



# Building Regulations Competent person self-certification schemes:

## **Consultation paper**



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self-certification schemes:

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Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 0303 444 0000  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

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## Scope of the consultation

<b>Topic of this consultation:</b>	Competent person self-certification schemes under the Building Regulations 2000.
<b>Scope of this consultation:</b>	This consultation seeks views on proposals to amend the conditions of authorisation, the application process and monitoring of performance for competent person self-certification schemes.
<b>Geographical scope:</b>	England and Wales.
<b>Impact Assessment:</b>	An Impact Assessment is attached at Annex D of the Consultation Document.

## Basic information

<b>To:</b>	Competent person scheme operators and members, bodies considering applying to operate competent person schemes, building control bodies, sector skills bodies. United Kingdom Advisory Service.
<b>Body/bodies responsible for the consultation:</b>	Sustainable Buildings Division of the Department for Communities and Local Government.
<b>Duration:</b>	23 December 2009 to 19 March 2010
<b>Enquiries:</b>	Tel: 0303 444 1791 E-mail: <a href="mailto:ian1.drummond@communities.gsi.gov.uk">ian1.drummond@communities.gsi.gov.uk</a>
<b>How to respond:</b>	Post: Sustainable Buildings Division Department for Communities and Local Government Zone 5/G10 Eland House Bressenden Place London SW1E 5DU Fax: 020-7944 5719 E-mail: <a href="mailto:cpsreview@communities.gsi.gov.uk">cpsreview@communities.gsi.gov.uk</a>
<b>Additional ways to become involved:</b>	As this is a largely technical proposal involving specialist interests following discussions with those affected, this will be a purely written exercise.

<b>After the consultation:</b>	A summary of the responses received will be published on the Department's website not later than three months after the close of the consultation.
<b>Compliance with the Code of Practice on Consultation:</b>	The consultation complies with the Code.

## Background

<b>Getting to this stage:</b>	Competent person schemes are authorised under the provisions of para 4A of Schedule 1 to the Building Act 2000. The application process and conditions of authorisation are set by the Department which has become aware that some changes are needed for the purposes of clarity and consistency. The EU Services Directive will also require some changes to the application process.
<b>Previous engagement:</b>	There have been discussions with key stakeholders to decide the key issues that need to be addressed.

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## Purpose of this consultation

This consultation sets out and seeks views on proposals by Communities and Local Government for changes to the administrative provisions for approval, monitoring and quality assurance of Building Regulations competent person self-certification schemes in England and Wales. The changes proposed in this document are designed to address perceived weaknesses in the current system, as identified by the Department, Competent Person Scheme operators and others. The changes are intended to both improve both the level of compliance with the Building Regulations and to increase consistency across the schemes.

In August 2006 it became clear from discussions with Competent Person Scheme operators that there were differences in the conditions under which they had been authorised which some considered to be creating an uneven playing field both generally and in relation to specific types of work.

The differences and apparent lack of consistency have arisen partly from differences in interpretation of the criteria and partly from the gradual evolution of Competent Person Schemes to cover different types of work. We consider this needs to be addressed to ensure good administration in the future, and to provide a fair basis on which existing schemes can work and new schemes authorised.

It was therefore decided in mid-2006 generally to suspend the consideration of further applications to operate new or extended Competent Person Schemes and to hold a review of the administrative provisions of their approval and operation. We considered that such a review was needed before deciding whether to extend the schemes into other areas of the Building Regulations and the approach that should be taken in doing so.

Current competent person scheme operators were invited to participate in a number of working groups to discuss various administrative aspects of the schemes and they have made valuable suggestions for change which have been incorporated in this consultation document.

## Planned outcome of this consultation

It is the Department's intention to introduce as soon as practicable the proposals in this consultation document after any amendment needed to take account of the responses received. Existing competent person schemes will be given a transitional period, agreed between the Department and the scheme operator, within which to make and implement the arrangements necessary to comply with any amended conditions of authorisation and other changes. New schemes will be expected to comply from their date of authorisation.

The Welsh Ministers (Transfer of Functions) No. 2) Order 2009 (S.I. 2009/3019) has transferred to Welsh Ministers the power to make building regulations including those on competent person schemes with effect from 31 December 2011. After that date responsibility for the activities of competent person schemes in Wales will be with Welsh Ministers and the Welsh Assembly Government. This would include responsibility for ensuring that, in respect of their operations in Wales, competent person scheme operators completed any arrangements necessary to comply with the amended conditions of authorisation or other changes. From the date of the transfer coming into effect it would be possible for Welsh Ministers to request further changes to the schemes in respect of their operation in Wales.



# Introduction

## Development of Competent Person Schemes

By the mid 1990's significant increases in the amount and types of work to which the Building Regulations applied meant that the supervision of notifiable work could no longer be practicably accommodated within the traditional building control framework. The 1991 Building Regulations had already exempted the installation of heat-producing gas appliances from notification to Local Authorities where the work was carried out by an installer registered with a scheme approved under the Gas Safety (Installation and Use) Regulations (then the CORGI scheme).

The responses to a formal public consultation in 1997 on the general principle of allowing competent installers to self-certify that their work complied with the relevant provisions of the Building Regulations showed general support. In 1999 the Department consulted more specifically on the appropriateness of self-certification for whole buildings and/or specific types of work. There was no support at that time for self-certification for whole buildings. However, there was much support for the self-certification of specific types of work, where the incidence of risk was low, in areas where the volume of jobs would have made building control involvement difficult and would divert resources from areas of higher risk.

In April 2002 the revision to Part L of Schedule 1 extended Building Regulations requirements to areas not previously covered, notably the energy efficiency of replacement windows and combustion appliances. For each type of installation it was estimated that there would have been over one million notifiable jobs per year. It was therefore decided that Competent Person Schemes would be appropriate in these areas. Within this, the role of CORGI was extended to the energy efficiency of heat-producing gas appliances as well as safety. At the same time two new schemes were authorised for the installation of oil-fired combustion appliances (operated by the Oil Firing Technical Association Limited (OFTEC)) and for the installation of solid fuel appliances (operated by HETAS Limited). FENSA was also authorised at this time to allow self-certification of replacement glazing in dwellings by its registered installers.

When Ministers made the decision in 2004 to regulate electrical installation work in dwellings under Part P of Schedule 1 to the Building Regulations, it was agreed this could only be practicably implemented if there were Competent Person Schemes to remove the supervision burden from Local Authorities and the cost of Local Authority notification from householders. Five full competence schemes (covering any electrical work in dwellings) and five defined competence schemes (where electrical work was only part of the main activity e.g. kitchen or gas fitters) were authorised to operate from 1 January 2005.

At the same time provision was made for a notice of all work carried out by installers registered with a competent person scheme to be given to the local authority within 30 days of the completion of work. There was also a requirement that all customers receive a certificate of building regulations compliance in respect of work carried out by such registered installers within the same period.

In 2006 Part L of the Building Regulations was revised once again and in addition Articles 3 to 6 of the Energy Performance of Buildings Directive implemented. It was decided that the revised provisions could be practicably implemented only if further Competent Person Schemes were authorised. An invitation to interested parties to submit applications was issued during 2005. A large number of applications were received and approved, some to extend existing schemes, some for new schemes, covering the plumbing, heating, hot water, mechanical ventilation and air-conditioning sectors. A scheme for air-tightness testing of new buildings was also authorised at this time.

The legal requirements for competent person schemes are set out in Annex A to the document.

A full list of bodies currently authorised to operate schemes is at Annex B.

# Section 1

## Proposals for changes to the authorisation criteria

The Department considers that a body seeking to become a competent person scheme operator must agree to conform to a set of conditions of authorisation. These conditions are designed to ensure that the body is a fit and proper body for such an activity, has the necessary competences to do so and will act fairly towards its own members and the customers of those members. Over the last few years a number of issues have been raised by existing schemes in relation to the authorisation criteria, in particular how they are set and how they are monitored.

Three key issues have been identified:

1. Schemes authorised in 2002 were not required to agree to any formal conditions of authorisation. At that time it was felt that authorisation criteria were not appropriate for combustion appliance schemes so as not to distort competition with the CORGI gas safety scheme to which criteria could not be applied as it was authorised by HSE under the Gas Safety (Installation and Use) Regulations, not under the Building Regulations. All schemes authorised since, including additional ones for oil-fired and solid fuel combustion appliances, operate under a full set of conditions of authorisation with only minor variations dependent on the type of work carried out. The schemes authorised in 2002 now operate in many respects similarly to those operating under the current conditions of authorisation.
2. In addition to the variation in the application of the authorisation criteria are applied, evidence has shown that some conditions are being differently interpreted by different schemes. This has led to a perception that some schemes are not abiding by the spirit, if not the letter, of the conditions.
3. The conditions of authorisation are on the whole outcome based allowing scheme operators a degree of flexibility in deciding how to meet them. There is a feeling amongst some operators that this degree of flexibility combined with the differing interpretation has created unfair inconsistencies.

In addition, the Department considers that some of the conditions need to be amended to allow it more effectively to carry out its functions in respect of competent person schemes and to make more certain that compliance with the Building Regulations is achieved.

*The Evaluation of Competent Person Self-Certification Schemes*<sup>1</sup> report (the 2009 report) has identified a number of failings of adherence of schemes to the current conditions of authorisation and makes a number of recommendations to improve adherence.

Before new schemes can be authorised, the Department therefore considers that some of the criteria would benefit from amendment. There is a need for a clear and agreed set of core criteria that are applicable to all schemes and a clear understanding of when and why additions or variations to those criteria will be considered, reflecting the circumstances of differing types of work.

Below is a table of the proposed new core criteria and how they differ from the previous criteria. Where the 2009 report's recommendations support the proposed changes in a criterion this is noted in the last column of the table below.

	<b>Core Criteria</b>	<b>Demonstration of meeting the criteria</b>	<b>Changes from previous criteria</b>
<b>Group 1: The Scheme</b>			
1	Scheme to have the technical ability to deliver the compliance with the Building Regulations.	A business plan must be provided to show how the relevant technical standards would be reached, including where a scheme acquires the technical competence from a third party.	No formal business plan previously required – applicants had to comment only on experience in the type of work for which they applied.
2	Scheme to be financially viable and self-sufficient within a reasonable timescale.	Provision within the business plan for the following: (a) A transparent fee structure showing projected income from members and how it will be self-financing with a sufficient surplus to develop the scheme (b) A timeframe within which the scheme would be self-financing, not later than five years after authorisation (c) Commitment to use scheme funds only for the benefit of the members of the scheme. This could include use of funds for the general benefit of the sector in which the scheme operated.	(a), (b) and (c) were previous stand-alone requirements but provision within a business plan will better demonstrate how applicants propose to achieve them in conjunction with other elements of the plan.

<sup>1</sup> SAIC Part P Monitoring Report, 2006 ([www.communities.gov.uk/publications/planningandbuilding/monitorelectricalsafety](http://www.communities.gov.uk/publications/planningandbuilding/monitorelectricalsafety)), and *The Evaluation of Competent Person Self-Certification Schemes*, 2009 [www.communities.gov.uk/publications/planningandbuilding/evaluationcompetentperson](http://www.communities.gov.uk/publications/planningandbuilding/evaluationcompetentperson)

	<b>Core Criteria</b>	<b>Demonstration of meeting the criteria</b>	<b>Changes from previous criteria</b>
3	Scheme to have a robust management system.	Provision within the business plan outlining how the scheme’s management system will work. A robust management system will include an appropriate system for the keeping of information needed for management and monitoring purposes.	This is a more detailed criterion than previously. Provision within a business plan will better demonstrate how applicants propose to achieve it in conjunction with other elements of the plan.
4	Scheme to have an absence of, or methods for avoiding, conflicts of interest between the commercial interests of any sponsoring or parent organisations and management of the scheme.	Where schemes are part of or owned by a larger commercial, trade or professional group, the business plan should show how any conflicts of interest would be avoided.	This is a current criterion but provision within a business plan will better demonstrate how applicants propose to achieve it in conjunction with other elements of the plan.
5	Scheme to have a commitment to membership growth.	Scheme to demonstrate how it proposes to grow and from where new members would come.	This is in part a new requirement. Successful schemes will continue to attract new members.
6	Scheme to give a commitment to provide annual audited accounts for the scheme itself.		This has been amended to ensure that audited accounts relating only to the scheme are produced and made available. Previously some accounts were unaudited and some formed part of the accounts of the ‘parent’ organisation making it difficult to see whether a scheme was financially viable.

	<b>Core Criteria</b>	<b>Demonstration of meeting the criteria</b>	<b>Changes from previous criteria</b>
<b>Group 2: The scheme and its members</b>			
7	Members must be technically competent as assessed against appropriate National Occupational Standards (NOS) under a Minimum Technical Competence (MTC) assessment procedure.	Where a sector MTC is in place, it must be used. Where one is not in place a scheme must agree to work towards the development of one with associated National Occupational Standards, in conjunction with the relevant sector skills body. This process should begin before making an application for authorisation and where possible be concluded before authorisation or as soon as possible thereafter.	The Department considers that there should be a common set of technical standards for the type of work for members of each type of scheme and a common method of assessment against those standards so that a scheme could not register members of a lower technical competence than necessary to achieve compliance with the Building Regulations. Previously the standards and method of assessment were in many cases left to individual scheme operators.
8	Schemes to ensure mandatory training for all members is provided when needed as a result of changes to Building Regulations and/or EN/BS standards.	This may be by means of formal training courses, seminars, distance learning etc, as appropriate.	A new criterion to make sure that scheme members remain up to date on requirements.
9	Scheme to undertake periodic random inspections of a representative sample of each member's work to check compliance.	The Department will set minimum levels for each type of work. The inspection regime after an agreed period of membership could become risk-based. Schemes will need to produce a risk model framed to deliver consistency where this is agreed.	Supported by the recommendations in the 2009 report. The risk-based element is new. Risk-based inspection may take into account , for example the inherent level of risk of the type of work or a member's previous compliance history.

	<b>Core Criteria</b>	<b>Demonstration of meeting the criteria</b>	<b>Changes from previous criteria</b>
10	Scheme to have effective sanctions in place for dealing with non-compliance by members of the scheme.	Applications to set out the range of sanctions to be applied in particular circumstances, including in the last resort termination of membership for refusal to comply.	Greater clarity on the range of sanctions.
11	Scheme to give a commitment to publish scheme rules and fee structure.	Publication on scheme website as a minimum.	New in part, to enable a prospective member to see exactly what rules must be followed and what charges are included.
12	Scheme to provide a mechanism to make available to other schemes the names of former members whose membership has been terminated by the scheme and the reason for termination.	All scheme members to be made aware that this will happen on initial registration and/or renewal of membership.	New, to prevent “rogue” members whose membership was terminated for non-compliance by one scheme simply transferring to another scheme without that scheme’s knowledge.
<b>Group 3: The schemes and their customers</b>			
13	Scheme to have a robust and publicised complaints procedure.	Stages of procedure to be set out in detail, at a minimum on the scheme website, including alignment with OFT Consumer Codes Approval Scheme where appropriate.	Better understanding for consumers about how complaints will be handled. OFT element is new. Supported by recommendations in 2009 report.
14	Scheme to arrange provision of financial protection for consumers to put non-compliant work right.	Will apply where original installer cannot put matters right. Type of provision may vary from scheme to scheme.	An existing criterion. Supported by recommendation in 2009 report.

	<b>Core Criteria</b>	<b>Demonstration of meeting the criteria</b>	<b>Changes from previous criteria</b>
15	Scheme members to remain responsible for the compliance of all scheme work carried out under a contract with the customer.	This applies in particular to cases where some of the work is subcontracted.	New, to clarify responsibility for customers.
16	Scheme to give a commitment to publish membership lists on the scheme website and LABC's competent person website.	To allow customers to find a firm to carry out work or to check if a firm is a member of a scheme.	Amendment of a previous criterion to ensure that information is available to customers.
17	Scheme to give a commitment to promote and advertise Competent Person Schemes.		New, to help customers better understand the existence and benefits of competent person schemes. Supported by recommendation in 2009 report.
18	Schemes to ensure that all customers receive a certificate of building regulations compliance on completion of work.	Schemes to set out how this will be achieved, including procedures to check that this occurs with each job carried out by members.	A statutory requirement. Checking process new in part. Supported by recommendations in 2009 report.
<b>Group 4: The scheme and CLG</b>			
19	Scheme to give a commitment to provide whatever information the Department requires in order for it to carry out its functions.	The Department will discuss with schemes the information needed to be given for the Department's purposes. Likely to include provision of a quarterly report on complaints and their outcomes.	An existing criterion. Complaints report to help ensure that complaints are being speedily, consistently and fairly dealt with.
20	Scheme to give a commitment to external monitoring of the scheme.	Likely to be as part of UKAS accreditation.	An existing criterion which may be made more specific as a result of this consultation. Supported by recommendation in 2009 report.



	<b>Core Criteria</b>	<b>Demonstration of meeting the criteria</b>	<b>Changes from previous criteria</b>
<b>Group 5: The scheme and BCBs</b>			
21	Schemes to ensure that they are notified by members of all completed work so scheme operator can forward this information to BCBs.	Scheme should receive notifications well within time to ensure scheme meets the 30 day deadline for transfer to BCBs. Scheme to have procedures in place to check that members are notifying all jobs.	A statutory requirement. Checking process new. Supported by recommendation in 2009 report.
22	A commitment by scheme and its members to use LABC confidential reporting hotline to allow local authorities to take action against illegal work.		New. The hotline will allow scheme members to report work possibly being carried out illegally for investigation by local authorities. Use of the hotline will help scheme members by cutting down on unfair competition and will also help achieve higher levels of building regulations compliance.

There will be additional costs to schemes and their members from some of the proposed changes to the criteria. There are also significant benefits. Some of the costs and benefits are discussed in the following sections of this consultation document; others are identified in the Impact Assessment at Annex D.

*Note: The criteria as they apply to the current scheme for the air-tightness testing of new buildings and for similar types of scheme which may be authorised in future may vary in some respects from the criteria above because of different statutory requirements and the very different nature of the process that they are certifying. In particular criteria 18 and 21 do not apply.*

## Consultation questions

### **Question 1**

Do you consider that the criteria in the table above are ones appropriate for the authorisation of competent person schemes?

### **Question 2**

Is the meaning of each of the criteria clear?

### **Question 3**

Are there any other criteria which you consider should be applied to competent person schemes?

## Section 2

# Application process to operate a competent person scheme

### Current position

The applications process has in the past been operated on a generally *ad hoc* basis with an open advert on the Department's website inviting expressions of interest to run a scheme. In some cases, for example for Part P (electrical safety), applications have been requested from a particular sector where the Department has already decided it would wish to have competent person schemes. Once an application has been received, the Department sends a letter of acknowledgement to the applicant.

No formal steps for the consideration of applications have been available on the Department's website. However, applications have generally been processed as follows:

- If not previously decided, a decision is made whether the sector to which the application applies is suitable for a competent person scheme. The decision is made in consultation with other relevant government departments, the Welsh Assembly Government, LABC (representing the local authorities) and the Association of Corporate Approved Inspectors (ACAI) whether it is considered that the sector is suitable for a competent person scheme and is based mainly on the basis of level of risk to the consumer. If it is judged that it is not to have schemes for that type of work, the organisation concerned will be informed and no further action taken.
- Where the sector is deemed suitable, a detailed scrutiny of the proposed scheme will begin. The application is vetted internally against the current competent person scheme authorisation criteria to ensure that it would deliver appropriate levels of compliance for all the relevant requirements in the Building Regulations and that the scheme and its potential members would have the appropriate level of technical competence.
- Consultation takes place as widely as necessary – for example, other government departments, trade associations and building control representative bodies may be invited to comment on the proposed scheme.
- The applicant may be asked to revise the application form or provide additional information to cover areas not sufficiently covered or to clarify certain points.

- After any necessary revisions have been made, the application will be referred to the Building Regulations Advisory Committee (BRAC)<sup>2</sup> for its advice. If Departmental officials are content that the proposed scheme meets the authorisation criteria, taking account of advice from BRAC, the proposal is submitted to the ministers for approval. If ministers agree, the scheme is authorised by means of a statutory instrument amending the Building Regulations.

At present there is no formal written process for these stages or any set timescale for them. The EU Services Directive now requires one to be in place and published on the Department's website. In any event, it is good administrative practice to have a formal and transparent process in place.

## Proposed application process

The Department proposes that in future the application process should operate as follows:

### **Step 1:**

Submission of an application to the Department, which may be after an invitation for expressions of interest. An invitation will normally include a closing date for receipt of applications. Application timescales when introduced will start from closure date for receipt of applications. Confirmation that applicant is willing to abide by conditions of authorisation if approved.

### **Step 2:**

Letters of acknowledgement will be sent to applicants with confirmation on the process and timescale to be followed.

### **Step 3:**

Detailed scrutiny by Departmental policy officers. This will include an assessment of the technical competence of the scheme and its potential members for the type of work applied for. Consultation with other government departments, building control bodies and others. Publication on the Department's website of names of applicants and the type of work applied for.

### **Step 4:**

Informal discussions regarding application between applicant and the Department. This may lead to an amended application or a request for further information or clarification.

### **Step 5:**

Scrutiny of amended application by the Department, where necessary.

<sup>2</sup> BRAC is a body with a statutory right to advise Ministers before any changes are made to the Building Regulations.

**Note:**

***At this stage the Department may decide that the application falls significantly short of what is required and may reject it. This would not prevent a further application being made at a later time.***

**Step 6:**

Arrangements for consultation with BRAC made. This may include a formal interview in appropriate cases.

**Step 7:**

Decision on whether to recommend Ministerial approval made by Departmental officials, taking account of advice from BRAC.

**Step 8:**

Ministerial approval sought.

**Step 9:**

Ministerial approval given. Applicants advised of approval. Where not approved, reasons for non-approval will be given.

**Step 10:**

Formal confirmation by applicant of acceptance of conditions of authorisation (i.e. agreement to the terms under which the scheme will operate and against which its performance will be monitored).

**Step 11:**

Regulations laid to authorise approved schemes from a given date (usually common commencement dates<sup>3</sup>).

The Department envisages that Steps 1 to 10 would be normally carried out within a period of six months from the date of the receipt of an application and in many cases the period could be shorter. Step 11, formal authorisation, would occur at the next available common commencement date of 6 April or 1 October.

If the proposed steps and timescale are adopted they will be published on the Department's website so that applicants will have a better understanding of how applications will be considered and when they could expect a decision on their application.

## Consultation question

**Question 4**

Are you content with the steps and timescale the Department is proposing for the consideration of applications to operate a competent person scheme?

<sup>3</sup> The Government has designated 6 April and 1 October in each year as common commencement dates when regulations will normally come into force.

# Section 3

## Consumer Protection

The Department's main focus in authorising competent person schemes is to achieve a higher level of compliance with the Building Regulations. Having a degree of consumer protection can be helpful in meeting this main aim as some building owners will then wish to employ members of competent person schemes for the assurance of the likelihood of a compliant job and better protection if the Building Regulations are not complied with.

### (a) Customer complaints procedure

Work by persons registered with competent person schemes does not always comply with all the relevant requirements in the Building Regulations, either the technical standards or the procedural requirements. Schemes are therefore required to have robust complaints systems to deal with customer complaints and, on the whole, these have been shown to work well.

The competent person scheme operators working group that helped CLG carry out the review noted above suggested that complaints procedures need to retain or increase their current robustness, become more uniform between schemes and that consumers might benefit from additional stages beyond what is currently available with most schemes.

It must also be borne in mind that customers have two legal remedies outside the competent person scheme framework through which to pursue complaints:

- Customers have the right to complain to the local authority about work which they consider does not comply with the Building Regulations. The local authority has statutory powers to inspect the work and to take formal enforcement action where it considers that this is warranted. Prosecutions for breaches of the Building Regulations can only be brought within two years of the date of the completion of the work.
- Customers also have the right to make a claim against the installer in the civil courts for compensation for the cost of bringing non-compliant work up to the required standard.

## Current position

The current authorisation criterion for complaints handling is that schemes should have robust procedures in place to deal with complaints from members and disputes between members and customers. However, the Department has generally allowed schemes to develop their own detailed procedures so long as the goal is a satisfactory resolution of justified complaints about work that does not comply with the Building Regulations. Some schemes' procedures are broadly in line with the principles in the Office of Fair Trading's Consumer Codes Approval Scheme<sup>4</sup> for dealing with complaints; others have adopted different procedures.

The Department currently is not aware of most of the complaints made to schemes or their outcomes. In those relatively few cases where it is aware, the complaints have generally been resolved satisfactorily by the work being brought up to the required building regulation standards or certificates of compliance provided.

It should be noted that, whatever complaints system schemes currently use, all are required to inspect the relevant work where a complaint is made that a breach of the technical standards has occurred and where such an inspection is necessary to decide whether the complaint is justified.

The Department has received relatively few complaints about the schemes' handling of customer complaints; where investigation of such complaints has taken place, it has shown that most schemes operate their complaints system to a higher standard than the current conditions of authorisation require. In a few cases, however, investigation following the complaints to the Department has shown that the time taken by the scheme operator to resolve a complaint through scheme's systems is unnecessarily long.

The Department is also looking at the comparison with other government departments' complaints system requirements in similar types of schemes, such as TrustMark (Department for Business, Innovation and Skills) and the Microgeneration Certification Scheme (MCS) (Department for Energy and Climate Change). In some cases competent person schemes are also members of these other schemes and it would be sensible for complaints systems requirements to be as similar as possible as complaints could fall under more than one scheme.

## Options

The Department has identified three broad options for schemes' complaints systems;

### **Option 1: No Change**

Available evidence indicates that most justifiable complaints from customers about non-compliance with the Building Regulations are settled to customer satisfaction through the current complaints systems of the schemes. However, there is a lack of transparency

<sup>4</sup> Office of Fair Trading, *Consumer Codes Approval Scheme: Core Criteria and Guidance*, 2008, [http://www.offt.gov.uk/shared\\_offt/Approvedcodesofpractice/oft390.pdf](http://www.offt.gov.uk/shared_offt/Approvedcodesofpractice/oft390.pdf)

about some schemes' systems which does not give customers sufficient information about how their complaints will be dealt with or the timescale for dealing with them. This option would continue to allow new schemes to choose whatever system they wished and not remove any inconsistencies between schemes that exist. There would be no additional costs or benefits to this option.

***Option 2: A more formal standardised system***

The Office of Fair Trading's robust complaints procedure guidelines that could be used to develop a more standardised internal system to be required for all schemes. Standardisation would include the steps in a system, procedures and timescales for dealing with complaints. It would also give new schemes a template to be followed. This would more closely align competent person schemes with the procedures in TrustMark and the Microgeneration Certification Scheme (MCS) (although these schemes offer procedures which cover a much wider range of issues than non-compliance with the Building Regulations, such as standards of finish or sales techniques, which the Regulations do not cover). The Impact Assessment at Annex D estimates the additional present value cost of this option as £70,000 over ten years for all schemes together.

***Option 3: Full compliance with the Office of Fair Trading's Consumer Codes Approval Scheme***

This would encompass Option 2 but would also add a further tier to the systems operating in most schemes by requiring unresolved complaints to be referred to independent arbitration, conciliation or mediation. However, these remedies can be very expensive and could impact adversely, particularly on the very many small firms registered with competent person schemes both in terms of money and time. In some cases the firms might simply terminate their registration with a scheme rather than following such procedures, thus rendering such an additional requirement counter-productive. The Department has not costed this option as it has insufficient information to estimate the number of times that arbitration, conciliation or mediation might be invoked or on the cost of such remedies.

**Proposal**

The Departments' preference is Option 2, giving more certainty to customers and further alignment with other government departments' initiatives at minimal additional cost without the extra financial burden of full compliance with the current OFT Code of Practice.

## Consultation question

**Question 5**

Do you support the Department's preference for Option 2 for schemes' complaints systems?



## (b) Consumer financial protection

There may be circumstances where work carried out under a competent person scheme does not comply with the requirements of the Building Regulations but the installer is no longer able to bring the work up to standard, most commonly because the firm has ceased to trade. In such cases customers of scheme members lose three of the options in place to get the work brought up to standard:

- scheme operators cannot require the installer to be put matters right as the installer is no longer in business
- the local authority cannot take enforcement action against a firm no longer in business; and
- the consumer cannot make a claim for compensation in the civil courts if there is no longer a firm against which to claim.

For these reasons the Department has included a requirement in the conditions of authorisation that there should be some protection for consumers who find themselves in such circumstances. The current criterion is: *Adequate consumer protection through the offer of an insurance-backed warranty, professional indemnity insurance or bond.*

The criterion applies as follows:

- All householders (except where the dwelling is owned by a local authority) to be given the opportunity to purchase an insurance-backed warranty against non-compliance of work with the requirements of the Building Regulations. There is no such requirement in respect of commercial or industrial buildings.
- This applies only where the value of the work is at least £250, including any VAT
- The minimum length of the warranty is six years except where the manufacturers of products have a lesser length of guarantee for a product. For replacement windows the warranty period is typically ten years or more.
- The warranty to come into operation where the original installer cannot put any non-compliance right (e.g. death, retirement, insolvency).

### **Current position**

The Department has never specified in detail how the schemes should comply with this criterion in part because schemes must individually negotiate with insurance providers on the provision of suitable policies. The Department is aware that in the past some schemes experienced difficulties in finding insurers willing to underwrite such policies, although these difficulties seem to have largely been overcome. The Department is, however, also aware that there remain significant differences in the warranty provision between schemes. In many cases there is doubt that the warranty covers all the circumstances the Department requires. In some cases installers or the scheme operators do not make

their customers sufficiently aware of the existence of the opportunity to protect the cost of bringing work up to the required standard through an insurance-backed warranty as installers see no benefit to themselves in doing so.

The Financial Services Authority's (FSA) rules on the selling of insurance mean that the installer is not permitted to "sell" the insurance to customers. All that is allowed is to make the customer aware that an insurance-backed warranty is available. In some cases, installers simply leave a leaflet explaining the insurance to the householder. In other cases the householder is sent a leaflet with their copy of the building regulations certificate of compliance. It is then for the householder to arrange and pay for the insurance. In general take up of the warranties following this model has been low as cover can work out costly in comparison with the cost of the job. The exception is in the replacement glazing sector where the provision for deposit protection and protection against the early failure of sealed units convinces many householders to accept the offer of an insurance-backed warranty.

In a few cases the scheme operators themselves have opted to provide an insurance-backed warranty in respect of every job their registered installers undertake. This provides cover at a much lower cost to the householder but does not give them the option of opting out if a warranty is not wanted. The 2009 Report<sup>5</sup> recommends that this should become the norm for schemes.

One scheme, which is authorised for the provision of air-tightness testing of new buildings, has adopted professional indemnity insurance as the form of protection offered. Whilst this is appropriate for the type of work undertaken under the scheme it would not be appropriate for most schemes.

The Department is aware that a few schemes investigated a bonding arrangement (similar to the ATOL scheme for holidays) but the cost of following FSA rules was found to be prohibitive and this is therefore not considered a viable option.

The Department also encourages membership of the Department of Business, Innovation and Skills' TrustMark consumer protection scheme in appropriate cases. Schemes which are TrustMark members must provide the sort of financial protection as in Option 2 below. However, some schemes would not be able to have TrustMark membership as the type of work for which they have been authorised falls outside the scope of the TrustMark scheme. In addition, this Department cannot require membership of TrustMark so, where schemes declined to join, other arrangements for protection would be necessary.

We would also be interested to know of other equivalent types of protection that might be appropriate. For example, particularly in the heating and hot water installation sector, householders are frequently offered the opportunity to take out a service contract to protect against the costs of parts and labour should the installation fail. This would provide much of the protection required but would not necessarily provide protection against all

<sup>5</sup> [www.communities.gov.uk/publications/planningandbuilding/evaluationcompetentperson](http://www.communities.gov.uk/publications/planningandbuilding/evaluationcompetentperson)

types of building regulations non-compliance where the non-compliance was not related to the failure of the installation.

## Options

### **Option 1: No Change**

The Department does not consider that this is a viable option. It would leave a requirement in place but would not deal with the issues of insufficient consumer awareness, low take-up or the doubt as to whether the current arrangements are giving the consumer the protection that we have asked for in all cases.

**Option 2:** Leave the take-up of financial protection to the consumer but set out in greater detail, in schemes' conditions of authorisation, the minimum financial protection arrangements that must be available to customers of the schemes.

**Option 3:** Make it mandatory for all consumers to receive financial protection automatically for each job. Schemes' conditions of authorisation would set out the requirements in detail.

The 2009 Report recommends this option.

**Option 4:** Remove any requirement for financial protection.

Schemes would be free to offer it if they choose but would be under no obligation to do so.

## Proposal

The Department considers that schemes should continue to be required to provide a degree of financial protection as in Options 2 or 3.

## Consultation questions

### **Question 6**

Do you agree that there should be a minimum level of consumer financial protection where the scheme member cannot bring work up to the required standard? If yes, please give your preference for Options 1, 2, or 3 with reasons for your choice.

### **Question 7**

Do you have any suggestions on other types of protection that might be appropriate if Options 1, 2 or 3 were adopted?

## Section 4

# Monitoring the performance of scheme members – quality assurance

### Competence standards

As part of their conditions of authorisation scheme operators are required to assess the competence of potential members against the National Occupational Standards for the type of work concerned using assessment procedures set out in Minimum Technical Competence Documents. Members that are in schemes at the moment have been assessed as competent to carry out work to the standards required by the Building Regulations. This requirement has been made clearer in the proposed schemes' conditions of authorisation. This system has generally worked satisfactorily and the Department does not seek to change it.

### Random inspections

As part of their conditions of authorisation most scheme operators are also required to carry out random periodic monitoring of the work of their members to make sure that the work continues to meet the standards required by the Building Regulations. This is in addition to any inspections undertaken as a result of a complaint. In general, the minimum requirement for such monitoring has been an annual inspection of a representative sample of completed work for each installer but for some types of work more frequent monitoring is required. The monitoring must be carried out by persons technically competent to do so.

Where monitoring discloses members who fail to reach the required standard they are offered training and advice to help them do so. Continuing failure to change or undertake training will, in the last resort, result in a member being removed for a scheme.

This system has worked well and the Department considers it should be extended to all authorised schemes.

### Consultation question

**Question 8**

Do you agree that the current system of monitoring the performance of members of schemes should be continued and extended to all authorised schemes?

Representations have been made to the Department that schemes should be allowed to move to a risk-based system of monitoring the performance of scheme members. For example, this would mean that in cases where the monitoring of a member over a number of years showed that it continued to meet the standards required and no justifiable complaints had been made against it, the frequency of monitoring could be reduced. As the cost of random inspections falls to the installers the potential move to a risk-based system will benefit good installers in reduced inspection fees.

A move to a risk-based system would be at the Department's discretion. If a risk-based system were to be adopted, the Department would set, as part of schemes' conditions of authorisation, the minimum requirements for such a system and would monitor the success of the system.

Taking account of costs and benefits of random inspections, including risk-based inspections, there would be a net present benefit over ten years of about £75m.

## Consultation question

### **Question 9**

Do you agree that the Department should allow schemes to move to a risk-based system of monitoring the performance of their members in appropriate cases where they have demonstrated their ability to operate such a system?

# Section 5

## Monitoring the performance of the scheme operators- quality assurance

At the application stage schemes are rigorously vetted and must convince the Department, the Building Regulations Advisory Committee and other stakeholders that they will be able to deliver building regulations compliance and comply with the conditions under which they have been authorised. This system has generally worked well.

The Department considers that there should also be continuing monitoring of schemes' performance to ensure that they continue to deliver the highest level of compliance with the requirements in the Building Regulations in accordance with their conditions of authorisation.

### Where we are now

The Department has carried out three monitoring exercises since schemes were first introduced in 2002:

- a report in 2003 on the schemes authorised in 2002<sup>6</sup>
- a report in 2008 on the Part P schemes introduced in 2005<sup>7</sup>; and
- a report in 2009 to cover the all the schemes authorised from 1 April 2006 and also those authorised in 2002.<sup>8</sup>

Both the 2003 and 2008 reports showed that competent person schemes were achieving a very high level of compliance with the substantive requirements of the Building Regulations. Both also showed that compliance with the procedural requirements and the conditions of authorisation was much more variable and, for a few schemes, below an acceptable level.

The results of the 2009 report showed that for some schemes the level of compliance with the Building Regulations was not at an acceptable level. It also showed that many of the schemes monitored were not complying fully with their conditions of authorisation.

<sup>6</sup> <http://www.communities.gov.uk/publications/planningandbuilding/reportcompetent>

<sup>7</sup> <http://www.communities.gov.uk/publications/planningandbuilding/monitorelectricalsafety>

<sup>8</sup> <http://www.communities.gov.uk/publications/planningandbuilding/evaluationcompetentperson>

The Department does not itself have the resources to carry out the full monitoring of schemes in-house. It therefore commissions others to do this on its behalf, which has the advantage of adding an independent element to the monitoring process. Monitoring reports are placed on the Department's website after completion.

However, the current system of monitoring has a major disadvantage. It is *ad hoc* and not carried out as often as desirable. For example, it will be six years between the first and second reports on the schemes authorised in 2002. If significant problems had arisen in the interval they could have persisted for a long period before the Department became aware of them and required corrective action.

It would be possible to continue with the current *ad hoc* system of monitoring but the Department would prefer a more regular and standardised system. A possibility for doing this would be for schemes to become accredited by the United Kingdom Accreditation Service (UKAS) which would then take responsibility for periodic monitoring of the schemes.

In 2004 applicants to schemes for Part P of the Building Regulations (Electrical safety) had to agree that they would actively to seek and achieve UKAS accreditation against their conditions of authorisation to standard EN45011, in part because accreditation would provide a regular independent report on whether the schemes were complying with their conditions of authorisation. All schemes authorised since 2006 have also had to confirm at time of application their willingness to seek and achieve UKAS accreditation.

There are other advantages to UKAS accreditation;

- More frequent and consistent reports on schemes would allow deficiencies to be corrected earlier than otherwise would be the case.
- The independence of UKAS is generally and widely recognised, which would add to the credibility of their reports and to the schemes themselves. The review working group considered that UKAS accreditation was widely recognised in industry and would be a positive step forward in independently demonstrating compliance with standards to the consumer and other stakeholders.
- Those competent person schemes which wish to participate in the Department for Energy and Climate Change's Microgeneration Certification Scheme (MCS) must seek and achieve UKAS accreditation to standard EN 45011 to do so. The majority of competent person schemes operate in areas where MCS technologies apply so they have applied or are about to apply for UKAS accreditation for that purpose. Adding competent person scheme conditions of authorisation to that accreditation would be only a small additional step.

It should be noted that the costs of seeking and maintaining UKAS accreditation would have to be paid by the schemes themselves. Some schemes initially balked at the possible cost of accreditation but more recently, for the reasons given above and a realisation that the cost was not as high as feared, most schemes have accepted that accreditation would be to their advantage despite the additional cost.

The Impact Assessment at Annex D estimates cost of UKAS accreditation over ten years at a net present value of £20m. This includes the cost of accreditation fees and also the cost to schemes of additional time needed to monitor the performance of scheme members to make sure that the scheme is fully complying with the authorisation criteria. The Impact Assessment also shows that there would be considerable variation in the costs to individual schemes.

If UKAS accreditation becomes a condition of authorisation arrangements would be put in place for the Department to receive and publish all UKAS reports on the accreditation of competent person schemes.

Where UKAS reports showed unacceptably low levels of compliance with the Building Regulations or non-adherence to the conditions of authorisation, the Department would agree an action plan with the schemes concerned to bring the schemes up to the standard required. Where this was not achieved within a reasonable timescale the Department would have the right to remove a scheme's authorisation.

## **Options**

### ***Option 1: No change***

The Department would continue to commission periodic monitoring reports of the operation of schemes. Those schemes which choose to seek UKAS accreditation or need it for other purposes would be free to do so.

### ***Option 2: UKAS accreditation***

It would become a condition of authorisation that all schemes sought and achieved UKAS accreditation to standard EN 45011 against their conditions of authorisation within a defined period from authorisation. This option is supported by a recommendation in the 2009 Report.

If UKAS authorisation were agreed, the Department would give currently authorised schemes two years in which to achieve accreditation. New schemes would be given two years from the date of authorisation.



### **Proposal**

For the reasons given above, the Department prefers Option 2 – that the monitoring of schemes should be carried out through UKAS accreditation.

## Consultation question

### **Question 10**

Do you agree with the Department's view that UKAS accreditation should be the requirement for the monitoring of schemes' performance?

# Section 6

## Impact Assessment

An Impact Assessment in respect of these proposals is at Annex D.

In brief, the Impact Assessment concludes that the proposals have an average annual cost for all schemes combined of £6m (£52m net present value over ten years). The benefits are estimated at £8m average annual benefit for all schemes combined (£75m net present value over ten years). Taking costs and benefits into account there is an estimated net benefit over ten years of £23m.

In addition to the monetised costs and benefits there are four very significant non-monetised benefits arising from the proposals:

### **Benefit 1:**

Many enterprises wishing to join a competent person scheme will need to update their competences in order to achieve the relevant competence standards for membership. In addition, the proposed requirement for continuing training for existing members of schemes will help ensure that those members keep their competences up to date. In those types of work where competent person schemes are authorised this will result in a better trained and qualified workforce to the overall benefit of the construction sector.

### **Benefit 2:**

The proposals on more robust assessments of the competence of enterprises applying to join a competent person scheme, and more robust random checks of their completed work, will mean that more work done by scheme members should fully meet the relevant requirements in the Building Regulations. This in turn will lead to greater customer satisfaction with the work that they have carried out by scheme members.

### **Benefit 3:**

The proposals will require an enhanced level of transparency in several areas:

- more available information about for prospective members better able to choose the which best suits their needs
- more available information to customers of schemes so that they can make a better choice of selection of someone to carry out their building work
- more transparency on the funds of a scheme to make sure that the funds are used to benefit the scheme and its members.

**Benefit 4:**

Competent person schemes are an increasingly important part of the building control system in achieving compliance with the Building Regulations. If schemes are more robust as a result of the proposals this will mean higher levels of compliance and a reassurance that self-certification is a successful way of achieving compliance, and therefore benefit the efficacy of the building control system as a whole.

## Consultation questions

**Question 11**

Do you consider that the draft Impact Assessment presents a fair representation of the costs and benefits?

**Question 12**

Can you supply any further information to help develop the Impact Assessment further? In particular we would welcome comments on the assumptions we have made on average per scheme or per member costs of some of the proposed changes, for example on the cost of UKAS accreditation or the cost of additional training.

# Section 7

## Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be disclosed in accordance with the access to information requirements (mainly the Freedom of Information Act 2000, Data Protection Act 1998 and the Environmental Information Regulations 2004).

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

A summary of the responses to this consultation will be published on the Department's website [www.communities.gov.uk](http://www.communities.gov.uk) within three months of the close of consultation.

Any confidential responses will be included in the statistical summary of numbers of comments and views expressed, although the respondent will not be identified.

# Annex A

## Legal requirements for competent person schemes

Competent person schemes are authorised under the power in paragraph 4A of Schedule 1 to the Building Act 1984. This provision allows local authorities to accept as evidence of compliance with the Building Regulations certificates from a class of persons prescribed by the Secretary of State for a particular type of work.

The various schemes are prescribed mainly in Schedule 2A to the Building Regulations 2000, as amended, but one is prescribed in regulation 20B of those Regulations (regulation 12B in the Building (Approved Inspectors etc) Regulations 2000). The provisions in regulations 12(5) and 16A do not apply to this scheme.

Regulation 12(5) of the Building Regulations exempts work carried out by persons registered with competent person schemes from the submitting full plans or a building notice for the work they carry out under the provisions of that scheme.

Regulation 16A of the Building Regulations and regulation 11A of the Building (Approved Inspectors etc) Regulations both require that not later than 30 days after the completion of work the relevant building control body must be given a notice or certificate attesting that the work carried out complies with all requirements of regulations 4 and 7 of the Building Regulations. The occupier of the building where the work was carried out must be given a certificate to the same effect.

There is no general requirement for a body to become a competent person scheme and no requirement for a person to join a scheme. The one exception to this is installers registered with the Gas Safe Register (before 1 April 2009, those installers registered with CORGI) in respect of the installation of heat-producing gas appliances where all the installers must be registered and must carry out the duties under regulation 16A of the Building Regulations and regulation 11A of the Building (Approved Inspectors etc) Regulations by virtue of their registration on the Gas Safe Register.

# Annex B

## List of bodies authorised to operate competent person schemes as at 6 April 2009

Self-certification schemes and exemptions from requirement to give building notice or deposit full plans.

Column 1	Column 2
Type of work	Person carrying out work
1. Installation of a heat-producing gas appliance.	A person, or an employee of a person, who is a member of a class of persons approved in accordance with regulation 3 of the Gas Safety (Installation and Use) Regulations 1998.
2. Installation of heating or hot water service system connected to a heat-producing gas appliance, or associated controls.	A person registered by Capita Gas Registration and Ancillary Services Limited or CORGI Services Limited in respect of that type of work.
3. Installation of: a. an oil-fired combustion appliance which has a rated heat output of 100 kilowatts or less and which is installed in a building with no more than three storeys (excluding any basement) or in a dwelling; b. oil storage tanks and the pipes connecting them to combustion appliances; or c. heating and hot water service systems connected to an oil-fired combustion appliance.	A person registered by NICEIC Group Ltd, Association of Plumbing and Heating Contractors (Certification) Limited, Oil Firing Technical Association Limited, NAPIT Registration Limited or Building Engineering Services Competence Accreditation Limited in respect of that type of work.

Column 1	Column 2
Type of work	Person carrying out work
<p>4. Installation of:</p> <p>a. a solid fuel burning combustion appliance which has a rated heat output of 100 kilowatts or less which is installed in a building with no more than three storeys(excluding any basement); or</p> <p>b. heating and hot water service systems connected to a solid fuel burning combustion appliance.</p>	<p>A person registered by HETAS Limited, NAPIT Registration Limited, Association of Plumbing and Heating Contractors (Certification) Limited, NICEIC Group Limited or Building Engineering Services Competence Accreditation Limited in respect of that type of work.</p>
<p>5. Installation of a heating or hot water service system, or associated controls, in a dwelling other than a combustion appliance or its associated controls.</p>	<p>A person registered by Building Engineering Services Competence Accreditation Limited, Association of Plumbing and Heating Contractors (Certification) Limited, NICEIC Group Limited, Corgi Services Limited or NAPIT Registration Limited in respect of that type of work.</p>
<p>6. Installation of a heating, hot water service, mechanical ventilation or air conditioning system, or associated controls, in a building other than a dwelling, other than a combustion appliance or its associated controls.</p>	<p>A person registered by Building Engineering Services Competence Accreditation Limited or NICEIC Group Limited in respect of that type of work.</p>
<p>7. Installation of an air conditioning or ventilation system in an existing dwelling, which does not involve work on systems shared with other dwellings.</p>	<p>A person registered by Corgi Services Limited, NAPIT Registration Limited or NICEIC Group Limited in respect of that type of work.</p>
<p>8. Installation of a commercial kitchen ventilation system which does not involve work on systems shared with parts of the building occupied separately.</p>	<p>A person registered by Corgi Services Limited or NICEIC Group Limited in respect of that type of work.</p>
<p>9. Installation of a lighting system or electric heating system, or associated electrical controls.</p>	<p>A person registered by EC Certification Limited or NICEIC Group Limited in respect of that type of work.</p>
<p>10. Installation of fixed low or extra-low voltage electrical installations.</p>	<p>A person registered by EC Certification Limited, British Standards Institution, NICEIC Group Limited or NAPIT Registration Limited in respect of that type of work.</p>

Column 1	Column 2
Type of work	Person carrying out work
11. Installation of fixed low or extra-low voltage electrical installations as a necessary adjunct to or arising out of other work being carried out by the registered person.	A person registered by Corgi Services Limited, EC Certification Limited, NAPIT Registration Limited, Association of Plumbing and Heating Contractors (Certification) Limited, NICEIC Group Limited or Oil Firing Technical Association Limited in respect of that type of electrical work.
12. Installation, as a replacement, of a window, rooflight, roof window or door (being a door which together with its frame has more than 50 per cent of its internal face area glazed) in an existing building.	A person registered under the Fenestration Self-Assessment Scheme by Fensa Ltd, or by CERTASS Limited or the British Standards Institution in respect of that type of work.
13. Installation of a sanitary convenience, washing facility or bathroom in a dwelling, which does not involve work on shared or underground drainage.	A person registered by CORGI Services Limited, NAPIT Registration Limited, Association of Plumbing and Heating Contractors (Certification) Limited or NICEIC Group Limited in respect of that type of work.
<p>14.-(1) Subject to paragraph (2), any building work which is necessary to ensure that any appliance, service or fitting which is installed and which is described in the preceding entries in column 1 above, complies with the applicable requirements contained in Schedule 1.</p> <p>(2) Paragraph (1) does not apply to:</p> <p>a. building work which is necessary to ensure that a heat-producing gas appliance complies with the applicable requirements contained in Schedule 1 unless the appliance:</p> <p>i. has a rated heat output of 100 kilowatts or less; and</p> <p>ii. is installed in a building with no more than three storeys (excluding any basement), or in a dwelling; or</p> <p>b. the provision of a masonry chimney.</p>	The person who installs the appliance, service or fitting to which the building work relates and who is described in the corresponding entry in column 2 above.

In addition to the above schemes, the British Institute of Non-Destructive Testing is authorised in respect of pressure testing for the air-tightness of buildings.



# Annex C

## The consultation criteria

- C.1. The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations consisting of a document in electronic or printed form.
- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
  - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
  - Ensure that your consultation is clear, concise and widely accessible.
  - Give feedback regarding the responses received and how the consultation process influenced the policy.
  - Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
  - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- C.2. The code does not have legal force but is regarded as binding on UK departments and their agencies unless Ministers conclude that exceptional circumstances requires a departure from it. The full consultation code may be viewed at: [www.cabinetoffice.gov.uk/regulation/consultation/consultation\\_guidance/consultation\\_guidance/index.asp#codeofpractice](http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/consultation_guidance/index.asp#codeofpractice)
- C.3. If you are not satisfied that this consultation has followed the above criteria or you have any other observations about ways of improving the consultation process, then please contact:

CLG Consultation Co-ordinator  
Floor 6 Zone H10  
Eland House  
Bressenden Place  
London  
SW1E 5DU

# Annex D

## Impact assessment

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>Communities and Local Government</b>	<b>Title:</b> <b>Impact Assessment of proposed changes to the authorisation process for Competent Person Schemes</b>	
<b>Stage:</b> Consultation	<b>Version:</b> Final	<b>Date:</b> 17 December 2009
<b>Related Publications:</b>		

**Available to view or download at:**

[www.communities.gov.uk/publications/planningandbuilding/competentsschemechangesconsult](http://www.communities.gov.uk/publications/planningandbuilding/competentsschemechangesconsult)

**Contact for enquiries:** Ian Drummond

**Telephone:** 0303 444 1791

**What is the problem under consideration? Why is government intervention necessary?**

The Department for Communities and Local Government propose changes to the administrative provisions for approval and monitoring of Competent Person Self-Certification Schemes in England and Wales. The changes proposed are designed to address weaknesses in the current system e.g. differing terms and conditions of authorisations and confusion over operating requirements for scheme operators, as identified by the Department, Competent Person Scheme operators and others. The changes are intended to both improve the level of compliance with the Building Regulations and also to create a more level playing field across the schemes.

**What are the policy objectives and the intended effects?**

The proposed changes will enable Competent Person Schemes to work in a more structured way, resulting in more transparency in the system, better services to the consumer and improvements in the competitive environment between the schemes. The objectives are to provide a single set of clear terms and conditions for the schemes to be assessed by and to work to, thus introducing more transparency into the process. Currently there is a lack of consistency which has arisen from the gradual evolution of Competent Person Schemes to cover different types of work, meaning the Department sets different terms and conditions for similar schemes. The Department considers this must be addressed as soon as possible to ensure good administration in the future.

**What policy options have been considered? Please justify any preferred option.**

The options considered are to

(a) do nothing and

(b) introduce amendments to provide flexibility, consistency, transparency and competitiveness. If the Department does not make changes to the current authorisation criteria, inconsistencies between schemes will continue, causing confusion within the industries, to members and the consumer.

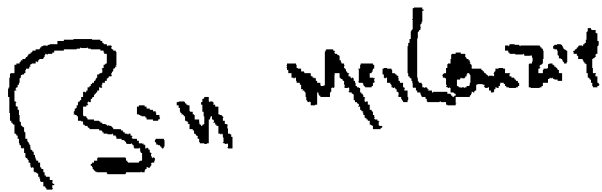
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The policy will be reviewed annually as part of the proposed UKAS accreditation of the schemes.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible minister:

A handwritten signature in black ink, appearing to read "Ben M. L. 2009". The signature is stylized and slanted.

**Date:** 17 December 2009

## Summary: Analysis & Evidence

<b>Policy Option: 2</b>		<b>Description: Impact Assessment of proposed changes to the authorisation process for Competent Person Schemes</b>	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>Costed package of improvements including: Mandatory Training (£23.4m), UKAS Accreditation (£21.5m), Random Inspections (£3.9m), Membership Growth commitment (£1.4m), Scheme Promotion (£1.4m), technical competence (£0.3m)</p>
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£0		
	<b>Average Annual Cost</b> (excluding one-off)		
	£6m		
		<b>Total Cost (PV)</b>	<b>£52m</b>
<p>Other <b>key non-monetised costs</b> by 'main affected groups'. All key/significant costs have been monetised</p>			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>Benefits from a risk based approach to Random Inspections leading to fewer, better targeted inspections. Members currently inspecting annually (PV £58.7m); members windows schemes (PV £5.8m); members of commercial sector schemes (PV £0.2m)</p>
	<b>One-off</b>	<b>Yrs</b>	
	£0	1	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£9m		
		<b>Total Benefit (PV)</b>	<b>£75m</b>
<p>Other <b>key non-monetised benefits</b> by 'main affected groups'. The proposals give transparency of the operation of schemes and better risk management, they give a reassurance to CLG, Ministers, members and the public that the process of self certification is successful and continues to work as an effective method of building control allowing LABC to focus on higher risk areas of work.</p>			
<p><b>Key Assumptions/Sensitivities/Risks</b> Indicative costs and benefits only, based upon an assumed growth of one new competent person scheme annually as a result of policy and other developments over the next 10 years.</p>			
<b>Price Base Year</b> 2009	<b>Time Period Years</b> 10	<b>Net Benefit Range (NPV)</b> <b>£5m to £43m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£23m</b>

What is the geographic coverage of the policy/option?		England & Wales		
On what date will the policy be implemented?		from April 2010		
Which organisation(s) will enforce the policy?		CLG		
What is the total annual cost of enforcement for these organisations?		£0		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		N/A		
What is the value of changes in greenhouse gas emissions?		N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)		
Increase of £N/A		Decrease of £N/A		<b>Net Impact £N/A</b>
Key:	<b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### Background/Introduction

#### *The development of Competent Person Schemes*

By the mid 1990's the increasing coverage of Building Regulations could no longer be practicably accommodated within the traditional building control framework, given the significant increases in the amount and types of building work that had to be notified to building control bodies before commencement. The 1991 Building Regulations had already exempted the installation of heat-producing gas appliances from notification to Local Authorities where the work was carried out by an installer registered with the CORGI (Council for Registered Gas Installers) registration scheme approved under the Gas Safety (Installation and Use) Regulations.

A formal public consultation in 1997 on the general principle of allowing installers certified as competent to self-certify that their work complied with the relevant provisions of the Building Regulations showed general support. In 1999 the Department consulted more specifically on the appropriateness of self-certification for whole buildings and/or specific types of work. There was no support at that time for self-certification for whole buildings but much support for specific types of work, provided that the type of work was relatively low risk and of such a volume that made building control involvement difficult and diverted resources from areas of higher risk.

The 1999 consultation also asked for expressions of interest in participating in such self certification schemes. A number were received but progress in taking the proposal forward was slow.

In April 2002 the revision to Part L extended Building Regulations requirements to areas not previously covered, notably the energy efficiency of replacement windows and combustion appliances. For each type of installation there would have been over one million notifiable jobs per year. It was therefore decided that Competent Person Schemes would be appropriate in these areas. Within this the role of CORGI was extended to the energy efficiency of heat-producing gas appliances and two new schemes were authorised for the installation of oil-fired) and solid fuel appliances, OFTEC (Oil Firing Technical Association) and HETAS (Heating Equipment Testing and Approval Scheme) respectively. FENSA (Fenestration Self Assessment Scheme) was also authorised at this time to allow self-certification of replacement glazing in dwellings by its registered installers.

When Ministers made the decision in 2004 to regulate electrical installation work in dwellings through Part P of the Building Regulations, it was agreed this could only be practicably implemented if there were Competent Person Schemes to remove the burden from Local Authorities and the cost of Local Authority notification from householders. Five full competence and five defined competence (where electrical work was only part of the main activity e.g. kitchen or gas fitters) schemes were authorised to operate from 1 January 2005.

At the same time provision was made for a notice of all work carried out by installers registered with a competent person scheme to be given to the local authority. There was also a requirement that all customers receive a certification of building regulations compliance in respect of work carried out by such registered installers.

In 2006 Part L of the Building Regulations was revised once again and Articles 3 to 6 of the Energy Performance of Buildings Directive implemented. It was decided that the revised provisions could only be practicably implemented if further Competent Person Schemes were authorised. An invitation to interested parties to submit applications was issued during 2005. A large number of applications were received and approved, some to extend existing schemes, some for new schemes, covering the plumbing, heating, hot water, mechanical ventilation and air-conditioning sectors and replacement glazing.

### **Rationale for Government Intervention**

In August 2006 it became clear from discussions with Competent Person Scheme operators that there were differences between them on the conditions on which they had been authorised which some considered to be creating an uneven playing field both generally and in relation to specific types of work.

In general the differences and apparent lack of consistency arose from the gradual evolution of Competent Person Schemes to cover different types of work. Decisions taken on an individual basis may have been sensible at the time but has led to the situation where the Department is now requiring different things from similar schemes without a robust framework within which to justify each decision. This is something the Department considers needs to be addressed to ensure good administration in the future and provide a fair basis on which existing schemes can work and new schemes can be authorised.

It was therefore decided to suspend the consideration of further applications to operate new or extended Competent Person Schemes and to hold a review of the administrative provisions of their approval and operation. Such a review is needed before deciding whether to increase the number of schemes into other areas of the Building Regulations and the approach that should be taken in doing so.

## Options

The Department has therefore developed proposals to address the problems identified with the process of applications to run a scheme and the criteria that they sign up to. The broad principles of the changes (to introduce clearer criteria, more transparency in the system and a formal process for applications to run a scheme) were consulted on in working groups consisting of representatives from the schemes, Local Authority Building Control (LABC) and the Department and received good support. The detailed proposals have been developed with input from key stakeholders and are supported by the Building Regulations Advisory Committee.

There are three options under consideration:

The first option is to do nothing and retain the current processes and criteria.

The second option is to take forward the proposals to help to address the deficiencies in the current application process and criteria system. Although presented as a series of measures it is possible that some or all of these may be amended or dropped altogether as a result of the consultation. It should also be noted that many of these proposals merely enable Competent Person Schemes to work to a clearer set of criteria which will halt the growing inconsistencies between the schemes.

There is a third option to only implement the criteria that would have little or no cost. In the department's view this would create a half measure and not bring about the consistency required from the new criteria nor create the level playing field required by CLG, Competent Person Schemes themselves and other stakeholders.

## Aim and Objectives

The main aims of the changes will be to enable Competent Person Schemes to work a more level playing field by:

- introducing more transparency into the Competent Person System by producing clearer terms and conditions;
- further improving the competitive environment within which the schemes compete;
- removing perceived restrictions and ambiguities which will allow Competent Person Schemes to work to improved standards;

## Main Proposals for Changes to the Criteria

The criteria in *italics* as set out below is the proposed newer, clearer criteria, Annex B shows the criteria as they currently stand. The old criteria have in the main been made clearer, some have been merged into new enlarged criteria, and new criteria have been added.

For a full breakdown of how the criteria have changed and why, please refer to the main body of the consultation document.



## Costs and Benefits

### ***Non-monetised benefits***

In addition to the monetised benefits set out below, there are four significant non-monetised benefits arising from the proposals:

- (1) Many enterprises wishing to join a competent person scheme will need to update their competences in order to achieve the relevant competence standards for membership. In addition, the proposed requirement for continuing training for existing members of schemes will help ensure that those members keep their competences up to date. In those types of work where competent person schemes are authorised this will result in a better trained and qualified workforce to the overall benefit of the construction sector.
- (2) The proposals on more robust assessments of the competence of enterprises applying to join a competent person scheme and more robust random checks of their completed work will mean that more work done by scheme members should fully meet the relevant requirements in the Building Regulations. This in turn will lead to greater customer satisfaction with the work that they have carried out by scheme members.
- (3) The proposals will ensure an enhanced level of transparency in several areas:
  - More available information about schemes so prospective members will be better able to choose the scheme which best suits their needs
  - More available information to customers so that they can make a better, more informed selection of someone to carry out their building work
  - More transparency on scheme funds to make sure that the funds are used to benefit the scheme and its members
- (4) Competent person schemes are an increasingly important part of the building control system in achieving. If schemes are more robust this will result in higher levels of compliance with the Building Regulations and will also provide reassurance that self-certification is a successful and effective way of achieving compliance. This benefits the building control system as a whole by allowing Local Authorities and Approved Inspectors to focus on higher risk areas of work.

### **Assumptions**

In looking at the costs and benefits of the proposed changes we have made a number of assumptions as to the unit costs per scheme or per member. These assumptions are based on discussions with the schemes themselves, discussions with the United Kingdom Accreditation Service, comparison with costs in other Departments' schemes (i.e. TrustMark and Microgeneration Certification Scheme) and knowledge built up within the Department over the last decade from monitoring the performance of schemes.

### **Criteria not changed**

Some of the criteria require no change as they are clear and deliver the required outcomes. There will therefore be no additional costs or benefits.

#### **Criterion 10**

*Scheme to have effective sanctions in place for dealing with non-compliance by members of the scheme.*

Applications to set out the range of sanctions to be applied in particular circumstances.

**Benefit** – This clarifies what we expect from the applicants in cases where their members fail to comply with building regulations.

#### **Criterion 15**

*Scheme members to remain responsible for the compliance of all work carried out under a contract with the customer.*

**Benefit** – This applies in particular to cases where some of the work is subcontracted and gives greater clarity on responsibility for compliance.

#### **Criterion 18**

*Schemes to ensure that all customers receive a certificate of building regulations compliance on completion of work.*

**Benefit** – This criterion is essential to ensure that customers receive a certificate, especially as the public are becoming more aware that certificates are needed when selling their home.

#### **Criterion 21**

*Arrangements to be made for members to notify all completed work to the scheme operator, to enable this information to be forwarded to Building Control.*

Scheme should receive notifications well within time to ensure scheme meets the 30 day deadline for notification to Building Control. Schemes are to have procedures in place to check that members are notifying all jobs. This is an existing criterion.

**Benefit** – It is important that all work is notified.

### **Criteria with negligible additional cost**

#### **Criterion 11**

*Scheme to publish its rules and fee structure on its website*

Although new in part, this information should be currently held by the schemes and would just require formatting and insertion on the website.

**Benefit** – This will enable a prospective member to see exactly what charges are included and how they are set out. It will give the prospective member more choice to see which scheme is more suited to their needs.

**Criterion 12**

*Scheme to provide a mechanism for making available to other schemes the names of firms whose membership has been terminated by the scheme and the reason for termination.*

**Benefit** – This is to prevent “rogue” members whose membership is terminated by one scheme simply transferring to another scheme without that scheme’s knowledge, and to make sure that the receiving scheme is aware that the applicant has been dismissed from the previous scheme.

**Criterion 16**

*Scheme to give a commitment to publish membership lists on the scheme website and LABC’s (Local Authority Building Control) competent person website.*

This information should be currently held by the schemes and would just require formatting and insertion on the website.

**Benefit** – This is to allow customers to check if an enterprise is in fact a member of a scheme or to find a competent installer.

**Criterion 22**

*Scheme and its members to give a commitment to use LABC confidential reporting hotline, to assist local authorities to take action against illegal work.*

This is to ensure that if a mechanism is put in place for the benefit of the schemes they will cooperate with it.

**Benefit** – The hotline will allow scheme members to report work possibly being carried out illegally for investigation by local authorities. Use of the hotline will help scheme members by cutting down on unfair competition and will also help achieve higher levels of building regulations compliance.

**Criteria where some cost may occur**

**Business plan**

A business plan is required to clarify the questions asked of applicants. In any case, prospective schemes would normally have a business plan for business, management and financial purposes.

**Benefit** – For the scheme itself, CLG and UKAS (United Kingdom Accreditation Service) this will provide clearer, more consistent and transparent information, making dependencies within the information more explicit. It will also mitigate the risks of system failures. It will aid the better running and management of the scheme from the outset.

**Criterion 1**

*Scheme to have the technical ability to deliver compliance with the Building Regulations.*

Within the business plan a prospective scheme must describe how the relevant technical standards would be reached.

**Benefit** – Previously applicants had to comment only on experience in the ‘field’ applied for. To open up to fairer competition this criteria has been included to show the ability to run a scheme generally, and to allow for the possibility to ‘buy in’ the expertise.

**Criterion 2**

*Scheme to be financially viable and self-sufficient within a reasonable timescale.*

*To demonstrate this, the business plan must include the following:*

- (a) a transparent fee structure showing projected income from members*
- (b) a statement that scheme funds will only be used for the benefit of the members of the scheme*
- (c) an agreed timeframe showing when the scheme would be self financing with a sufficient surplus to develop the scheme*

**Benefit** – This will better demonstrate how applicants propose to achieve financial viability and self-sufficiency in conjunction with other elements of the plan. This clarifies what we expect from an applicant, and gives an indication of how the applicant expects the scheme to grow.

**Criterion 3**

*Scheme to have a robust management system.*

**Benefit** – Requiring the explanation of the management system within the business plan and showing how it will work, including the system for record keeping, is a more detailed criterion than previously. Provision within a business plan will better demonstrate how applicants propose to achieve the criterion in conjunction with other elements of the plan.

**Criterion 4**

*Absence of, or methods for avoiding, conflicts of interest between the commercial interests of sponsoring or member organisations and the management of the scheme.*

**Benefit** – Where schemes are part of, or owned by, a larger commercial, trade or professional group, the business plan should show how any conflicts of interest would be avoided.

*Cost analysis of requiring a Business Plan*

To give an indicative sense of the costs we have estimated a fixed one off cost to the scheme operator of £1000. The original 12 operators will not have to provide a business plan retrospectively. With an assumption that the schemes will grow by one scheme operator per annum this indicative estimate gives a Present Value Cost over ten years of approximately £13,600.

**Accounts****Criterion 6**

*Scheme to provide annual audited accounts for the scheme(s).*

This clarifies more what we expect from the applicants as in the past the schemes have been uncertain as to what was required. Schemes may incur a small cost in producing a subset from the main accounts. Where schemes are part of or owned by a larger commercial, trade or professional group, the business plan should show how any conflicts of interest would be avoided.

**Benefit** – This will give enhanced transparency of the operation of the schemes along with better risk management. This will also give a reassurance to CLG, Ministers, scheme members and the general public that the scheme is not making a profit out of income and any excess money is ploughed back into the business or for the benefit of the industry.

*Cost analysis*

To give an indicative sense of the costs we have estimated an annual cost to the scheme operator of £1000. There are currently 12 scheme operators with an assumption that the schemes will grow by one scheme operator per annum and an estimated 50% of the current schemes provide the information already. This indicative estimate gives a Present Value Cost over ten years of approximately £70,000.

**Membership growth commitment****Criterion 5**

*Scheme to give a commitment to membership growth and to describe from where new members will be found.*

This is to ensure that schemes will commit to the growth of their scheme through recruiting new members. Previously, the equivalent criterion required the applicant to forecast membership numbers over time, without any requirement to work at membership growth.

There will be a cost involved as the scheme will have to advertise and recruit. This is in part a new requirement. Successful schemes will continue to attract new members.

**Benefit** – Recruitment helps increase compliance and maintains competition. Growing membership in the schemes will lead to more compliant work being carried out, more customer satisfaction and less burden on Building Control as a higher percentage of lower

risk building work will be self certified. It also reduces the costs to the householder of having building work carried out as no Building Control Fee is payable. It will also lead to a greater income for the schemes making them stronger with a more diverse revenue base, which will make them more effective and bring them greater credibility as they will become a larger growing company.

#### *Cost analysis*

To give an indicative sense of the costs we have estimated an annual cost to the scheme operator of £20,000, with 12 scheme operators initially, an assumption that the schemes will grow by one scheme operator per annum and an estimated 50% of the current schemes already meet this criterion. This indicative estimate gives a Present Value Cost over ten years of approximately £1.4 million.

### **Minimum Technical Competence**

#### ***Criterion 7***

*Members must be technically competent as assessed against appropriate National Occupational Standards (NOS) under a Minimum Technical Competence (MTC) assessment procedure.*

Where a sector MTC assessment procedure is in place, it must be used. Where one is not in place a scheme must agree to work towards the development of one and its associated National Occupational Standards, in conjunction with the relevant sector skills body. This process should begin before making an application for authorisation and where possible be concluded before authorisation or as soon as possible thereafter.

The Department considers that there should be a common set of technical standards for each type of work carried out by members of schemes, and a common method of assessment of meeting those standards, so that a scheme could not register members of a lower technical competence than necessary to achieve compliance with the Building Regulations. Previously the standards and method of assessment were in many cases left to individual scheme operators.

This criterion expands on the technical requirements which originally applied only to schemes authorised since 2005. Relevant industries are in the process of establishing these requirements.

Cost will be incurred by the use of SummitSkills and industry consulting but the cost to the schemes themselves will be negligible.

**Benefit** – This will bring consistency in the way that compliance is measured throughout each industry and in the long term save money after the initial cost. It will deliver more compliant work leading to increased customer satisfaction in the short term. In the longer term the customer should face fewer problems when it comes to selling their property.

*Cost analysis*

To give an indicative sense of the costs we have estimated a one off set up cost to the scheme operator of £10,000. It would then lead to an annual running cost of £1500, with 12 scheme operators initially, an assumption that the schemes will grow by one scheme operator per annum and an estimated 50% of the current schemes provide the information already. This indicative estimate gives a Present Value Cost over ten years of approximately £275,000.

**Continuing training****Criterion 8**

*Schemes to ensure mandatory training for all members is provided when needed as a result of changes to Building Regulations and/or to European or British standards.*

The purpose of the training would be to help ensure that members of the schemes were fully up to date with requirements and standards and the ways in which they can be achieved. The training could, for example, take the form of formal training courses provided in-house or at a technical college, seminars or distance learning packages.

The Department has now instituted a periodic review timetable for the different parts of the Building Regulations which in general means that each part would be reviewed and amended as appropriate once every six years. This would mean that members of schemes would normally need to undergo mandatory training for each type of work once every six years. However, it is possible that changes to European or British Standards might increase this. As many scheme members are authorised for more than one type of work they would in some cases need to undergo mandatory training more often than once every six years.

**Benefit** – Ensuring that members of Competent Person Schemes are kept up to date with regulatory and standards changes will deliver more compliant work leading to increased customer satisfaction.

*Cost analysis*

It is assumed that 50% of the schemes already carry out this training, then the estimated number of members initially involved, is currently 100,000 at an estimated cost of £250 every 6 years and total membership will increase proportionately as total number of schemes increase from 12 by 1 new schemes per year. This gives an indicative estimate Present Value Cost of approximately **£23.4 million** over 10 years and an average annual cost of £2.8m.

**Random Inspections****Criterion 9**

*Scheme to carry out periodic random inspections of a representative sample of members' work to ascertain compliance. The approach after an agreed period of membership could become risk based.*

To help ensure that members of schemes are complying with Building Regulations scheme operators are required to carry out random inspections of the work of their members. The work to be inspected is chosen by the scheme operator, not the member, and must encompass a representative sample of the members' work.

At present the requirement for most schemes is that there should be at least one random annual inspection per year. There are two significant variations to this:

- Hetas and OFTEC have no such requirement placed on them. Their average time between inspections is five years.
- FENSA, CERTASS and BSI (windows) must carry out inspections of 1% of work with at least two random inspections of members per year.

The current cost of these inspections are shown as the baseline costs in the following table.

<b>Random Inspections</b>						
		<b>Baseline</b>		<b>Proposed</b>		
<b>Current scheme</b>	<b>Average cost per inspection</b>	<b>No of inspections annually</b>	<b>NP Cost (over 10 years)</b>	<b>No of Inspections annually</b>	<b>NP Cost (over 10 years)</b>	<b>NPV Benefit</b>
<b>5 Yearly inspection (HETAS, OFTEC)</b>	£310	2180	£5.8m	3640	£9.7m	(£3.9m)
<b>Annual Inspection (6 schemes)</b>	£310	38,200 (yr 1) – 66,800 (yr 10)	£137.6m	25,400 (yr 1) – 26,700 (yr 10)	£69.9m	£67.8m
<b>Windows Schemes (FENSA, CERTASS, BSI)</b>	£125	21,080	£22.7m	21,080 (yr 1) – 10,538 (yr 10)	£15.9m	£6.7m
<b>BINDT Air tightness testing scheme – annual inspection</b>	£570	110	£0.54m	74 (yr 1) – 44 (yr 10)	£0.28m	£0.26m
<b>Total</b>			<b>£166.6m</b>		<b>£95.8m</b>	<b>£70.9m</b>



The proposal is that inspections would in future be carried out on a risk basis. Those scheme members which had established a good record of compliance would be inspected (and have to pay for inspections) less often. For example, most scheme operators are required now to carry out one random inspection of members annually. Under a risk-based system this could move to one inspection every three years. To control the risk, this privilege would be granted only to those members who had established a track record of full compliance over the preceding two or three years and the privilege would be lost if an inspection (either random or following a complaint) found a significant non-compliance with the Regulations.

**Benefit** – This should lead to more consistency within the industry sectors, poor performers will be picked up earlier leading to more customer satisfaction through better installations which in turn will increase consumer confidence. The benefit of this will be gained by members of those schemes currently inspecting more frequently than will be required under the new policy.

Currently there are 12 schemes. Two are inspecting on a once in five year basis, three are inspecting 1% of jobs carried out with a minimum of 2 per year and a maximum of 100 per year dependant on size of the member company (glazing schemes), and the remaining seven inspect annually.

We are looking to change this to a risk-based inspection process which will lead to a more competitive base for schemes to work to within their respective sectors.

#### *Cost Analysis (currently 5 yearly inspections)*

Costs incurred by those schemes inspecting less frequently than will be required by the new policy. The analysis uses an estimate of 10,907 members which, with inspections every 5 years, gives 2,181 current inspections per annum (the baseline or do nothing scenario). Estimated cost of inspection £310 gives a baseline cost of £5.8 million over 10 years.

The analysis assumes that the total membership will stay fixed as the two schemes concerned are mature with little prospect of further growth and that the average gap between inspections under the new policy will change to every three years. As the table above shows this will increase the average number of inspections by 1,460 per year giving a Present Value **Cost** of option 2 of approximately **£3.9 million** over 10 years (extra cost beyond the baseline cost).

#### *Benefit analysis (Currently annual inspections)*

Estimate of 38,181 initial members in six schemes involved, which equates to currently 38,181 annual inspections at an estimated cost of £310 per inspection which gives a cost of 137.6 million over ten years in the baseline.

Under option 2 it is assumed that total membership will increase proportionately as total number of schemes increase from 12 by 1 new scheme per year. The assumed average gap between inspections will increase to 1.5 years in year 1 (currently average gap of 1 year) and then steadily increase further to 2.5 years in year 10 assuming 1 inspection per member. Assuming 12 scheme operators annually, growing by one scheme operator per annum gives, as shown in the table above, an indicative estimate Present Value **Benefit** of option 2 of approximately **£67.8 million** over 10 years (cost saving relative to the baseline).

*Benefit analysis replacement glazing schemes* (Currently minimum 2 inspections per year)

This assumes that the total membership will stay fixed as windows schemes are mature with little prospect of further growth and that there will be no new schemes in this sector. Estimate of members involved is 10,538 which currently equates to 21,080 inspections per year. The estimated cost of replacement window inspections is £125 which gives an estimated I cost of £22.7 million over ten years in the baseline.

Under option 2 the assumed average gap between inspections will be 0.5 in year 1 and then increase to 1.0 in year 10. This indicative estimate gives a Present Value **Benefit** of the glazing scheme of approximately **£6.7 million** over 10 years (cost saving relative to the baseline).

*Benefit analysis of the BINDT air-tightness scheme* (Currently annual inspections)

The analysis assumes that the estimate of initial members of 111 will stay constant. Under option 2 the analysis assumes that the average gap between inspections will increase to 1.5 in year 1 and then increase further to 2.5 in year 10 and assumes 1 inspection per member.

This indicative estimate gives a Present Value benefit of the commercial sector scheme of approximately **£0.26 million** over 10 years (cost saving relative to the baseline).

## **Complaints**

### **Criterion 13**

*Scheme to have a robust and publicised complaints procedure.*

Escalation processes for both members and consumers, including alignment with OFT Consumer Codes Approval Scheme where appropriate.

This clarifies what we expect from the applicants. The OFT element is new.

There is currently no last resort, independent element to the criteria (Arbitration).

Putting in place a robust framework could incur increased costs for some schemes although the majority already follow the basics of the OFT code. Some who are members of TrustMark or MCS will already have a robust framework.

**Benefit** – A clearer route for the customer to follow and a more uniform approach across the schemes.

#### *Cost Analysis – Complaints Policy*

To give an indicative sense of the costs we have estimated an annual cost to the scheme operator of £1,000. There are currently 12 scheme operators with an assumption that the schemes will grow by one scheme operator per annum and an estimated 50% of the current schemes provide the information already. This indicative estimate gives a Present Value Cost over ten years of approximately £70,000.

### **Financial Protection**

#### **Criterion 14**

*Scheme to arrange provision of financial protection for consumers, to fund the remediation of non-compliant work.*

This will apply where original installer cannot put matters right. Type of provision may vary from scheme to scheme.

This has more flexibility than the current criterion.

**Benefit** – Increased consumer protection but it may be at a cost to the consumer as the purchase of an insurance backed guarantee, service contract or some other insurance plan would need to be funded.

#### *Cost analysis – Financial protection*

This has been a criterion since 2002, so will only affect the schemes authorised before its introduction and any new schemes that may be authorised in the future.

To give an indicative sense of the costs we have estimated a one off set up cost to the scheme operator of £1,000. There are currently 12 scheme operators with 9 already providing this service. Using an assumption that 3 schemes will initially need to provide this service and growth of one scheme operator per annum this indicative estimate gives a Present Value Cost over ten years of approximately £10,600.

### **Promotion and advertising of Competent Person Schemes**

#### **Criterion 17**

*Scheme to give a commitment to promote and advertise Competent Person Schemes and the need to notify.*

**Benefit** – A commitment to CLG initiatives will raise the profile of the CPS system adding more credibility and increasing consumer knowledge and satisfaction. It will lead to more work for members of Competent Person Schemes as the public become more aware of the need to notify and the benefits of using Competent Person Schemes.

There will be costs incurred here with the use of an advertising budget.

### *Cost analysis Promotion and advertising of Competent Person Schemes*

To give an indicative sense of the costs we have estimated an annual cost (assuming this is additional to existing communication costs) to the scheme operator of £20,000. There are currently 12 scheme operators with an assumption that the schemes will grow by one scheme operator per annum and an estimated 50% of the current schemes provide the information already. This indicative estimate gives a Present Value Cost over ten years of approximately £1.4 million.

## **Quarterly Report**

### **Criterion 19**

*Scheme to give a commitment to provide whatever information the Department requires in order for it to carry out its functions The Department will specify the information to be given. Likely to include provision of a quarterly report on complaints and their outcomes.*

This would consist of information that the schemes should already be holding. Some TrustMark member schemes prepare this report for TM already.

**Benefit** – This will help CLG to confirm that the schemes are compliant with the condition that they have a robust complaints system which deals with complaints fairly, consistently and in a reasonable timescale, thus increasing consumer confidence.

If UKAS is decided on then this report will result in a saving for the scheme as the information will be ready prepared for their use.

### *Cost analysis – provision of a quarterly complaints report*

To give an indicative sense of the costs we have estimated an annual cost to the scheme operator of £500. There are currently 12 scheme operators with an assumption that the schemes will grow by one scheme operator per annum and an estimated 50% of the current schemes provide the information already. This indicative estimate gives a Present Value Cost over ten years of approximately £35,000.

## **UKAS Accreditation**

### **Criterion 20**

*Costs of Introducing and Operating under UKAS accreditation.*

Accreditation costs will be dependant on a number of issues such as the type of scheme, the scheme diversity and the income from operating the scheme from participating customers. As an illustration and for simplicity we have considered two types of organisations that may apply for accreditation.

Example A: A Competent Person Scheme operator that already has a structure to deal with inspection & quality.

Example B: A Competent Person Scheme operator that has no structure in place to deal with inspection & quality.

Set out in the table below are examples of additional costs that could be incurred by typical organisations shown above.

Activity		Example A	Example B
1	Employ a consultant to write a quality management system to meet the requirements of the standard being accredited against.	0*	£25k
2	Employment of a scheme/quality manager	0*	£45k–£50k
3	UKAS Accreditation visit (2 days) inc expenses; this would be dependant on the need of a technical expert.	£2k–£4k	£2k–£4k
4	UKAS annual surveillance (1 day) inc expenses; this would be dependant on the need of a technical expert.	£1k–	£1k–£2k

\*Note: Although 'example A' above does not show additional/external costs the actual costs of internal staff with the correct capabilities needs to be considered. By way of example, it would take someone with the right skill set about 3 months to write a suitable quality system. Furthermore, the manager who was designated to manage the CPS would then extend his responsibilities as scheme/quality manager as approximately 80% of their existing role would already be covered.

The key assumption is that the schemes have in place, in the main, the structures and resources to be classed as 'example A's. This has been estimated as an annual cost to the scheme operator of £2000 once accredited.

To obtain an indicative estimate, we assume 12 scheme operators initially and that 9 schemes are on the way to accreditation or are already accredited. This will grow by one scheme operator per annum with the remaining 3 schemes accredited in year 3. This indicative estimate gives a Net Present Cost over ten years of approximately £268,000

The 3 remaining scheme operators have been assumed to be starting from scratch and this will increase by one scheme operator per annum with the remaining 3 schemes accredited in year 3. This has been estimated as a one off cost over the initial three years to the scheme operators as £79,000. This indicative estimate gives a Present Value Cost over ten years of approximately £1.2 million.

### **Extra Cost to Inspections as a result of UKAS Accreditation**

If the proposal for UKAS Accreditation is taken up then there will be a knock on effect to the inspection regime. UKAS Accreditation will mean that an inspector will need to spend more time on an inspection therefore increasing the cost to the installer.

*Cost analysis (based on the current annual inspections taking into account working toward a risk based regime)*

It is assumed that as one scheme has been accredited for some time then the estimated number of initial members initially involved, is currently 35,000 annual inspections at an estimated additional cost of £100 per inspection which gives an initial annual increased cost of approximately £2,401,200 in the baseline.

It is assumed that total membership will increase proportionately as total number of schemes increase from 12 by 1 new schemes per year. The assumed average gap between inspections will increase to 1.5 years in year 1 (currently average gap of 1 year) and then steadily increase further to 2.5 years in year 10 assuming 1 inspection per member.

Assuming 12 scheme operators annually, growing by one scheme operator per annum gives an indicative estimate Present Value Cost of approximately **£20 million** over 10 years (cost saving relative to the baseline).

**Benefits** – In considering the set up and maintenance costs of any accredited scheme the benefits that operating an accredited scheme bring to a business and its customers, are;

- Level playing field against competitors
- Customer reassurance
- Department's assurance that all schemes are equivalent
- Consistent approach
- Increased income from membership as members are able to gain more work from being part of an accredited scheme
- Increased income for approved companies as specifiers are more likely to support accredited companies over non accredited companies.

### **Sensitivity Analysis**

The assumed indicative costs of inspections and operator costs were adjusted to assess the impacts of variations on the costs and benefits.

For current annual inspections the central assumption of £310 per inspection was adjusted to give a range of £290 (low estimate) – £350 (high estimate). For glazing replacement inspections the central assumed cost of £125 was adjusted to give a range of £100-£150. For commercial sector schemes the assumed central cost of £570 was adjusted to give a range of £550 – £600.

This gives an indicative total present value central benefit of £64.7m and a range of £60m – £73m.

Ranges were also assessed for the costs including those associated with:

- random inspections where more inspections are needed (Central: £310 per inspection, Range: £250-£350)
- Mandatory Training (Central £42 per member annually, range £33-£50 per member annually)
- Membership growth commitment (Central: £20,000 per operator, Range: £16,000-£24,000)
- UKAS Accreditation (Central: £79,000 to become accredited then £2,000 annually per operator, Range: £63,200-£94,800 initially and £1800-£2200 annually)
- UKAS Accreditation – Additional inspection costs to members (Central: £100 annually per member, range £80 – £120 annually per member)
- Scheme Promotion: (Central: £20,000 annually per operator, Range: £16,000-£24,000).

This gives an indicative total present value central cost of £52.0m and a range of £42m-£64m.

### **Administrative Burdens Baseline**

We are required to identify any impact of new policies on the administrative burden baseline as calculated by Price Waterhouse Cooper in 2005. For these purposes Administrative Burdens are defined as the ongoing additional costs associated with demonstrating compliance, such as form filling, reading guidance or facilitating inspections. It does not include one off start up costs or fees. These changes will introduce some new burdens and reduce others. We are currently in the process of assessing the net impact.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No



## Annexes

### Annex A

#### **Small Firms Impact Test**

The responsibility for implementing the changes and the main impacts will fall primarily on the Competent Person Schemes. The opportunity to register with a competent person scheme for the self-certification of certain building work would be open equally to small and larger firms.

The overall costs of the changes indicatively estimated at £9.5m will have some impact on all enterprises. However, the indicatively estimated costs of the resulting benefits of the changes £64.7m far outweigh the burden giving a positive impact on small and large enterprises alike.

#### **Competition Assessment**

Having answered the questions in the competition assessment we do not believe that the impact will be significant and believe that the benefits to be gained outweigh any potential impact as the proposals will not limit the number or range of suppliers either directly or indirectly nor limit the ability of suppliers to compete as they will not control or substantially influence the price a supplier may charge, limit the scope for innovation to introduce new products or supply existing products in new ways. They also will not limit the sales channels a supplier can use, or the geographic area in which a supplier can operate.

The proposals also will not restrict the ability of suppliers to advertise their products, or limit the suppliers' freedoms to organise their own production processes or their choice of organisational form nor reduce the schemes' incentives to compete vigorously as they do not exempt suppliers from general competition law.

#### **Health Impact Assessment**

It is envisaged that a more transparent system will help to raise standards and aid compliance with the building regulations. As the building regulations cover issues relating to the health and safety of people such as hygiene, drainage and moisture, there is likely to be a positive health impact on the people living and working in those buildings.

#### **Disability Assessment, Legal Aid, Sustainable Development, Carbon Assessment and Other Environment**

We have considered the potential impacts of this proposal on the above and do not believe that there will be any effect.

#### **Race Equality, Gender Equality, Human Rights and Rural Proofing**

The equalities Impact Assessment has been screened and the result considered and we do not believe that it will have any effect.

## Annex B

### Existing criteria

Criteria for management of a Competent Person Scheme under the Building Regulations. The expectation is that all need to be demonstrated but the weight attached to each would depend on the particular circumstances in the sector concerned and the requirements on that sector in the Building Regulations.

- Financial probity and a proven track record in the field.
- Demonstrable understanding of what is involved in managing a scheme of this type and the administrative systems to do so.
- Sufficient knowledge of the Building Regulations by both scheme organisers and scheme members.
- Absence of, or methods for avoiding, conflicts of interest between the commercial interests of sponsoring or member organisations and management of the scheme.
- A minimum standard of technical competence, independently assessed where practicable, for all prospective members of a scheme such standards will vary from sector to sector and maybe based on formal qualifications, and or experience, taking account of any British or European standards. (For Part P, see below.)

Effective means of vetting prospective members against the minimum standard.

Commitment to allow CLG to monitor the scheme periodically to ensure that it delivers compliance with the Building Regulations and operates within the published rules of the scheme.

- Robust procedures in place to deal with complaints from members and disputes between members and customers.
- A rigorous system of monitoring members' compliance with the Building Regulations.
- Effective sanctions in place for dealing with non-compliance by members of the scheme.
- System for ensuring that members issue certificates to consumers. If information on work completed under the scheme is to be sent to local authorities, appropriate methods to ensure rapid transfer of the information.
- Adequate consumer protection through an insurance-backed warranty, professional indemnity insurance or bond.
- Commitment to publicising the scheme and its rules as widely as possible, including the names of members of the scheme.
- Commitment to allow the DCLG to monitor the scheme periodically to ensure that it delivers compliance with the Building Regulations and is following the scheme rules.

# Annex E

## Consultation questionnaire

We are keen to receive views on the proposals in the Consultation Document. It would be helpful if you would submit your views by using the following questionnaire and returning it by: **19 March 2010** at the latest to:

E-mail: [cpsreview@communities.gsi.gov.uk](mailto:cpsreview@communities.gsi.gov.uk)

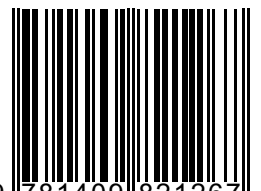
Post:

CPS Review Consultation  
Department for Communities and Local Government  
Sustainable Buildings Division  
Zone 5/G10  
Eland House  
Bressenden Place  
London SW1E 5DU

You should not feel constrained by the specific questions or feel obliged to offer responses to all of them. Please feel free to describe your views and suggestions when responding rather than simply giving yes/no answers.

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