

Annex A

Response form

Section four: The building control system

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

If possible, please could you respond by email to:

building.regulations@communities.gsi.gov.uk

Alternatively, responses can be sent by post to:

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

About you:

(i) Your details

Name:	Hywel Davies
Position:	Technical Director
Name of organisation (if applicable):	CIBSE
Address:	222 Balham High Road, Balham, London, SW12 9BS
Email:	hdavies@cibse.org
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(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response Personal views

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

Yes No

Name of group:

Chartered Institution of Building Services Engineers (CIBSE), the learned and professional body for building services.
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(iv) Please tick the *one* box which best describes you or your organisation:

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

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

Micro – typically 0 to 9 full-time or equivalent employees (incl. sole traders)

Small – typically 10 to 49 full-time or equivalent employees

Medium – typically 50 to 249 full-time or equivalent employees

Large – typically 250+ full-time or equivalent employees

None of the above (please specify)

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

Yes No

Name of scheme:

CIBSE do run a UKAS accredited energy assessor scheme and are part of the Green Deal pilot with UKAS.

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

Yes No

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

Questions:

¹Chapter 2: Improving local authority building control processes

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

Yes No Don't know

Please give your reasons:

So that all work is properly certified as complete, and so that the completion certificate captures details of the various notices produced, particularly for non-domestic buildings, during construction.

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

Yes No Don't know

Please give your reasons:

We believe that the certificate should also indicate clearly that the Building Control Officer is satisfied that the requirements of Regulations XX and YY have been met and a certificate duly received by them. Completion Certificates for building works

Regulations 41 and 42 of the Building Regulations 2010 require that where work is carried out which is controlled by the specified Parts of Schedule 1, namely sound insulation testing and mechanical ventilation air flow rate testing, then “the person carrying out the work shall, for the purpose of ensuring compliance with [the relevant] paragraph”, ensure that the testing is carried out and a notice given to the local authority.

The changes to the format of completion certificates should be amended to require the building control officer to confirm that these notices have been received. This has no cost impact, since it is merely requiring the building control

¹ Chapter numbers correspond to those in Section four of the consultation.

officer to confirm that an existing statutory provision has indeed been carried out.

Regulation 43 covers pressure testing of buildings. It contains a significant and probably unintended loophole, as follows:

43.—(1) This regulation applies to the erection of a building in relation to which paragraph

L1(a)(i) of Schedule 1 imposes a requirement.

(2) Where this regulation applies, the person carrying out the work shall, for the purpose of

ensuring compliance with regulation 26 and paragraph L1(a)(i) of Schedule 1—

(a) ensure that—

(i) pressure testing is carried out in such circumstances as are approved by the Secretary

of State; and

(ii) the testing is carried out in accordance with a procedure approved by the Secretary of

State; and

(b) subject to paragraph (5), give notice of the results of the testing to the local authority.

(3) The notice referred to in paragraph (2)(b) shall—

(a) record the results and the data upon which they are based in a manner approved by the

Secretary of State; and

(b) be given to the local authority not later than seven days after the final test is carried out.

(4) A local authority are authorised to accept, as evidence that the requirements of paragraph

(2)(a)(ii) have been satisfied, a certificate to that effect by a person who is registered by the British

Institute of Non-destructive Testing(b) in respect of pressure testing for the air

tightness of

buildings.

(5) Where such a certificate contains the information required by paragraph (3)(a), paragraph

(2)(b) does not apply.

So paragraph (4) authorises a local authority to accept “a certificate” provided by a BINDT registered person. But paragraph 5 says that where the certificate contains the information required by paragraph (3)(a), then the local authority does not have to receive a notice.

Whilst the strict legal interpretation of this is that the certificate that the requirements of paragraph

(2)(a)(ii) have been satisfied, and that the certificate is provided in lieu of notice, this is not readily apparent. Given the concerns about compliance with the pressure testing requirements, would it not be a simplification and deregulation measure to amend Regulation 43 as follows:

43.—(1) This regulation applies to the erection of a building in relation to which paragraph

L1(a)(i) of Schedule 1 imposes a requirement.

(2) Where this regulation applies, the person carrying out the work shall, for the purpose of

ensuring compliance with regulation 26 and paragraph L1(a)(i) of Schedule 1—

(a) ensure that—

(i) pressure testing is carried out in such circumstances as are approved by the Secretary

of State; and

(ii) the testing is carried out in accordance with a procedure approved by the Secretary of

State; and

(b) subject to paragraph (5), give notice of the results of the testing to the local authority.

(3) The notice referred to in paragraph (2)(b) shall—

(a) record the results and the data upon which they are based in a manner approved by the

Secretary of State; and

(b) be given to the local authority not later than seven days after the final test is carried out.

(4) A local authority are authorised to accept, as evidence that the requirements of paragraph

(2)(a)(ii) have been satisfied, a certificate to that effect by a person who is registered by the British

Institute of Non-destructive Testing(b) in respect of pressure testing for the air tightness of

buildings.

(5) Where such a certificate contains the information required by paragraph (3)(a), paragraph

(2)(b) does not apply.

This amendment would clarify the Regulation, and remove the potential confusion between notices and certificates. The requirement proposed in this response in relation to the notices required under Regulations 41 and 42 could then be extended to Regulation 43, providing a simple means of confirming that these notices have indeed been provided as already required.

A final addition to the completion certificate would be to require the Building Control Officer to confirm that the commissioning notice required under Regulation 44 had also been supplied. In this way the Building Control Officer would be entitled to decline to issue a completion certificate where the notices have not been deposited, indeed if providing an accurate certificate he would be required to decline to supply the certificate until satisfied that the notices under Regulations 41 to 44 have been supplied. Since these notices are already a regulatory requirement, this proposal can only be an additional cost to those who currently fail to comply with the Regulations, and that cannot be a legitimate cost to include in an impact assessment. This is therefore a simple zero cost means to improve compliance with these aspects of the Regulations.

This proposal would also overcome another flaw in the current Regulations. At present, Regulation 47 prevents the BCO from taking enforcement action under Section 35 of the Building Act for non compliance with Regulations 41-44

(amongst others). The approach outlined above would provide BCOs with a simple very low cost remedy to breaches of Regulations 41 to 44 – no notices, no completion certificate.

However, this does not quite eliminate the “get out of the magistrates court” element of Regulation 47, since it still prevents a BCO from taking action in the absence of a notice of the CO2 emission rate calculations (Reg 27) or a notice giving details of the energy performance certificate (Reg 29) or a notice of the Wholesome water consumption calculation (Reg 37).

Again, these deficiencies could be quickly and simply remedied by inserting a line for each of these notices in the amended completion certificate, and again, the only cost of this would be to those who are currently not complying with the regulations.

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

Yes No Don't know

Please give your reasons:

CIBSE has argued at some length for a risk based approach, which allows Building Control to focus on those projects that are considered most likely to require attention. This should allow those who already address compliance more responsibly to reduce the regulatory costs and benefit from adopting good practice on a voluntary basis. One way to incentivise voluntary measures to comply with the regulations, particularly those more technical and specialist aspects such as Part L is sometimes alleged to be, is to enable those who can demonstrate appropriate use of suitably qualified practitioners to benefit from a reduction in formal inspections. We believe that this proposal will help to introduce such an approach, subject to effective implementation of certain other proposals contained within Part 4 of the consultation, relating to Competent or Approved Persons, or both.

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

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

Yes No Don't know

Please give your reasons:

To improve consistency between the two inspection regimes.

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

Yes No Don't know

Please give your reasons:

CIBSE has no view on this proposal

Chapter 4: Strengthening enforcement

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

Yes No Don't know

Please give your reasons:

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

Yes No Don't know

Please give your reasons:

CIBSE believes that this change is essential to demonstrate to the EU that the UK is taking serious steps to address Article 27 of the EPBD, which states:

“Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall communicate those provisions to the Commission by 9 January 2013 at the latest and shall notify it without delay of any subsequent amendment affecting them.”

The requirements for carbon emissions calculations and the notice of an EPC required by Regulations 27 and 29 implement aspects of the EPBD. The amendments to the completion certificates proposed in our response to Q2.2 as a means of ensuring that the notices required by Regulations 27 and 29 are indeed deposited are a further means of demonstrating that in England Article 27 is being addressed.

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

Yes No Don't know

Please give your reasons:

In order to increase the likelihood of non-compliant work of any description being identified and those who suffer loss as a result having some realistic prospect of an effective remedy.

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

Yes No Don't know

Please give your reasons:

All, on the basis that the most appropriate is selected in the empowering regulation or order. The current reliance on criminal sanctions appears to act as a barrier to enforcement except in the most serious cases, and this change would remove that. It would also add to the case for demonstrating that the UK is implementing Article 27 of the EPBD effectively.

We support all of these measures being adopted for appropriate breaches of the regulations.

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

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

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

Fixed Monetary Penalty:

Procedural ²	<input checked="" type="checkbox"/>	Penalty	£150 Dom or £500 Non dom
Minor Technical ³	<input checked="" type="checkbox"/>	Penalty	£150 and £60/day.nondom £500 & £120
Serious Technical ⁴	<input type="checkbox"/>	Penalty	Not appropriate

Variable Monetary Penalty:

Procedural	<input checked="" type="checkbox"/>	Penalty	Scale charges in order/regulations
Minor Technical	<input checked="" type="checkbox"/>	Penalty	
Serious Technical	<input type="checkbox"/>	Penalty	Not appropriate

Compliance notice:

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

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

Procedural	<input type="checkbox"/>	Minor Technical	<input checked="" type="checkbox"/>	Serious Technical	<input checked="" type="checkbox"/>
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² A breach that is considered by a building control body to be a procedural breach of the requirements of the Building Regulations. For example, it has been suggested that this could be failure to provide the required fire safety information to the building owner or failure to notify completion of work.

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

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

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

Yes No Don't know

Please give your reasons:

This is an obvious streamlining of the two regimes, and should not require detailed explanation or justification. Why should they not be able to request enforcement action?

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

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

Yes No Don't know

Please give your reasons:

Given the growing demands on BCBs and the fact that there is no additional funding available to support their work, the only way to enhance compliance is to give the professionals who design and deliver buildings greater responsibility for checking and signing off the compliance of their work.

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

Design compliance with the requirements of Part L; compliance with Regulations 26,27, 29, 41 - 44. We believe that there is also scope for the development of a scheme for Lighting.

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

Yes No Don't know

Please give your reasons:

We already have such arrangements for structural design. Given the concerns that Part L is complex, and the widespread view that energy conservation is not a critical risk, unlike, structure, fire and drains, CIBSE would once again propose that there should be formal arrangements which allow suitably qualified and competent engineers to certify compliance with Part L.

This is a very long running proposal which extends back at least to the 2002 revision. We understand the reasons why the Department has previously opted not to pursue this route, but given the current constraints on BCBs and the desire to move more formally to risk based compliance checking and enforcement, CIBSE would like to see a scheme which allows services engineers to sign off on Part L design in the way that structural engineers sign off on Part A design (and not works) is now overdue. We would welcome an early discussion with the Department to progress this.

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

Part L etc

Chapter 6: Introducing Appointed Persons

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

Yes No Don't know

Please give your reasons:

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

LCC, CEng in a relevant discipline

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

certifying compliance with the requirements of Regulations x, y, z Making a declaration that the works make reasonable provision for conservation of heat and power and adequate ventilation What about water and Part G?

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

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

(i) improve local authority building control processes;

Yes No Don't know

Comments:

CIBSE does not have a sufficiently detailed knowledge of the underlying costs and revenues of the building control to wish to comment on the IA.

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

Yes No Don't know

Comments:

(iii) strengthen enforcement;

Yes No Don't know

Comments:

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

Yes No Don't know

Comments:

(v) introduce Appointed Persons?

Yes No Don't know

Comments:

For each of the above proposals:

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

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

Any other comments

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

Comments:

We believe that the proposal to introduce consequential improvements will have an impact on building control bodies and it is not clear where this is addressed in the Impact Assessment.