases local authorities will carry out fewer inspections but instead spend time checking the plans for compliance. There may therefore be a slight reduction in the building control charge but it is considered that the charges will be broadly similar. It has been alleged that compliance is lower where a building notice is used and therefore that compliance would increase if full plans were submitted. There is no firm evidence to support this allegation, however, it is possible that compliance issues may be picked up at an earlier stage ie during the plan check rather than on site.



# APPROVED INSPECTOR REGULATIONS AND THE REMOVAL OF THE WARRANTY LINK RULE

## Background

### Approved Inspector Regulations

The Approved Inspector Regulations supplement the Building Regulations and expand upon many of the procedural requirements for Approved Inspectors covered in the Building Act. They 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). The Approved Inspector Regulations also set out the functions of Approved Inspectors ie to take all reasonable steps to satisfy themselves within the limits of their professional care that the requirements of the Building Regulations have been complied with.

### Warranty Link Rule

Until 2005 only local authorities and the National House Building Council (NHBC) (an Approved Inspector) were allowed to undertake the building control function for new homes intended for private sale or rent. All other Approved Inspectors were limited to dealing with non-domestic work. This was because of concerns that, if there were issues of non-compliance, a homeowner would be unable to make a claim against the Approved Inspector's professional indemnity insurance due to the need to prove negligence. The National House Building Council was included because it only undertook building control work where its own new home warranty was in place, thus providing a no-fault redress for homeowners and it had been providing such warranties for around 20 years, giving them experience of issues relating to construction of dwellings.

When the new home market was opened up to all Approved Inspectors in 2005, it was felt that a similar level of protection was required to maintain confidence in the building control system as other Approved Inspectors had no previous experience of operating in the domestic sector. The Warranty Link Rule was therefore introduced, which requires that before an Approved Inspector can take responsibility for building control in respect of building work consisting of the creation by new build of dwellings (ie houses or flats) or the conversion of any building in whole or in part to houses or flats (eg a barn conversion) and the dwellings are for private sale or renting, a warranty must be in place under one of the Designated New Home Warranty Schemes approved by the Department.

## Problem under Consideration

### Approved Inspector Regulations

As part of the 2013 Building Regulations review, the Department proposes to make changes to the building control system processes to improve the existing system to both reduce burdens and improve compliance where possible and to encourage industry to take greater responsibility for their actions. We have considered a number of suggested changes to the Approved Inspector regulations to reduce the burdens associated with them and have identified the following minor changes that would reduce burdens both on Approved Inspectors and local authorities:

- 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 (which can cover multiple units, often covering hundreds of units). Instead the approval body will hold this information on an existing publicly-accessible register
- ii. Combine the two classes (individual person and corporate) of Approved Inspectors

- iii. Ensure all the definitions are up-to-date and make a few clarifications for ease of interpretation.

### Warranty Link Rule

Following concerns over the way the Warranty Link Rule was operating, a project was set up to consider the policy rationale for the Warranty Link Rule and whether the specific criteria were appropriate, particularly the one for contaminated land. The research found that Approved Inspectors do not appear to be the subject of more complaints than local authority building control which suggests that the concerns which led to the Warranty Link Rule being put in place have not been realised 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.

The research suggests that the Warranty Link Rule is no longer needed, creates an unnecessary burden and acts as a barrier for Approved Inspectors to take on business. However, the research also found that there are a number of complex issues primarily in respect of the contaminated land criterion which would need to be addressed if the Warranty Link Rule were to be retained, which could increase the costs of the warranties.

### **Rationale for intervention**

To provide competition and choice to consumers the Building Control function can be carried out by either an Approved Inspector or local authority building control.

If the Approved Inspector Regulations are not revised they will continue to impose extra unnecessary burdens on both Approved Inspectors and local authorities.

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 affecting consumer choice. The Department would also need to revise the Warranty Link Rule contaminated land criterion and designated warranty approval process which would increase costs on both the warranty providers and house builders.

Although warranties are generally considered to be beneficial to homeowners it is not Government policy to require them to be provided in all cases. There has been no provision for them to be provided where a local authority is the building control body.

### **Policy objective**

To reduce unnecessary burdens on Building Control Bodies and improve compliance with Building Regulations where possible, and to encourage industry to take greater responsibility for their actions.

To level the playing field between local authorities and Approved Inspectors.

### **Description of options considered (including do nothing)**

We have considered two options:

**Option 1** - do nothing

**Option 2** - make minor changes to the Approved Inspectors Regulations and remove the Warranty Link Rule

Option 1 would mean that the problems and unnecessary burdens associated with the current Approved Inspectors processes as described earlier would remain.

Option 2 is our preferred option. It addresses the problems with the current processes and removes burdens without any substantial additional costs.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

### Option 1

No additional costs, burdens or benefits arise.

However issues would occur if the Warranty Link Rule was retained without the contaminated land criterion being revised and the approval process amended. Any such revisions to the criterion would create a burden on both warranty providers and/or house builders.

Retaining the Warranty Link Rule would mean that Approved Inspectors will continue to be discouraged from entering the market for new homes for private sale and rent and that competition and choice would continue to be impacted.

If the Approved Inspector Regulations are not revised they will continue to impose extra unnecessary burdens on both Approved Inspectors and local authorities.

### Option 2

## **Approved Inspector Regulations**

It is estimated that the following costs and benefits will arise if we make the proposed minor changes to the Approved Inspector Regulations:

### Costs

It is proposed that Approved Inspectors should no longer be required to send a copy of their insurance certificate and certificate of approval to the local authority with every Initial Notice. Instead the Construction Industry Council (CIC), the body that approves Approved Inspectors, would add the insurance information to an existing publicly accessible website.

There will be an initial set up cost to the Construction Industry Council for expanding their website to include the insurance certificates and to uploading them onto the site. We estimate that for the 70 Approved Inspectors, this will take one 7.5 hour day, which at an hourly rate of £30, gives a total transitional cost of **£225**.

There will also be a nominal cost for updating the insurance details on an annual basis. We estimate that this would either be included as part of the normal web management or at a nominal charge of about £2.50 per annum, on the basis of it taking 5 minutes at £30 per hour. For 70 Approved Inspectors the total ongoing cost would therefore be around £175 per annum. There would be no cost with respect to the approval information as Construction Industry Council already record this information on their website.

We anticipate that Construction Industry Council would recover their costs through Approved Inspectors approval/re-approval fees (re-approval is every 5 years).

There will also be a cost to Approved Inspectors of sending their insurance certificate by email to CIC each year. We estimate it will take each Approved Inspector 5 minutes to send their certificate. This gives a total time of around 6 hours at £60 per hour (assuming the same hourly

rate for Approved Inspectors as for local authority building control) which gives a cost of around £360 per annum.

The estimated total annual cost of **£535** gives a present value of £4,605 over 10 years. When added to the transition cost above, this gives a total monetised present value cost for the policy of **£4,830**.

There will be no need for Approved Inspectors to send a copy of their Approval certificate to Construction Industry Council as the information originates with Construction Industry Council.

There will be a nominal administrative cost to local authorities for checking the validity of Approved Inspectors approval and insurance certificates on the Construction Industry Council's website if they chose to do so. However, from information provided by LABC, we anticipate this will only occur in a few cases each year eg where a new Approved Inspector is involved or concerns have arisen and so costs are likely to be negligible.

### Benefits

There is a saving to Approved Inspectors of not having to send their insurance and approval certificates to the local authority with each Initial Notice. There are approximately 40,000 Initial Notices per annum (based on the Survey of Building Control Bodies for 2006/07 published in March 2008). We estimate that 70 % (28,000 approx) of Initial Notices are sent by email and 30% (12,000 approx) are sent in hard copy by post because not all local authorities elect to receive Initial Notices electronically.

On the assumption that attaching both the insurance certificate and approval certificate to the Initial Notice takes five minutes of an Approved Inspector's time, whether as electronic attachments to an email as paper put into an envelope, there would be a saving of approximately 3,335 hours. At £60 per hour would save Approved Inspectors around £200,000 per annum.

For Initial Notices sent in hard copy by post there will also be a saving to the Approved Inspector in not having to photocopy/print off the insurance and approval certificates to send with the Initial Notice. We estimate a saving of 10p per Initial Notice which would save a further £1,200 per annum.

As the insurance certificates and approval certificates would in almost all cases have been filed together with the Initial Notice to which they were attached (either electronically or as paper) we do not think that there will be any quantifiable savings to local authorities from no longer receiving them. However, there will be a saving from no longer having to record the Approved Inspectors' insurers name and address information on to the register kept under section 56 of the Building Act. If this saved Local Authorities 5 mins per Initial Notice, this would total £200,000 per annum.

There are no perceived benefits in having the historic split of two classes of Approved Inspector: individual and corporate which has on some occasions caused confusion. There would therefore be minor administrative benefits of consistency to Approved Inspectors and their approval body, CIC, in combining the two classes of Approved Inspectors. Only one approval form would be needed instead of the current two and all Approved Inspectors would be required to provide the same information. This change would be cost neutral.

The Department is also aware of instances where users of the Approved Inspectors Regulations have found some of the definitions and other provisions to be unclear. As removal of the need to accompany an Initial Notice with an insurance certificate and the combination of the two classes of Approved Inspectors will require amendments to the Regulations we would use the opportunity to clarify the unclear provisions. The time taken for Approved Inspectors and others

to use the legislation will be less and compliance with the regulations should improve due to better understanding of what is required.

An annual benefit of £401,200 per annum gives a present value benefit for the changes to the Approved Inspector Regulations over 10 years of **£3.45m**.

## **Warranty Link Rule**

It is estimated that the following costs and benefits will arise if we remove the Warranty Link Rule:

### Costs

There are no direct costs in removing the Warranty Link Rule. However, removing the Warranty Link Rule does mean the possibility of more work going to Approved Inspectors and less work going to local authorities so there may be a distributional effect.

### Benefits

Problems arise 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 therefore do require a warranty. Similar problems arise when a warranty provider decides it cannot issue a warranty once construction has begun. As 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 process costs loss of business to the Approved Inspector, is a difficult situation for the local authority who have to take over the building control function part way through the job and may require work to be uncovered so they can certify it as compliant, and results in inconvenience and potentially delays and increased costs to the developer/building owner. Abolishing the Warranty Link rule would remove these problems.

It is also estimated that every year a number of jobs that could have been dealt with by an Approved Inspector are lost to local authorities because the housebuilder does not want to pay for the provision of a warranty or the housebuilder does not meet all the requirements of the warranty provider.

We estimate there are approximately 15,000 units per annum (range of 10,000 to 20,000) that go to the local authority either at the start of the job or during construction. Figures from Approved Inspectors suggest that Approved Inspectors knowingly lose business worth approx £57m pa (range of £38m to £76m) to local authorities (from housebuilders who have initially approached an Approved Inspector and subsequently elected to use the local authority). This figure could well be significantly higher in practice as housebuilders who are aware of the Warranty Link Rule may never approach an Approved Inspector at all.

Clearly loss of business for an Approved Inspector is merely a gain for the local authority. However, removing the Warranty Rule would level the playing field between local authorities and Approved Inspectors and improve competition. As well as providing more choice for customers, it could result in a better quality service and possibly a drop in Building Control charges. We estimate that if the charges dropped by 1% on the 15,000 units (range of 10,000 to 20,000) passed to the local authority there would be a saving to consumers of around £57k per annum (range of £38k to £76k).

In addition, if work did not need to revert to the local authority due to the lack of a warranty, there would be savings from avoided disruption and delays and potentially from work needing to

be uncovered so that the work can be inspected and signed off. It is difficult to quantify such benefits as they will vary considerably depending on the circumstances of each individual case.

Further information on both the amount of business lost to local authorities and at what stage, as well as the costs that would be saved if reversions were no longer necessary, will be sought as part of the consultation.

There would also be a benefit to the housebuilder and building owner in the reduction in warranty costs. The total number of units dealt with by Approved Inspectors per annum is approximately 120,000 (based on Departmental statistics in the Approved Inspector sector for 2009/10). We estimate that the average cost of a new home warranty from a designated warranty provider is £750. The regulatory saving from not requiring a designated new home warranty to be in place where an Approved Inspector carries out the building control function on a new build dwelling for private sale or rent is therefore expected to be approximately £90m pa. This would give a present value benefit over 10 years of £775m.

However, we recognise that in practice in most cases a new home warranty will be required to satisfy other market-driven purposes, such as the Council of Mortgage Lenders borrowing requirements. We estimate that there are approximately 2,200 units (range of 2,000 to 2,400) (based on 2010 figures provided by the Association of Consultant Approved Inspectors) built per annum that would fall in to the category of not needing a warranty for any other purpose than the Warranty Link Rule. We estimate that the average cost of a new home warranty is £750 (based on figures provided by designated warranty schemes) and the actual benefit to housebuilders and building owners in practice would be around **£1.65m** (range of £1.5m to £1.8m).

If the Warranty Link Rule is removed there would also be savings to warranty providers and house builders from not having to bring their policies in line with changes that would be necessary for the Department for Communities and Local Government to make to the Warranty Link Rule contaminated land criterion. It would also give more choice for consumers as they would be able to choose from a wider range of warranties not just the designated warranty schemes. Warranties would also be more flexible to meet the specific needs of particular customers/sites (eg providing a higher level of cover on sites where there are known contamination risks). Further information on such benefits will be sought as part of the consultation process.

An annual benefit for the warranty link rule of £1.65m (High: £1.8m, Low: £1.5m) gives a present value benefit over 10 years of **£14.2m** (High: £15.5m, Low: £12.9m).

The total present value benefit for both the warranty link rule (£14.2m) and Approved Inspector regulations (£3.45m) is therefore **£17.66m**, against a total present value cost of **£0.005m**. This gives a net present value of **£17.65m** (High: £18.94m, Low: £16.36m). Further information on costs and benefits will be sought as part of the consultation.

# ENFORCEMENT

## Background

The person carrying out building work is responsible for compliance with the Building Regulations. Building control is a spot-checking process intended to help ensure compliance. Most enforcement is informal and achieved through oral or written guidance, or withholding completion certificates, which works in the vast majority of cases. Where issues of non-compliance remain, despite interventions by building control, formal legal enforcement tends to be only undertaken where work presents serious health and safety risks or for persistent offenders. We do not anticipate any significant change to this.

Only the local authority can undertake formal legal enforcement action. Where Approved Inspectors are carrying out the building control function and cannot get the person carrying out the work to comply through informal means they must revert the work to the local authority for formal enforcement action.

The Building Act currently sets out two formal enforcement mechanisms:

- Prosecution in the Magistrates Court (Sections 35 and 35A)

Sections 35 and 35A of the Building Act 1984 provide powers for the local authority to bring a prosecution against the person who carried out the non-compliant work. This can be used for both substantive and procedural breaches of the Regulations and can only usually be initiated once the building work is complete. The time limit for bringing about prosecution is up to 2 years after the work has been completed, and within a period of 6 months from having sufficient evidence to justify a prosecution. Prosecution carries a fine of up to £5000.

- Issuing a notice to put right non-compliant work (Section 36)

Section 36 of the Building Act 1984 provides powers for the local authority to issue a notice to a building owner requiring them to put right non-compliant work. It can only be done once the work has been completed and the time limit for serving such a notice is up to 1 year after completion.

## Problem under consideration

The exact extent and degree of non-compliance is not completely clear as no reliable statistics are kept. However, from the evidence that we do have, although compliance across the building regulations is generally considered to be good and that informal interventions by building control are usually successful, it is clear that there are some areas where it could be improved, for example, with respect to energy efficiency requirements. The Building Control Alliance are carrying out work on compliance for building control bodies and we hope that the information provided from this will give us further information to assist us with the final Impact Assessment

It is also clear that in those cases where issues of non-compliance persist, there are a number of problems associated with the current enforcement mechanisms which mitigate against formal enforcement action being taken:

- Neither can be used during the course of the building work, except for procedural breaches of the Regulations. This means that putting right non-compliant work is often more costly than if it would have been had it been put right at an earlier stage in the building process

- The time limits are different for each enforcement mechanism
- The restriction on the maximum fine for prosecution means that the fine may not effectively penalise building firms, particularly larger ones, and therefore not act as a sufficient or effective deterrent to non-compliance
- It is costly for the local authority to prosecute and often seems too resource intensive, particularly in comparison to the impact of the prosecution on the person who carried out the work. Unlike many other parts of the building control process prosecution is not a user paid for service and must be funded from Council Tax or Central Government grants. Although some costs may be awarded by the courts, they rarely cover the full cost of bringing a prosecution
- The notice to put right non-compliant work can only be issued to the building owner. This often makes local authorities reluctant to issue it as the owner is often themselves the victim of non-compliant work which they were not responsible for or even aware of.

A robust enforcement framework is important for the credibility and robustness of the building control system and of the Building Regulations as a whole. If those carrying out building work consider that there are no effective mechanisms to ensure compliance they may be tempted not to comply, especially where they see a financial advantage in not doing so.

In addition to considering ways in which to strengthen the current enforcement provisions, the Regulatory Enforcement and Sanctions Act 2008 enables a range of civil sanctions to be given to regulators. We have therefore considered whether these sanctions should be adopted to help enforcement of the Building Regulations. The possible sanctions are:

- 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 regulations as they are intended to enforce less serious offences as an alternative to prosecution where prosecution could be disproportionate. The use of fixed monetary penalties for this purpose was also supported in the research we commissioned. These can only be used where the regulator is satisfied beyond reasonable doubt that the person has committed the relevant offence.
- Variable monetary penalties (VMP) would be determined by the regulator but could not exceed £5000. These might be appropriate where none of the notice measures below were considered applicable or likely to be effective.
- Compliance notices 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 notices are 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 notices prevent the person from carrying out any further work until the non-compliant work is remedied. Stop notices are intended to be used only where there is a significant and imminent risk of causing serious harm to human health or the environment.
- Enforcement undertakings 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.

## **Rationale for intervention**

One of the key objectives of the Building Regulations Review 2012 is to improve compliance with the Building Regulations, in a context where information is often difficult or costly for building control bodies to obtain. Enforcement mechanisms should be effective in acting as a deterrent and where necessary provide an appropriate penalty and should be proportionate to the problem under consideration. Regulations cannot be fully effective without the ability to enforce them successfully.

## **Policy objective**

A primary policy objective is to improve compliance with the requirements of the Building Regulations. The intended effect is that the changes to the current enforcement mechanisms will allow enforcement to be carried out where perhaps previously it was not worthwhile doing so, as the introduction of sanctions will allow greater flexibility and choice to the local authority. It is intended that all the changes should work as a deterrent to non compliance, rather than having to be carried out in practice.

## **Description of options considered (including do nothing)**

We have considered two options:

### **Option 1 - To do nothing**

### **Option 2 - To make changes to the current enforcement mechanisms in the Regulations by:**

- (i) Extending the time limits for prosecution from two to three years (and the six months to one year) and raising the level of fine that can be imposed in a successful prosecution (sections 35 and 35A)
- (ii) Extending the time limits from one year to three years for issuing a notice under section 36
- (iii) Introducing some, or all, of the sanctions in the Regulatory Enforcement Sanctions Act 2008.

We do not favour Option 1 as this would mean that the problems associated with the current enforcement mechanisms as described would remain. It would also mean that there would continue to be no way in most cases of formally enforcing the Regulations whilst building work is being carried out; nor do the existing enforcement penalties represent an effective deterrent. It would thus not support one of the main objectives of the 2013 Review which is to improve compliance.

We therefore prefer Option 2 as this addresses both the problems with the current enforcement mechanisms and also introduces new sanctions giving the ability to take proportionate enforcement action during the course of the building work and mean enforcement could be carried out more quickly and appropriately. This is in line with the Hampton principles that sanctions should be proportionate and meaningful.

Note: It would be possible, but not the Department's preference, to proceed with each of the elements in Option 2 separately. Further consideration will be given to this as a result of the consultation.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

It is important to bear in mind that only those persons carrying out building work who do not comply with the Building Regulations will be subject to formal enforcement. The vast majority of those carrying out building work (ie those that do comply, whether of their own accord or following informal interventions by building control) will not bear any of the costs associated with formal enforcement.

We commissioned research on the use of the Regulatory Enforcement and Sanctions Act 2008 for enforcing the Building Regulations (see <http://www.communities.gov.uk/documents/corporate/pdf/1832154.pdf> )

We have drawn upon this where appropriate, both for views on how the sanctions might be applied as well as views on estimated costs and benefits.

### **Option 1 – to do nothing:**

There are no additional costs, benefits or burdens associated with Option 1.

### **Option 2:**

#### **Prosecution in the Magistrates Court (S35 and 35A)**

##### Costs

At present less than 1% of work carried out is formally enforced. The research estimates that around 0.2% of applications result in prosecution or a section 36 notice (for a section 35 prosecution it is 0.05%, for a section 36 notices it is 0.17%). The estimated cost to a local authority of bringing a prosecution is between £5,000 and £10,000 per case and could be more in the few cases where it is necessary to engage counsel.

LABC estimate that the changes to the time limits and the monetary fine levels would be unlikely to make a significant difference to the number of prosecutions each year because of the cost of bringing them. There may be a few cases where prosecutions would have been brought but the time limit had expired before formal action could be taken. A higher level of fine might also encourage local authorities who currently consider that the low impact does not justify the use of their resources to bring some additional prosecutions in the future. There will be additional costs to the local authority only if the number of prosecutions rises. In practice, it is likely that local authorities would continue to only prosecute for serious breaches to health and safety or for persistent offending. We shall try to get better evidence on any possible increase in the number of prosecutions during the consultation period.

*Note:* If some of the civil sanctions in sub-option iii were also adopted there might be a fall in the number of prosecutions as local authorities might prefer to use a civil sanction in preference to a prosecution.

The immediate cost to business would be the fine levied and any court costs awarded. If, as a result of the prosecution, the person fined decided to remedy the non-compliance or paid for it to be remedied, these would be additional costs, but only in line with those that would have been incurred had they done the work correctly in the first place. At present, the Department has little available evidence on the level of fines or court costs awarded but we shall attempt to get more evidence through the consultation period.

The administrative burden falls to the courts and the local authority. However, unless there is a rise in the number of prosecutions and any appeals against convictions (very rare) there would be no

additional burden. We will therefore seek views through consultation and work with LABC and the Ministry of Justice on this.

### Benefits

The benefits of the proposed changes are that non-compliant work which was not spotted until two to three years after the work was completed could be prosecuted where appropriate. Similarly extending the six month time period for bringing the prosecution to one year would give the local authority additional time to allow the non-compliance to be rectified voluntarily without resorting to prosecution. The extended time limits would therefore act as a better deterrent against non-compliance and encourage issues to be resolved through informal means.

It is anticipated that the deterrence effect would significantly increase if the fine level were to be increased in proportion with the cost of the non-compliance. Anecdotal evidence suggests that where deliberate non-compliance occurs for financial reasons (rather than due to oversight) the current fine levels have little or no deterrent effect, especially on larger building firms. The potential for receiving higher fines could therefore have a significant impact on encouraging firms to comply, without the need to bring more prosecutions.

### **Issuing a notice to put right non-compliant work (S36)**

#### Costs

The local authority seldom issues a section 36 notice to put right non-compliant work (the research states that 193 notices were issued in 2008). The average cost to the local authority in issuing a section 36 notice is £12.50 - £25.00 based on 30 minutes to 1 hour of administrative work at £25 per hour. There is also the cost of possibly 2 additional inspections; the first to inspect the apparent non-compliant work and the second to check that it had been made compliant. The inspections would cost an average of £120 per notice.

If, for example, the change in time limit caused an additional 100 section 36 notices to be issued there would be an additional cost of between £1,250 – £2,500 for administrative work and £12,000 for inspections. The overall extra cost to the local authority as a result of extending the time limit would therefore be between £13,250 and £14,500. These costs would not be recoverable from the building owner.

The additional cost to building owners would be the cost of putting right the non-compliant work which would be dependant on what the problem was. In some cases putting right the problems would also require work on other elements of the building to get access to the non-compliant work. The building owner might be able to recover these costs from the person who carried out the work. We do not at present have sufficient information to estimate these costs but will seek such information during the consultation period.

### Benefits

The benefits of the proposed changes are that work which would not have been put right due to the one year time limit restriction could be put right, for example, defects which are often not revealed until more than 1 year after the work is completed. There is also the likelihood that more non-compliant unauthorised work (ie work carried out without any building control supervision) would be picked up with the extended timeframe.

## Introduction of Civil Sanctions

It should be noted that at this stage the Department is only proposing to consult on the principle of introducing these sanctions. We wish to ascertain whether respondents consider we should introduce some, or all, of the possible sanctions, for what breaches each would be appropriate and how often they might be used. As many costs are unknown at this stage, any costs in this Impact Assessment involve an element of uncertainty and so we will be working up further information through the consultation period. We will also seek to gain a better idea of levels of fines and their use using comparators from other regulatory bodies which have already adopted some or all of the sanctions (such as the Environment Agency) and, where relevant, utilise their methods of research. If we do decide to proceed with the introduction of some, or all, of the possible sanctions, this information will enable us to prepare detailed proposals for full consultation in due course (as required by statute) accompanied by a full Impact Assessment of costs and benefits.

### Costs

It is important to bear in mind that where a person carrying out the work complies with the Building Regulations they will not be subject to a civil sanction and therefore not incur costs. It is also likely that local authorities will use informal enforcement methods in most cases and, if those carrying out the work follow the informal advice and guidance, they will not be subject to a civil sanction and therefore not incur additional costs. As it is likely that civil sanctions will be used mainly where informal methods have been unsuccessful they will apply only to a small minority of persons carrying out building work.

The 2008 Act sets out rights of appeal for those on whom a civil sanction is served, including an appeal to the First-Tier Tribunal. Because of these we consider regulators would be very careful in applying the sanctions. The Department for Environment, Food and Rural Affairs (Defra) Impact Assessment for the Environment Agency's use of the sanctions concluded that it was likely there would be few appeals and we consider this would also be the case if local authorities were to be given access to the sanctions for Building Regulations purposes. We will do further work to be able to estimate the number of possible appeals and the cost of their use, drawing on the experience of other regulators such as the Environment Agency, and through discussions with the Ministry of Justice to inform any future decisions.

It is not possible for civil sanctions to be used where an Approved Inspector is the building control body without amendment of the Building Act 1984. LABC have expressed concern that this might result in applicants choosing to use an Approved Inspector for fear that local authorities might issue a sanction against them. Distortion of competition tends to lead to higher prices, in this case building control charges. We therefore propose to consult on whether the Building Act should be amended to allow a job to be reverted to the local authority to issue a civil sanction without cancellation of the Initial Notice to minimise the impact on competition.

### *Transitional Costs*

There would be an initial cost to the local authority in terms of training building control officers in the use of the sanctions. Although this cost would be dependent on how many sanctions were introduced, an initial assumption (which is based on costs to local authorities for previous training on changes to the Regulations) is £50 plus VAT for approximately 2,500 local authority building control officers in England. This would give an initial cost of £125,000.

There would be an initial cost to local authorities in preparing and publishing guidance covering the sanctions. There are two sets of guidance which are required by law; the Enforcement Policy and the Penalty Guidance (although in practice it is likely that these can be prepared as one set of guidance) and which the local authority is required to publish. We anticipate LABC preparing one set of model guidance for local authorities. Based on information from LABC we estimate this would

be a one off cost of £20,000 and that the costs of publishing on an existing website would be negligible.

Regulators must put in place systems for considering written representations made in response to a notice of intent for fixed monetary penalties. There will be an initial cost to all the local authorities in setting this up. There would also be the additional initial cost of putting a compensation scheme in place for stop notices wrongly issued. We will seek further information on this through consultation, in particular with other regulators who have already put such a system in place.

### *Ongoing annual costs*

We do not currently have sufficient evidence on the likely levels of the imposition of civil sanctions or of the likely effects on those upon whom they are issued to estimate costs to persons carrying out work. We intend to get the evidence needed to monetise these costs through consultation, working with LABC and with other regulators which have adopted the sanctions.

The additional burden on local authorities of adopting the civil sanctions is estimated to be low. Additional labour costs to impose or administer the sanctions will be small, although it is possible in a few cases that there could be additional costs in gathering evidence, or in seeking legal or professional opinions, particularly where sanctions are appealed against. We do not consider there would be additional inspections undertaken in respect of the use of the sanctions, over and above those carried out at present, and therefore no additional costs to local authorities.

There may be additional administrative costs to local authorities in issuing some of the sanctions. For a variable monetary penalty there would be the cost of assessing the level of the penalty. We estimate this would cost £30 based on 30 minutes of a building control officer's time at £60 per hour. For a stop notice, there would be costs associated with time taken to confirm with senior officers that the stop notice should be issued, particularly because there are costs associated with compensation where these are incorrectly issued. We estimate that this might be £60 based on an hour of officer's time at £60 per hour. However, local authorities may choose to issue a compliance or restoration notice in place of formal letters of advice and guidance which they currently issue where the work has not been completed. As the cost of issuing a notice is comparable to writing a formal letter there would be no additional costs where local authorities used compliance or restoration notices in these circumstances but doing so would give additional weight to the requirement to bring work into compliance.

The 2008 Act provides for cost recovery for all of these sanctions from the person on whom a sanction is issued, except in the case of fixed monetary penalties and enforcement undertakings. We assume that local authorities would seek cost recovery in all cases where it is allowed, which would mean there would be no cost to the local authority in most cases in using those sanctions (although there would be a distributional impact.)

Costs cannot be recovered for issuing a fixed monetary penalty or for an enforcement undertaking. We estimate that costs associated with issuing a fixed monetary penalty would be approximately £15 based on 15 minutes of time at £60 per hour. Writing up an enforcement undertaking agreement (not many anticipated) would need to be done by a building control officer. The cost would vary depending upon the complexity of the agreement but we assume it would take one to two hours of the building control officer's time at a cost of £60 - £120 per instance. We will seek further evidence on the likely number of such undertakings through consultation. There are no imposed additional costs in respect of enforcement undertakings on persons carrying out building work as they are a sanction requested by the person carrying out the work so any cost is accepted voluntarily.

The Regulatory Enforcement and Sanctions Act requires regulators to publish details of any enforcement undertakings agreed and certain other statistics. Publishing these on existing

websites would incur small additional costs on the local authority but we anticipate these would be negligible.

There may be an additional cost to those carrying out building work in respect of a stop notice. This will require all work on a site to cease until the non-compliance is put right. In some cases this will mean that workers not putting the work right will be idle and, depending on their employment contracts, may nevertheless need to be paid. There may also be time penalties for late completion of work. It is expected that very few stop notices will be issued by local authorities given the risk that they may be required to pay compensation where stop notices have been wrongly issued. We therefore think that overall the costs of such delays will be low but we shall do further work on this.

If persons carrying out building work decide to comply with the Regulations because of the possibility of having a civil sanction imposed on them where previously they would have chosen not to comply to save construction costs, there will be an additional cost of the work undertaken which otherwise would not have been undertaken. In many cases this cost is, however, already heavily mitigated. When work currently does not comply local authorities ask informally for it to be put right. If it is not the local authority will not grant a completion certificate. It would be possible (but very rare) for the local authority to prosecute or serve a section 36 notice. Persons carrying out the work are thus already bearing the cost of putting the work right. The service of a compliance, restoration or stop notice is a formal request to put the work right

There is also a possible administrative burden on the civil courts where any penalties from the sanctions remain unpaid and the civil courts are asked to enforce them. We think this would be rare in practice as it would be cheaper for the person issued with the sanction simply to pay it rather than face the cost of proceedings in the civil courts. There will also be an administrative burden on the First-Tier Tribunal where the imposition of a sanction is appealed. We will develop this through consultation and through work with the Ministry of Justice.

### Benefits

The principal long term benefit of introducing the sanctions from the Regulatory and Enforcement Sanctions Act 2008 is that compliance should increase because of the greater deterrent effect. As local authorities would have a more flexible and proportionate package of enforcement tools there is more likelihood that they would use them where appropriate. Knowledge of this would make it more likely that those carrying out building work would make greater efforts to comply so as not to have a sanction imposed upon them. Higher levels of compliance would result in benefits such as safer buildings and a long term reduction in carbon emissions. In order to try to assess how great the deterrent effect would be we shall seek evidence from other regulatory bodies (Health and Safety Executive, Environment Agency, fire authorities and trading standards authorities) on whether increases in their enforcement powers resulted in greater compliance with their requirements.

There is the added benefit of creating a level playing field between those carrying out building work. Those who currently do not comply with parts of the regulations and do not get penalised for it due to the current lack of appropriate enforcement mechanisms are able to save on the costs associated with compliance. They are able to charge lower costs to customers and therefore have a competitive advantage in the market over those who comply. The use of the sanctions is likely to act as a deterrent towards non-compliance and thus improve the competitive position of those who already comply.

There could also be offsetting benefits for persons carrying out the work. Initial evidence gathering suggests that there is a significant cost difference to putting right work as near to the time of non-compliance compared with doing so when the work has been completed. The ability to request an enforcement undertaking may also be beneficial to the person carrying out the work as they are able to put right the non compliant work at an earlier stage and avoid other more punitive means of enforcement at a later stage. Where an enforcement undertaking has been complied with then the

person who was issued with it cannot at any time be prosecuted or issued with another sanction for that original offence.

It should be noted that, if civil sanctions were adopted, they would likely be used in some cases instead of a current enforcement mechanisms where a sanction was regarded as a more appropriate and effective penalty. The use of any of the sanctions is likely to take less time than the current enforcement mechanisms, saving time for both the person carrying out the work and for the local authority. We do not have evidence to quantify this at this stage, but it is something we would develop as part of the consultation process.

### Distributional Issues

The costs and benefits for introducing civil sanctions outlined above reflect the impact on society as a whole. In addition, there will be costs and benefits for particular affected groups, such as transfer payments, which are not included in the social cost/benefit analysis. These have been identified below. Again further work on these costs and benefits will be carried out during consultation.

A local authority may be required to pay compensation where it has wrongly issued a stop notice. During consultation stage we will seek further information from other regulators which have adopted the sanctions on instances where compensation has been payable and the amounts.

For the person carrying out the work there will be the cost of any fixed or variable monetary penalty. We are working with LABC and local authorities to help us with the costing of these but at this stage they are unable to give us any figures. Fixed monetary penalties will be fixed by each local authority for specific breaches of the Building Regulations and cannot exceed £5000. Most will be much lower. For example there could be a penalty of £200 for failing to notify building work. It may be that LABC will decide to draw up a schedule of model fixed monetary penalties that could be adopted by local authorities. Variable monetary penalties will be decided by local authorities on a case by case basis, probably based on the seriousness of the breach which is being penalised. It would also be possible to vary the penalty to reflect the size of firm being penalised. The maximum penalty cannot exceed £5000.

Persons on whom a monetary penalty is imposed can mitigate the amount through early payment discounts, or through making a discharge payment (a lower payment than the original imposed available where the person issued with the penalty has accepted liability). If a person on whom a civil sanction has been imposed decides to appeal they would have to bear costs in bringing the appeal.

# COMPETENT PERSON SELF-CERTIFICATION SCHEMES and SPECIALIST THIRD PARTY CERTIFICATION SCHEMES

## Background

Until 2002, everyone carrying out building work was required to pay a charge and use a building control service provided by a building control body, who help ensure compliance by checking the plans and/or inspecting work on site. However, a significant increase in the amount and types of building work subject to the Building Regulations (eg control of replacement windows and installation of combustion appliances due to increasing energy efficiency requirements), meant that controlled building work could no longer be practicably accommodated within the traditional building control framework. It was also felt that, in some circumstances, those engaged in carrying out the work were best placed to take responsibility for ensuring compliance without the need for an independent third party check on the work.

Following consultation, the Government introduced self-certification by competent installers (ie members of “competent person schemes” who have been assessed by the scheme operator as being competent to self-certify their work complies with all relevant requirements of the Building Regulations). This was restricted to certain types of high volume, low risk work such as replacement windows, installation of combustion appliances, certain plumbing and electrical work in dwellings etc. Monitoring of the performance of competent person schemes has shown that the schemes and their members have generally achieved a good level of compliance with the Building Regulations and proved to be a success.

To become a competent person scheme operator, applicants must demonstrate to the Department that they have the managerial, financial and technical ability to operate a scheme and are able to comply with certain conditions of authorisation. Authorisation is formally given through an amendment to the Building Regulations. Installers who wish to self-certify must pay a membership fee to join a scheme and demonstrate that they have the necessary skills and technical competence to carry out a type of work to Building Regulations standards and are subject to ongoing monitoring. Membership of a competent person scheme is voluntary. Installers who do not wish to join a scheme can continue to use the services of building control to certify their work.

Where self-certification is permitted, the work does not need to be notified in advance and checked by a building control body on payment of a charge but instead is simply notified to building control (typically the local authority) within 30 days of completion for their records. 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.

## Problem under Consideration / Rationale for intervention / Policy objective

### Competent person schemes

Allowing competent installers who are members of competent person schemes to self-certify their own work as compliant with the Building Regulations means that they are not required to notify in advance and pay a building control body to check the work, thus removing a cost and burden on installers and consumers (ie building owners/occupiers). It also removes a burden for building control bodies by freeing up their resources to concentrate on other areas of building work where the risk is higher and self-certification is not considered appropriate. Enlisting the installers undertaking the work in delivering compliance can help installations achieve a higher level of compliance with the Building Regulations, particularly where the incentives are aligned.



Self-certification therefore provides an alternative, cost effective and deregulatory means of ensuring compliance with the Building Regulations and its success is evidenced by past monitoring reports (see above). Accordingly, we intend to consult on the possible extension of self-certification through competent person schemes to other types of work, particularly in those areas where it was previously considered that the level of risk of self-certification was too high, eg relating to Parts A (Structure), B (Fire Safety) or H (Drainage) of the Building Regulations to extend the benefits of self-regulation.

### Specialist third party certification schemes

Building control bodies are in effect third party certifiers of building work carried out by others. The Department considers that there may be scope for specialist organisations to certify work carried out by developers as an aid to building control bodies in areas where they may not always have the necessary in-house expertise or where the buildings are particularly complex.

Some specialist third party certification schemes already exist in the market place which developers may choose to use during the construction process. If they are satisfied that the scheme is adequate for the purposes of the Building Regulations, building control bodies may take certification by such bodies into account in deciding whether part or all of the building work complies. If any third party certification schemes were formally authorised in the Building Regulations, building control bodies would be required to take their certification into account when deciding if work complies. This could provide savings in building control time and charges and could improve compliance. For cost effective reasons, it is assumed that the third party certification is most likely to be used for work involved in new build and major renovation in large housing estates, blocks of flats or complex non-domestic buildings.

We therefore propose to consult on the principles and framework for authorising specialist third party certification schemes. Possible areas where such schemes might be beneficial include: 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.

[*Note:* A form of third party certification is proposed as part of the consultation on Part P (Electrical Safety) of the Building Regulations and the costs and benefits of this are analysed in the Part P Impact Assessment, not here.]

We propose that specialist third party certification schemes would operate similarly to competent person schemes in that the operators and members would need to satisfy robust conditions before being authorised by the Department, including achieving UKAS accreditation and having professional indemnity insurance. The schemes would certify the relevant part of the building work to the building control body which would be able to accept such certificates as evidence of compliance. As with self-certification, membership and use of such schemes would be voluntary.

### **Description of options considered**

We have considered two options:

**Option 1** - To do nothing; or

**Option 2** - To consult on the possible:

- (i) Extension of the competent person schemes framework to include new types of building work; and/or
- (ii) Introduction of specialist third party certification schemes.

Option 1 would mean that there is no increase in self-regulation or introduction of specialist third party certification.

Option 2 is therefore our preferred option. It extends the benefit of self-regulation and introduces the potential for specialist third party certification to provide a new complementary approach to third party certification by building control.

### **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

**Option 1:** No new additional costs, burdens or benefits would arise.

**Option 2:** Increased self-regulations and the addition of new voluntary alternative approaches would reduce burdens and help to improve compliance

It should be noted that at this stage we are consulting on the principle of extending the competent person schemes framework to include new types of building work and on the introduction of specialist third party certification. Specific details of costs and benefits can only be established and calculated as part of the future vetting of individual applications, taking into account the type of work, estimated number of scheme members and jobs likely to be carried out in each case etc. In addition to the impact assessment for this consultation, a further more detailed impact assessment will be prepared when considering whether or not to make regulations to authorise new schemes in any of these areas.

We have therefore used information from the last two detailed impact assessments that accompanied previous competent person scheme authorisations (which indicate that there were estimated cumulative net benefits to business over ten years of £284m), as well as information from LABC and existing voluntary third party certification schemes, to provide indicative figures on costs and benefits for the purpose of this consultation. We will seek further evidence on the costs and benefits as part of the consultation and use this to prepare a more detailed final impact assessment.

It should also be noted that as membership and use of such schemes is, or will be, voluntary they will only be joined/used where there are net benefits of doing so.

### Competent person schemes - Costs

#### *Operating a scheme*

There will be one-off and ongoing administration costs to bodies (mostly trade bodies) to establish and operate a competent person scheme, eg to develop the scheme rules and conditions and the necessary computer systems, which would be covered by fees charged to members. Where existing schemes are authorised to self-certify further types of work, one-off costs would not apply and the types of work may be carried out by existing members, so in those circumstances there would be no additional membership fees or costs.

An installer joining and registering as a member of a competent person scheme would be charged around £300 - £450 fees per annum, although this varies from scheme to scheme with some setting flat annual or other periodic rates and others setting charges based on the number of jobs completed and number of monitoring / surveillance visits necessary during the year (so a sole trader may pay more than a large company). Membership fees will be reflected in charges made to consumers.

### *Training members*

There may be one-off training costs for installers registering with competent person schemes and for those already in schemes to be able to undertake new types of work, so that they have the necessary competencies to self-certify compliance of their work with the applicable requirements of the Building Regulations.

Experience with installers in existing competent person schemes indicates that many already possess the necessary competencies to undertake new types of work authorised so additional training and costs tends to be minimal. Furthermore, we estimate that only 25% of those installers joining a scheme will require additional training as the others are likely to have the necessary competencies thorough their work in the industry or existing membership of other similar schemes (eg the Microgeneration Certification Scheme). For these installers, we estimate that the cost of this additional training would normally be around £500 over 20 hours per installer and that the trainees would be foregoing earnings of an average of £75 per hour.

After joining a competent person scheme, some ongoing training may also be needed for members to keep up to date with changes to the Building Regulations and other standards to maintain their competence. The schemes either absorb this cost through membership fees or members may have to pay additionally for such training.

### *UKAS accreditation*

It is expected that, as part of a separate exercise to introduce new conditions of authorisation for competent person schemes, in future, schemes will be required to commit to monitoring by the United Kingdom Accreditation Service (UKAS) and to achieve accreditation to British Standard EN 45011.

For competent person schemes already accredited to EN 45011 for other activities, United Kingdom Accreditation Service estimate that it will require about 4-6 days for an initial assessment to extend their accreditation; for new applicants, United Kingdom Accreditation Service estimate that it will take between 10-12 days. As United Kingdom Accreditation Service currently charge a fee of £965 per day (excluding VAT), initial assessments will cost an estimated average of £5,000 for schemes already accredited and an average of £11,000 for new applicants. Thereafter, it is proposed that schemes will be monitored on a risk-basis as appropriate (subject to minimum surveillance periods to be agreed) with each visit taking about three days, with an estimated average cost of £3,000 per inspection. It is anticipated that the costs of United Kingdom Accreditation Service accreditation to scheme operators will be passed on to their members, but it should be defrayed equally across the membership and therefore lead to only a slight increase in membership fees.

### *Notifying jobs carried out*

There is also a minimal cost to competent person scheme members to notify each job carried out to the building control body after completion and to provide a certificate of compliance to the consumer. This is done via the scheme operator who charges the installer approximately £2 - £3 per job. As notification to the scheme operator is done electronically we consider the cost of the time taken to do this is negligible. Having said this, if the work were being carried out by an installer not registered with a scheme, they would incur costs in submitting a building control application (in addition to paying a building control charge) and any subsequent notifications (eg on completion). We therefore consider that there is no additional burden from the requirement to notify the local authority/consumer.

## Competent person schemes - Benefits

### *Savings in building control charges*

There will be savings in building control charges for members of competent person schemes as they will not need to notify building control in advance and pay a charge for building control body to check for compliance. This will benefit consumers in particular as the charge will be removed from the overall cost payable to installers to carry out the work, and scheme members will also benefit from a competitive advantage as they will be able to quote a lower price for their work than non-members. If the work that is self-certified by the scheme member forms part of a larger building project, the building control body can either reduce the charge for the whole project at the outset or give a refund at the end to reflect a reduction in their input. Building control bodies will benefit from a freeing up of their resources to concentrate on areas of higher risk, thereby reducing the burden.

We estimate the time taken by a building control body to carry out its responsibilities in the types of work covered by competent person schemes would be in the range of one to two hours with an average of 1½ hours at a rate of £60 per hour. If this is the case there would be an average saving of £90 in building control charges per job. Set against the annual membership fees of belonging to a scheme of between £300-£450, benefits in savings would accrue after the installer carried out a fifth job per annum.

The total potential savings in building control charges will be calculated on the basis of the estimated number of members per annum for each competent person scheme undertaking the types of work authorised and the estimated number of jobs they will carry out each year for which there will be no or, if part of a larger project, reduced building control charges. These details will be drawn from information provided in application forms and Departmental knowledge of the type of building work in question.

### *Other benefits*

Extending the number of competent person schemes or the types of work they can undertake also provides other benefits. The requirement for installers registering with a scheme to demonstrate and maintain their competence raises standards and enables consumers to identify competent individuals/firms. It also helps to improve compliance with the Building Regulations and reduces the level of unauthorised work carried out. Competition amongst schemes helps to ensure they keep membership fees low.

## Specialist third party certification schemes - Costs

It should be noted that as explained above, it is difficult at this stage to accurately set out the potential costs and benefits in this area. The information on the current costs and benefits of the Structural Engineers Registration Ltd (SER) scheme administered by the Institution of Structural Engineers is included by way of an example of a third party certification scheme. The scheme currently operates as a statutory structural design certification system in Scotland and Jersey (voluntary in Scotland). However, it should be noted that the building control system in England has significant differences to that in Scotland which will impact on the costs and benefits of operating the Structural Engineers Registration scheme here.

### *Operating a scheme*

There will be one-off administration costs for those bodies establishing a new third party certification scheme, eg to develop the scheme rules and conditions and the necessary computer systems. It is assumed that most will be existing bodies so this would reduce the

costs. There would also be ongoing administration costs to bodies in operating a scheme, but both one-off and ongoing costs would be covered by membership fees charged to engineers or other professionals wishing to register with the scheme and certificate fees. This would vary depending upon the type of scheme/work involved but would be reflected in charges made to clients (ie developers).

In the area of structural design, joining and ongoing annual fees for engineers to voluntarily register as an approved certifier with the existing Structural Engineers Registration Ltd (SER) scheme are £25 (plus VAT) and £100 (plus VAT) for their employing company. These are nominal amounts as Structural Engineers Registration Ltd derives most of its income from the fees charged for the issue of certificates. The scale of certificate fees is related to the cost of projects, with a minimum of £30 (plus VAT).

### *Training members*

There may be one-off and ongoing training costs for anyone registering with a third party certification scheme to ensure that they have and maintain the necessary competencies to ensure their work complies with the applicable requirements of the Building Regulations.

In the case of the Structural Engineers Registration Ltd scheme, all professionally qualified engineers, ie certifiers, are required to maintain and update their competence on a regular basis through Continuing Professional Development (CPD) and are audited at least once every five years. Structural Engineers Registration Ltd requires members of the existing scheme to undertake a minimum of 20 hours of Continuing Professional Development each year that is relevant to certification. This can be done in a wide variety of ways, including self study, attending mostly free Institution technical meetings and formal paid for courses. As a rough average estimate the costs to members are assumed to be approximately three days salary a year plus about £400 for paid for courses.

### *UKAS accreditation*

As in the case of competent person schemes, it is proposed that third party certification schemes will be required to commit to future monitoring by the United Kingdom Accreditation Service (UKAS) and to achieve accreditation to EN 45011. The same costs identified above will apply to those schemes already accredited for other activities and to new applicants.

### *Costs to developers*

There will be a cost to developers (ie businesses) in using the services of a third party certifier to certify work as compliant with the Building Regulations. With regard to the Structural Engineers Registration Ltd scheme, certification fees charged to clients are commercially sensitive decisions for each company and will depend on many factors that include the complexity of the design, so it may not be possible to generically monetise this cost. The cost of using a third party certifier may exceed any building control charges savings that may be derived. However, a developer carrying out a building project will not voluntarily use a third party certification scheme unless there are advantages in doing so. This is further discussed under benefits below.

### *Notifying jobs carried out*

As with competent person schemes, there will be a cost to members of third party certification schemes to notify each job carried out (perhaps also via the scheme operator) to the building control body after completion and to provide a certificate of compliance to the client, as well as the time taken to do so. However, we envisage that this will also be a minimum cost of £2-£3 per job and will thus have little impact. Unlike competent person schemes, this cost will not be offset by not having to submit a building notice, full plans or Initial Notice to the local authority in

advance, as we envisage that most jobs subject to third party certification will form part of larger projects which will have been notified beforehand to a building control body.

### *Insurance*

There may also be a cost to members of third party certification schemes to acquire Professional Indemnity Insurance and Public Liability Insurance, but it is anticipated that most will already have this cover.

### Specialist third party certification schemes - Benefits

#### *Savings in building control charges*

Building control bodies may currently choose to take account of work certified by third parties when carrying out their functions if they are satisfied that the scheme is adequate for the purposes of the Building Regulations. Formally authorising such schemes in the Building Regulations would mean that building control did not need to satisfy themselves that each scheme was adequate and would mean that they would be required to take such certification into account.

This would allow for the saving in time spent by building control bodies on checking/inspecting plans or work to be recognised through reduced building control charges. The level of cost savings will depend on the type and size of scheme and building project involved. For example, evidence provided by some local authorities suggests that, for a scheme involving structural engineering, a reduction of between 20% - 35% could be made in the charge for checking the plans (or 6-10% of the overall building control charge, ie plan and inspection charges). This would be on the basis that the larger the building project the less time the local authority would spend as a percentage of the plan charge on checking, ie they would use a sampling approach. For smaller building projects the likely percentage reduction could be greater as the plan charge will be less. For the SER scheme, local authorities in Scotland currently give a standard 10% reduction to the building warrant fee if a SER certificate accompanies the application.

The savings in building control charges will be calculated in the same way as for competent person schemes, primarily from information taken from application forms, eg the estimated number of members per annum for each third party certification scheme undertaking the new types of work and the estimated jobs they will carry out each year, for which there will be reduced building control charges. Further information will also be sought as part of the consultation and used to inform a more detailed impact assessment.

#### *Other benefits*

We believe that the savings from reduced building control charges alone may not exceed the costs of using a third party certifier. However, we understand that there are currently a number of successful third party certification schemes in the market place which indicates that there are clear benefits to the industry in joining or making use of these schemes, such as providing a better quality building or product with performance reassurance and improving the level of compliance with the Building Regulations. Having work checked by a certificated company usually means that there are less snagging problems to be rectified later on in the build programme which could save time and cost on the overall build programme. These benefits improve the value of buildings and in many cases reduce running costs.

Furthermore, some of the 'other benefits' identified above for competent person schemes would apply to authorised third party certification schemes, ie raising competence standards, and enabling developers to identify competent certifiers giving the latter a competitive advantage over other certifiers. Formally authorised schemes may therefore benefit from improved membership and would also provide more choice for developers.

# APPOINTED PERSONS

## Background

The Sustainable and Secure Buildings Act 2004 amended the Building Act 1984 to allow the introduction of Appointed Persons who, in brief, would be persons employed by those carrying out building work to manage compliance on site. The Act allows regulations to implement their role in prescribed circumstances (for example, say, for non-domestic buildings with a floor area above a set area with more than one contractor involved) and what qualifications, powers and duties they should have. It was envisaged that it would be analogous to the role of the co-ordinator for health and safety at work required by Construction (Design and Management) Regulations on larger construction sites and that the Appointed Person would co-ordinate (and have the statutory powers to require) compliance amongst the different contractors on site. In this way they would act as an interface between building control and the developer so as to improve compliance with the Building Regulations.

## Problem under Consideration

Although compliance with the Building Regulations is generally considered to be good, it is clear that there are some areas where it could be improved, for example with the energy efficiency requirements. Furthermore, although compliance may well be achieved by the point of completion of a project, it is often the case that problems and non-compliances arise during construction which later have to be put right, especially on larger sites where there may be lack of co-ordination between different trades.

The responsibility for compliance with the Building Regulations rests with the person carrying out building work. Building control is intended to help the person carrying out building work to achieve compliance but it can only be spot-checking mechanism. There is a belief that some carrying out building work do not take their responsibility for compliance seriously enough.

We are therefore considering ways to incentivise and strengthen the compliance role of those carrying out building work. One way of doing this would be to introduce the new role of Appointed Persons as set out under powers in the Building Act 1984. We propose to consult on their introduction on a voluntary basis at the choice of the person carrying out the work but we would set out the qualifications/competences that a person must have in order to be appointed and also the powers and duties that they would be given in order to be able to carry out their role effectively.

We considered whether to make an Appointed Person a mandatory requirement in respect of some types of building work (eg large, complex projects). However, we concluded it would be a new regulatory burden, with costs likely to outweigh benefits in many cases. Requiring an Appointed Person where their appointment would not be an aid to 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.

Although the person carrying out the work could, if they wished appoint an individual to a co-ordination role akin to an Appointed Person, that role would not have statutory force and so the individual would have less influence on site. In addition, without a set of common competence requirements and accreditation, building control would have to satisfy themselves on a case by case basis whether they considered that the person carrying out the role was competent and whether they would be content to reduce their input on site. This would be likely to negate the benefits that such a role might bring.

## **Rationale for intervention**

Well-designed self-regulatory approaches which complement and support the current statutory system can play an important role in our compliance strategy. They give duty holders the opportunity and incentive to achieve compliance at a lower cost than might otherwise be the case by extending the scope of compliance activity without increasing the costs of building control. It also reinforces the principle that compliance is the responsibility of the duty holder, rather than relying on building control to identify and resolve problems.

## **Policy objective**

Our objective is to improve compliance with Building Regulations and encourage industry to take greater responsibility for its actions through the introduction of Appointed Persons on a voluntary basis so that the person carrying out the work can choose to use them in those cases where they consider it to be beneficial.

## **Description of options considered (including do nothing)**

We have considered two options:

**Option 1** - do nothing

**Option 2** - make regulations to allow the introduction of Appointed Persons on a voluntary basis

Option 1 would not achieve the objective of enhancing self-regulation and increasing compliance through the use of a properly accredited Appointed Person playing a recognised role in the building control process on behalf of the person carrying out the work.

Option 2 is our preferred option as by introducing the role of an Appointed Person, it would allow those carrying out building work to decide on a case by case basis whether the use of an Appointed Person would be appropriate and beneficial in respect of that particular building work and help to improve compliance. It would give statutory force to the role to enable the Appointed Person to act effectively and set common competence requirements so building control can take their activities into account when determining their own input into the project.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

### **Option 1**

There would be no additional costs, burdens or benefits.

### **Option 2**

It should first be noted that the proposal is to introduce Appointed Persons only on a voluntary basis. Therefore any costs would be incurred only by those who chose to use the Appointed Person facility, likely where they saw that the benefits on a particular building project would outweigh the costs.

The powers in the Building Act allow regulations to specify various aspects of Appointed Persons and these could affect the cost benefit analysis:

- (a) The projects to which any provisions would apply. As it would be entirely voluntary to have an Appointed Person it could be argued that there would be no need to specify the



type or size of project, leaving it to those carrying out building work to decide where an Appointed Person would be appropriate or beneficial. We shall consult on this point but, even if we choose not to set any size/type criteria, any information received on the potential costs and benefits associated with different projects will be useful for future analysis

- (b) The qualifications/competences necessary to carry out the role of an Appointed Person. Regulations can specify these and we shall consult on what would be appropriate. It may be that some training would be needed at least for some people carrying out the role and the following assessment of costs takes account of this
- (c) The provisions allow a company carrying out the building work to appoint itself or one of its employees as an Appointed Person or to appoint someone from another organisation.

## Costs

As the proposal is to introduce the role of Appointed Persons and to enable them to be employed on a voluntary basis it is not possible to say how many exactly would be employed. We aim to obtain further information on this as part of our consultation. However, for the purpose of this analysis we estimate that initially there would be around 50 Appointed Persons in the first year and this would rise over time with about 10 more persons being appointed each year.

There are likely to be two main types of Appointed Person, those already employed by the person carrying out the work (where acting as an Appointed Person would be an adjunct to their existing responsibilities) and those appointed from outside. For the purpose of this analysis we have assumed a 50:50 split.

To fulfil their role Appointed Persons would need a comprehensive knowledge of the technical requirements of the Building Regulations and of the construction techniques to be used on site. Many who sought this role would have the necessary competences either through qualifications and/or experience. It is unlikely that those without any such competences would seek to fulfil this role but some may require additional training as a top-up to their existing knowledge and experience. For the purposes of assessing costs we have assumed that 50% of Appointed Persons would have the necessary competences prior to their appointment and the other 50% would need some additional training.

We estimate that the cost of the necessary additional training to be £2500. In the first year there would thus be 25 persons needing this training and 5 persons in each succeeding year. This would give a present value cost of **£158,000** over ten years, assuming a 3.5% discount rate.

There would be a one-off cost to business for assessing the competence of a proposed Appointed Person. We estimate this would be £500 per appointment and in the first year all would need to be assessed. If the Appointed Person worked for the same business (50) there would be no need to reassess their competence on further appointments with that business or be a need for reassessment in subsequent years. We have assumed that 50% of those appointed from outside (12.5) would work for the same client and not need reassessment in the second year. In the third and subsequent years we have assumed that half (6.25) would need reassessment, the rest working for a client that had employed them previously. In the second and subsequent years all new persons appointed for the first time (10 per year) would need assessment. This gives a cost of **£90,000** over ten years.

We have also assumed that the annual salary of Appointed Persons would be in the range of £50,000-£70,000 (central estimate £60,000). However, except on perhaps the largest construction projects we estimate that the role would require only 25-35% of a person's time (central estimate 30%). Where the Appointed Person was already employed in another

capacity there would not be the full cost to the person carrying the work of employing an Appointed Person. However, there would in many cases be an augmentation of salary to recognise the extra responsibilities, which we estimate at £5000 per annum. This cost would continue throughout the period that the appointment continued, which we have assumed would be continuous from the time of first appointment. This would give a cost of **£1.98m** over ten years (High: £2.18m, Low: £1.79m). Where the appointed person came from outside we estimate the cost would be 25-35% of the annual salary per annum. This would give a cost of **£7.14m** over ten years (High: £9.72m, Low: £4.96m).

The building projects where there was an Appointed Person would of course be of different lengths. However, this indicative analysis assumes that the Appointed Persons would be employed on one building site or another throughout the year and thus gives annual costs for their employment.

The total estimated cost discounted at 3.5% over 10 years would therefore be **£9.37m** (High: £12.15m, Low: £6.99). However, these costs are indicative estimates only as reflected in the large ranges. Further information will be sought on these as part of the consultation.

### Benefits

We anticipate that if there is an Appointed Person in place there would be lower building control charges as fewer inspections would be required. It seems likely that employment of an Appointed Person would be on larger building sites (commercial buildings, blocks of flats, housing estates). On such sites it would be normal for building control officers to inspect at least twice per week and for each inspection to take on average 2 hours. This would mean about 100 inspections per year. Average building control charges are £60 per hour so the total cost for inspections per site would be £12,000 per annum.

With an Appointed Person in place we estimate that there might be 25% fewer inspections (High estimate: 30%, Low: 20%) with a consequential reduction in building control charges. Assuming as above that there would be 50 Appointed Persons in place in the first year and an additional 10 in subsequent years this would give a benefit of **£2.38m** over ten years (High: £2.86m, Low: £1.90m).

There are also significant non-monetised benefits of the employment of an Appointed Person:

- Better management of work on site resulting in the project being completed more quickly, saving wage costs
- Earlier completion would also mean that the building would be ready for occupation earlier
- Better compliance with the Building Regulations which would improve the sale or rental value of the building
- Better liaison with the building control body through the Appointed Person
- Likelihood that faults identified more quickly and put right at lower cost.

The monetised benefits and costs give a net present value of **-£6.99m** (High: -£9.29m, Low: -£5.09m), although these numbers should be seen in the context of the non-monetised benefits listed above and the fact that a business will only introduce an Appointed Person where they perceive that these benefits will outweigh the costs. Further information will be sought as part of the consultation.

## **OVERALL ASSESSMENT OF ALL PROPOSALS**

### **Wider impacts**

#### *Economic*

The main groups affected by the proposals will be building control bodies (ie. either local authorities or private sector Approved Inspectors), builders/installers, competent person schemes operators, scheme members and consumers.

#### *Small and Micro businesses*

The proposals in this Impact Assessment will apply equally to small and micro-businesses. Current statistics show that micro-businesses make up approximately 90% of the builder/installer sector generally and this proportion would be similar for members of competent person schemes. A few of the private sector Approved Inspectors are also micro-businesses.

However, the impact of the changes detailed within this Impact Assessment are either deregulatory in respect of small and micro-businesses with insignificant transitional costs (removal of statutory notification stages, changes to the Approved Inspectors Regulations and removal of the Warranty-Link Rule), voluntary so small and micro-businesses would not have to take advantage of them unless they wished (competent person schemes, third party certification schemes, Appointed Persons) or avoidable (new enforcement mechanisms which would not apply if work complied). This in turn might mean that micro businesses chose not to use their exemption and instead comply with new building regulations.

#### *Competition*

With respect to building control bodies it is expected that the proposals will help to level the playing field between local authorities and Approved Inspectors. The proposals will apply to all non-building control businesses equally and so should not alter the current competitive position.

#### *Social*

An Equality Impact Assessment Initial Screening has been carried out and no impacts on any of the affected groups have been identified.

#### *Environmental*

One of the main reasons for bringing forward the proposals is to achieve a higher level of compliance, particularly with the energy and water efficiency provisions in the Building Regulations. This will result in the achievement higher building and environmental standards.

#### *Other specific impact tests*

These are not relevant to this Impact Assessment.

### **Summary and preferred options with description of implementation plan**

Our preferred option is option 2, which is composed of option 2 from each of the five areas of change being proposed. We consider that these will improve the building control system by making it more efficient, by removing unnecessary burdens, by improving the deterrent effect of enforcement mechanisms and by making available alternative voluntary routes to compliance.

It is proposed that the proposals would be taken forward as part of the proposals for changes to the Building Regulations in 2013.

### **Rationale and evidence that justify the level of analysis used in the Impact Assessment (proportionality approach)**

We have based our level of analysis on the information available to us, which is proportionate for consultation stage. In some cases we have been able to base the analysis on assumptions derived from information given by LABC and the Association of Consultant Approved Inspectors (ACAI) (the building control representative bodies). In other cases we intend to carry out additional work and acquire further evidence through and alongside the consultation process to allow us better to monetise the costs and benefits. For all the proposals a further Impact Assessment will need to be completed and, for competent person schemes, third party certification schemes and the introduction of the new civil sanctions, a further consultation with accompanying Impact Assessments. In respect of the new civil sanctions, there is a statutory requirement to consult further.

### **Risks and assumptions**

We have made a number of assumptions throughout this analysis, for example on the time taken to produce service plan templates and time taken to produce individual service plans. Some of our figures are based on assumptions such as estimates of the numbers of Initial Notices taken from the survey of Building Control and the hourly rate of Building Control taken from the Charges Review. We have also obtained information from local authority building control, Approved Inspectors, Construction Industry Council and from warranty providers and drawn upon research findings. However these assumptions are based on current available evidence. We intend to challenge the assumptions made through the consultation process and to seek further evidence where sufficient is not yet available.

### **Direct costs and benefits to business calculations (following One In One Out (OIOO) methodology)**

The monetised cost estimates for appointed persons and third party certification are voluntary and so will only occur where the benefit to the business is higher than the cost incurred. In addition, enforcement costs to business are out of scope for One In One Out. As a result this gives a net present value benefit to business, over 10 years, of £15.93m or an annual equivalent net cost to business for One In One Out purposes of **£1.85m** at 2011 prices (£1.74m at 2009 prices)

The bulk of this benefit, an annual equivalent of approximately **£1.32m**, will fall to housebuilders