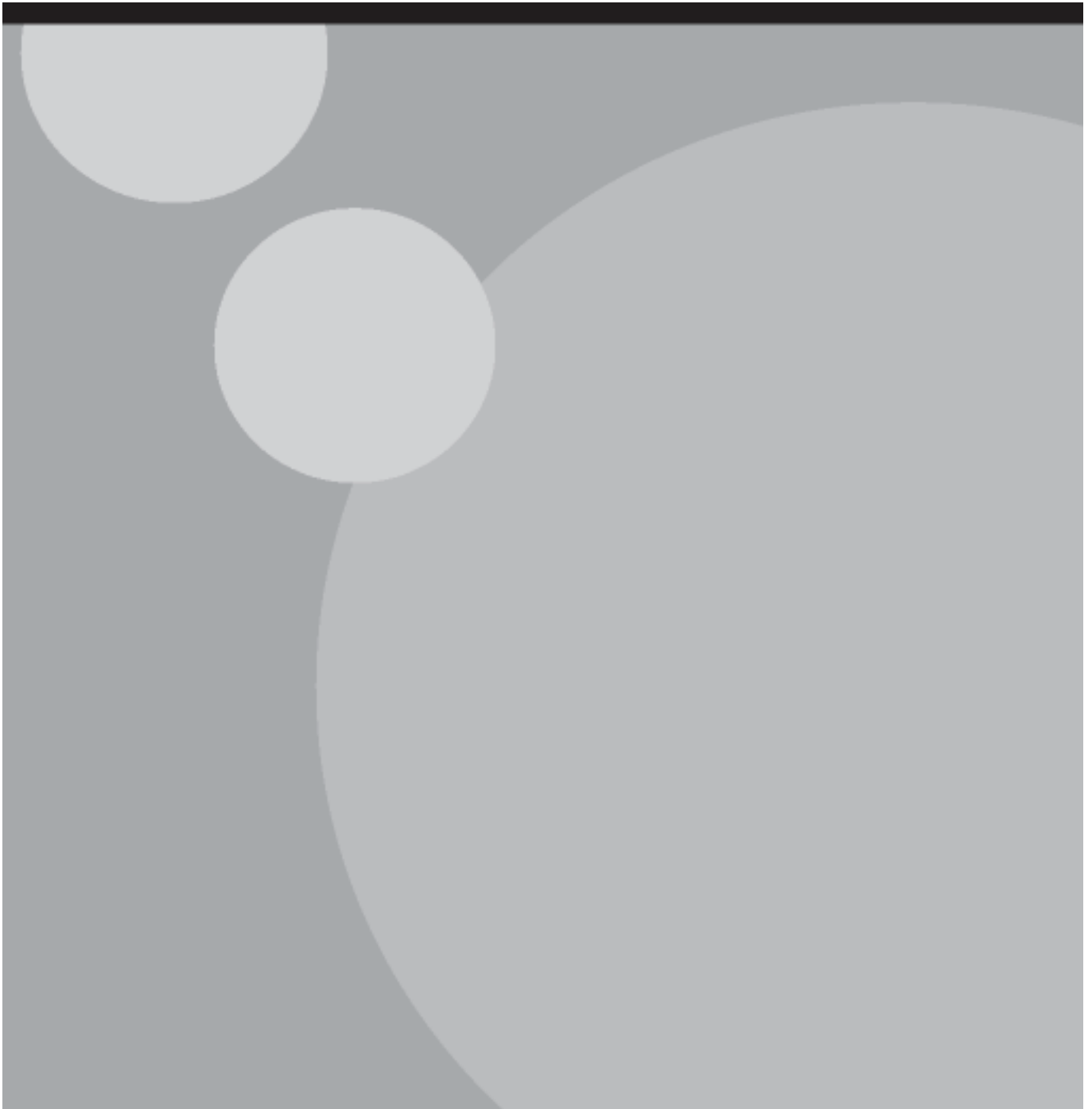


Future changes to the Building Regulations – next steps





Future changes to the Building Regulations – next steps

© Crown Copyright, 2010

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.communities.gov.uk

If you require this publication in an alternative format please email:
alternativeformats@communities.gsi.gov.uk

Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

December 2010

ISBN: 978-1-4098- 2704-7

Contents

Executive summary	2
Section 1 Introduction	4
Section 2 Summary and analysis of responses	5
Section 3 Next steps	18

Executive summary

1. This document outlines the Department for Communities and Local Government's work programme on changes to the Building Regulations.
2. At the end of July we invited external partners to submit their ideas and evidence on ways to improve the Building Regulations, on reducing the regulatory burdens and on ways to deliver even better levels of compliance. We received several hundred responses providing helpful and valuable information which we have used in developing the programme. The key theme to emerge has been that partners believe the regime is generally fit-for-purpose, but that there are things that we can improve.
3. We now plan to take forward a programme of work to examine a number of areas and to develop detailed proposals for consultation. This programme will have a particular focus on deregulation and streamlining of the technical and procedural aspects of the regulations. In particular, we propose:
 - to evaluate the contribution Part P (Electrical safety – dwellings) has made since the requirements were introduced in 2005 and consider ways of reducing the costs of compliance
 - to explore how rationalisation of Parts M, K and N (Access to and use of buildings, Protection from falling, collision and impact, and Glazing, respectively) might address areas of potential conflict and overlap (including reviewing guidance relating to access statements); and
 - to explore changes to the building control system, seeking means of improving compliance and considering ways of reducing the burden of compliance.
4. The programme will also include further work looking at revisions to Part L (Conservation of fuel and power) delivering the next steps to zero carbon for homes and non-domestic buildings, and supporting wider policy for the retrofit of existing buildings. At the same time we will seek to guard against any consequences arising from more airtight and better-insulated buildings and to improve their energy performance in practice. In addition we will explore the case for regulatory measures to:
 - establish minimum standards for security in homes; and
 - ensure suitable toilet and changing provisions for people with multiple and profound disabilities, often referred to as "Changing Places".

5. We will continue to work with key partners and across government to understand the problems and potential solutions in a number of areas, for example, those related to additional protection against the effects of radon and flooding, where a case has yet to be made for a regulatory approach, but where we cannot yet rule out the possibility of incorporating them in a consultation in 2011.

Section 1

Introduction

- 1.1 The Department for Communities and Local Government initiated, at the end of July, an exercise to establish the changes necessary to the Building Regulations regime to ensure it remains fit for the purpose of securing proportionate baseline health, safety, accessibility and sustainability (including energy efficiency) standards for buildings of the future. We invited our external partners to submit their ideas about what they believed needed to be improved or extended, where we might reduce regulatory burdens and how we might deliver even better levels of compliance.
- 1.2 The Department made clear that the process would be driven by its commitment to reducing the burden of technical and administrative aspects of regulation, whilst acknowledging the need for proper consideration of emerging issues and “maintenance” to ensure the provisions remain current.
- 1.3 Throughout this we also drew upon: the knowledge and ideas of the Building Regulations Advisory Committee; suggestions made to the Cabinet Office’s *Your Freedom* website and this Department’s own *Cut Red Tape* website; previous reviews; and from the knowledge of issues raised with us as part of our ongoing dialogue with external partners.
- 1.4 In addition, the Department also hosted a workshop of key external partners to hear their thoughts directly, as well as drawing upon feedback from and active participation in other similar events organised by partner organisations. In parallel, the Department worked closely with other government departments across Whitehall who have clear policy interests in how we take forward changes to the Building Regulations.
- 1.5 This document outlines the ideas submitted to the Department, the areas to be taken forward into 2011 for further work, how we will do this and to what timescale.
- 1.6 The Department acknowledges and appreciates the time and effort put into this exercise by our external partners - including professional institutions, trade associations, companies, individual practitioners and other members of the public - and encourages their continued engagement with us as we continue to develop our proposals and the evidence base.

Section 2

Summary and analysis of responses

- 2.1 The Department has considered all responses received. This section provides a summary of these, sets out some of the main issues to emerge and the Department's initial view on these.

Overview of responses

- 2.2 The Department received 248 separate responses to its request for information from external partners and around an additional 600 standard replies campaigning for the inclusion of Changing Places into Part M (Access to and use of buildings) of the Building Regulations. Of the 248, about a third came from the building-related industry, including trade associations, professionals and their representative bodies. Approximately a fifth came from building control bodies and the remainder were comprised of a diverse category of people and groups such as individuals, police authorities, charities etc.
- 2.3 Generally, most issues raised in these responses were similar to those identified in previous engagement with our external partners and did not throw up many new issues. Although the Department specifically asked that responses were accompanied by supporting evidence where possible, replies were mostly lacking evidence to support the ideas and assertions presented.
- 2.4 Few responses questioned the principle of regulations setting national standards that ensure buildings are built to baseline standards, although there was some comment that they were on firmest grounds in relation to health and safety. Many specifically recognised the positive role Building Regulations played and welcomed the fact that there was a nationally applied set of minimum requirements. A wider concern was raised by some about the range of other burdens imposed on builders such as, for example, conditions associated with the granting of planning permission.
- 2.5 Many of the responses demonstrated that broader issues, for example, compliance, are not straightforward and that problems and potential solutions can relate to both the "technical" aspects of the regulations (the Parts and their associated Approved Documents) and the "system" aspects (the framework of building control and how it operates). However, in this document we have sought, for the sake of simplicity, to deal with the two elements separately.
- 2.6 First, we deal below with technical comments on the Building Regulations and the statutory guidance in the Approved Documents. A message to emerge very clearly was there was concern about the increasing complexity and scope of the provisions (with knock-on effects in terms of costs – particularly in relation to Part L (Conservation of fuel and power)). Some felt this was

particularly challenging for smaller-scale building work (for example, domestic extensions) and there was support for separate guidance or more information on how to comply for such types of project.

- 2.7 Secondly, we then deal with the almost half of the responses which made suggestions on and raised issues with building control system, including, for example, competent person schemes and general issues in relation to compliance.

The technical provisions

Part A (Structure)

- 2.8 Twenty-four of the responses raised Part A issues. Generally external partners were largely content with the technical provisions and comments received focused primarily on the processes associated with complying with Part A rather than the technical provisions themselves.
- 2.9 In particular, a number commented that there should be a requirement that structural designs submitted to a building control body should only be acceptable where it was done by someone with an appropriate professional qualification. It was suggested that suitably-qualified practising engineers should also be able to self-certify that their designs match the requirements. Some suggested that we might introduce a scheme of third-party certification (similar to the scheme in place in Scotland) as an alternative to reduce the burden of Building Control applications and checks. We will examine these ideas next year alongside the work on the building control system, particularly the potential for a voluntary certification scheme.
- 2.10 Responses also raised concerns that Approved Document A does not reference the new British Standards for structural design based on the Eurocodes. It was also suggested that there would be potential benefits from clarification to some of the guidance given on disproportionate collapse provisions. In addition some suggested we look at the rationalisation of Parts A and C.
- 2.11 On the basis of the responses received, the Department is not convinced that there are issues of significant enough weight to merit recommencing the wholesale revision of Part A. We will in the review next year look at how Part A and the Approved Document might be updated, with references reflecting the standards based on Eurocodes. More specifically in relation to the rationalisation of Parts A and C, the Department has explored this with external partners in a variety of discussions but we do not believe a clear case has yet been made for its effectiveness, particularly given that many of the users are different for each Part.

Part B (Fire safety)

- 2.12 There were 54 responses relating to the fire safety provisions in Part B. A significant proportion of these included calls for regulation to require greater use of sprinklers and water suppression systems in both domestic and non-domestic situations. It was variously argued that this would improve safety and protection of property with consequent economic benefits and sustainability benefits (by reducing the environmental impact of fire).
- 2.13 However, this exercise has not produced any significant new evidence on the health and safety benefits of greater sprinkler provision that would alter the cost/benefit analysis and the basis of the current approach. The Department will not, therefore, be considering this as part of next year's programme of work.
- 2.14 The Department notes the view that greater sprinkler use would afford additional property protection and thereby also reduce burdens on business. However we believe that it is for business to make a decision as to the approach they favour in the same way that they make decisions on other areas of potential risk. We believe it is for the proponents of this use of sprinklers to set out the benefits associated with these products to support businesses making properly evidenced business decisions. On that basis, the Department does not believe that there is a case for regulation.
- 2.15 We also note the point made with regard to the environmental impacts of fire. Assessing the impacts of fire and fire protection systems from a sustainability perspective is far from straightforward. The Department has been and will continue to consider how we might establish a more robust evidence base in this area as part of its ongoing policy development in coming years.
- 2.16 A number of recent fires have also raised concerns around timber-framed construction. Many of these relate to risks during the construction phase, which is not within the scope of the Building Regulations. Recent statistics do suggest that timber-framed buildings suffer greater fire damage than other building types. However, this has not resulted in a higher risk of injury. We do not believe that there is a need for changes to the Building Regulations, but the Department will continue to work with the Health and Safety Executive and external partners to understand the issues better.
- 2.17 Defra continues to explore the promotion of the use of timber in construction, including timber framed construction, and we will work closely with Defra and external partners on this.
- 2.18 On a different theme, a number of respondents raised the issue of egress from a building for people with disabilities in the case of fire. It was suggested that the existing provision was unacceptable as it permitted an approach that could leave a person with a disability within a building (albeit within a safe refuge) in the event of a fire evacuation. Whilst the Department has not been presented with any evidence that the approach is, in practice, any less safe, it notes the concern about this provision and will keep the issue under review.

Part C (Site preparation and resistance to contaminants and moisture)

- 2.19 There were seven responses that mentioned Part C or the guidance in its Approved Document. These were in a similar vein to those in relation to Part A, reflecting the fact that Parts A and C are closely related. As with Approved Document A, we will review next year how references to standards in Approved Document C might be updated to reflect the introduction of Eurocodes,
- 2.20 We also intend to carry out further work in the coming year looking at existing provisions relating to radon gas. We will, in particular, examine alternative options for addressing the health risks from radon and the costs and benefits of these, and concerns about the effectiveness of existing protection measures.
- 2.21 We will continue to work closely with the Department for Health, the Health Protection Agency and external partners on this. Should this work progress more speedily than anticipated it may still be possible to incorporate proposals for consultation next year if a compelling case can be made. Alongside this we will look at updating the statutory guidance to maintain the current policy - targeted intervention requiring radon protection in higher risk areas - but against the updated risk maps published in 2007. This is in line with our proposals and recommendations on good practice published in our Circular Letter in 2008. This is available on the Department's website at:
- www.communities.gov.uk/publications/planningandbuilding/revisedradonguidanceletter.

Part D (Toxic substances)

- 2.22 There were only two responses on Part D, which seeks to ensure toxic fumes from cavity wall insulation, particularly urea formaldehyde foam insulation, do not permeate through a building's walls.
- 2.23 Both responses suggested that this provision is no longer necessary as this material is no longer commonly used in cavity walls. Alternative cavity insulation materials do not have the same risks. We intend to carry out further work to examine insulation practices and risks, with a view to possibly consulting on removing Part D.

Part E (Resistance to the passage of sound)

- 2.24 There were 12 responses related to the provisions in Part E. These included positive comments on how sound-testing and the Robust Details approaches have helped in terms of compliance with the requirements, although some commented that the aim of the provisions could still be undermined by build quality. There were also some negative comments related to the lack of

control of noise through the external envelope of the building. We continue to work with key partners on these but we currently do not have evidence to indicate a need for a wider review to address these concerns.

- 2.25 Other points raised support work we have in hand looking at ways to improve our guidance, making it more concise, with clear definitions and fewer references to third-party documents.
- 2.26 However, as stated previously, a major focus for the Department in this review has been seeking to reduce the burden of regulation. With the Department for Education we have been looking at requirement E4 that currently requires that schools are “suitable” acoustically. Guidance in the Approved Document then cross-refers to Department for Education’s guidance. We are exploring whether this provision is the most appropriate and effective way of achieving appropriate standards for school buildings.
- 2.27 The Department has raised the issue informally with external partners, including at the Department-led workshop in September, with feedback for and against the existing approach. The Department will continue to work closely with Department for Education officials and external partners to explore the scope for streamlining and deregulation in this area.

Part F (Ventilation)

- 2.28 Twenty two responses were received that mentioned Part F. It should be noted that Part F was recently reviewed which has resulted in new requirements and guidance documents coming into force on 1 October. Despite the number of responses there were few substantive points and most were referenced in the context of the close correlation with Part L (Conservation of fuel and power) as an example of how the Building Regulations have become overly complex. The Department recognises that in pursuit of higher levels of energy efficiency there will be a tendency towards more airtight buildings and more complex ventilation systems which in turn requires more comprehensive guidance. We will consider the comments on Part F alongside the review of Part L, mindful of the call to minimise complexity.

Part G (Sanitation, hot water safety and water efficiency)

- 2.29 There were 19 responses that mentioned Part G. The *Your Freedom* website also contained Part G-related discussion threads. Most comments focused on two of the recent additions to the provisions – the introduction of a minimum water efficiency standard for new homes and the introduction of a requirement to prevent scalding by limiting the temperature of bath water in new homes, often achieved by fitting thermostatic mixing valves.
- 2.30 In relation to thermostatic mixing values, there was little submitted directly to the Department. However, there was some debate on the *Your Freedom* website about whether regulations should govern the temperature of people’s bathwater and whether this control was legitimate.

- 2.31 A few responses directly to the Department questioned the need for regulation in relation to water efficiency and whether it was appropriate for Government to regulate at all. Others were more positive and supported the concept, but with some discussion about the best methodology to use for improving water efficiency.
- 2.32 Part G of the Building Regulations has only recently been updated with the changes coming into force on 6 April this year and there has been no formal evaluation of how it is working in practice. In the absence of a compelling case, we do not propose to look at Part G in the coming year.
- 2.33 However, the Department has received representations about the Part G guidance on toilet provision, with a suggestion that the guidance (which cross-refers to the Health and Safety Executive Approved Code of Practice) discriminates against women. Whilst there is no evidence that the guidance leads to inadequate provision, we do intend to examine whether existing guidance on levels of provision of toilets for men and women is adequate. We will work closely with Health and Safety Executive in setting out the aims of and approach to this work.

Part H (Drainage and waste disposal)

- 2.34 There were eight responses directly to the Department on Part H. In relation to the technical provisions, it was questioned whether it was correct for the drainage requirements to apply to stand-alone structures given the expense of complying, for example, for structures covering cycle racks at schools. The Department is not persuaded that there is a case for an exception to the general provision.
- 2.35 A few other responses suggested it would be helpful to consolidate various areas of drainage-related policy development and guidance such as the emerging new policy approaches on Sustainable Drainage Systems being developed by the Department for the Environment, Food and Rural Affairs or the information relating to the Code for Sustainable Homes.
- 2.36 The Department does not intend to extend the remit of the Building Regulations to overlap with or absorb other regulatory or standards regimes. However, we will continue to work closely with the Department for the Environment, Food and Rural Affairs, and with other Departments and external partners, as it develops new policies on drainage and sewerage, seeking to ensure that guidance is clear and avoids duplication and, particularly, conflict.
- 2.37 In the light of these considerations the Department does not envisage carrying out further work to change the drainage requirements of Part H in 2013, although we will ensure that the guidance remains relevant and aligned with the developments related to drainage standards.

- 2.38 Part H6 currently requires the provision of adequate space for waste storage and suitable access arrangements. The statutory guidance then cross-refers to relevant legislation which imposes requirements to provide storage facilities in response to the requirements of the relevant local waste collection authorities.
- 2.39 We will review the existing national regulatory approach which outlines the requirements for space for waste storage and consider whether national standards and guidance are appropriate given the different local approaches to waste collection. In tandem we will continue discussion with the Department for the Environment, Food and Rural Affairs as they develop future waste strategy and associated policies on household waste collection.

Part J (Combustion appliances and fuel storage systems)

- 2.40 There were eleven responses that mentioned Part J. The only significant comments related to the scope of the new regime. In particular there was concern that the provision of carbon monoxide alarms was limited to homes with solid fuel heat sources. Given we consulted widely on changes introduced in October 2010, and that no new evidence has been provided as to why the costs and benefits contained in the recent Impact Assessment should be revisited, the Department will not be taking forward any further work on Part J at this time.

Part K (Protection from falling, collision and impact)

- 2.41 Nine responses made reference to Part K. Some respondents felt there were areas of conflict and/or confusion between the guidance in Approved Document K and the Approved Documents for Parts M (Access to and use of buildings) and N (Glazing).
- 2.42 In addition, as part of its everyday business, the Department receives queries from building control bodies and industry that suggest there is scope for rationalisation of Parts M, K and N. We will look at the opportunities and benefits that might be achieved with rationalisation, addressing areas of potential conflict and overlap. This is not intended though to open these Parts to wider review.

Part L (Conservation of fuel and power)

- 2.43 Eighty-two responses directly referred to Part L. It should be noted that Part L was recently reviewed which resulted in a suite of new guidance documents being issued in April 2010 with provisions only coming into force on 1 October. Many peoples' experience will have been with the previous guidance suggesting that some of the issues raised may have already been addressed.
- 2.44 That notwithstanding, the biggest concern related to the complexity of guidance, some of which was considered to be beyond the understanding of many. It was widely suggested that a key consequence of this complexity was that compliance suffered as people failed to understand what was required of

them. Tied up in this was criticism of the complexity of the software used to calculate energy performance which it was suggested meant many required additional input from third party specialist providers.

- 2.45 A number of solutions were suggested including a return to showing compliance using the “deemed to satisfy” method; the adoption of the German “Passivhaus” standards; and making the process less complicated by the use of checklists to verify compliance.
- 2.46 The Department acknowledges that, driven by requirements to introduce overall energy performance targets for buildings, the guidance and calculation tools have over time become more complex. It will be mindful of the call to minimise complexity as it takes forward its programme of work into 2011 and beyond. These concerns will also be fed through to the review of the software for calculating energy performance which will be carried out in tandem.
- 2.47 The Department is also encouraging the production of simpler guidance, additional to the Approved Documents aimed at making the main requirements of Part L understandable to a broader audience. An example of this is the *Loft Conversion Guide* produced by the Construction Products Association which came out in September 2010.
- 2.48 Other more specific points included concern about the frequency of the changes to Part L, calls for the introduction of “consequential improvements” under Part L as a way of contributing to improvement of the existing stock, and suggestions that lighting efficiency could have a bigger role to play than is currently the case.
- 2.49 The Department will remain mindful of the points raised as we carry out the next Part L review – the aim of which will be to make and ensure implementation of further cost-effective changes to the energy efficiency of buildings. This will be undertaken in the context of wider policies to improve the energy performance of new and existing buildings. It will include taking the next step towards zero carbon buildings being mindful of the work of the Zero Carbon Hub and including support for the wider retrofit policy and the introduction of the Green Deal. In securing such improvements we will seek to ensure that no adverse consequences are created as part of this, for example, from better insulated and air-tight buildings increasing the risks of overheating and reduced indoor air quality.

Part M (Access to and use of buildings)

- 2.50 There were 52 individual responses on Part M and approximately 600 as part of a campaign for suitable toilet and changing provisions for people with multiple and profound disabilities – generally referred to as “Changing Places”.
- 2.51 As well as the e-mails received as part of the Changing Places campaign, there was also support for adult changing provision in the more detailed and wider ranging responses. The Department accepts that there is a case for

examining limited, targeted intervention to provide more adult changing facilities. We will therefore undertake more detailed work looking at the options around Changing Places as part of our programme of work.

- 2.52 There was also support for the Building Regulations being used to deliver standards for new housing that might more widely support independent living in older age, with specific reference to inclusion within the Regulations of Lifetime Homes Standards. We are finalising more detailed analysis of Lifetime Homes Standards in order to determine whether there is a case for Regulation.
- 2.53 A number of respondents raised issues of emergency egress for disabled people, particularly in the event of fire and this is covered in the commentary associated with Part B above. Other respondents raised concerns about the complexity of existing provisions and guidance in Approved Document M. The Department has noted these and, whilst we consider the content of the existing guidance is largely fit for purpose, we will be looking next year to see if there is scope to rationalise Parts M, K and N and their Approved Documents to reduce their burden and assist compliance. This is not intended to open up the Parts to a wider review.
- 2.54 As part of next year's work programme we will also examine further the performance and use of access statements introduced in 2004. Specifically, we will be examining whether they have achieved their objectives in driving up compliance, and how they have functioned in practice alongside other legal requirements already in place.

Part N (Glazing – safety in relation to impact, opening and cleaning)

- 2.55 There were only four responses that referenced Part N, including suggestions to extend the Building Regulations to areas such as conservatories and additional aspects of glazing. The evidence presented of the risks from these is not compelling and so the Department does not intend to review and consider further Regulation at this time.
- 2.56 However, as noted above, there is a strong case to consider examining where Parts M, K and N and their guidance overlaps and could be simplified.

Part P (Electrical safety – Dwellings)

- 2.57 There were 18 responses submitted directly to the Department. There was some specific support for the Part P, in particular how it had improved the quality of electrical work in the home and as a result reduced the number of deaths and injuries. There was a similar number that suggested that the approach in Part P was unnecessary and/or should be replaced by a requirement that electrical work should be carried out by a suitably-qualified and registered/competent person (with the comparison with gas safety often being made).

- 2.58 However, Part P was by far the most commented on aspect of the Building Regulations on the *Your Freedom* website. While a minority of the comments on that site supported the existing provision and worried that deregulation could impact on health and safety in homes, these views were outnumbered by those that supported revision of the existing provisions.
- 2.59 Various reasons were cited for the need to review Part P. However, in summary they related to the cost associated with demonstrating compliance with the provisions rather than costs imposed by the way the work itself had to be carried out, that is either the payment of a building control fee for the work or payment of an annual fee to belong to a Competent Person Scheme to be able to self-certify the work. It was often stated that such costs impacted particularly on small firms. Furthermore, by falling only on those people that actually sought to comply with the regime it was said this was both unfair and failed to do anything to tackle those people who were most likely to be responsible for unsafe work.
- 2.60 The provisions were first introduced in 2005 and we believe it is now time to evaluate their contribution to the safety outcomes they were intended to support. We will therefore undertake a review of the requirements, their implementation and the associated compliance mechanisms to determine whether there is any case for change.

Regulation 7 (Materials and workmanship)

- 2.61 There were 21 responses on products and workmanship. Most of those raised concerns about the quality of workmanship suggested changes to the building control system and compliance mechanisms rather than changes to Regulation 7 itself.
- 2.62 Some respondents suggested that tighter control on product certification might help guard against the use of inadequate or substandard products. The Department has no plans to change the functional approach of Regulation 7 in which any product can be used provided it is clear that it meets the performance requirements set out in the rest of the Regulations. However, the advent of the EU Construction Products Regulation (likely to come into force in 2013) will make CE marking (testing and certification against EU standards) mandatory for many construction products on the UK market. This will be picked up in changes to guidance related to Regulation 7.
- 2.63 A small number of responses suggested that the Regulations should seek to cover the embodied carbon impact of products. This is a complex issue, which we continue to explore, and there are other levers (product standards and emissions trading, for example) which will be driving improvements in product performance outside the Building Regulations. In addition, because there is ongoing development work on EU standards for assessing the embodied carbon impact of products, we would not set up a national approach which would necessarily be superseded by a pan-EU methodology in a few years time. Therefore at present the Department is not minded to regulate for this.

Other technical issues

- 2.64 An issue that was raised by a number of respondents as part of this exercise, and has also been raised on a number of other previous occasions is that of building security. Responses suggested that the scope of the existing Building Regulations should be extended to include provisions to ensure adequate security measures are incorporated into buildings (as provided for by the Sustainable and Secure Buildings Act 2004). There was no consensus, however, as to what such a provision might require to achieve this.
- 2.65 We propose to work with the Home Office to consider what role the Building Regulations might play in reducing burglary and preventing crime through national regulatory standards for, for example, the security of doors, windows and locks.
- 2.66 However, the Department recognises that regulation is not necessarily the only way to capture the benefits referred to above. Voluntary measures have already delivered some improvements and additional voluntary approaches need to be further explored. We will therefore continue to work with Home Office in order to monitor that progress alongside undertaking work to establish better the case for and possible scope of regulation.
- 2.67 A number of respondents also raised the issue of flooding and whether the regulations should specifically address flood resilience and resistance. The Government has undertaken some initial work that indicates there may be a cost-benefit case for incorporating certain measures in buildings at a high risk of flooding. However, there remains a question as to whether it is best done through national regulation. There are arguments that a voluntary approach may be better, to allow flexibility for local authorities or homeowners to decide what flood resilience measures best suit their individual circumstances. We want to fully explore the scope for non-regulatory measures to improve flood resilience before we consider regulatory intervention. In particular, we need to understand what the market failure is that prevents the take-up of resilient repairs by individuals.
- 2.68 In addition, the need to consider climate change adaptation has been raised as part of this process, for example, our intention to consider overheating in the context of the next review of Part L is mentioned above. Generally, the Department is committed to ensuring that wherever possible future changes to the Building Regulations seek to incorporate consideration of designing buildings for not only the existing, but also the future climate too. More specifically, significant adaptation issues such as overheating and flooding are being considered as part of the Government's wider consideration of adaptation issues.

The Building Control System

- 2.69 There were 113 responses that contained comments and suggestions on system-related issues. A key theme running through a significant number of responses was the need to raise the levels of compliance and for better evidence of compliance, including a suggestion for random post-completion testing. Allied to this was a strong call for increased legal enforcement including an increase in the range of powers available (such as the introduction of stop notices), the level of impact they have (such as an increase in the level of fines) and measures to encourage local authorities to take more legal action (for example, by allowing them to keep the fines if successful).
- 2.70 On the building control system itself, the vast majority of responses supported retaining third party checking by building control. Only a couple of respondents suggested a move to a different compliance model such as relying on builder registration or giving responsibility for building standards and checking to the insurance industry. Some suggested that Building Control should be fully privatised, others that it should be returned wholly to local authorities. Clearly there are pros and cons to both. A number of suggestions were made about how better to level the playing-field in a mixed public/private Building Control system. Others suggested that all Building Control officers should be licensed and subject to external monitoring although there was not a great deal of evidence to justify setting up such a regime.
- 2.71 There was some support for greater use of self-certification of compliance with Building Regulations, although not to the extent of whole building self-certification, and some support for additional third party certification (eg in relation to certain specialist checks). There were a number of suggestions that all electrical contractors should be required to join a Part P register (similar to the mandatory register for gas installers) or that structural calculations should only be submitted by a qualified structural engineer. Conversely, the *Your Freedom* website responses were largely in favour of abolishing Part P or removing/ reducing Competent Person Scheme requirements. In addition there was some support for the introduction of Appointed Persons and some suggested that there was a role for businesses in formally signing off/verifying compliance with the Regulations, although there was no consensus on whether it should be an alternative or in addition to Building Control sign-off.
- 2.72 There was also broad support for a number of measures previously consulted on such as the need for local authorities to move to a fully risk assessed approach to inspections, restricting the use of Building Notices to minor works and the mandatory issue of completion certificates. Several respondents also asked that the exemptions from the Building Regulations (for example, for mobile homes, porches etc) be reconsidered with a view to tightening up what is controlled work; a few respondents to the *Your Freedom* website took the opposing view that exemptions should be increased and people “should be allowed to do what they want in their own home”.

- 2.73 Another issue that received wide support was streamlining the interaction between Building Regulations and other regulatory regimes such as planning, although suggestions ranged from wholesale integration of certain aspects through to simply improving interface and providing better clarity on roles and responsibilities of the different participants. This was an issue that was also raised by *The Penfold review of non-planning consents*.
- 2.74 Over the next few months we will be taking forward work to gather further evidence about actual levels of compliance and reasons for instances of non-compliance to better inform the development of proposals for changes to the system. As part of this the Building Regulations Minister will be hosting a compliance roundtable with key partners to explore compliance-related issues across all parts of the regulations, but with a significant focus on energy efficiency matters. In the light of this further evidence, we will be exploring options to further improve enforcement (for example potential increases in the level of fines, introduction of civil sanctions) and incentives for responsible businesses, including the role for Appointed Persons, other third party checking mechanisms and the role of insurance and warranties. We will also be considering how we can improve the interface with planning and other regulatory regimes and ensure a level playing field in the Building Control service.
- 2.75 We will develop proposals for changes to the building control system including those to be brought forward for consultation in late 2011. A number of particular options have previously been consulted on and received wide support from partners. We will therefore consider taking these forward more quickly, subject to further work on the costs and benefits of the proposals. These include: changes to improve the robustness of Competent Person Schemes aligning them with other schemes across government; the removal of some of the current statutory notifications along with a move towards a fully risk based approach to inspections; and working with industry to develop new accredited construction details and new Competent Person Schemes so as to help improve compliance whilst reducing the burdens associated with demonstrating compliance.

Section 3

Next steps

Summary of work to be taken forward

- 3.1 The package of work to be taken forward into next year will therefore consist of a number of workstreams and the Department will work with its external partners as it seeks to establish its final proposals for consultation.
- 3.2 First, the programme will contain a significant deregulatory workstream. In particular this will include considering the scope for reducing the burden of Parts P, K, M and N as well as the building control system as a whole. We will also explore what other more minor changes might deliver additional reduced burdens – particularly whether there is any scope for reducing regulation through Part D or through the specific provisions at H6 and E4.
- 3.3 A second strand of work will explore regulatory changes including the energy efficiency standards in Part L. We will also explore the case for Changing Places provision and whether there is a case to introduce security measures into the Building Regulations. It will also consider amendments required as a result of the adoption of the *European Construction Products Regulation*, and other European-related issues such as updating references to standards in Parts A and C to reflect the introduction of Eurocodes.
- 3.4 Finally, there is also a third group of issues that we believe currently lack clear evidence to support regulation in 2013, but which we would not wish to definitively rule out. This includes whether to expand the provisions for radon gas protection and whether flood resilience/resistance should be incorporated into regulations.

Equalities

- 3.5 In line with the Government's commitment to fairness, the Department is conducting an initial screening to look at whether the existing regime has differential impacts on different groups in society including men, women, people from ethnic minorities and people with disabilities that should be examined further in the review. We will also be considering the impacts on groups covered by equalities legislation as we develop proposals for changes in the next stages of this review.
- 3.6 So far our initial screening work has identified no significant issues with the current technical standards or the system but we are exploring further questions around the implications of the current building standards for an aging population, and whether they correctly describe suitable levels of toilet provision in workplaces.

Timetable

- 3.7 The Department will move swiftly in the new year, with external partners, on further analytical work and developing detailed proposals for consultation.
- 3.8 We committed in the Departmental Business Plan to consult by December 2011 on changes to Part L. Following consideration of consultation responses and further refinement of the proposals, the Department's aim would be for amending legislation and statutory guidance in the Approved Documents to be published in October 2012, six months prior to the provisions coming into force in April 2013.
- 3.9 The workstreams of the programme are wide-ranging and inevitably different elements will develop in different ways and at different speeds. However, we will co-ordinate the workstreams to ensure policy development is properly joined-up - across the Building Regulations regime and with other policy developments - and to minimise the burden on our external partners as we seek their contributions to these.
- 3.10 We will consider in more detail with partners how best to approach the consultation on the workstreams, given the potential breadth of the areas covered. At this stage we envisage the main timeline will have consultation on the different workstreams being undertaken in parallel with the Part L consultation. However, we may make some earlier changes, for example on some of the building control elements to improve compliance and reduce regulatory burden.
- 3.11 What is set out above is a summary of the areas where we believe we need to do more work in 2011 to decide whether regulatory changes in 2013 are justified. When identifying this programme of work we have considered proposals against the principles the Government has set out on localism and regulation, including a one-in-one-out approach to managing regulatory burden and finding innovative approaches to achieving health, safety and sustainability goals in a non-regulatory way.
- 3.12 The Government is committed to simplifying regulations and reducing the burden they place on businesses, and the elimination of obsolete and inefficient regulation. The Government aims to achieve this by: using targeted measures to simplify and improve existing regulation; communicating more clearly with businesses to help them understand what they must do to comply; and carefully assessing the impact of any new regulation proposals.

- 3.13 For proposals that do not reduce the burden of regulation, we will need to be clear:
- if a problem might be addressed by appropriate action by individuals, by neighbourhoods, by business/social enterprises, by the voluntary sector or by local authorities
 - if it might be addressed by non-regulatory intervention to generate appropriate action; or
 - if there is no suitable alternative that there is a clear and compelling case supported by cost-benefit analysis to warrant regulation even in the current climate.
- 3.14 We have been mindful so far, and will remain so, of the need to incorporate a one-in-one-out approach to managing regulatory costs to business as part of this process so as to at least balance our regulatory “ins” and “outs”. We will also be specifically considering the impacts on housebuilders, with the aim of contributing to the achievement of our Spending Review commitment to reduce regulatory costs by the end of this Parliament.
- 3.15 We believe this package of work matches these ambitions and potentially at least achieves that, but we will continue to assess that balance as policy development progresses and proposals are refined.