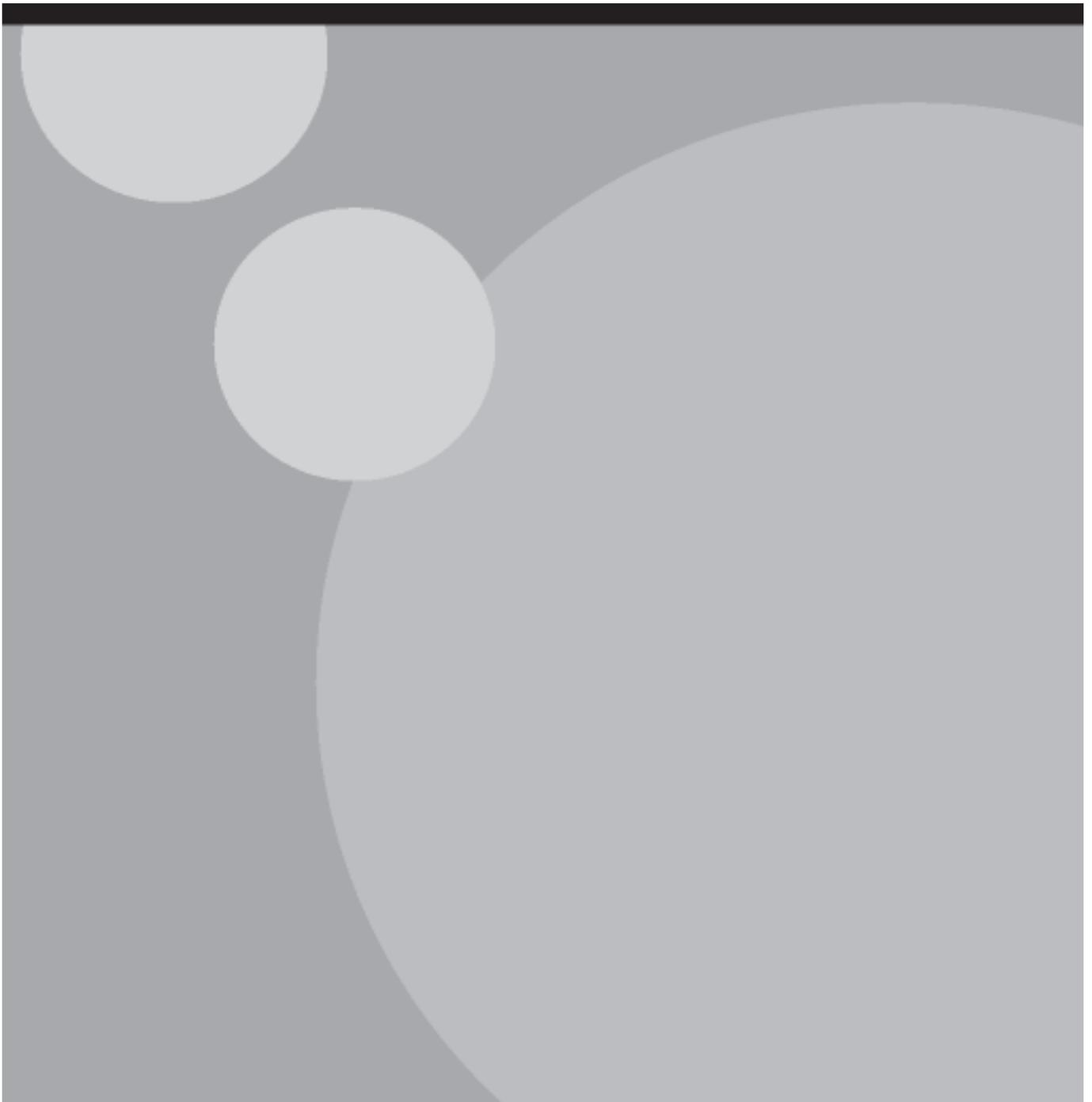




# Building Regulations Competent Person Self-certification Schemes: Consultation

## Summary of responses





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June 2012

ISBN: 978-1-4098-3431-1

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# Introduction and overview of responses

## Background

1. The Department of Communities and Local Government (DCLG) issued a consultation paper, *Building Regulations Competent Person Self-certification Schemes*, in December 2009. Its purpose was to seek views on proposals for changes to the administrative provisions for approval, monitoring and quality assurance of schemes. The changes proposed were designed to improve the level of compliance with the Building Regulations and to increase consistency across the schemes. The consultation period ended on 19 March 2010.
2. 47 bodies or individuals responded to the consultation, falling into categories as follows:

	<b>Number of respondents</b>
<b>Total</b>	<b>47</b>
Competent Person scheme operator	11
Building control body	10
Professional or trade body	16
Other	10

3. A complete list of those who responded is at Annex 1.
4. This summary of responses was prepared by the In-house Policy Consultancy unit based in Department for Transport, which provided a service to all of DCLG, Defra, DECC and DfT.

## Overview of responses

5. The consultation paper posed 12 questions, each inviting a 'yes' or 'no' answer. The number of respondents answering 'yes' and 'no' to each question is recorded in the table at Annex 2, and a fuller breakdown by respondent category is in the relevant section of the main report that follows. Respondents who elected not to respond in a yes/no format are recorded as 'neither', as are those who offered no response to the particular question.
6. A clear majority of respondents supported the Department's position on all issues where the consultation paper offered a view, ranging from 9:1 in favour of scheme operators offering some financial protection to consumers (Q6) to a bare majority who considered the Impact Assessment to be fair (Q11). However, crude analysis by numbers of 'yes'/'no' votes disguises some important reservations expressed by those who supported the Department's position in general terms, and a fair

amount of common ground between the 'yes' and 'no' camps on some issues.

7. In general, there was markedly less support from scheme operators than from other respondents for the Department's proposals. Even within this category, however, it was only on Q11 (Impact Assessment) that a majority opposed to the Department's proposals.
8. The proposal to require scheme operators to gain United Kingdom Accreditation Service (UKAS) accreditation provoked the most attention and strongest views from respondents. For this reason it is dealt with first below, with other issues following the order of the consultation document.

## **UKAS accreditation**

9. The consultation document notes that monitoring of Competent Person scheme operation has hitherto been undertaken by the Department on an *ad hoc* basis, and that the Department would like to move to a more regular and standardised arrangement. The proposal is to require schemes to gain UKAS accreditation to standard EN 45011, and for UKAS to take on regular scheme monitoring.
10. A substantial majority of respondents supported this proposal. However, while there was wide consensus about the need to put in place effective scheme monitoring and quality assurance arrangements, views were far more mixed about whether this should be achieved through UKAS accreditation.
11. Four scheme operators strongly opposed UKAS accreditation. They argued that it would result in substantial additional costs which would take scheme membership beyond the means of smaller businesses and sole traders, and as a result lead to a major reduction in Competent Person membership numbers. There were also fears that UKAS might impose a 'one size fits all' approach to monitoring scheme members' work in different sectors, which could result in a reduction in quality standards as well as an increase in costs in some areas.
12. Other scheme operators took a different view, arguing that UKAS accreditation was essential to remove unfair inconsistencies between operators and schemes. Some respondents argued that the Department did not have the right skills for monitoring scheme operation, and that, as the UK's national accreditation body, UKAS was the right body to take the job on. UKAS itself said that it would welcome this role.
13. Alternative propositions were that the Competent Person scheme operators should collectively appoint and pay for a respected independent auditor, or for the auditing task to be opened up to a wider range of suitable bodies.

## Core authorisation criteria

14. The consultation paper proposed changes to the criteria against which new Competent Person schemes are authorised, designed to bring more uniformity to the application and enforcement of criteria across schemes. It proposed a total of 22 core criteria.
15. There was no disagreement in principle that there should be an updated and common set of core criteria, and a broad measure of support for many of those proposed. Recurring general comments were that there should be adequate mechanisms in place to ensure compliance and that it was important that schemes operated to the same rules and standards.
16. Some of the criteria deal with issues covered in more detail in later sections of the consultation document. Of those not covered elsewhere, those that provoked most comments were:
  - critterion 5: membership growth. All of those who commented opposed the proposal that schemes should be required to commit to membership growth, on the grounds either that it was undeliverable, or that it would undermine a commitment to proper standards, or both.
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  - critterion 2: scheme to be financially viable. There were suggestions that this rule should apply to the operator rather than the scheme, and related arguments for greater clarity about what constitutes a conflict of interest.
  - critterion 7: members of schemes to be technically competent. While there was of course no disagreement with this in principle, there were concerns – particularly from the glazing industry – about how it was to be measured.
  - critterion 10: requirement for effective sanctions. Several respondents wanted to see a common set of sanctions in place across schemes, and some looked to the Department for guidance.
  - critteria 18 and 21: certificates of compliance and notification of completed work. While Building Control Body respondents attached particular importance to notification (critterion 21), a number of scheme operators commented that these requirements were ultimately outside their control.

## **Application process**

17. The consultation paper proposes that a formal process should be put in place to deal with applications to operate Competent Person schemes, and identifies an 11-step process.
18. Whilst there was general support for these proposals, respondents expressed some concern on two issues in particular. First, some respondents were concerned to ensure that a general invitation to express interest was issued when a new scheme was established. Second, a small number of respondents queried the role of DCLG in the process of approving new schemes, arguing that UKAS should play a larger part.

## **Customer complaints procedures**

19. All Competent Person schemes are already required to have in place a robust complaints procedure. The consultation paper queried whether the procedure should be strengthened through the introduction of a formal, standardised procedure, or whether the Department should go a step further and require full compliance with the OFT Consumer Code Approval Scheme, including independent arbitration.
20. There was almost universal agreement to the proposal to introduce a standardised complaints procedure, but a range of views on what this should cover, and whether it should include independent arbitration. Many respondents in the scheme operator category looked for greater clarity about the procedures envisaged, and suggested that a draft should be developed for discussion. Several respondents looked for compatibility with other requirements, such as ISO 10002 and Trust Mark.

## **Consumer financial protection**

21. There is an existing requirement that all Competent Person schemes should include arrangements for offering consumers some form of financial protection in cases where members' work does not comply with building regulations, and where there is no redress against the member concerned because they have gone out of business. The Department would like to see the current arrangements strengthened, and the consultation document puts forward the options of (i) a more detailed specification of the minimum protection to be offered, or (ii) mandatory provision to cover customers whether or not they opt for it.
22. A small number of respondents rejected the whole idea of Competent Person scheme consumer financial protection on the grounds either that such provision would change the role of scheme operators from certification to underwriting bodies or on the more practical grounds that the vast majority of consumers were not interested in such protection.
23. However, the large majority of respondents favoured the provision of some form of consumer financial protection. Of these, 57% thought that

provision should be mandatory, applying regardless of whether or not consumers opted for it.

24. The main arguments for mandatory protection were that this was the simplest option and a potential selling point for Competent Person scheme operators. The main arguments of those who opposed mandatory protection were that it would drive up costs significantly and hence deter scheme membership, and that it was wrong in principle to deny consumers the opportunity to make their own judgments about whether or not to opt for this insurance.

## **Monitoring the performance of scheme members**

25. Most Competent Person schemes are currently required to carry out random periodic monitoring of the work of their members, with a minimum requirement for an annual inspection of a sample of each member's completed work. The consultation document proposes (i) that this requirement should be extended as a basic requirement to all schemes and (ii) schemes should be allowed to move away from annual inspections to a risk-based approach where they have demonstrated their ability to operate such a system. This approach is expected to generate net savings of £71m at net present value over 10 years.
26. Respondents in general supported the proposal to extend the basic inspection regime to all schemes, including a requirement for annual inspections. There were, however, concerns expressed by those schemes currently operating with less frequent inspections that the requirement was excessive, and that existing schemes should be allowed to continue to operate tried and tested processes. A wider range of respondents warned against the danger of too rigid an approach, arguing that the kind of inspection regime that made sense for one type of work would not necessarily work well for others. There were also concerns expressed about the adequacy of current monitoring and about low levels of compliance, and an argument from one respondent in the professional and trade association category that all inspection work should be undertaken by UKAS.
27. While the majority of respondents favoured a move to a risk-based approach in appropriate cases, a significant minority did not. Many respondents from both camps supported a risk-based approach in principle, but wanted to see basic minimum standards adopted. Some argued that a requirement for annual inspections should be retained as a minimum, while others argued for a minimum three-year cycle.
28. Concerns were also expressed as to how a level playing field between operators was to be maintained if some were allowed to adopt a risk-based approach while others were not.

## Impact assessment

29. The consultation document anticipated that a net present value benefit of £23m over 10 years would flow from the proposals, made up of £75m savings offset by £52m costs. Views were invited on the underlying estimates as set out in the Impact Assessment.
30. Less than a half of all respondents supported the Department's position on this, with many respondents saying they were not in a position to offer a view. Seven out of the 11 scheme operators to respond said that they did not consider that the Impact Assessment offered a fair overview of costs and benefits. There were concerns in particular that moving to a risk-based approach to inspections would not in practice deliver the savings anticipated, and that the costs associated with UKAS accreditation would work out considerably higher.

# Section 1: proposals for changes to the authorisation criteria

## Proposal

31. The consultation paper proposed changes to the criteria against which new Competent Person schemes are authorised, designed to bring more uniformity to the application and interpretation of criteria across different schemes, to tackle unfair inconsistencies in the way schemes are operated and to take account of recommendations in the 2009 evaluation report. The document proposed 22 criteria organised under the headings of (i) the scheme; (ii) the scheme and its members; (iii) the schemes and their customers; (iv) the scheme and DCLG; and (v) the scheme and Building Control Bodies. Comments were invited on whether the proposed criteria were the right ones, whether their meaning was clear, and whether there were others which respondents would like to see added.

## The response - overview

		Yes	No	Neither
<b>Q1. Do you consider that the criteria in section 1 of this consultation document are appropriate for the authorisation of Competent Person schemes?</b>	<b>All responses</b>	<b>27</b>	<b>11</b>	<b>9</b>
	Competent Person scheme operators	5	4	2
	Building Control Bodies	9	0	1
	Prof and trade bodies	9	5	2
	Other	4	2	4
<b>Q2. Is the meaning of each of the criteria clear?</b>	<b>All responses</b>	<b>29</b>	<b>10</b>	<b>8</b>
	Competent Person scheme operators	5	5	1
	Building Control Bodies	9	0	1
	Prof and trade bodies	10	4	2
	Other	5	1	4
<b>Q3. Are there any other criteria which you consider should be applied to Competent Person schemes?</b>	<b>All responses</b>	<b>29</b>	<b>8</b>	<b>10</b>
	Competent Person scheme operators	9	1	1
	Building Control Bodies	7	2	1
	Prof and trade bodies	7	5	4
	Other	6	0	4

## Responses to questions 1 and 2

32. There was no disagreement in principle that there should be an updated and common set of core criteria for the authorisation of competent person schemes, and there was a broad measure of agreement on many of the criteria proposed. Although a substantial minority of respondents answered 'No' to one or both of questions 1 and 2 in the consultation document (whether the criteria proposed are appropriate and whether their meaning is clear), the concerns expressed were about individual proposed criteria rather than the general approach set out in section 1.
33. Most of the competent person operators who responded offered detailed comments on many of the criteria suggested, several of them commenting individually on all 22 of them. Detailed comments from other categories of respondents were relatively few in number.
34. Recurring general comments applying across a number of the proposed criteria were that there must be adequate mechanisms in place to ensure compliance; that it was important that schemes operate to the same rules and standards, particularly where more than one scheme operates in the same sector, and that further consultation on detailed aspects would be important. A number of respondents argued that many of the requirements proposed were dealt with adequately under EN 45011 and as such would automatically come into play if the Department went ahead with the proposal to require scheme operators to gain UKAS accreditation (see discussion of Q 10). A few respondents sought greater clarity about whether the rules should apply to individuals or businesses and, related to this, suggested that EN ISO 17024 might be the more relevant standard.
35. Comments on the proposed core criteria 9 (periodic random inspections of members' work), 13 (customer complaints procedures), 14 (financial protection for consumers) and 20 (monitoring of schemes) are dealt with in later sections of this report under Qs 8, 5, 6 and 10 respectively. A summary of views expressed on other proposed criteria is in the table included as Annex 3. The following were among the views to emerge:
- there were mixed views on criterion 2 – scheme to be financially viable within a reasonable timescale - with some scheme operators taking the view that the requirement should relate to the operator rather than the scheme, while others expressed a range of concerns about schemes operating on a level playing field, and not being used by businesses to generate commercial advantage.
  - linked to this, there were some arguments for greater clarity about what constituted a conflict of interest (criterion 4). On this, in dealing with the proposed requirement to ensure the provision of mandatory training (criterion 8), a number of respondents argued that provision of training services by operators to their members constituted a conflict of interest, in breach of EN 45011.

- criterion 5 – scheme to have commitment to membership growth – was the only one to attract expressions of concern or outright opposition from all of those who commented. Nine scheme operators and a couple of other respondents all argued that the requirement was undeliverable and/or would undermine the maintenance of proper standards and lead to poaching between schemes.
- while there was no disagreement with the proposition that members of schemes should be technically competent (criterion 7), a range of views were expressed on how this should be measured and enforced. On the one hand, there were concerns that National Occupational Standards tied to NVQs were just not good enough to guarantee adequate standards. On the other hand, the view was expressed – relating in particular to the glazing industry – that it was not realistic to try to introduce an NVQ-based standard in the near future.
- several respondents wanted to see a common set of sanctions in place across schemes for dealing with non-compliance by members (criterion 10), with several also arguing for better links to building control enforcement bodies and prosecution.
- a number of scheme operators were unhappy with the onus placed on schemes to ensure that certificates of compliance are issued to customers (criterion 18) and that Building Control Bodies are notified of completed work (criterion 21), arguing that both these actions are ultimately outside the operator’s control. Conversely, respondents from the building control group were concerned to tighten up scheme operators’ responsibilities in this area.

## Responses to Q3 – other criteria

36. While over 60% of respondents replied positively to the invitation to suggest other criteria for scheme authorisation, many of the ideas put forward were in elaboration or refinement of existing proposed criteria rather than wholly new ones, and are covered in Annex 1 and the previous paragraphs.
37. Most of the building control bodies who responded to this question wanted to see a strengthening of the notification requirements. There were requests for post-code reference numbers (UPRNs) to be a compulsory part of notification of completed work; for the notification to be in LABC (Local Authority Building Control) XML data format; for multiple notifications to be avoided; and for the notice period to be reduced from 30 to 15 days from completion. A couple of respondents also wanted to see the introduction of a requirement to pre-notify Competent Person work in advance, as under the AI arrangements.
38. A couple of respondents wanted to see a Government-backed logo or emblem to be used by schemes and their members. Others argued that systems should be required to sign-up to one or other of the existing

quality-assurance schemes: TrustMark, Buy with Confidence, Local Trading Standard Schemes etc.

39. Other suggestions were that:

- scheme operator authorisations should be reviewed at least once every five years, and approval withdrawn if necessary. Sanctions against operators who default on their obligations should also be set out
- there should be an express requirement for operators to provide technical help to scheme members and advice to consumers
- it should be stipulated that membership of schemes should be open to any applicant able to satisfy membership requirements
- the Planning Portal should be used as a central register for all Competent Person notices, and for Initial Notices and Final Certificates for Approved Inspectors
- there should be an obligation to transfer standard business data when a member transferred to a different scheme
- work undertaken on a probationary basis by applicants for scheme membership should be supervised and certified by inspectors working for scheme providers.

# Section 2: application process to operate a competent person scheme

## The proposal

40. The consultation paper notes that applications to operate Competent Person schemes have hitherto been considered on an ad hoc basis. It proposes that a formal process should be put in place as a matter of good administrative practice and to comply with obligations under the EU Services Directive. An 11-step process is identified, and a target time of maximum six months suggested for the first 10, non-legislative, stages of the process.

## The response - overview

	Yes	No	Neither	
<b>Q4. Are you content with the steps and the timescale the Department is proposing for the consideration of applications to operate a competent person scheme?</b>	<b>All responses</b>	<b>27</b>	<b>12</b>	<b>8</b>
	Competent Person scheme operators	6	4	1
	Building Control Bodies	8	1	1
	Prof and trade bodies	10	4	2
	Other	3	3	4

41. While many respondents supported these proposals, about a third of all those who dealt with the question were not entirely happy with the process proposed. Most concerns expressed centred on three matters: (i) the procedures in place for inviting applications at the start of the process; (ii) the timescales proposed; and (iii) the role of DCLG in deciding applications. A number of other issues were also raised by one or two respondents.

## Invitations for expressions of interest

42. While the consultation document says that the Department *may* issue an invitation to express interest in running a proposed scheme as part of Step 1, it does not state that such an invitation will always be part of the process, nor offer any details of how this will be handled. A number of respondents argued that an invitation to express interest should always be a part of the process, and one sought greater clarity on the matter.

43. One respondent from among the professional and trade bodies group expressed particular concern on this matter, arguing the Department should make a clear distinction between the intellectual process of deciding whether a scheme is appropriate in a particular area of work and the separate consideration of applications to run it. They argued that an open invitation to express interest, together with relevant technical criteria, should always be published on the Department's web-site when the decision is taken to go ahead with a scheme. They believed that contrary practice had in the past resulted in commercial inequities and market confusion, and could be in breach of the open competition principles in the EU Services Directive.

## **Timescales**

44. A variety of views were expressed on the proposed timescales. While most of those who offered express comments on this particular matter considered the proposals broadly right (five respondents), there were three respondents who considered them to be too tight and a couple who considered them to be insufficiently challenging.

45. Other points made on timing were:

- the adoption of a UKAS-based model would reduce the time and work required from the Department at application stage, though there would be more work to secure UKAS accreditation prior to the application being submitted.
- amendment of the legislative requirements to avoid the need for each scheme to be listed in regulations (step 11) would reduce delays. The mechanism for authorising Approved Contractor Schemes under the Water Supply (Water Fittings) Regulations 1999 provided a model.
- uncertainty about the future content of the Building Regulations following current reviews could complicate and delay the process.

## **Involvement of DCLG**

46. Four respondents queried the role of the Department in the process, with two arguing that it should be UKAS rather than civil servants or Ministers who took decisions. They queried in particular whether the Department had the expertise to reach a judgement under step 3 on the technical competence of the scheme and its potential members. A more nuanced view offered on this issue was that Ministers and officials should set out scheme requirements while the suitability and competence of applicants should be assessed by UKAS.

## Other issues

47. Other points to be raised on this section were:

- the Department should publish open and transparent assessment criteria
- once accepted in principle, applications under consideration should be published to ensure all stakeholders have an opportunity to raise issues of concern. A narrower take on this was that existing operators should be given an opportunity to comment when new applications are under consideration in their sector
- applicants should be given reasons for refusal and a right of appeal
- the voting systems and criteria to be applied by the Building Regulations Advisory Committee (BRAC) should be made public. There was also an argument that step 6 should always include a BRAC interview
- existing operators seeking an extension to the scope of their scheme should be subjected to a simpler process.

# Section 3: consumer protection

## (a) Customer complaints procedure

### The proposal

48. Competent Persons schemes are required to have in place robust complaints systems to deal with customer complaints in cases where the work of the registered competent person does not fully comply with either the technical or the procedural requirements of the Building Regulations. The consultation document discusses whether this requirement should be left as it stands (option 1); whether it should be strengthened to impose a more formal standardised complaints procedure (option 2); or whether the Department should go a step further and require full compliance with OFT's Consumer Codes Approval Scheme, involving the further step of independent arbitration (option 3). The Department's preference is for option 2, providing customers with more certainty without imposing on scheme operators the extra financial burden of full compliance with the OFT scheme.

### The response - overview

		Yes	No	Neither
<b>Q5. Do you support the Department's preference for Option 2 for schemes' complaints systems?</b>	<b>All responses</b>	<b>32</b>	<b>6</b>	<b>9</b>
	Competent Person scheme operators	8	2	1
	Building Control Bodies	8	0	2
	Prof and trade bodies	9	4	3
	Other	7	0	3

49. Two thirds of respondents said that they agreed with the Department's preference for a more formal standardised complaints procedure under the proposed option 2, while 13% said that they did not. The crude numbers disguise an almost universal agreement to the principle of introducing a standardised complaints procedure but a considerable range of views within each of the 'yes'/ 'no' categories. 'No' respondents ranged from one who preferred the more rigorous option 3 to another who feared that any new scheme would be too costly and hence create a barrier to scheme membership. Those who answered 'yes' ranged from one who saw option 2 only as an interim measure on the path towards the full application of the OFT complaints procedure guidelines to others who were more concerned to work with the Department to pin down precisely what aspects of the guidelines should be applied.

## **Complaints and UKAS accreditation**

50. Four of the seven respondents who answered 'no' to this question argued that UKAS accreditation would require schemes to have in place a robust complaints system and, by implication, that no further action would therefore be needed if the Department decided to go down the road of compulsory accreditation. It is not clear what assumptions these respondents made about the nature of the complaints system likely to be required by UKAS, including whether or not UKAS would impose a standardised approach to apply across all Competent Person schemes, and whether this would include independent arbitration.

## **Defining a procedure under option 2**

51. While supporting the principle of a standardised complaints procedure, six respondents in the scheme operator category noted that the consultation paper is unspecific about how, and what aspects of, the OFT consumer codes approval guidelines will be developed for this purpose, and they noted that work will need to be done to develop and agree a suitable procedure. They suggested that a discussion draft should be produced by the Competent Persons' Forum, the Department in consultation with LABC and the schemes, or by some other arrangement.

## **Independent arbitration/ full compliance with the OFT consumer codes approval scheme**

52. Seven respondents commented on whether or not a complaints procedure should include some kind of independent arbitration as a final step, mostly in favour (including one scheme operator) and only one firmly against (another scheme operator). One organisation (not a current Competent Person scheme operator) noted that OFT consumer codes approval was a long and labour-intensive process (it had taken four years in their case) but did in the end provide a very high standard of consumer protection going well beyond that envisaged under option 2.

## **Interface with other consumer protection schemes**

53. Several respondents argued that a procedure drawn from the OFT guidelines might not be fully compatible with other systems such as ISO 10002 and TrustMark, and that inconsistencies could cause problems. Another respondent argued that, in cases where more than one consumer protection scheme was in place, it was essential that the interface between them was clear so that consumers had a one-stop, holistic experience. TrustMark themselves argued that standardisation between their own and Competent Person complaints procedures would bring benefits, but noted

that their procedures do include independent arbitration, conciliation or mediation in the case of unresolved complaints.

## **Other comments**

54. One scheme operator argued that contractual matters needed to be pursued through the appropriate legal channels and that scheme operators could not get involved. The same respondent also made the point that the first port of call for consumer complaints should be to the contractor concerned who should be expected to respond to the complaint and deal with the issues in the first instance.

55. Other comments were that:

- if a common complaints scheme were to be adopted, it would be very important to strongly enforce uniform and consistent compliance
- complaints procedures should include a simple route for consumers to follow to avoid them being passed from pillar to post
- scheme operators should be required to publish information on complaints received, response time, time to resolve and outcomes.

## **(b) Consumer financial protection**

### **The proposal**

56. There is an existing requirement that all Competent Person schemes must include arrangements for offering consumers some form of financial protection in cases where their members' work does not comply with building regulations, and where the member concerned is not in a position to rectify it (because of death, retirement, insolvency etc). While all schemes currently offer some form of protection of this nature, the Department is concerned that there is insufficient consumer awareness and hence low take-up, and doubt as to whether all schemes are offering the full level of protection required.

57. The consultation paper invites views on whether some kind of financial protection should continue to be offered to consumers and, if so, whether this should be under the current arrangements (option 1), a more detailed specification of the minimum financial protection to be offered (option 2), or mandatory provision of cover to customers against the identified risks whether they opt for it or not (option 3). Views are also invited on what types of financial protection might be appropriate.

## The response - overview

		Yes	No	Neither
<b>Q6. 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 preferred option.</b>	<b>All responses</b>	<b>33</b>	<b>4</b>	<b>10</b>
	Competent Person scheme operators	8	1	2
	Building Control Bodies	9	0	1
	Prof and trade bodies	10	2	4
	Other	6	1	3
<b>Q7. Do you have any suggestions on other types of protection that might be appropriate if options 1, 2 or 3 were adopted.</b>	<b>All responses</b>	<b>14</b>	<b>24</b>	<b>9</b>
	Competent Person scheme operators	5	4	2
	Building Control Bodies	2	7	1
	Prof and trade bodies	4	9	3
	Other	3	4	3

<b>Q6 option preferences</b>				
	Option 1	Option 2	Option 3	No view expressed
<b>All</b>	<b>4</b>	<b>12</b>	<b>19</b>	<b>12</b>
Competent Person scheme operators	1	3	4	3
Building Control Bodies	0	1	6	3
Prof and trade bodies	2	6	5	3
Other	1	2	4	3

58. Overall, 70% of respondents expressly agreed with the Department's view that there should be a minimum level of financial protection offered to consumers under Competent Person schemes, while only four respondents expressly disagreed. Among those wanting to see some kind of financial protection, 57% were in favour of option 3 (mandatory protection) while 36% favoured option 2 (more prescriptive minimum requirements but leaving take-up to the consumer). Only two of those in favour of a minimum level of protection supported the status quo (option 1) with the other two votes for option 1 coming from those who disagreed with the base proposition.

59. Respondents in the scheme operator and professional and trade body categories were split evenly in their preferences for options 2 and 3. Respondents in the building control body category were much more likely to favour option 3.

## **Arguments against providing financial protection under Competent Person schemes**

60. A variety of arguments were given for opposing the base proposition that a minimum level of financial protection should be offered to the customers of scheme members. Two respondents argued that such a requirement would change the role of scheme operators from certification to underwriting bodies, and detract from the principle that the individual contractor was liable to the customer. One of the existing scheme operators opposed the proposition on the more practical grounds that the vast majority of consumers have not identified a need for such insurance, and that a mandatory requirement would have major cost implications and work as a disincentive to scheme membership. There was also a view expressed by a body concerned with fire protection that the installation of passive fire protection was in reality rarely undertaken for individual householders and as such outside the scope of this proposed requirement.

## **Arguments for mandatory take-up (option 3)**

61. Those who preferred the mandatory option 3 saw this as the most effective option in protecting consumers, and a potential selling point for Competent Person scheme operators. One building control body argued that the absence of such provision could fatally damage the reputation of Competent Person schemes generally. There were also comments that a mandatory requirement it was the most straightforward option, and the only way of ensuring take-up.

62. Three current scheme providers argued for mandatory cover while another supported the proposition provided that it could be implemented universally. These respondents all wanted to see consistency between schemes. Two of these bodies said that it was already their practice to provide cover automatically, in one case indicating that the costs were £1.50 per insurance warranty. One made the point that mandatory provision can dramatically reduce the cost to the consumer.

63. Respondents in this group recognised that provision could only cover work where members notified the scheme about the job at an early stage, and that further work was needed to ensure that this happened.

## **Arguments for more prescriptive minimum requirements but leaving take-up to the consumer (option 2)**

64. Those in favour of option 2 were divided between (i) those who thought that a mandatory requirement was wrong in principle on the grounds that consumers should be in a position to make their own judgements about what insurance cover they required, (ii) those who thought that a mandatory scheme would drive up costs significantly and deter scheme membership, and (iii) those who thought that this was the only practical

option for the time being at least. Practical concerns expressed by some scheme operators were that it could prove impossible to find an insurance provider to cover this risk and that there is no means of ensuring that every consumer is covered.

## Other points raised

65. There were a number of comments on the subject of deposit protection, with some respondents pointing to arrangements where such cover was already universally provided, particular those where substantial deposits are taken. One respondent pointed out that the OFT requires all members of a consumer code to place clients' funds in a third party Client Account so that they cannot be used for day-to-day business, and are protected for the consumer if the business goes into receivership. A different perspective on deposit protection is that this is the area where current protection is weakest since Competent Person schemes do not become aware of members' work until notification takes place after completion. This might be seen as an argument for pre-start notification.

66. The following were among the other points raised on this issue, and in response to question 7.

- there is a question about whether it is better to run multiple protection offers at scheme level or whether a supra-level cross Competent Person scheme could offer better value, be less burdensome for scheme operators and provide an easier product for the consumer to assess.
- only a very small proportion of complainants to Competent Person scheme operators would benefit from the proposed financial protection as most problems did not relate to members who had gone out of business.
- the best form of consumer protection would be genuine and effective enforcement of the regulations, and actions against unregistered incompetent organisations.
- if Competent Person schemes are to provide consumer insurance for non-compliant work undertaken by members who go out of business, it could be argued that LABC should provide an insurance-backed warranty for work undertaken by other persons who go out of business if the work has been accepted by Building Control but later turns out to be non-compliant.
- consumers may consider it odd if they receive an offer of protection against failure to meet the building regulations at the same time as they get a certificate of compliance with the building regulations.

# Section 4: monitoring the performance of scheme members – quality assurance

## The proposal

67. The consultation paper notes that the conditions of authorisation for most schemes require them to carry out random periodic monitoring of the work of their members to make sure it meets the required standards and that, in general, there is a minimum requirement for an annual inspection of a representative sample of each member’s completed work. The Department considers that this system has worked well and proposes to extend it to all authorised schemes. The Department has also considered the case for moving to a more risk-based system which would allow scheme operators to monitor high performing members less frequently, and proposes to allow some scheme operators to apply such arrangements at its discretion. The consultation document invites views on these propositions.

## The response - overview

		Yes	No	Neither
<b>Q8. Do you agree that the current system of monitoring the performance of members of schemes should be continued and extended to all authorised schemes?</b>	<b>All responses</b>	<b>33</b>	<b>4</b>	<b>10</b>
	Competent Person scheme operators	7	2	2
	Building Control Bodies	9	0	1
	Prof and trade bodies	12	1	3
	Other	5	1	4
<b>Q9. 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?</b>	<b>All responses</b>	<b>29</b>	<b>9</b>	<b>10</b>
	Competent Person scheme operators	8	2	2
	Building Control Bodies	8	1	1
	Prof and trade bodies	10	3	3
	Other	3	3	4

## Extending the current system to all schemes

68. Most respondents agreed that the current system for monitoring members should be continued and extended to all Competent Person schemes, with

only five disagreeing. Of these five, three suggested that monitoring and inspections should be undertaken by UKAS, one (a scheme operator) considered annual monitoring could be excessive, and one saw a need for more flexibility in the requirements to take account of the different characteristics of different kinds of work.

69. There were concerns expressed by the building control sector about the adequacy of current monitoring, and, from one of the specialist bodies, about current low levels of compliance. In this connection, there were arguments for:

- an unannounced inspection of each member's work at least once a year
- inspections to be undertaken in the course of work rather than following completion (which in turn argues for a pre-notification system)
- encouragement of the use of inspectors who are independent of the scheme operator, who in practice have been found to identify a higher incidence of defects
- tougher action in cases where non-compliance is found. The offer of training and advice followed by removal from a scheme as a last resort, as proposed in the consultation document, was not considered to be a strong enough response by one respondent
- a larger range of tools to be made available to those undertaking monitoring and inspection.

70. A number of respondents commented to the effect that the kind of inspection regime that made sense for one type of work would not necessarily work well for others. Checking of completed work could be done in some cases, such as the installation of replacement windows, but did not make sense for other services, such as details of wall construction. A mix of approaches was necessary taking account of an industry's culture, 'inspectability' and cost.

71. One of the original scheme operators was concerned to point out that there was an important difference between existing and new schemes, and that original schemes had built up a history and processes. Annual inspections should not be imposed as a mandatory requirement on all members of existing registrants.

72. Several respondents urged the importance of monitoring and inspection being undertaken by properly qualified people who understood the work and its context, noting that this was not always the case currently.

## **Risk-based monitoring systems**

73. 60% of respondents answered 'yes' to the question of whether they agreed that the Department should allow schemes to move towards risk-based monitoring, while just under 20% of respondents said they did not.

74. Three of those who answered 'no' to this question made it clear that they were not opposed to a risk-based approach in principle, but wanted to see

some basic minimum standards imposed even where a risk-based approach was adopted. Many of those who answered 'yes' to the question expressed the same view. Four respondents argued that annual inspections should be retained as a minimum. Others argued for a minimum three-year cycle (Trust Mark's current minimum requirement) or for an unspecified minimum relating both to the volume of business and elapsed time. A couple of respondents noted that the £75m saving anticipated would not occur if annual inspections were set as a minimum standard.

75. One respondent was content with a move towards risk-based monitoring provided that it improved compliance overall. They wanted to see savings from reduced monitoring and inspection of high performing businesses diverted to improve poor performers. This respondent also called for more frequent inspections – perhaps twice a year rather than once a year – for schemes covering work areas where the risk of non-compliance is highest.

76. Several respondents from the scheme operator and professional and trade body categories again expressed concern about the need to maintain a level playing field. One operator argued that a common risk ranking system would need to be developed for operation across all Competent Person scheme operators with, for example, differential rules for new members. Another operator thought that DCLG would need to consider the case for a risk-based approach sector by sector rather than scheme by scheme to ensure that different minimum requirements were not operated by schemes which are in direct competition. A trade body which opposed this proposal did so on the grounds that it could lead to destructive competition within a sector.

77. Other points made were that:

- the circumstances of a business could change very quickly as a result of high staff turnover or other problems. A drop in the standard of performance might not be picked up for some time under a risk-based system  
several respondents argued for a tighter inspection regime to be applied to new members over their first year
- if a risk-ranking system was to operate effectively, then information on sanctions imposed on members would need to be available to all Competent Person operators (cp core criterion 10)
- a risk-based approach should provide an opportunity to increase surveillance as well as reduce it where monitoring revealed poor performance.

# Section 5: monitoring the performance of scheme operators – quality assurance

## The proposal

78. The consultation document notes that monitoring of Competent Person schemes has hitherto been undertaken by the Department on an ad hoc basis, with exercises undertaken in each of 2003, 2008 and 2009. The 2009 exercise showed that the level of compliance with the Building Regulations was not at an acceptable level for some schemes, and that many of the monitored schemes were not complying with their conditions of authorisation.
79. The consultation document indicates that the Department would prefer a more regular and standardised system for monitoring the performance of schemes, and is considering the possibility of achieving this through a requirement for UKAS accreditation. It points out that the 2004 Part P (electrical safety) schemes had already agreed to work towards UKAS accreditation to standard EN 45011 as part of their conditions of authorisation, and all schemes authorised since 2006 had indicated their willingness to do so if required.

## The response - overview

		Yes	No	Neither
<b>Q10. Do you agree with the Department's view that the UKAS accreditation should be the requirement for the monitoring of schemes' performance?</b>	<b>All responses</b>	<b>27</b>	<b>10</b>	<b>10</b>
	Competent Person scheme operators	5	5	1
	Building Control Bodies	8	0	2
	Prof and trade bodies	9	3	4
	Other	5	2	3

80. There was a wide consensus among all respondents that scheme providers should be subject to effective monitoring and quality assurance arrangements, common across those answering both 'yes' and 'no' to this question. Views on the proposition that the schemes should be subject to UKAS accreditation were, however, far more mixed, with strong concerns being expressed in particular by a number of current operators, and suggestions from a wide range of respondents that the Department's figures understated the likely costs. There was also a range of views expressed on whether EN 45011 set the right standards.

81. An alternative proposition was for the Competent Person scheme operator to appoint and pay for an independent auditor of some standing to undertake an annual audit of schemes against criteria set out clearly in advance by the Department. There were also calls for the auditing task to be opened up to a wider range of suitable bodies.

## UKAS accreditation

### Scheme operators

82. A group of the original scheme operators responded both collectively and individually to express their concern that a requirement for UKAS accreditation would undermine their schemes and cause a substantial reduction in their membership numbers. One operator predicted a loss in membership of as much as 50%. One further scheme operator opposed the proposal on similar grounds. The particular concerns expressed were that:

- the costs of UKAS accreditation would be excessively high (see section 6 for more detail); one operator estimated that it would triple the cost of scheme membership
- UKAS would impose a 'one-size-fits all' approach, imposing new membership monitoring requirements that were inappropriate for some sectors (such as a focus on visiting business premises in the case of sole traders) while discarding others that worked well (such as the inspection of a sample of completed jobs in the window replacement industry)
- there was a particular concern that UKAS accreditation requirements would not be well-gearred to the working methods of sole traders and the smallest businesses, and would lead to a substantial loss of scheme membership among this group.

83. In contrast, two scheme operators working in the electrical sector argued that the Government should make it mandatory for all schemes to be assessed and accredited by UKAS, so as to remove unfair inconsistencies between operators and schemes, and ensure that the required standard of work is being achieved.

84. Of the remaining five scheme operators, one opposed the proposal and four supported it conditionally. One argued for a two-stage approval process which would allow for Competent Person scheme statutory commencement procedures to go ahead concurrently with an applicant's application for UKAS accreditation.

### Other respondent groups

85. 80% of those expressing a view from other respondent groups supported the Department's proposition. However, while a few respondents expressly

favoured mandatory UKAS accreditation in their comments, a larger number expressed reservations.

86. At one end of the spectrum, one professional body was keen to see the whole process of evaluation and monitoring of schemes being undertaken by UKAS, together with their greater involvement in deciding the core criteria. Their arguments – supported variously by other respondents – were that:

- this approach would introduce a common standard across all schemes
- it would free up DCLG staff time, allowing savings and/or more time to be made available to explore more specialised areas such as establishing technical competences
- it would recognise the role of UKAS as the UK's national assessment body in relation to EC Regulation 765/2008, and the BIS Secretary of State's commitment to encourage conformity assessment bodies to seek UKAS accreditation.

87. Another respondent in favour of the proposition argued that independent, competent monitoring of schemes was vital, and that additional costs should not prove problematic as many schemes were already linked to the Microgeneration Certification Scheme with its existing requirement for UKAS accreditation.

88. Arguments against mandatory UKAS accreditation from within this group were that:

- UKAS might be expected to impose additional requirements because they 'fit their model'. This would be unhelpful
- stipulation of UKAS as the single source of audit was unreasonably restrictive. There were other bodies well-able to undertake this task
- UKAS accreditation would impose an unacceptable additional administrative and cost burden on scheme members.

89. Despite reluctantly supporting the proposal, one respondent noted that they found UKAS to be 'a costly, bureaucratic and unhelpful body'.

## **Standards**

90. A range of views were expressed on the Department's proposal that UKAS accreditation should be to EN 45011 standard.

91. Some respondents favoured applying EN 45011 standards to all schemes, in some cases arguing that many of the proposed core criteria for accreditation should be replaced by a simple requirement to 'meet the provisions of EN 45011'. At the other end of the spectrum, there were suggestions that schemes might be assessed against tailor-made licence requirements rather than any nationally recognised standards, and EN 45011 principles should be applied only on a selective basis.

92. A number of respondents suggested that ISO 9001 (standards for quality management systems) should be considered in preference to EN 45011. There were also suggestions that ISO 17020 (General Criteria for the Operation of Various Types of Bodies Performing Inspection) and EN ISO 17024 (General requirements for bodies operating certification of persons) were the more appropriate standard for some sectors.

## **Quality of monitoring**

93. A number of respondents were concerned that, whatever arrangements were made for quality-assuring scheme operators, the work should be undertaken to high standards by people who understood the context in which schemes were operating. There were suggestions that UKAS would need to resource-up to undertake the task effectively. A couple of scheme operators also noted that they had been disappointed by the quality of work commissioned by the Department in previous monitoring exercises.

## **Costs**

94. Views on the costs of UKAS accreditation are covered in the next section.

# Section 6: impact assessment

## The proposal

95. The consultation document includes a statement of the impacts of the proposed changes to the competent person self-certification regime indicating a net benefit at present values of £23m over 10 years. The savings anticipated derive exclusively from a reduction in the number of inspections for the majority of scheme operators, expected to flow from the proposal to move to a risk-based approach (£75m). They are offset by anticipated additional costs over 10 years totalling £52m, the largest components of which are:

- mandatory training (£23.4m)
- extra costs of inspecting to UKAS standards (£20m)
- other costs of UKAS accreditation (£1.5m)
- increased numbers of inspections for two scheme operators (£3.9m)
- promoting membership growth commitment (£1.4m); and
- increasing consumer knowledge (£1.4m).

The document also notes that there are likely to be significant non-monetised benefits, including a better trained workforce, customer satisfaction, enhanced transparency and higher levels of compliance with building regulations.

96. Views are invited on validity of the analysis.

## The response - overview

		Yes	No	Neither
<b>Q11. Do you consider that the draft Impact Assessment presents a fair representation of costs and benefits?</b>	<b>All responses</b>	<b>17</b>	<b>11</b>	<b>19</b>
	Competent Person scheme operators	3	7	1
	Building Control Bodies	4	0	6
	Prof and trade bodies	7	3	6
	Other	3	1	6
<b>Q12. Can you supply any further information to help develop the impact assessment?</b>	<b>All responses</b>	<b>12</b>	<b>24</b>	<b>11</b>
	Competent Person scheme operators	7	3	1
	Building Control Bodies	0	9	1
	Prof and trade bodies	3	9	4
	Other	2	3	5

97. Three quarters of respondents from the scheme operator category were not fully persuaded by the figures presented in the Impact assessment. Half of the respondents in other categories expressed no view either way in response to this question, and a small number in those categories did not accept that the figures were fair. Many of the remainder ticked the 'yes' box without offering comment.
98. While there was a scattering of comments on a number of the figures and assumptions in the Impact assessment, most concerns expressed were about the anticipated inspection costs, and the costs of UKAS accreditation.

## Inspection costs – moving to a risk-based approach

99. Current practice varies between schemes as to how frequently random member inspections are undertaken. The Impact assessment includes a breakdown of the anticipated costs/savings of moving to a risk-based approach, with schemes categorised in terms of the existing frequency of inspections. Specifically:
- for schemes currently undertaking five-yearly inspections, an NPV *cost* of £3.9m is anticipated
  - for schemes currently undertaking annual inspections, an NPV *saving* of £67.8m is anticipated
  - for window schemes, an NPV *saving* of £6.7m<sup>1</sup> is anticipated.
100. Two respondents who are major players in connection with window schemes opposed the proposal to move to a regime involving less frequent inspections on the grounds that it will lead to a fall-off in standards in the industry. They argued accordingly that the anticipated savings of £6.7m in this sector should be taken out of the equation.
101. Schemes currently undertaking five-yearly inspections argued that the statement underestimates the costs of what is proposed, but did not specify what additional costs they expected to face.
102. On the anticipated savings from schemes currently undertaking annual inspections, there were a range of comments including:
- a move to less than annual inspections was unlikely to be acceptable to UKAS for passive fire protection schemes, and potential savings would be reduced accordingly.
  - the unit costs of fire protection inspections had been understated. The infrequency and geographic spread of work made it unlikely that more than one or two inspections could be completed in one day.

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<sup>1</sup> A different figure of £5.8m appears in the summary on page 42. £6.7m is understood to be correct.

- in other contexts, one scheme operator argued that the unit costs of inspection had been overstated, and hence that the anticipated savings from a reduced number of inspections are an overestimate. More conservative assumptions would suggest an NPV benefit of £50m rather than £67.8m.

103. The Impact assessment also estimates that moving to UKAS inspection standards will result in an extra average cost of £100 per inspection, and a total present value cost of £20m over 10 years. One scheme operator said that they expected the change to add less than £5 to the unit cost of their inspections, suggesting that this cost estimate might be too high.

## UKAS accreditation

104. Excluding the additional costs of undertaking inspections to UKAS standards covered in the preceding paragraph, the Impact assessment included an estimated present value cost for UKAS accreditation of £1.5m over 10 years. Many respondents commented in general terms that they considered this too low, including UKAS themselves and a Building Control Body respondent. Some respondents expressed the view that the additional costs would be offset by no tangible benefits in terms of improved quality of work.

105. Specific points on the estimates relating to UKAS accreditation were:

- UKAS accreditation fees in the range £2-4k were an underestimate. One respondent noted that they had paid £10k in fees for an uncomplicated MCS accreditation
- the Impact assessment contained no mention of the UKAS annual fee of £2.2k per year
- UKAS annual surveillance was likely to involve many more days than the one day identified in the IS. One respondent reported that UKAS had quoted for 8.5 man-days
- one operator suggested a one-off cost of UKAS accreditation of £20k (IS: £0 - £50k); annual UKAS charges of £7k - £10k (IS: £1k - £2k); and additional staff costs to maintain accreditation of c. £40k (Impact assessment: £2k).

106. There was also a suggestion that DCLG was the only real beneficiary from the proposals in that it would face substantially reduced costs for the monitoring and auditing of schemes.

## Other costs

107. Other points on the costings included:

- three operators thought that the costs of training were understated. One commented that some schemes were currently operating to a

much lower standard. Another comment was that it would cost the window industry at least £20m to extend NVQs to all installers.

- some respondents challenged the assumption that the application of criteria 18 (certificates) and 21 (notifications) would be cost neutral, commenting that the cost of making sure that these were issued would certainly not be zero.
- there is no estimate of the cost of mandatory consumer financial protection, should the Department decide to go down this road (see Q. 6). One respondent put the cost of this to their scheme alone at £11m.
- one of the larger scheme operators put the cost of PR and marketing within the industry (to promote membership and support initiatives) at £55k pa per scheme (IA: £20k pa), and consumer advertising at £1.5m as against the figure of £20k pa in the Impact Assessment.

108. Several of the scheme operators offered to go through costings with the Department in more detail.

109. Other more general points made were that:

- it was essential that the costs of scheme membership should be kept below building regulation charges on the equivalent work of non-members. DCLG should issue guidance to Building Control Bodies to ensure that happened
- one respondent made a general point about the problem of increasing bureaucracy facing small traders.

# ANNEX 1

## List of respondents

### Competent Person schemes operators (11)

Association of Plumbing and Heating Contractors (Certification) Ltd (AHPC)
Air-Tightness Testing and Measurement Association (ATTMA)
British Standards Institution
Building Engineering Services Competence Accreditation Ltd
Electrical Contractors' Association
Fensa Ltd
Gas Safe Register
HETAS Ltd
NAPIT Registration Ltd
NICEIC Group Ltd
Oil Firing Technical Association Ltd (OFTEC)

### Building Control Bodies (including individual inspectors) (10)

Building Control Alliance
Cambridgeshire LABC technical group
Leila Benfaida (Hampshire CC officer)
LABC (represents local authority building control)
London Borough of Haringey
NHBC Building Control service
Northgate Public Services
South Oxfordshire District Council
Suffolk Coastal DC
Wigan Council

### Professional and trade bodies (16)

Association for Specialist Fire Protection
Association for the Conservation of Energy
Association of Noise Consultants
BRE Global Ltd
British Board of Agrément
Chartered Institution of Building Service Engineers
Federation of Master Builders
Federation of Small Business
Glass and Glazing Federation
Heating and hot water industry council
Heating and Ventilating Contractors' Association
National Association of Professional Inspectors and Testers
National Federation of Roofing Contractors
Royal Institute of British Architects
Royal Institution of Chartered Surveyors
Structural Engineers Registration Ltd

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**Other (10)**

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British Gas

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Cornwell Fire and Rescue Service

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Department for Business, Innovation and Skills

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Electrical Safety Council

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Health and Safety Executive

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Intertek Testing and Certification Ltd and Association of Specialist Fire Protection

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Renewable Energy Assurance Ltd

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TrustMark

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United Kingdom Accreditation Service

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Wilkinson Construction Consultants

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## ANNEX 2

### Competent Person Schemes consultation: numerical analysis of responses

	Yes	No	Neither
Q1. Do you consider that the criteria in section 1 of this condoc are appropriate for the authorisation of competent person schemes?	27	11	9
Q2. Is the meaning of each of the criteria clear?	29	10	8
Q3. Are there any other criteria which you consider should be applied to competent person schemes?	29	8	10
Q4. Are you content with the steps and the timescale the Department is proposing for the consideration of applications to operate a competent person scheme?	27	12	8
Q5. Do you support the Department's preference for schemes' complaints systems?	32	6	9
Q6. 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.			
Option 1	4		
Option 2	12		
Option 3	19		
No answer	12		
	33	4	10
Q7. Do you have any suggestions on other types of protection that might be appropriate if options 1, 2 or 3 were adopted. If yes, what is it?	14	24	9
Q8. Do you agree that the current system of monitoring the performance of members of schemes should be continued and extended to all authorised schemes?	33	4	10
Q9. 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?	29	8	10

Q10. Do you agree with the Department's view that the UKAS accreditation should be the requirement for the monitoring of schemes' performance?	27	10	10
Q11. Do you consider that the draft Impact Assessment presents a fair representation of costs and benefits?	17	11	19
Q12. Can you supply any further information to help develop the impact assessment?	12	24	11

# ANNEX 3

## Detailed comments on the proposed core criteria

<b>Group 1: The Scheme</b>		
1.	Scheme to have technical ability to deliver compliance with building regulations.	<p>There was no disagreement with this in principle. Comments and suggestions from existing scheme operators were (i) this requirement could be covered by EN45011, clauses 4.2j, .4.3 &amp; 4.4; (ii) there should be specific reference to the technical competence requirements for assessors and inspectors; (iii) schemes should be able to provide proper technical support to registrants, with proper follow-up arrangements where this was contracted to third parties; (iv) a minimum technical specification might be developed for use by BRAC when assessing the suitability of operators.</p> <p>On the proposed requirement to provide a business plan, a couple of operators commented that a uniform template would be useful. One argued that the core content should be specified. Another argued that this requirement should apply only to those aspiring to become an operator and not to existing schemes.</p>
2.	Scheme to be financially viable within a reasonable timescale.	<p>Four of the six scheme operators commenting on this proposed criterion argued that it should be the operator rather than the scheme that is required to be viable. This was especially important where an organisation offered multiple schemes as a service to its members. Two operators took a different view, expressing concerns that (i) some operators should not be allowed to make a financial gain from their scheme while others devoted time and effort to standard setting etc, and (ii) there was a need for greater clarity about how far it was appropriate to allow loss-making schemes to be used to drive the profitability of other businesses owned by the operator. One respondent argued that schemes should break even within 2 years rather than five.</p> <p>There was a suggestion that EN45011, clause 4.2i, provided a model requiring scrutiny of viability by an independent governing board, including assessment of whether fees were fair and proportionate.</p>
3.	Scheme to have robust	There was no disagreement with this. Two respondents commented that it would not be needed

	management system.	as a core criterion if UKAS accreditation became a requirement, while another made the contrary point that having a robust management system did not necessarily imply the need for accreditation. There was a suggestion that meeting this requirement could be demonstrated by the submission of a management system manual and operating systems. One respondent thought this area would be covered by EN45011, clauses 4.2 and 4.5, while another pointed to the need for a decision as to whether BS EN45011 or BS EN 17024 was appropriate.
4.	Scheme to avoid conflicts of interest.	<p>There was no disagreement in principle. Three operators commented that this was standard UKAS territory, and the criterion would not be required if UKAS accreditation was in place. Others argued that a clearer definition of what constituted a conflict of interest would be helpful, that there were links with the arguments about the self-financing of schemes, and that DCLG needed to establish clearer rules about the links with commercial enterprises. There were suggestions that conflicts of interest could be managed by setting up an independent scheme committee or appointing an independent provider to undertake inspection and complaint investigation.</p> <p>EN45011 clauses 4.2c, 4.2e, 4.2n and 4.2o were identified as covering this area.</p>
5.	Scheme to have commitment to membership growth	<p>Nine scheme operators commented on this proposed criterion, all of them expressing a degree of concern ranging from 'strongly disagree' to 'have some concerns'. Two respondents in the 'professional and trade representative bodies' group also expressed reservations. No respondents commented in support.</p> <p>Concerns were that a membership growth requirement will undermine proper commitment to maintaining standards among members, and will lead to poaching between operators. Several respondents also commented that scheme membership in their industry is approaching a natural ceiling, and that continued growth is not practicable.</p>
6.	Scheme to produce audited annual accounts	<p>Comments on this proposed criterion ranged from strong support to some disagreement. The latter stemmed from a perceived link between this proposal and the proposed requirement for schemes to be self-financing (see 2 above). Other comments were that the requirement for formal audit – as opposed to the preparation of a statement of accounts - went beyond UK law in so far as it applied to businesses with a</p>

		turnover of less than £5m, that it might require schemes to change their current accountant if he/she did not have an audit licence, and there would be cost implications for operators which DCLG needed to reflect in their Impact Assessment.
<b>Group 2: The scheme and its members</b>		
7.	Member must be technically competent as assessed against appropriate National Occupational Standards (NOS) under a Minimum Technical Competence (MTC) procedure.	<p>There was no disagreement with the proposition that members must be technically competent but a range of views were expressed on how this should be measured and applied. Four of the scheme operators argued that an MTC procedure must be in place before a scheme was authorised, and that a commitment 'to work towards' a procedure was not good enough. Another urged that the requirement should apply to existing schemes as well as new ones.</p> <p>On NOS and NVQs, there were varying concerns (i) that they were just not good enough to guarantee adequate standards, and that an independent expert assessment was required; (ii) that NOS should be required only for work with a major bearing on building regulation compliance; and (iii) that they might not be appropriate for work for which professional qualifications were an entry requirement. Respondents from the glazing industry flagged up that NVQs were not commonplace in their sector, arguing variously that the requirements for measuring competence should not be too restrictive, and that a MTC procedure relying on NVQs would take time to put in place.</p> <p>Several respondents argued the importance of consulting widely within the sector when agreeing an MTC procedure and related standards.</p>
8.	Schemes to ensure mandatory training for members on changed Building Regs and/or EN/BS standards.	<p>There were expressions of support for the importance of training.</p> <p>A number of respondents queried who should be responsible for providing mandatory training, a couple commenting that provision by scheme operators would not be permissible under EN45011 on grounds of conflict of interest. One scheme operator currently providing mandatory training wanted to see a level playing field where other scheme operators were obliged to provide such training also, while another operator commented that they were not in a position to enforce take-up of their programmes when there were alternative providers.</p> <p>A couple of respondents noted that simple</p>

		<p>communication of change to regulations or standards would be adequate in more simple and straightforward cases, rather than a formal training programme. There were also queries about who needed to undertake the training – the registered business, the manager, the supervisor, the installer? – and about how knowledge and understanding was to be assessed.</p>
9.	<p>Scheme to undertake periodic random inspections of a representative sample of each member's work</p>	<p>Generally, respondents agreed that inspection was important and that a risk-based approach might replace a fixed periodic system after an agreed period of membership. There were concerns from scheme operators that the same minimum requirements and risk assessment framework should apply within a sector to avoid market distortions, and that new arrangements should not interfere with existing cycles of inspection, nor impose additional costs. A couple of respondents suggested that UKAS / EN45011 may require annual inspections. Again, respondents were concerned that there should be stakeholder involvement in the setting of minimum standards.</p> <p>[See also analysis of responses to Q. 8.]</p>
10.	<p>Scheme to have effective sanctions in place for dealing with non-compliance by members.</p>	<p>Again, there was no disagreement with this criterion in principle. Several respondents wanted to see a common set of sanctions in place, some suggesting that DCLG should provide notes for guidance. LABC argued that sanctions should include provision of assistance to LABC to ensure local authority enforcement powers can be used effectively where appropriate. One of the operators wanted to see a link between scheme sanctions and Building Control prosecution in severe cases while another queried who would monitor the work of those expelled from a scheme.</p> <p>Several respondents argued that scheme members should have a right of appeal against sanctions.</p> <p>One respondent argued that the application, execution and monitoring of sanctions should be seen to be independent so as to ensure confidence in the scheme.</p>
11.	<p>Scheme to publish scheme rules and fee structure</p>	<p>There was no disagreement with this proposal. Comments were that it should be an absolute requirement rather than a commitment, and that the information should be web-based.</p>

12.	Scheme to have mechanism to alert other schemes to the names of former members whose membership has been terminated.	<p>While there was general agreement that it was desirable to improve communication between schemes to avoid 'rogue' members transferring from one to another, many respondents also commented that this would not solve the problem of 'phoenix' companies who re-appeared under a different name. Some scheme operators argued that there should also be a requirement to inform building control in cases where sanctions were applied.</p> <p>One existing operator disagreed with the proposal on the grounds that the Data Protection Act precluded the disclosure of such information about members. Another queried the legality of the proposal.</p>
<b>Group 3: The schemes and their customers</b>		
13.	Scheme to have a robust and publicised complaints procedure.	See analysis of responses to Q.5 in main report.
14.	Scheme to arrange provision of financial protection for consumers.	See analysis of responses to Q. 6 in main report.
15.	Scheme members to remain responsible for compliance.	There is no disagreement with this proposition. One respondent notes that the recent DECC Microgeneration Certification Scheme will allow the manufacturer rather than the installer to take on responsibility for the installed product.
16.	Scheme to commit to publishing membership lists.	<p>Most respondents were happy with this proposed criterion. However, one scheme operator said that they were not prepared to publish a full list of registered members as they had in the past been used by competitors to poach them. This respondent was happy to provide names and contact details through a post-code search by consumers, an approach also favoured by another scheme operator. Other comments were that contact details of members who do not work directly for the public should not be published to avoid wasted calls, and that other detailed arrangements would need attention, including ensuring that published LABC and scheme records were consistent and up-to-date. Two operators also expressed concern about the costs.</p> <p>LABC comment that the existing website is hosted by the LABC for competent persons' schemes, and</p>

		covers only Part P (electrical safety) schemes. Significant development of the site would be needed to meet this broader requirement which – though very welcome in principal – would need to be funded by the schemes or some other source.
17.	Scheme to commit to promote and advertise CPS	<p>Comments on this proposed criterion came exclusively from scheme operators, many of whom commented that it was ambiguous. They were uncertain as to the nature or the scale of the promotional activity required, and whether the requirement was to promote the scheme to potential members or to consumers. There was also a suggestion that DCLG should also be promoting the scheme on the basis of updated material, and that some steer was required from the Department on the level of commitment required.</p> <p>Several respondents noted that they were already involved in significant promotional activity.</p>
18.	Scheme to ensure that customers receive certificate of compliance on completion of work.	<p>A number of scheme operators argued that they are not in a position to ‘ensure’ that certificates are issued, and that a criterion which required the establishment of appropriate scheme rules and audit procedures would be more appropriate.</p> <p>LABC took the different view that scheme operators themselves rather than their members should be responsible for issuing compliance certificates so as to ensure that work was properly recorded and notification procedures followed.</p> <p>A couple of operators argued that a common arrangement needed to be developed to apply to all schemes so as to provide a level playing field; including one operator which itself issues compliance certificates at present.</p> <p>ATTMA argue that this principle <u>should</u> apply in their sector, contrary to the note in italics on page 16 of the consultation document.</p>
<b>Group 4: The scheme and DCLG</b>		
19.	Scheme to provide such information as is required by DCLG	Some scheme operators criticised this criterion as too ambiguous and open-ended. Commentators required clarity about what information will be required, and there were requests for a level playing field between schemes. One respondent argued that an emphasis on complaints information will not be helpful.

20	Scheme to commit to external monitoring	There was no disagreement about the need for external monitoring but mixed views on whether this should be done through UKAS accreditation mechanisms. Views are reported in more detail under Q. 10 in main report.
<b>Group 5: The scheme and Building Control Bodies</b>		
21.	Schemes to ensure that they are notified by members of completed work so scheme operator can inform Building Control Bodies.	Respondents agreed that schemes should make arrangements for members to notify completions to them in good time, but several queried to practicability of schemes 'ensuring' that members do so and/or putting arrangements in place which will ensure 100% success. One respondent rejected the suggestion of checking members' order books put forward in the 2009 evaluation report as unworkable, suggesting standardised procedures based on education, and culminating in expulsion if necessary. Another respondent noted that harsh penalties for late notifications could be counter-productive.
22.	Scheme and members to commit to using LABC confidential hotline to allow LAs to act on illegal work	There was general agreement with this. Additional comments were: <ul style="list-style-type: none"> <li>• there should be a reciprocal requirement on LABC to advise schemes about errant members;</li> <li>• the Department should fund and progress a publicity campaign to promote the hotline. This might be addressed more widely than the schemes and their members.</li> <li>• the Department or LABC should pay for the hotline.</li> </ul>

Department for Communities and Local Government  
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**ISBN: 978 1 4098 3431 1**