



The Future of Building Control **Consultation**



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Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Communities and Local Government Publications
PO Box 236
Wetherby
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Tel: 08701 226 236
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Contents

Introduction	5
Summary of Consultation Proposals	7
Evidence Gathered and Consultation Impact Assessments	7
How to Respond	8
Help with Queries	10
Chapter 1: A Vision for Building Control	11
Chapter 2: A Better Approach to Delivering Regulations and Guidance	23
Chapter 3: Modernising Inspection and Enforcement	31
Chapter 4: Alternative Routes to Compliance	45
Chapter 5: Improved Performance and Capacity	58
Annex A: The Building Regulations and the Building Control System: a Brief Explanation	68
Annex B: Response Form	72
Annex C: The Consultation Criteria	85
Annex D: The Review of Building Control Working Group	87

Introduction

1. This consultation paper sets out and seeks views on proposals by Government for changes to the building control system in England and Wales. The changes proposed in this document are designed to address weaknesses in the current system, as identified by users of the system and the building control industry itself, and are intended to both improve compliance with the Building Regulations and further reduce the burdens associated with the system.
2. The Building Regulations set baseline regulatory standards which exist to ensure that our buildings are safe, energy efficient and accessible for everyone who lives and works in and around them. The building control system is the system through which these standards are updated, applied and enforced. The regulations apply to most new buildings and many alterations of existing buildings in England and Wales, whether domestic or non-domestic. More information on how the system operates and what the regulations are about can be found in Annex A.
3. Over the years, the Building Regulations have brought great benefits to society. The quality, variety and performance of buildings in this country are a testament to the past success of the system and the people who operate it.
4. The value of the building control system can be put down to a number of factors. Firstly, the existence of professional, independent third-party assurance provided by local authority inspectors and private Approved Inspectors (AIs), which ensures that the standards required by the regulations are met. Secondly, the fact that the regulations are 'functional' rather than prescriptive, preserving design freedom and enabling designers to innovate. Thirdly, the fact that the regulations are strictly evidence-based and designed to achieve a particular positive goal, or to avoid a very negative effect. Any changes to the technical requirements in the regulations are only introduced when Government is clear that the evidence justifies them and that they are achievable for all relevant sectors of the construction industry.
5. The result of this is that the system has been very effective; for example, deaths caused by fires in the home are at the lowest for 45 years and over 97 per cent of all new homes meet the current standards for sound insulation. The inclusion of access to buildings in the regulations has seen a positive cultural change where access is now more readily incorporated into the design of new buildings. In addition, the energy efficiency of new homes has been dramatically improved over the last ten years.
6. However, the world is moving on. Today we are demanding ever more from building control. We ask it to ensure that our buildings are not only safe but that they are sustainable and make a direct contribution to tackling climate change. In doing so, we ask it to take account of ever more complex technologies whilst remaining easy to understand and comply with.

7. Climate change is one of the greatest challenges we face. Around a quarter of the UK's current carbon emissions (around 150 million tonnes of carbon dioxide each year) arise from the way we heat, light and run our homes. Yet we need more homes. The Government has set a housing target for 2016 of 240,000 additional homes a year to meet the growing demand for housing and address affordability issues. It is imperative that these homes are built in a way that minimises carbon emissions. The Government is therefore also committed to making all new homes zero carbon by 2016.
8. Achieving our targets for more new homes and more sustainable homes will be dependent on compliance with the Building Regulations which will set the standards for meeting these new targets. To compliment the targets we have set for homes the Government announced its ambition for all new non domestic buildings to be zero carbon from 2019 and we will be consulting on this ambition and how it can be achieved later this year.
9. However, feedback from stakeholders tells us that, while the system is not broken, it has some significant weaknesses that must be tackled if we are to ensure that it remains fit for purpose in today's world and in the future.¹
10. In March last year we published a short document² which set out the key areas for reform that we believed had the potential to address the main weaknesses in the system. Since then the Review of Building Control Working Group has been established, representing the people who operate and use the building control system day in and day out. We have used this group to develop and test our proposals. This work and the other evidence we have gathered in this time have culminated in the detailed proposals set out here. These are practical actions which we believe should be taken to ensure that we increase compliance with the Building Regulations and reduce burdens and costs placed on users of the system.
11. There are many differing views on how the system can be improved. It is not our intention in this consultation document to cover every idea that has been put forward on this subject. Nor is this consultation the result of a 'blank sheet' review. It does not look at structural changes to the system itself or changes to the roles and responsibilities of the key players, although these issues may be picked up in future longer term strands of work.
12. Our intention in this consultation document is to define the practical actions and changes which need to happen as soon as possible in order to create a more effective framework within which building control can operate today and develop into the future.
13. Welsh Ministers have been consulted on and support the proposals contained in this consultation. At the request of Welsh Ministers the UK Government is currently

¹ When we refer to stakeholders, we refer to our key stakeholders and they include building control bodies, developers, architects, designers, builders, homeowners, etc.

² *The Future of Building Control*, CLG, March 2007, www.communities.gov.uk/documents/planningandbuilding/doc/324876.doc

considering the possibility of transferring responsibility for Building Regulations to Wales. Should a transfer of responsibility take place prior to the implementation of changes proposed in this document, the Welsh Assembly Government will have regard for this consultation, the responses received (and in particular those received from Welsh respondents) and the conclusions reached in bringing forward any proposals for change in Wales.

Summary of Consultation Proposals

14. We are consulting on a range of proposals and asking a number of questions on each. These proposals fall into the following five areas:
 - developing a vision for building control
 - establishing a better approach to the way we deliver regulations and guidance
 - modernising inspection and enforcement
 - providing alternative routes to compliance
 - enabling improved performance and capacity
15. A full list of questions being asked under these themes is attached in Annex B.

Evidence Gathered and Consultation Impact Assessments

16. The first stage of this review has involved developing a clear understanding of the case for reform. Over the last 18 months, Ministers and officials have listened to stakeholder views and have gathered suggestions. We have also tested our proposals on those that use the system on a day-to-day basis. Principal inputs to the review have included:
 - **a survey of Building Control Bodies (BCBs)** conducted in autumn 2007 by the Building Control Alliance³ on our behalf in order to give a breakdown of the activities carried out by BCBs and much needed data to underpin the issues of concern stakeholders have raised with us. The full report has been published alongside this consultation document⁴.
 - **responses to the Department's March 2007 *Future of Building Control* document** which set out the direction we were minded to pursue and invited comments. Over 30 responses were received, mostly from building control

³ The Building Control Alliance was formed in 2007 to represent the views of its members: Association of Building Engineers, Association of Consultant Approved Inspectors, Local Authority Building Control, RICS Building Control Faculty and the Chartered Institute of Building.

⁴ www.communities.gov.uk/publications/planningandbuilding.

bodies, construction companies and professional institutes, and fed into the development of the proposals in this fuller consultation document.

- **the Review of Building Control Working Group** was established to test proposals as they were developed. Membership of the group is listed at Annex D but in summary include Local Authority Building Control, Approved Inspectors, architects, developers, small builders and consumer representatives. We held three half-day meetings with work taken forward between meetings by virtual think tanks. We also convened a half-day workshop on 'Vision for Building Control' hosted by the Building Control Alliance
 - the **Building Regulations Advisory Committee⁵ (BRAC)** has reviewed all of the proposals contained within this consultation document and has made an invaluable input to their development
 - the **'Achieving Building Standards Study'⁶** (2007) carried out by Science Applications International Corporation on behalf of the Department, provided an insight into how the building control system is perceived by many stakeholders; how successfully building standards are being achieved; and barriers to improvement
 - a major **Ministerial round-table meeting** with the construction industry in June 2006, at which the strategic approach to this review was discussed
 - a **'Review of Building Regulations and Options for Change'** in 2006 conducted by a Task Group of construction industry professionals, which looked at the nature of the regulations themselves and how our approach to future regulation could be improved
 - a wide range of discussions with individual stakeholders to explore areas in which the building control system could be improved and the Building Regulations simplified to make them easier to understand and more user-friendly.
17. Impact Assessments, assessing the potential impacts of the major proposals, have been published separately and can be found at www.communities.gov.uk/publications/planningandbuilding alongside the supporting economic analysis of the costs and benefits.⁷

How to Respond

18. Questions on which we are seeking input are raised throughout this document and repeated in Annex B. Responses to this consultation must be received by **10 June 2008**. We are also seeking views on the Consultation Impact Assessments, particularly to help gather the evidence needed to underpin the proposals.

⁵ A statutory committee set up to advise Ministers on Building Regulations.

⁶ www.communities.gov.uk/publications/planningandbuilding/achievingbuildingstandards.

⁷ Economic analysis of changes to the Building Control procedures, 2008.

19. This is an e-consultation and we encourage you to submit your comments online at www.communities.gov.uk/futurebuildingcontrol or use the response form provided in Annex B. To reach the householder on the proposals which will have a significant impact on them, we are launching a parallel e-consultation. We hope that you find it easy to submit your responses and that you benefit from having a variety of ways in which you can feed through your views.
20. You may print copies of this document without seeking permission.

Confidentiality and data protection

21. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
22. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
23. The Department will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
24. Confidential responses will nevertheless be included in any statistical summary of numbers of comments and views expressed, although individuals will not be identified.

Further communication

25. Communities and Local Government wishes to engage better with its stakeholders by automatically notifying you of changes to the regulations and approved documents and of consultations on Building Regulations issues.
26. The UK Data Protection Act 1998 requires your consent before we can do that. If you would like further communication from us on Building Regulations related issues, please indicate your consent in the check box on the response form either in paper format or online.
27. We will not disclose your details to any third parties and the information provided will only be used to inform you of any changes to the building control system, future consultations and other changes which you indicate an interest in.

28. A summary of responses to this consultation will be published within three months at www.communities.gsi.gov.uk. Paper copies will be available on request.

Help with Queries

29. If you have any queries or problems with submitting an online response or require a hard copy of this consultation document please contact:

Mary Onyejiaku
Sustainable Buildings Division
Department for Communities and Local Government
Zone 2/G6, Eland House
Bressenden Place
London SW1E 5DU
e-mail: thefuture@communities.gsi.gov.uk

30. Questions about the policy issues raised in the document can be addressed to:

Paula Higgins
Sustainable Buildings Division
Department for Communities and Local Government
Zone 2/G6, Eland House
Bressenden Place
London SW1E 5DU
or by e-mail to paula.higgins@communities.gsi.gov.uk.

31. If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Albert Joyce
Consultation Co-ordinator
Department for Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London SW1E 5DU
or by e-mail to: albert.joyce@communities.gsi.gov.uk

32. A copy of the consultation criteria from the Code of Practice on Consultation is in Annex C.

The Government's Proposals

Chapter 1

A Vision for Building Control

Introduction

33. As mentioned in the Introduction, this is a time of major change for the building control system. The challenges of climate change and the need to dramatically increase the number of new homes we are building will only be met if the system is working effectively, and that means ensuring maximum compliance and minimum burden.
34. In order to achieve and maintain this into the future we need to make sure we are all working to the same shared vision for building control. Developing that vision at the moment is difficult because:
 - i) many people do not understand what building control does and how to use it to ensure that they get a good job done which meets their needs and meets minimum standards
 - ii) many people do not understand their role or the role of their builder or designer in the system so either assume that building control does something it cannot understand or tries to avoid it altogether
 - iii) many people do not understand the connection between building control and other regimes, particularly planning
35. We need a consensus about these things and we need to use that as the foundation of a single vision for building control which will guide us in the future as challenges grow. This vision needs to meet realistic customer expectations for the service, meet the construction industry's needs and ensure high levels of compliance and low levels of burden.

Issues

Those who do not understand what building control is for...

36. The purpose and scope of the building control system is often not understood and this can have a significant impact on compliance. The building control system is a means of protecting the public interest by promoting a baseline regulatory standard for building performance.
37. Over recent years the areas covered by the Building Regulations have been extended from pure health and safety related issues to ensuring greater conservation of fuel and power and improving accessibility into and around buildings for all those using them. However, there remains a need for these issues to be better understood by building professionals and members of the public if we are to achieve increased compliance with the standards. This is particularly important for meeting our commitments for delivering increased numbers of, and more sustainable, homes as well as contributing to wider Government targets on climate change.
38. We believe there is a case for encouraging those involved in the delivery of building control services to focus both on the purpose of the process and on its impact on the delivery of compliant buildings. This is true for many areas covered by the regulations, but stakeholders have suggested that it is particularly relevant to situations when, for example, checking compliance with energy efficiency may be treated as less important than, and perhaps traded-off against, more traditional health and safety aspects of the regulations. We need a shared vision to ensure Local Authority (LA) Building Control and Approved Inspectors (AIs) are focused both on raising compliance across the board and on protecting the public good.
39. There is also a common misconception that the Building Regulations cover the quality of a building, as opposed to key performance standards. This is not the case. For example, the regulations play no part in resolving a grievance between a homeowner and a designer or a builder on an issue of aesthetics or the quality of a finish.
40. While the regulations contain a provision with respect to the quality of materials and workmanship in Regulation 7⁸, it is only applicable where quality impacts directly on achieving the requirements of the regulations. For example, in a kitchen refit, plumbing and electrical installations will most likely come within scope of the Building Regulations. However, faults arising with regard to the cupboards, floor and wall finishes, etc are not covered by the regulations and, despite being important to the clients, are nonetheless generally outside the remit of the building control process.

⁸ Guidance on this provision is given in an Approved Document to Regulation 7.

41. The Government believes that to change this approach would involve a considerable increase in workload and associated costs. In addition, quality is a subjective concept and changing the current position would not produce a measurable improvement on the current process. Nonetheless, we do think there is a case for better, up-front communication to the customer about what building control can and cannot deliver.

Those who do not understand their role...

42. Stakeholders also tell us that there is a lack of understanding of the current roles and responsibilities of the different groups and how the building control system should operate. This situation is inevitably hampering compliance with the standards.
43. Although it is the function of each Building Control Body (BCB)⁹ to ensure that work they supervise complies with Building Regulations, the primary responsibility for compliance with the regulations rests with the person carrying out the work. Although every item of work carried out which is covered by the Building Regulations must comply, a BCB, whether private or public, cannot, and is not required to, check every item. Therefore, in practice the primary means by which BCBs ensure compliance is not to check every aspect of the work but to try to ensure that the person undertaking the work is complying properly. This may be done by advising prospective clients at the design stage, inspecting plans submitted, identifying problem areas and suggesting possible ways of improving compliance. The BCB may then check compliance on site at certain key stages of construction. Where non compliance is identified, action can be taken against the person responsible.
44. Unfortunately, the role of building control is widely misunderstood by customers and often leads to situations whereby some small builders, those undertaking DIY projects and some larger development companies rely on their BCB for detailed advice on how to comply. Whilst this is preferable to a situation whereby a builder makes costly mistakes or risks formal enforcement action against the building owner, this level of advice does have the effect of discouraging developers and builders from taking responsibility for compliance. It can lead to a situation whereby the BCB is seen to assume, quite inappropriately, the role of a 'Clerk of Works'. That is not an efficient use of either the skills or the resources of BCBs.

Those who do not understand the connection between building control and other regimes, particularly planning...

45. The fact that roles and responsibilities are not generally understood by end-users of the service also has other implications. For example, we believe that too many homeowners are confused when they discover that Planning Approval is a separate requirement to a Building Regulations Approval. This might suggest that compliance with the Building Regulations is, in many cases, being considered much too late into the project.

⁹ Local authority building control and Approved Inspectors

46. A resulting consequence of seeking the BCB's advice late in the project is that time and resources, including money, will have been committed – making retrospective work to ensure compliance with the Building Regulations much more difficult to achieve. The end result is that contact with building control can often be a negative experience for consumers rather than one that adds value to a building project from the start.
47. This situation may be compounded by the fact that even those end-users who are aware of the role of building control, the need to seek approval, and who pay the required fee, will often nominate their builder to take the lead in contact with the BCB rather than having direct contact themselves. Last year, 80 per cent of applications to LA Building Control were submitted by the architect or builder. As such, it is only those with direct contact that see first-hand the value BCBs can add to the building process. To increase compliance and demonstrate added value in the services they offer, BCBs need to do more to connect with the customer – the person paying the fee – and do so earlier in the process.

Government Proposals

Proposal 1.1: Develop a shared vision for the future of building control

48. Last year we held a workshop with members of the Building Control Alliance, the Review Working Group and other stakeholders to better understand the values driving the profession which might be used as a basis for developing a vision for the future. This workshop also identified changes needed to improve the system itself. These are covered in subsequent chapters of this consultation document.
49. We have taken the views expressed at the workshop and feedback from other stakeholders to develop a draft vision for building control. The following boxed text presents a starting point for further discussion with stakeholders and sets out what a vision statement would do and how it could be used.
50. We think the vision statement should clearly explain what building control does and does not deliver. So, for example, quality of workmanship only comes into play in respect of the requirements of the Building Regulations. In all other cases, the checking of final works and snagging issues are the duty of the builder, designer, new homes warranty provider or ultimately the consumer who is paying for the work. Consumer protection sits with Trading Standards, while contract law may also provide a remedy in cases where the builder-client relationship has broken down. BCBs cannot check quality in so far as it applies to aesthetics and finishes.

Questions:

Q1. Do you agree that a vision for building control based on the boxed text below would be useful?

Q2. Are the areas covered in the boxed text below generally the right ones?

Q3. Are there other areas a vision statement should cover?

Q4. Is what we say about quality generally correct? (paragraphs 39-41 and boxed text)

Q5. Are there other issues under quality which we need to cover?

A Shared Vision for Building Control

What is a Shared Vision Document?

There is a general concern from Government and stakeholders that there is little in terms of a guiding strategic vision for the future of building control – what it is for, how it should operate and how it needs to be supported to develop in the future.

The Department, Local Authority and private sector building control, industry and customers need to work together to develop a high-level vision which sets out our shared ambitions for the system and how we will all work within it.

For the Department, a shared vision will drive the work programme of the Sustainable Buildings Division to improve the way the system operates and ensure that the building control industry and others who use the system are properly supported in their efforts to ensure compliance. For Building Control Bodies, the vision will set the framework for operations and provide additional impetus to examine how they could work better, reflecting on the likely risks and opportunities of the future. For users of building control, it will set out what they can expect from the service and from the players within it.

The vision statement in the next box puts forward some possible shared values and points to how the service could operate, what it could encompass and how it could look for users in the future. Over the course of the consultation period we will discuss with stakeholders the appropriateness of these shared values, whether the scope is right and how to define each partner's role.

Our vision is for a service which delivers safe, healthy, accessible and sustainable buildings for current and future generations

To deliver this vision we need a building control system which:

- works with the customer to help them achieve a building project which meets their expectations, as well as building standards and the public need
- works hand-in-hand with other regulators to provide a coherent service to customers
- ensures that the level of inspection is appropriate to the risk and need
- gives local authorities the powers needed to enforce building standards
- ensures all Building Control Bodies regularly assess and improve their performance
- is professional, well-managed and ensures resources are used appropriately
- offers end-users an effective means of resolving disputes about compliance

We also need to be clear with customers that building control will not:

- act as a 'Clerk of Works' monitoring every stage of the construction process on site. That is a matter for the contracts and arrangements put in place between the client and builder. Ultimately, compliance is clearly the responsibility of the person carrying out the work
- address issues such as the finish and aesthetics of the final project where these are not Building Regulations standards – these are a matter for designers, builders, and new home warranty providers
- offer protection to a client in a contract with a builder. This is a matter of contract law

Proposal 1.2: A 'Procedural Guide' to explain what building control is for and action needed to reconnect with the customer

51. In support of the 'Vision for Building Control' we believe there is a case for a more comprehensive guide to the building control system. We already have the Explanatory Booklet¹⁰ which we are currently revising and updating for publication later this year. This short guide provides an introduction to the Building Regulations and is targeted mainly at householders carrying out domestic projects, and is intended to answer preliminary questions.
52. Stakeholders have told us they would also value a procedural guide along the lines of the *Manual to the Building Regulations* which was last printed in 2001 and set out the processes and procedures of the system and the kind of work to which the regulations applied, described the two alternative systems of building control (LAs and AIs), and contained the regulations with an explanatory note on how they might be met. It also gave a summary of other legislation that might apply to building work and contained a list of supporting documents and useful addresses. We agree there is a case for this kind of guide which would act as a useful tool for LAs and AIs in undertaking their functions and raising awareness. We plan therefore to issue a procedural guide which fulfils this function as well as clarifying the intent of the building control system, and set out the roles and responsibilities of the key players, the value building control adds to a project and other areas which need to be better communicated, as identified in this consultation document.
53. This document could be used by building control providers, designers, developers, small builders, surveyors and other professionals involved in relevant building work as well as being available to members of the public wanting to know in greater detail what is involved. This document would sit alongside the shorter Explanatory Booklet and publications that LAs and AIs already produce detailing the building control process and the particular service they provide.
54. We highlighted the issue that building control can be perceived as a negative function rather than one which can add value from the commissioning and design of a building. There is a strong case for turning this potentially negative experience around to give building control a more positive perception as a modern service and source of valued independent advice in the community it serves.
55. The Government thinks it is important that the building control service reconnects with its customers so that, in addition to being legally required to use the building control service (whether public or private), potential end-users can see the benefits they receive. Reaching and engaging potential customers and better communicating the service will increase compliance, particularly for those that might otherwise let their builder take the lead or be tempted to evade the system. This is in part about how the service is delivered but also about communicating and getting credit for what building control does.

¹⁰ Building Regulations: Explanatory Booklet: www.planningportal.gov.uk/england/genpub/en/1115313929415.html

56. Reconnecting with the customer might take the form of building control services:
- issuing a standard document outlining the scope of service at the point of first contact with the customer
 - engaging the applicant/homeowner as well as the builder in any promotional activity and when first point of contact is made on a project
 - giving guidance on how to appoint a designer and/or a builder and encourage homeowners to use contracts

Questions:

Q6. Do you agree that a procedural guide which sets out the purpose of building control, the processes, role and responsibilities and a brief explanation of the regulations would be helpful?

Q7. An online only version of the procedural guide which could be downloaded by users would be easier to keep updated. Would you support this approach?

Q8. Do you agree more needs to be done to communicate the benefits of using building control and that raising awareness particularly amongst those that pay the fees should be an explicit part of a building control service responsibility?

Q9. Do you have any good examples of which we should be aware or organisations that should be engaged to lead in co-ordinating this work?

Proposal 1.3: To create a seamless planning and building control service

57. In discussing the issues of overlapping regulatory regimes with stakeholders, it is clear that the interface between planning and building control caused the most problems and needs to be the primary focus for further work. At the vision workshop last year, there was some support for considering a merged planning and building control process for domestic projects which require both, thus providing one entry point into the LA approval process for the end-user.
58. The Government is working with stakeholders to streamline the planning and building control application process by studying the practicalities of incorporating building control forms with the 1APP Standard National Planning Application. This could allow applicants to submit one application for planning and building control approval. We are looking for a solution that suits all Building Control Bodies (LAs and AIs). An important step to enabling this is the current consultation on electronic communications¹¹. Subject to this consultation we intend to modify current legislation to clearly allow for electronic communication in a number of building control processes.

¹¹ Enabling electronic Communication of Building Control Documents:- Consultation Paper, <http://www.communities.gov.uk/publications/planningandbuilding/enablingelectroniccommunications>

59. The Government is also committed to helping the customer better understand when Building Regulations and Planning approval need to be sought. For example, the new 'common projects'¹² section of the Planning Portal gives examples of common building projects and how both sets of regulations relate to these, illustrated with case studies and details of who is responsible for what.
60. The *Local Government White Paper*¹³ recognised that citizens want right first-time, seamless and accessible services. This is good for LAs too, reducing the costs of rectifying mistakes and avoiding duplication. Services from a variety of public service providers can be brought together at the point of delivery – available in the customer's home via the Internet (using the Planning Portal) or in contact centres or community one-stop-shops.
61. The Government welcomes the increasing number of LAs providing such a service, such as in Hartlepool (see box), and other customer focused approaches to providing a comprehensive service which helps users to navigate and better understand the regulatory regimes.

The **One Stop Shop Service** in **Hartlepool** encourages people to get in touch with a sketch and details of the works they wish to do. Every Wednesday, officers from across the LA and other agencies (Building Control, Development Control, Fire and Rescue Service, Health and Safety Executive, etc) meet to discuss the applications and any informal inquiries. Advice will be offered as to major issues or concerns likely to be raised and whether permission is likely to be granted or refused.

62. However, LAs should not just *appear* to be joined up. The Government also expects LA Building Control and Planning departments to work closely together in delivering their services, such as in Westminster (see box overleaf). Indeed, over one-third of Local Authority Building Control departments surveyed last autumn already check planning conditions on behalf of their Planning departments.
63. This collaborative approach will be particularly important for local authorities as we move towards delivering the Government's zero carbon homes target, and similar ambitions for cutting carbon emissions from new commercial buildings, which will require both increased energy efficiency and much greater use of renewable energy.

¹² www.planningportal.gov.uk/england/genpub/en/1115314762605.html

¹³ *Local Government White Paper: Strong and Prosperous Communities, October 2006.*

64. Our new Planning Policy Statement (PPS)¹⁴ on climate change challenges councils to do more to support the delivery of local renewable or low-carbon energy, such as setting targets for energy for new development to be generated from local renewables or low-carbon sources. The PPS makes it clear that these sorts of local approaches must be achievable and should be set out in a Development Plan document.
65. Moving towards our zero carbon ambitions will be challenging for councils. Planning and Building Control departments will need to work very closely together so that the requirements and methodology for planning and for building regulations are aligned while also ensuring that the customer of these two regulatory regimes are not receiving conflicting messages or demands.

Westminster City Council's formal agreement between building control and planning

Before decisions are made on certain types of planning application, building control is asked if there are any issues that may result in a change in design. If this is the case, the applicant is asked to reconsider the application to avoid resubmission for an amendment planning permission.

When work begins on site, building control issues progress reports to the planning department to consider whether any enforcement action is needed. Planning and building control applications are linked electronically so that officers from each unit can see what actions the others are taking. Financial arrangements between the two departments make this close working relationship viable.

66. From discussions with our stakeholders it seems that other regulatory regimes which impact on the construction process do not present the same cause for concern as the overlap presented by planning and building control regimes. We have undertaken some preliminary mapping of the building process from the perspective of the large developer undertaking a large construction project and that of the small builder undertaking a domestic refurbishment project. In both these cases we did not identify major problem areas which could hinder compliance presented by Health and Safety (CDM) Regulations, Local Acts or Water Regulations. That is not to say that more could not be done to make the regulatory regimes work better together.

¹⁴ www.communities.gov.uk/publications/planningandbuilding/ppslimatechange

Questions:

Q10. *Do you think we should do more to require planning and building control services to operate as a single function to ensure better joining up for the customer?*

Q11. *Do you have examples of successful close working relationships in your LA which we could disseminate?*

Proposal 1.4: Other tools for a seamless service

67. The Local Government White Paper recognised that citizens want right first-time, seamless and accessible services. Services from a variety of public service providers can be brought together at the point of delivery – available in the customer’s home via the Internet or in contact centres or community one-stop-shops.
68. E-enabling has the potential to deliver a faster building control service that is more integrated with planning, and achieving significant time and cost savings for both industry and building control. Although 68 per cent of LAs which responded to our recent survey are able to receive applications electronically, electronic applications made up less than 10 per cent of total applications received by these e-enabled authorities in 2006/07. There is great potential as illustrated in the box below. We want to look at ways of increasing e-enabling as a means of improving the efficiency of the building control system as a whole and the experience for the customer.

Fenland Building Control: an e-enabled service

Most of the work carried out is domestic in nature in this mainly rural authority, with a population of about 90 000. In the six months ending September 2007, 29 per cent of Full Plans applications were received electronically. Going electronic has reduced postage costs as e-mail is used for correspondence. This saving has more than covered the extra cost of printing the applications.

The electronic service is actively promoted to customers and a marketing plan is in place. In 2006, 100 per cent of the regular customers surveyed agreed that the electronic service saved them time and money.

69. We intend to help LAs do more in this area such as:
- Removing any legislative barriers that prevent electronic applications, notifications and delivery. For example, replace the requirement for a tailored insurance certificate to be submitted with the initial notice with the requirement to provide details of the insurance policy.

- Considering ways of enabling electronic applications submitted through the Planning Portal, Submit-A-Plan or direct to local authorities as an interim solution, with the longer-term aim to have one form covering building control and planning permission, to encourage these departments to work together and share information.
- There will be ongoing campaigns aimed at the Planning Portal's three user groups (public, professional and local government) to increase awareness of the Building Regulations and aid compliance; and to promote the portal as a source of information on planning and building regulations.

Questions:

Q12. Do you agree with our aim to further e-enable the building control system and its processes?

Q13. What are the other barriers to more e-enabling that we need to address?

Chapter 2

A Better Approach to Delivering Regulations and Guidance

Background

70. Building regulations exist to ensure that our buildings are safe, energy efficient and accessible for everyone who uses them or lives or works in or around them. They are made under powers provided in Section 1 of The Buildings Act 1984 (as amended by the Sustainable and Secure Buildings Act 2004). The current regulations which set the building standards and requirements are contained in the Building Regulations 2000 (as amended). They contain various sections dealing with definitions, procedures and what is required in the terms of technical performance of building work. These performance requirements are split into 14 parts in Schedule 1 of the building Regulations 2000 (as amended). These parts deal with individual aspects of building design and construction from structural matters (Part A) to Electrical Safety in Dwellings (Part P)¹⁵.
71. The standards are drafted in broad functional terms, rather than prescriptive terms, and the Department issues statutory guidance on how they might be satisfied in common building situations. This statutory guidance on meeting the requirements are known as Approved Documents (ADs), which are issued in 14 Parts to match the corresponding technical requirements.
72. There are other sources of guidance which also provide valuable information and to which Approved Documents (ADs) often refer to. These are, for example, published by the Department itself, British Standards Institute, professional institutions, trade associations, Competent Person Schemes, Robust Details Ltd, manufacturers and others, and can help users in achieving compliance with the regulations.
73. The Government is committed to reviewing and amending the regulations and the corresponding ADs over time in order to ensure they are up to date and achieving the right standards. The current system of review means that a number of Parts may be changed and updated every year. Implementation reviews are conducted a few years after a new regulation, and accompanying guidance, comes into force in order to identify how it is taking effect and whether further changes need to be made. Changes to regulations and ADs can also be driven by Government priorities, outside events such as a major fire or structural collapse, European legal obligations and significant technical advances.

¹⁵ There is no Part I or O.

Issues

74. Construction projects can have long lead-in times and the industry needs certainty in terms of what to expect. Stakeholders have told us that the current frequency of changes to the regulations and accompanying ADs hinders compliance because industry finds it difficult to prepare and plan ahead, and Building Control Bodies (BCB) continually need to get up to speed with new technical requirements. Long lead times in the construction industry also mean regulations are sometimes updated before previous changes have been fully applied. Nearly two-thirds of building control and construction professionals interviewed said that a lack of overall strategy and direction makes it difficult for them to plan their own activities over a reasonable period of, say five years¹⁶.
75. The existing system tends to review individual Parts of the regulations. Changes to one Part can have knock-on effects for others, particularly the more detailed technical guidance in the ADs. This is not easily dealt with in the existing system and there is an increased risk of creating confusing and conflicting advice.
76. Some have argued that the large numbers of technical requirements and guidance (14 Parts) is complex, especially for smaller businesses. In trying to cover a wide range of building uses and situations, some of the ADs have also become lengthy. To check that a particular building project meets the Building Regulations, one might need to refer to all 14 Parts, even though many users, contractors and designers only work in specific sectors (for example, some specialise in domestic extensions while others may deal primarily with industrial buildings). Furthermore, having so many parts which have evolved over time has resulted in repetition, perceived inconsistencies and contradictions.
77. Stakeholders have told us that guidance needs to be simplified and take into account the different types of project and users. Research shows that small builders rely heavily on Building Control Officers to give them the information they need to comply and to keep up with new regulations¹⁷. Of local authorities surveyed, 82 per cent give out technical guides to their clients and believe that further guidance on loft conversions and domestic extensions would help these types of projects to comply while also making their job easier on site.
78. The Planning Portal¹⁸ is the Government's online planning and Building Regulations resource for England and Wales. The site holds guidance on the building control system, regulations, Approved Documents and case studies. This has proved to be a popular source of information, and many have welcomed this move to make guidance more accessible and user friendly. However, there is concern that the name Planning Portal acts as a barrier to full take-up from designers, building control professionals and members of the public.

¹⁶ Achieving Building Standards, 2007. www.communities.gov.uk/publications/planningandbuilding

¹⁷ New Building Regulations (Part L) Research Amongst Builders and Building Control Officers Report, April 2006.

¹⁸ The Planning Portal can be accessed at www.planningportal.gov.uk

79. Stakeholders tell us that the fact that ADs rely on references to advice in other (often referred to as third-party) documents can also cause frustration by requiring the reader to track down and purchase another document of which only part might be relevant, thus reducing comprehension and compliance.
80. It is also worth emphasising that there is no obligation to adopt any particular solution offered in an AD if the relevant requirement can be achieved in some other way. However, we believe some stakeholders (including BCBs) wrongly interpret the ADs as essentially being the regulations, rather than simply offering one possible path to compliance. This interpretation can make it more difficult for innovative or unique projects to show compliance.

Government Proposals

81. We think the following proposals will help to address these very inter-linked issues and deliver a better system of review and suite of guidance to help improve compliance with the Building Regulations.

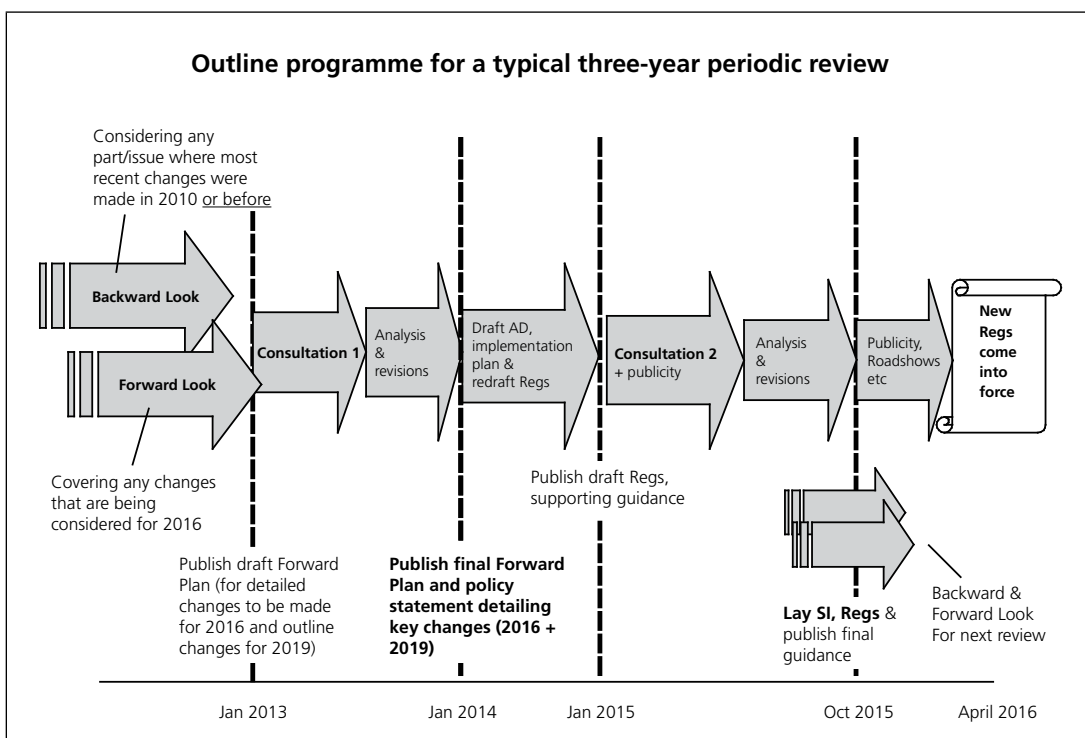
Proposal 2.1: Introduce a periodic system of review

82. In order to create a more open and transparent system that gives industry more time to prepare and innovate, and ensure better compliance, we think that we need to have a fixed periodic cycle for the review of regulations during which we would make any necessary changes across the full body of regulations.
83. The Government would still retain the right to make any essential amendments which may be required between the reviews in order to respond to critical issues but these would be the exception, and we would in the first instance be committed to finding alternative approaches to regulation wherever possible. In addition, the Government is required to implement EU legal obligations by the date set by the European Union, so these obligations will often fall outside this commitment.
84. We have carefully considered the length of the ideal cycle and think that three years strikes the right balance and will better enable industry to prepare and for changes to bed in. The Impact Assessment for this proposal includes a full analysis and costings for cycles of two, three and five years.
85. Some industry and building control bodies have told us that they would like to see a five-year cycle and believe that a shorter period would not reap the full benefits of the new approach. We understand this position but are concerned that five years would be too long to maintain no change in such a fast moving environment.

86. In recognition of industry’s concerns, we have therefore proposed a ‘two cycle rule’ for the three-year option. This means that a particular issue or part of the Building Regulations would not be reviewed in consequent cycles except in exceptional circumstances. As a result, in the majority of cases, no one issue would be the subject of change more than once every six years. To be clear, this would not prevent Ministers from continuing to raise standards in stages, as long as such a move was announced in advance in the Forward Plan, as we have done for energy performance in Part L.

87. The key stages of the periodic review cycle are represented graphically below and would be as follows:

- **A Backward Look:** which will involve research of compliance levels and impacts of previous changes to see if they have had the intended effect
- **Publication of a Draft Forward Plan:** identifying key issues or themes for the next cycle of review and beyond
- **Consultation Stage 1:** setting out action on key issues identified in the Forward Plan
- **Publication of Forward Plan and Consultation Summary:** taking account of responses and policy changes
- **Consultation Stage 2:** on draft regulations, the redrafted ADs, detailed guidance and implementation strategy (industry solutions, awareness raising etc)
- **Laying of Statutory Instruments:** publish ADs, circulars, consultation summary, supporting guidance and tools
- **Publicity:** awareness raising, roadshows, training etc



88. The next review of Part L, Part F and some sections of the Code for Sustainable Homes is a good starting point to introduce this new approach. We are committed to consulting around the end of 2008 on changes to Part L for 2010 and flagging up amendments that will come into force in 2013. We intend to broaden this consultation of Part L to include other key changes for 2010 and outline issues that we propose to focus on in the draft Forward Plan for the whole set of regulations.

Questions:

Q14. Do you support the introduction of a three-yearly review of the regulations, whereby no one issue/subject will be reviewed more than once every two cycles (ie every six years), unless necessary through exceptional circumstances?

Q15. Do you agree with our analysis of why a shorter or longer time frame does not work?

Q16. Do you agree that we should start the first cycle of review in line with commitments to review Part L (ie starting in 2010)?

Proposal 2.2: Introduce a standstill period between reviews

89. As part of the new system of review we will also introduce a standstill period of six months between publication of the new legislation and its implementation. This will allow time to roll-out a robust implementation strategy covering training and awareness raising for both building control and industry. This time could also be used to produce supplementary guidance and other tools for industry to use.
90. It may not be possible to have a standstill period for implementing EU obligations because transposition deadlines are challenging and cannot be changed. Where this is the case, effort will be made to raise awareness of the content of the legal obligations in advance so that industry is warned and can begin to prepare during the transposition period.

Question:

Q17. Do you support the introduction of a six month standstill period?

Proposal 2.3: Rename, revise and reduce Approved Documents

91. The Government has considered options for a more radical approach to restructuring the Approved Documents. For example, Scotland took the opportunity of the introduction of the Building (Scotland) Act 2003 to replace the 14 Parts with 6 Parts in line with the essential requirements of the Construction Products Directive. We have also considered clustering the technical requirements and ADs in the order they are considered during the design and construction stages, under the headings Structure, Services, and Sustainability. Although this may fit more logically with the stages of construction, many overlaps would still occur and sustainability, which should be an integral consideration at all stages of a project, could appear to be more of an add-on and thus seen to be less important.

92. Having considered these options, we are not convinced that there is merit in undertaking a major restructuring of the ADs and technical requirements in either of these ways. The amount of work involved would distract from other reforms proposed in this consultation document which are expected to deliver real dividends. Moreover, the standards that have to be achieved when undertaking relevant building works are technical and often complex; this will remain regardless of how the information is grouped.
93. Nevertheless, we think that there is a case for the guidance to be presented in as clear and comprehensive a manner as possible. To this end, the Government believes the distinction between the technical requirements in the regulations and guidance in the ADs needs to be reinforced and clearly explained at every opportunity. To highlight this distinction, we suggest that 'Official' or 'Technical' Guidance may be a more appropriate name. Their status would remain the same. This new title will not only emphasise the fact that these documents are guidance, providing only some possible options for demonstrating compliance, but will also make them more meaningful and accessible to those coming new to the building control system.
94. We are also committed to applying a consistent style and structure to the ADs as they are reviewed (in line with the Forward Plan timetable). The distinction between the regulations and the guidance will be clearly made. We will also seek to remove overlaps or points of confusion by reducing the number of Parts, over time and within the periodic review framework.
95. We want to make it as easy as possible to use our guidance in the way that suits the users. A better understanding of how existing guidance is being accessed at the moment, particularly the usage of the electronic and paper versions, will help us decide how guidance should be provided in the future, as well as views on how to improve the presentation of current online and printed copies.
96. Since 2002, we have split some of the ADs into building type, for example, existing and new buildings, domestic and non-domestic. In the case of Part L (Conservation of fuel and power) and Part B (Fire safety) we believe this has made them easier to use and we will continue to take this approach where it is sensible to do so.

Questions:

Q18. Do you agree that Approved Documents should be renamed? Any suggestions?

Q19. Do you think our approach to merging and reducing the number of ADs over time is the right one?

Q20. Do you use the ADs online or did you purchase a Part or a full bound set?

Q21. Do you have other suggestions to improve the presentation and usability of these documents? i) hard copies ii) electronic copies

Proposal 2.4: Project guides

97. The Government recognises the need to do more to help the public, industry and BCBs to better understand and comply with the regulations. To this end we are looking to complement the ADs with specific project guides. We will work with industry and other stakeholders to produce project guides in areas where there is a high volume of projects taking place, levels of compliance with the standards are thought to be low and work is generally carried out by those who do not encounter the Building Regulations on a day-to-day basis.
98. In a survey conducted in autumn 2007, LAs and AIs were asked what national project guides would make the most difference to the levels of compliance. Guidance on loft conversions and domestic extensions received by far the most support (54 per cent considered as needed for loft conversions; 40 per cent for domestic extensions).
99. Given this, and subject to further views, we are minded to focus on loft conversions and domestic extensions as a matter of priority. We are very interested in working with industry to develop these guides and would like to learn of any such initiatives.

Questions:

Q22. Do you support the development of project guidance for domestic extensions and loft conversions?

Q23. What in your view are the other areas where compliance is thought to be low and a project guide might be of help?

Proposal 2.5: Establish criteria for references to third-party documents

100. The Government believes ADs should be as self-contained as possible. We want as much as possible of the relevant guidance to be available in one guidance document. There is of course continued value in professional institutions and trade associations and others providing additional information to help users comply. However, third-party documents that are deemed to fulfil an important function and need to be referred to in the ADs will in future be assessed by the Department against a set of criteria before they are included.
101. These criteria will include issues such as the extent to which the documents are easily and freely available on the Internet (with the exception of British and European standards), not commercially biased or favouring one product or process over another, and are presented in a clear and accurate way.

Questions:

Q24. Do you find references in the Approved Documents helpful?

Q25. Do you think our proposal to assess third-party guidance against a set of criteria (clear and accurate, freely available on the Internet, not commercially biased) is correct?

Q26. What other criteria need to be applied?

Q27. Are there other problems with third party documents which we need to address?

Proposal 2.6: Make best use of the Planning Portal

102. In order to improve accessibility of the Building Regulations and associated guidance the Government is committed to making better use of the Internet, particularly tools such as the Interactive House on the Planning Portal and more electronic referencing and links to the specific parts of guidance searched for. We will be monitoring the effectiveness of these initiatives on the Planning Portal, in order to make improvements and to develop further interactive guides.
103. We are conscious that the branding of the Planning Portal is not as helpful as it might be in communicating the value, processes and requirements of the building control system, despite the wealth of information it holds. The future ownership and governance of the Portal is currently under review. Although the future is unknown, the Portal is committed to developing building control content and services and will be considering the implications of rebranding the Portal to better reflect the wider user community.

Questions:

Q28. Do you agree the Planning Portal needs to be rebranded to reflect its role in hosting building control content?

Q29. Do you use the Planning Portal?

Q30. Do you find it useful?

Chapter 3

Modernising Inspection and Enforcement

Background

104. This chapter identifies proposals which could help create an inspection and enforcement regime that can operate effectively to meet rising demands on the building control system and help achieve good levels of compliance with the regulations.
105. In particular, the Government is concerned that compliance in areas such as energy efficiency is often perceived to be lower than is the case for the traditional health and safety related regulation. Stakeholders also suggest that Building Control Bodies (BCBs) tend to focus on issues that are critical to safety (ie structure and fire) at the expense of newer regulations (eg those relating to sound insulation, air tightness and energy efficiency) because of pressure on resources, a lack of understanding and because they do not have enough up-front information about the project. It is also true that the public tend to be more concerned about life safety issues than energy efficiency.
106. As mentioned in Chapter 1, although BCBs have a duty to ensure compliance with the Building Regulations, the primary method by which they achieve this is not by checking that every item of work to which the regulations apply complies, but by trying to ensure those carrying out the work are complying properly. To do so, building control will adopt a variety of techniques to track compliance over the course of a project, namely approval of plans and designs, site inspections and the use of communication and informal advice alongside more formal measures (oral and written warnings). However, in a small number of cases mismanagement or deliberate evasion may require the LA to take formal enforcement action or an Approved Inspector (AI) to hand the job back to the LA to take such action. This chapter examines these procedures and makes proposals for improving the way the system as a whole operates.

Existing approaches to inspection

107. Under the existing system, those doing relevant building work seek approval through their LA by submitting Full Plans applications or by submitting a Building Notice, and paying a plan and an inspection charge. As well as requiring the applicant to give notice of commencement to the LA, Regulation 15 also requires that the LA is notified when the applicant has reached various stages of work. These are known as statutory notification stages.

108. Statutory notification stages do not apply if an AI is engaged to provide the service. As part of the contract with their client, the AI will set out what inspections will be needed in order to check that the proposed work will comply with the Building Regulations.
109. Discussions with stakeholders have suggested that the current system of statutory notification stages can act as a barrier to the development of a modern inspection service because:
- It can encourage unnecessary inspections. Currently those carrying out building work may be required to notify LA Building Control, in person or in writing, nine times over the course of a project, with no regard to the particular details of the project, eg size, complexity. Many LA building control officers interpret these stages as statutory *inspection* stages. This inhibits LAs applying a risk assessed approach to inspection that would allow more appropriate levels of inspection, which take account of local and national priorities, the skills and track record of those involved and allow for a better application of limited resources.
 - These stages can send the wrong message to customers. Applicants are often left under the impression that LA Building Control will or should inspect at these stages and can be left feeling short-changed when, having paid a fee, they do not receive an inspection at every notification stage. At the same time, where too much inspection occurs, developers and builders are discouraged from taking any responsibility for compliance, compounding the misinterpretation of Building Control Surveyors as a 'Clerk of Works'.
 - The existing statutory notification stages are outdated and focus on health and safety issues. They mainly occur at the beginning of construction (eg laying of foundations, uncovering drains), when it is not possible to check that some key requirements, such as energy efficiency, are met. Therefore these Regulations continue to be perceived as less important than more traditional health and safety issues.
 - AIs are not covered by the statutory notification stages and often already take a risk-based approach to inspection which they communicate to customers. While over 60 per cent of LAs surveyed use these stages as the basis of an inspection regime for commercial work, only 13 per cent of AIs used them for the equivalent work, preferring to set up a bespoke inspection regime instead.¹⁹ This represents an obstruction to a level playing field in the market place.
110. Guidance has been published for all BCBs in the *Building Control Performance Standards*²⁰ which sets out the policy approach they should take to delivering their service and gives guidance on how to do so. In terms of inspection it states that the

¹⁹ For residential applications 70 per cent of LAs and 40 per cent of AIs use statutory notification stages. Survey of Building Control Bodies, 2008. www.communities.gov.uk/publications/planningandbuilding.

²⁰ Building Control Performance Standards, BCPSAG, June 2006 can be viewed at www.planningportal.gov.uk/uploads/br/bcpi/building-control-performance-standards_june06.pdf

BCB should adopt an appropriate site inspection regime which will be dependent on many factors, including issues such as the extent of prior assessment of plans, complexity of the method of construction and any unusual or high-risk factors.

111. Relevant factors should be assessed at the outset and regularly reviewed so that effective control is maintained for the duration of the project, with adequate site inspections and records, sufficient to demonstrate the application of reasonable skill and care. It is recognised that it is not practicable to examine every item of work covered by the Building Regulations. Building control staff should use professional skill and judgment in their selection of priorities for inspection and avoid unnecessary inspections of low-risk stages.
112. While this guidance exists, our evidence suggests that it is not being taken up as widely as we need it to be. We therefore want to do more to ensure a risk-based approach is being adopted.

Other limits to applying a risk-based approach: Building Notices

113. As mentioned in paragraph 107, anyone doing relevant building work and seeking approval from their LA can use one of two possible routes: Full Plans applications or a Building Notice. An applicant can apply to start any work to domestic premises (except where the work will include common parts of a block of flats) by lodging a Building Notice with the local authority.
114. The Building Notice may contain as little as a one-line description of the work, and requires the applicant to wait 48 hours before work starts²¹. It is thought that Building Notices were introduced to make it easier for the homeowner to carry out small works. Building Notices save builders and local authorities unnecessary time and cost on the approval process for a large number of straightforward building projects. This is still the case for over half of Building Notices submitted.²²
115. It is apparent that Building Notices are being used for larger and more complex projects, such as domestic extensions and conversions of lofts, cellars and garages. These are complex projects where design is more complex, even more so since the strengthening of Part L. For building control to check compliance, they need to understand many aspects of the design at an early stage.
116. LAs tell us the option of a Building Notice, when used inappropriately, creates significant problems because:
 - much less information is made available on a Building Notice, which means they are not able to assess the risk associated with the project

²¹ This is the same as for Full Plans. Construction can start after 2 days.

²² Survey of Building Control Bodies, 2008.

- in the absence of Full Plans, LAs often need to spend more time asking for information and being out on site, hand-holding builders on what may be a poorly conceived project or where the builder is ill-equipped to carry out the work. Indeed, our survey of LAs shows that they carry out 28-40 per cent extra inspections for projects submitted under Building Notices compared to similar projects submitted using Full Plans. A lack of up-front information means these inspections also usually take longer (on average, 20 per cent longer)
 - dependent on the complexity of the project, such inspections may need to be carried out by personnel with greater expertise. This limits LAs' ability to manage their resources appropriately
117. For work submitted on a Building Notice, deficiencies are often discovered only when work is inspected – rather than at the outset, before work has begun, when plans are examined. This can lead to expensive remedial work. We also suspect that where work is discovered to be non-compliant after it has been completed, BCBs may be reluctant to insist on expensive remedial work where there is no direct safety risk, and issues such as energy efficiency requirements can, as a result go unachieved. For example, increasing the thickness of a wall to meet energy performance requirements is easily achieved on a plan, but it may be difficult if the work has started.
118. We are also concerned that the use of the Building Notice procedure means that members of the public are sometimes left exposed, as they do not have the protection of Full Plans checks prior to starting work on what are often significant, costly building projects. This can cost them more money down the line as problems arise and work needs to be redone to put them right.
119. A number of cases that come to the Secretary of State for a formal determination or appeal are often these types of projects. (See Chapter 4, paragraph 222 for further information).
120. Finally, it is worth noting that Approved Inspectors generally ask for the equivalent of the information needed to make a Full Plans application up-front and before they are employed to do the work. This situation creates a two-tier marketplace.

Existing powers of enforcement

121. If work is found not to comply with the Building Regulations, a local authority can serve an enforcement notice on the building owner under section 36 of the Act requiring the alteration or removal of non-compliant building work. A section 36 enforcement notice cannot be issued after the expiration of 12 months from the date of completion of the non-compliant work. This is often the preferred formal enforcement option used by LA BCBs.

122. In addition, a local authority, the Attorney General or indeed anyone can apply to the courts for an injunction for this purpose – without time limit. This would normally only be appropriate in the case of an immediate and serious threat to health and safety. The burden of compliance in both these circumstances falls on the owner rather than the builder and this is often because they are easier to identify and locate.
123. Local authorities can also take criminal prosecutions in the Magistrates' Courts under section 35 of the Building Act 1984 for breaches of the regulations. If found guilty, a person can be fined up to £5000 for each contravention and £50 for each day the contravention continues. However, at present the prosecution must be brought within six months of the offence taking place. This enforcement power is generally reserved for the most serious or flagrant breaches or for persistent offenders. In practice, the time and expense of prosecution and the six month time limit operate as a disincentive to local authorities: if defects emerge relatively late, this can compress the time for local authorities to gather evidence, investigate the claim and put together a prosecution case.
124. Levels of fines issued once a person is found guilty in the courts are generally relatively low. Although there have been some recent exceptions, it is unlikely that fines match the economic benefit gained by those who breach the requirements of the regulations by skimping on work. The effects of breaches, given the nature of the built environment, can be long-lasting.
125. In summary, these enforcement options are widely perceived as failing to provide an effective mechanism for dealing with serious problems or persistent offenders. We think they are cumbersome, time-consuming and present limited options for LAs. In practice, we understand LAs are reluctant to take enforcement action because in many cases (eg Section 36 notices) this can involve penalising the owner who may already be the victim of a cowboy builder. Local authority lawyers can also be reluctant to prosecute many cases because it takes considerable time and is paid for through council tax.
126. Unlike a local authority, an Approved Inspector has no power formally to enforce the regulations. Where work under an AI's supervision contravenes the regulations, a written notice may be issued. If the work is not then remedied within three months the initial notice is cancelled and the work referred back to the local authority which may decide to prosecute. Our survey showed that less than 1 per cent of all initial notices issued were reverted to LAs for enforcement action last year, which is in line with the percentage of formal enforcements LAs carried out during the same time.
127. Some stakeholders have expressed concern that there may be a lack of consistent enforcement between private and public building control providers, and have suggested there may be a case for allowing AIs enforcement powers, but we do not believe that there is evidence of this, as the levels of formal enforcement are broadly similar.

128. These issues were highlighted by many respondents to the stakeholder questionnaire²³ which found that improving methods for enforcing compliance to ensure they are as simple and non-bureaucratic as possible was very important.

Government Proposals

129. Our earlier proposals to introduce a vision for building control and a more predictable system of reviewing regulations and guidance will help to increase understanding of the Building Regulations in future and should reduce the need to take formal enforcement action. Nevertheless, we need to do more to ensure enforcement options are appropriate and that the levels of inspection match the needs of a modern world.
130. Key to the Government's better regulation agenda is the implementation of the Hampton Review, which sets out a vision for an approach to regulation which is based around risk and proportionality. (www.berr.gov.uk/files/file_22988.pdf)
131. The Hampton Review stated that there remained wide variations and inconsistencies in the application of national standards by local authority regulators in general. These inconsistencies result in uncertainty and unnecessary administrative burdens for business.
132. Hampton also found that regulator's penalty regimes are cumbersome and ineffective and recommended that reviews of these regimes should take place. Closely linked is the Macrory Review²⁴ which sets out a blue print for transforming the regulatory sanctioning regime in the UK. It found that the current regulatory sanctioning regime was ineffective, over reliant on criminal prosecution and lacking in flexibility.
133. The Government is committed to implementing the Hampton agenda. The Regulatory Enforcement and Sanctions Bill²⁵ is one element to delivering on that commitment. It seeks to advance Hampton's vision of a regulatory system, at both a national and local level, that is risk-based, consistent, proportionate and effective. The Department is particularly interested in Part 3 of the Bill which will introduce a framework for a range of new administrative sanctions that will allow regulators to respond in ways that are transparent, flexible and proportionate to those who seek to gain an advantage by deliberately disregarding the law or those that refuse to respond to informal advice and guidance from a Building Control Body (BCB).

²³ Achieving Building Standards: Final Report, 2007.

²⁴ Regulatory justice: making sanctions effective. Final report. Better Regulation Executive, December 2005.

²⁵ www.berr.gov.uk

134. We believe that the following proposals will deliver proportionate inspection and enforcement arrangements to help drive up compliance with the standards and deliver better outcomes on the ground in terms of improving public services and creating a better environment for industry and end-users.

Proposal 3.1: Provide specific guidance on risk assessing projects

135. The Government is committed to continuing to support the approach set out in *Building Control Performance Standards*, which encourages LA and AI BCBs to take a risk-based approach to inspection using the standards that exist in order to assess what and how often to inspect. To do so, stakeholders have told us more guidance is needed, in particular, on risk assessing certain projects.
136. We will develop, with the Building Control Alliance, London District Surveyors Association and other interested stakeholders, specific guidance on how to risk assess certain projects and would welcome any examples where robust risk assessment was undertaken from which we should learn.

Questions:

Q31. Do you agree specific guidance on risk assessing projects would help?

Q32. For what particular projects would you most welcome guidance in the first instance?

Q33. (BCBs only) What guides do you currently use to help you risk-assess applications and draw up an inspection notification framework?

Proposal 3.2: Remove statutory notification stages for local authorities and replace with a risk-based approach to inspection (a Service Plan)

137. Given the issues identified with the current set of statutory notification stages – we are proposing to remove the existing stages and replace them with the requirement for LAs to draw up a Service Plan which details the likely stages of inspection following a risk assessment of relevant factors. This approach will devolve completely the process of identifying the risks to the LA. The recipients of the Plan would notify the LA at these stages in order to inspect.
138. The Service Plan approach will allow for a more flexible inspection regime, based on the professional judgement of the BCB and local and project specific circumstances, rather than the application of a standard, predetermined inspection regime. It will also address inconsistencies in performance between the public and private service providers, as Approved Inspectors are not subjected to the statutory notification stages and already provide a bespoke, often risk-assessed, inspection regime to their clients.

139. It is our view that better risk-assessed inspections will provide a better service to customers and allow the focus of limited local authority resources on priorities (eg energy efficiency, locally defined problem areas, and so on), thereby increasing compliance.
140. This proposal formalises the existing approach recommended in the *Building Control Performance Standards* guidance. This guidance was pulled together by BCPSAG²⁶ and already recommends that local authorities draft an appropriate inspection plan. It would also introduce the flexibility local authorities have been asking for in terms of how they apply their resources.
141. To assist in this process we will issue a model Service Plan, in addition to guidance on how to risk assess certain projects. This guidance should help ensure that inspection regimes give equal weight to Part L (energy efficiency) issues as to the traditional health and safety requirements.

Questions:

Q34. Do you agree we should remove statutory notification stages?

Q35. Do you agree we should replace with a requirement to issue a Service Plan?

Proposal 3.3: Make the issuing of Completion Certificates by local authorities mandatory

142. Currently this certificate must be issued for work where the Regulatory Reform (Fire Safety) Order applies (non-domestic properties and the common parts of blocks of flats) and if requested by the customer when Full Plans applications are submitted to the LA. For other work, some LAs issue them as a matter of course while others do not. Als are required to issue the equivalent 'final certificate'.
143. This situation is confusing. In particular, customers are confused when it comes to the end of the building control process, and later when it comes to selling their property, that they did not receive a Completion Certificate despite informing the local authority and paying the relevant charge.
144. With the need to ensure better understanding of the Building Regulations in order to improve compliance, the coming into force of the Home Information Packs (HIPs); and solicitors, needing more certainty that building work complies and insisting on the necessary approvals and Completion Certificates, we think there is a case for requiring all local authorities to issue Completion Certificates. Indeed, our survey showed that 97 per cent of LAs automatically issue Completion Certificates. We think that as Completion Certificates becomes the norm, become a standard part of the HIP, their presence will act as a deterrent to those who might otherwise evade the system.

²⁶ The Building Control Performance Standards Advisory Group is made up of the Association of Consultant Approved Inspectors, BRAC, the Construction Industry Council, LABC, LGA and CLG.

145. Alongside this proposal we are also considering whether the Service Plan should include a requirement for at least one inspection. At present LAs are not required to carry out any inspection. However, we consider that LAs are unlikely to be able to issue meaningful certificates which suggest that as far as reasonably possible the work complies with the regulations without at least one inspection. While we understand most LAs normally inspect all projects at least once²⁷ and the BCPSAG guidance promotes this, we consider we would need to make this mandatory to support the comprehensive issuing of Completion Certificates.
146. While the Government is not intending to set the stage at which this one inspection should be carried out – this is best left to the professional judgement of the LA BCB – we are aware it is a departure from current practice and would therefore welcome views on this proposal and whether it should be extended to AIs.

Questions:

Q36. Do you agree with making the issuing of Completion Certificates for all works mandatory, whether submitted using a Building Notice or Full Plans?

Q37. Do you agree that we should introduce one mandatory inspection as part of the Service Plan and to support the issuing of the Completion Certificate?

Q38. What might the practical implications and problems of making at least one inspection mandatory be?

Proposal 3.4: Limit Building Notices to minor works

147. We are concerned that the Building Notice procedure acts as a major barrier to LAs taking a risk-based approach, something which we see as key to increasing compliance, modernising the service and ensuring appropriate inspection regimes are adopted which align limited resources with local and Government priorities.
148. We would therefore welcome your views on whether to extend the types of project requiring Full Plans applications to include:
- erection of new buildings
 - extension of a building
 - loft, cellar and garage conversions
149. We would continue with the provision that allows Building Notices to be used for emergency repairs and that such work could be carried out before the local authority receives this notice if necessary, and also for minor works in existing buildings.

²⁷ Our survey showed that a typical loft conversion would be inspected on average five to seven times and a domestic extension between seven and nine times.

150. This will mean that for domestic extensions and major conversions, the applicant will be required to submit to building control more details about the construction project. It is reasonable to assume that this information already exists before construction starts; otherwise it is extremely difficult to ensure and demonstrate that the work will fully comply with the regulations. Therefore, we believe that the extra cost of providing this information should be minimal.
151. This proposal should not cause delay to construction. Unlike planning, there is no obligation to wait for approval and even when something is submitted with a full plan, work can start after two days as long as the homeowner accepts that it is at their own risk.
152. This proposal would not be an additional burden on industry. In its calculation²⁸ of the administrative burden this Department places on business, PwC determined that the costs were the same whether building work was taken forward under Full Plans or Building Notices. Typically LAs require the same information but it is all provided up-front for Full Plans work as opposed to piecemeal under a Building Notice. It is more efficient to give the information needed up-front in one package.
153. A consultation Impact Assessment has been published alongside which sets out in detail the costs and benefits of this proposal, but in summary, limiting Building Notices will:
- Improve customer protection. These are major construction projects that can have major impacts on a home. To undertake them without preparing detailed plans would be reckless and for that reason it was never envisaged that Building Notices would be used in this way. Where builders attempt to do these types of jobs on Building Notices, they often do sub-standard work which leaves the homeowner stuck with a poor product or with expensive remedial work. Inspectors are often reluctant to penalise a homeowner when the defects are discovered, which in turn results in lower compliance.
 - Reduce inspections and free up LA resources: Building Notice jobs make risk-based inspection impossible and unnecessarily subjects the builder to extra and longer inspections.
 - Stop Building Control officers having to design on site – this is not their job and is a waste of their time and resources, but they do it to protect the customer. Detailed checking of compliance while work is underway is difficult on complex jobs such as extensions and conversions.

²⁸ Administrative Burdens Measurement Final Report (December 2006).

- Improve compliance. Without plans (knowing how many windows there are going to be, how thick the walls are going to be etc), it is extremely difficult to show compliance with Part L (Conservation of fuel and power). Increasing the thickness of walls to meet energy efficiency requirements is easily achieved on a plan, but it is too late if the work has been done and covered up.
- Enable a 'level playing field' between public and private sectors. Als do not have to deal with the Building Notice regime.

154. The Building Control community seems to be united that changes are needed to the types of work allowed to be submitted using a Building Notice. We seek wider views on this proposal and its impact.

Questions:

Q39. Are we right to want to limit Building Notices?

Q40. Are the areas we propose to require Full Plans the right ones (i.e. loft, cellar and garage conversions, erection of new buildings and extensions)?

Q41. What might the unintended consequences be?

Q42. Are there any areas we have not covered which in your view need to be considered?

Proposal 3.5: Allow local authorities to issue stop notices

155. The Regulatory Enforcement and Sanctions Bill, which has recently been introduced into Parliament, sets out a number of enabling provisions that could allow regulators a range of enforcing options. The following proposals for stop notices and fixed monetary penalties are dependent first on this Bill becoming law, and subsequently on a substantial majority of LA BCBs being able to show that their enforcement policies comply with the Regulators' Compliance code.
156. Stop notices require a 'person' (this term includes an individual, business or a company) to cease an activity which involves the commission of an offence, and that has caused, or presents a significant risk of causing serious harm.
157. Stop notices will perform two related functions. Where the person served with a notice is already carrying on the activity, they will prevent the activity being further carried on until the steps specified in the notice have been carried out.
158. They may also be used for more preventative purposes. A stop notice may be imposed where an activity does not currently present a significant risk of serious harm, but by being allowed to continue is likely to present a significant risk of serious harm in the future. This is important as once work is covered up, it can be more difficult and expensive (and in some cases, nearly impossible) to rectify at a later date.

159. The objective, in both cases, is to prevent the person from carrying on the activity until the steps needed to remove or reduce the harm, or risk of harm, have been taken.
160. While the notice is in force, it will serve the further valuable purpose of protecting the public from the effects of carrying on the activity in a way that causes harm, or risk of harm. This is particularly important for building works where the consequences are often long-standing.
161. A stop notice may only be served if a person is carrying out or is likely to carry out building work and the LA reasonably believes that the carrying out of that activity is or would be an offence, and that it presents a significant risk of serious harm to:
- human health
 - the environment (including contribution to climate change), or
 - the financial interests of consumers, and
 - reasonably believes that in carrying on the activity the business is or would be committing an offence.
162. Stop notices have the power to prevent a business from lawfully carrying out certain processes or even stop the business trading altogether, until such time as the remedial steps specified in the notice have been complied with. As such, the test of significant risk of serious harm would need to be set deliberately high to ensure only the most serious cases are captured.
163. If the enforcer is satisfied, after the notice has been served, that the person has taken the remedial steps set out in it, the enforcer must issue a certificate (a “completion certificate”)²⁹.
164. It is anticipated that the existence of stop notice powers would act as a catalyst to changing behaviour. Unlike informal written and oral warnings used under the current system, stop notices could not be ignored.
165. A person served with a stop notice will have the right to appeal if they consider that the LA’s decision to serve the notice was based on an error of fact or wrong in law, that a requirement imposed by the notice was unreasonable or that, because the business has a defence, it would not be liable to be convicted of the offence giving rise to the service of the notice. Ultimately though, unless an appeal is made and succeeds, a person who does not comply with a stop notice will be guilty of a criminal offence. If you are interested in full details of the current proposals for stop notices, please see the draft Bill and Explanatory Notes.³⁰

²⁹ Not to be confused with ‘completion certificates’ that local authorities give to customers to show that they are satisfied that the project complies with the Building Regulations.

³⁰ www.official-documents.gov.uk/document/cm70/7083/7083.asp

Questions:

Q43. Do you agree stop notices would be of benefit to local authorities in enforcing the building regulations?

Q44. In what circumstance might they most usefully be applied and what are the perceived difficulties?

Proposal 3.6: Allow local authorities to issue fixed monetary penalties

166. We are considering, in addition to existing section 36 and section 35 powers, that LAs should be able to issue fines which may act as a more effective deterrent to non-compliance with the Building Regulations.
167. Fixed monetary penalties (FMPs) are fines for relatively low fixed amounts that are intended to be used for low-level, minor instances of non-compliance. We see FMPs as enabling LA BCBs, in suitable cases, to deal with less serious offences in a way that is more proportionate and less complicated procedurally than a prosecution. They may also be appropriate for procedural breaches such as failure to notify the local authority at agreed stages of inspection. FMPs do not entail the stigma of a criminal record and could be used where there is no deliberate intention to breach the regulations.
168. The criteria for establishing the amount of the penalty would be decided by the Department, and will need to be considered further but could take account of factors such as the size of the organisation which contravened the regulations, whether the person was a repeat offender or whether a company is a private firm or publicly listed. We will work with the LABC and others to identify the criteria for applying FMPs, as well as work up an appeals procedure.
169. As FMPs are designed to be used to levy low-level fines, they are not appropriate for more serious or deliberate cases of non-compliance where a business has made a significant financial gain or the public interest would be best served by a criminal prosecution. Hence it is our intention to retain powers under section 35 (the ability to convict and fine through the courts) and section 36 (the ability to issue an enforcement notice to take down or put works right).

Questions:

Q45. Do you agree the threat of a fixed monetary penalty could act as a useful deterrent to breaches of the regulations?

Q46. If the power to issue fines existed how might local authorities most appropriately apply them? What criteria should we consider using?

Proposal 3.7: Extending time limits for prosecution

170. The Government is committed to extending the time limits available to local authorities to take prosecutions for breaches of the requirements of the Building Regulations to two years from discovery of the breach. Section 13 of the Climate Change and Sustainable Energy Act 2006 amended the Building Act 1984 to give powers for such an extension for breaches of provisions relating to energy efficiency and emissions of greenhouse gases. We propose to widen this to apply to all breaches and a clause to this effect is in the Housing and Regeneration Bill now before Parliament.
171. It would seem sensible to align the time limits for other enforcement action which local authorities can take. We would therefore propose that the time limit for serving notices under Section 36 of the Building Act, requiring non-compliant work to be pulled down or rectified, should also be increased to two years from the date of completion of the work in question. We would also wish to set the time limit for the issuing of fixed monetary penalties in the Regulatory Enforcement and Sanctions Bill at two years.

Q47. Do you agree that it would be useful to set the enforcement action time limits for all forms of formal enforcement at two years?

Chapter 4

Alternative Routes to Compliance

Background

172. There are a number of options available to demonstrate compliance with the Building Regulations which complement the traditional route of engaging the services of LABCs or AIs. These include, for certain building works, using a Competent Persons scheme or the application of a Pattern Book approach, such as the one provided for sound insulation by Robust Details Ltd.
173. This chapter considers other options for self-certification and the role of Appointed Persons in helping deliver improved compliance, alongside possible improvements to the appeals and determinations system open to users of the building control service.

Competent Persons schemes

174. Competent Persons schemes were originally introduced to provide an alternative route to compliance as it became obvious that the increasing coverage of the Building Regulations, particularly to the installation of building services such as heating and electricity, could no longer be accommodated within the traditional building control framework.
175. Competent Persons schemes are schemes whose members have been granted the right to self-certify that their work complies fully with all relevant requirements in the Building Regulations. Persons wishing to join a scheme must demonstrate appropriate qualifications, knowledge and experience to be able to comply. Schemes are run by organisations which have shown that they have the necessary technical, managerial and financial ability to secure compliance by their members.
176. Competent Persons schemes are now major players in the building control market. Today there are 14 Competent Persons scheme operators providing 45 schemes (such as electrical, window and heating installations). For schemes covering electrics, there are over 33,000 registered members who carried out over 1.2 million notified jobs in 2006/07.
177. Schemes have generally been authorised in areas where the level and incidence of risk is low. For example, there are no schemes authorised specifically to allow self-certification of the structure, fire safety and underground drainage. It has been considered that non-compliance in these areas could have significant consequences and we have no current plans to alter this approach.

178. Stakeholders and monitoring reports provided by scheme operators tell us that the schemes have been successful in reducing bureaucracy and increasing the level of compliance³¹. Stakeholder research tells us that there is general support for more Competent Persons schemes, although they need to be better organised³².
179. Competent Persons schemes also offer better protection for the consumer through the provision of robust complaints systems and insurance-backed warranties and support for the installer by training and encouraging them to develop their skills. The Government is committed to looking at ways of further improving the service of the schemes and extending them wherever possible into new appropriate areas.

Other forms of certification

180. One way to make industry realise that it is responsible for ensuring that work complies with the regulations is to provide further opportunities for industry to regulate itself. We now have experience in setting up and running limited self-certification Competent Persons schemes and they have generally been successful.
181. We have looked to countries that have recently given industry more responsibility to self-regulate and there are two models of certification for the future that we would like to seek views on.
182. The first is whole building certification. This would involve either the builder or a person employed by the builder or client certifying that all aspects of a new or renovated building complied with all relevant requirements in the Building Regulations. This would be done without any BCB involvement except for the receipt of a certificate attesting compliance after work had finished.
183. The 1999 consultation document, *Taking forward self-certification under the Building Regulations*, asked for views on whole building certification as well as self-certification, which eventually led to the setting up of Competent Persons schemes. In that consultation we found that respondents were largely against whole building self-certification and we did not take it forward. Norway has just announced that they will be re-introducing independent building control in 2009, after twelve years of operating a full self-certification system across all building projects³³.
184. It is clear that self-certification of projects needs to be backed up by a rigorous monitoring, inspection and audit regime, alongside strong enforcement powers. Self-certification without some form of post-monitoring and spot-checks would be likely to result in the slippage of standards over time.

³¹ Report on Competent Persons self-certification schemes in 2003.
www.communities.gov.uk/publications/planningandbuilding/reportcompetent

³² Achieving Building Standards: Final Report.

³³ RICS study tour to Norway: Appendix C, A Building Control System for the 21st Century, Building Control Alliance 2008. www.rics.org.

185. The second model is third-party certification. This can be defined as a third person (not LA Building Control or Approved Inspectors) taking responsibility for certifying compliance with the Building Regulations for parts of a project. This person would not have been directly involved in all or part of the work, but may be employed by the same organisation or contracted in by the developer.
186. The third-party certifier would provide specialist expertise to carry out checks on compliance with parts of the project. It is thought that this would be of benefit in the areas that require a certain level of specialist knowledge or where the buildings are particularly complex. We think this would have the advantage of:
- increasing compliance with more technical requirements of the regulations
 - increasing the skills base within the sector
 - increasing choice for the consumer
 - reducing burdens on BCBs
187. While there may be increased choice for the consumer, the introduction of another type of person to certify compliance for certain aspects of the work may just confuse the building control marketplace.
188. We are also aware that third-party certification could have a negative impact on LA and AI competence levels in particular technical areas. Others could perceive an increase in consumer choice as a further fragmentation of the building control system. However, we would look to address these arguments by insisting that any third-party certification would be developed within the existing Competent Persons framework.

Pattern Book approach

189. Some types of work controlled under the Building Regulations are sensitive to quality of workmanship and construction details may be difficult to check by inspection. The Pattern Book approach gives detailed guidance on designs that are likely to satisfy some specific requirement(s) of a Part of the Building Regulations.
190. Since July 2004, there has been one example of the Pattern Book approach in operation. This is the scheme run by Robust Details Ltd (RDL)³⁴ for demonstrating compliance of dwellings with Part E – *Resistance to the passage of sound*. Industry set up this Pattern Book approach as an alternative to demonstrating compliance by pre-completion sound insulation testing – which was introduced at the same time.

³⁴ A not-for-profit distributing company that operates in accordance to a Memorandum of Understanding with the Department.

191. This scheme has been designed to improve compliance with the regulations while reducing the burden on building control. Other advantages include achievement of standards above the minimum required by the Building Regulations and the centralised collection of compliance and performance data. The downside is the further fragmentation of the building control market and additional costs to the user by requiring them to pay to register with RDL (if they choose to use this approach) as well as paying the building control fee. Start-up costs for the RDL approach are also substantial and an on-going income stream is needed to make it self-financing.

192. There are five stages to the Part E (RDL) scheme:

- **Stage 1.** The Pattern Book was produced to give detailed guidance on designs that are likely to satisfy the requirements of Part E.
- **Stage 2.** The builder registers with RDL before commencement of the work, pays a fee and gets confirmation to pass to building control to gain exemption from pre-completion testing.
- **Stage 3.** The builder follows the detailed guidance in the Pattern Book, and RDL inspects a random sample of registered constructions during construction and tests a random sample of completed constructions. Results are entered on a database.
- **Stage 4.** If the work fails the performance test, RDL informs building control so they can take enforcement action.
- **Stage 5.** RDL reports regularly about the level of compliance achieved by the scheme and introduces new Robust Details and amends existing ones as necessary.

193. The RDL scheme has recently been reviewed and shown to be successful with about 70 per cent of the new housing market using the scheme. Compliance with Part E performance standards is about 97 per cent with a similar figure for dwellings using the testing regime³⁵. This is the first time such reliable performance data have been collected, and it has helped to identify specific construction faults so that RDL guidance can be improved. We are committed to exploring the application of the Pattern Book approach to other parts of the regulations and believe it would be well suited where compliance is an issue, building control finds checking difficult, and industry sees a big enough advantage to pay to use it.

³⁵ www.robustdetails.com/fileadmin/documents/RDL/Annual_Reports/RDL_Annual_Review_2005.06.pdf Robust Details Ltd

Appointed Persons

194. In the case of medium to large construction projects, where multiple contracts are involved, BCBs have told us of the difficulties they face in identifying ownership for the delivery of information that is essential to the process of determining compliance. This absence of a single person on site providing what was once the 'Clerk of Works' or site supervisor function makes it difficult and time-consuming to check compliance. In response, the Appointed Person role was envisaged and set out in the amendment made to the Building Act 1984 by the Sustainable and Secure Buildings Act 2004 and further developed in research commissioned by the Department³⁶.
195. The 2004 Act allows for the appointment of a single person to act as an interface between the BCB and the developer. While the BCB (private or public) would still be tasked with certifying compliance with the regulations, the Appointed Person would have responsibility for facilitating Building Regulations compliance on site.
196. The intention of the Appointed Person role is that it could be carried out by someone already employed by the contractor, working as part of the design team, but providing an interface between the contractor and the BCB with the aim of speeding up the construction process and ensuring that compliance with the Building Regulations was being properly considered.
197. We have not made the regulations which would bring the Appointed Person role into force but seek your views on the value of doing so.

Government Proposals

Proposal 4.1 Improvements to the Competent Person Schemes

198. The Government has been conducting a review of the Competent Persons schemes aimed at developing, standardising and improving the management and operation of existing schemes, as well as how to raise the profile of the schemes. In response to initial findings of the review and stakeholder feedback, the Government wants to ensure more consistent and better internal management by requiring all schemes to achieve UKAS accreditation to standard EN 45011. This would involve UKAS periodically monitoring the schemes to ensure they were achieving compliance with the requirements in the Building Regulations and operating in accordance with their conditions of authorisation.

³⁶ Appointed Persons: Summary Report 2007. www.communities.gov.uk/publications/planningandbuilding/appointedpersonssummary

199. While some Competent Person Schemes have a high profile, such as FENSA or NICEIC, the profile of other schemes could be improved. For example, by preparing simple leaflets setting out what they do, the service they provide and the complaints procedure.
200. Our survey of BCBs showed that there are significant difficulties with data transfer between the LA and Competent Person Schemes, primarily to do with addressing and data format problems. We are currently discussing with LABC on how best to resolve these issues.
201. Given the success of the current Competent Person Schemes, we will continue to look for opportunities to extend their application to other appropriate types of work.
202. We are also aware that some LAs think there is a case for reducing their charges for Full Plans applications and Building Notices to take account of work covered by Competent Person Schemes. LA already have the powers to do this under the existing charges regulations, since their charges should relate only to the work for which they are providing the building control service. However, the charges review, referred to in Chapter 5, will consider whether LAs need more flexibility to make reductions and refunds in this area.

Questions:

Q48. Are we right to continue with our current approach to encourage more schemes in existing areas and to continue not to approve Competent Person Schemes in the areas of structure, fire and underground drainage as built?

Q49. Do we need to do more to improve existing systems than our current proposals (i.e. to require UKAS accreditation, encourage publication of leaflets, resolving data transfers and addressing difficulties)?

Proposal 4.2: Investigate the case for other forms of certification

Whole building self-certification

203. Our discussions with stakeholders and the Review Working Group to consider the merits of whole building self-certification has led us to believe that opinion has not significantly changed since we last asked for views in 1999, and where respondents were strongly opposed.
204. We have also looked to countries that have recently given industry more responsibility to self-regulate and are waiting for the results of the Consortium of European Building Control study into self-certification which will be published in the spring. It is clear that any move must be considered very carefully and that it is clear that any further expansion of self-certification needs to be backed up by a rigorous monitoring, inspection and audit regime, alongside strong enforcement powers. Self-certification without some form of post-monitoring and spot-checks will likely result in the slippage of standards over time.

205. The Government supports the continued role for an independent building control service covering all relevant building work – delivered by LAs and AIs – as the fundamental means of helping to ensure compliance with the Building Regulations. We think this is essential in not only providing a good service to the customer, but also in ensuring that buildings are safe, accessible and sustainable for the wider public good. Therefore, we seek views on our position not to consider whole building self-certification in the immediate future.

Third-party certification

206. We are open to the suggestion that the existing Competent Persons schemes could be widened to cover third-party certification (a person certifying that parts of the project meets building regulations other than building control) for specialist areas of the regulations. This is a departure from the existing Competent Persons schemes which only allow installers to certify that their own work complies.
207. This type of third-party certification may help to improve compliance in those areas that building control may find difficult to control. Also, given that buildings become more complex and technical, it may not be reasonable to expect that one person can have in-depth knowledge and expertise over all aspects of the Building Regulations. One example could be the certification of the fixed building services requirements of Part L.
208. Indeed, as is the case for existing Competent Persons schemes, we do not think it would be appropriate for such schemes to cover structure, fire or underground drainage.

Questions:

Q50. Do you see any merit in whole building certification?

Q51. Do you think it is appropriate to develop third party certification (certification of parts of a project) but only within the Competent Persons scheme framework?

Q52. If yes, in what areas?

Proposal 4.3: Further encourage the Appointed Person role

209. Following changes to the Building Act in 2004, the Department commissioned research to explore whether the introduction of Appointed Persons is necessary to improve compliance and a summary of the conclusions was published on our website in March 2007³⁷. This study found that of the seven options investigated, there was a clear preference for Appointed Persons to perform a management/co-ordination role. The Government is not looking to the Appointed Person to also take on the role of the Building Control Officers by certifying as well (third-party or self-certification).

³⁷ Appointed Persons – Summary Report (<http://www.communities.gov.uk/index.asp?id=1509052>).

210. From discussions with stakeholders it is clear there are a number of potential advantages to introducing the Appointed Persons role:

- Ensure building control compliance is designed into a project from the offset.
- Ensure that construction is carried out in accordance with the approved plans or that the alternative approaches adopted achieve compliance.
- Make it clear that the prime responsibility for compliance lies with those carrying out the building works and not with BCBs.
- Tackle non-compliance because the on-site team lacks people having sufficient building regulation knowledge (technical and procedural).
- Reduce the burden on BCBs by having one point of contact on larger multi-contract sites. This person could also have responsibility for gathering certificates issued by Robust Details, Competent Persons, etc.
- Speed up the construction process through better co-ordination with BCB inspections and approvals.

211. There are also a number of possible disadvantages to regulating in this area:

- Regulating to enable an Appointed Person would be superfluous: we know that some developers and contractors dealing with medium to large building projects are already adopting this approach and it is working well. Others already have modern day equivalents of 'Clerks of Works'.
- An Appointed Person would only be cost-effective for medium to large projects, where compliance is considered a less significant problem. This fails to address compliance in the part of the market dealing with smaller building projects where compliance is thought to be the biggest issue.
- There is a risk that a requirement for such a role would create a new profession tempting qualified staff away from existing LA and AI building control functions.
- We would be introducing another layer of bureaucracy for which the client would potentially be required to pay twice (for the Appointed Person role and for Building Control) and which if required in regulation would need administering and enforcing, which could create an additional burden.

212. In summary, we believe it is good practice for there to be a single point of contact for Building Control on site and will promote the presence of such a person as good practice. We would welcome your views on whether it is also necessary to regulate in this area.

Q53. Do you think we should regulate for the Appointed Persons role or simply promote the adoption of this role as good practice?

Proposal 4.4: Extension of the Pattern Book approach

213. The Review Working Group broadly supported the extension of the Pattern Book approach where feasible, but felt that it was difficult to identify areas where it would work practically and financially as a business. It would require a substantial investment and it was questionable whether industry would be prepared to pay.
214. The scheme may work for some of Part L for dwellings: airtightness and insulation continuity (thermal bridging). This is a difficult area for normal building control inspections to check because details are soon concealed by subsequent building work and compliance is considered to be low. Prior to the 2006 edition of Part L (which introduced mandatory testing), about 43 per cent of new dwellings tested by BRE failed the performance standard in the 2002 AD.
215. Generic accredited details for junctions where air-leakage and/or thermal bridging are likely to occur have already been developed by the Government and the Energy Saving Trust. Currently, builders who use these details benefit from a reduction in the amount of airtightness testing required to show compliance with Part L. To use and pay for a Pattern Book approach, builders would expect an exemption from building control airtightness testing. The exemption in testing may not be enough to encourage usage of the system, as it is easy and not very expensive to rectify if the project does not meet the regulations.
216. A consultation Impact Assessment has been published alongside this consultation paper and we seek your input to help us work out whether this extension is viable.

Questions:

Q54. Should the Pattern Book approach be extended?

Q55. What areas do you think the pattern book approach could cover?

Q56. Do you agree that a Pattern Book scheme could be developed to cover airtightness testing and accredited details for Part L in dwellings?

The existing system of determinations and appeals

217. Effective dispute resolution mechanisms are an important part of any effective regulatory system and critical to supporting high levels of compliance now and in the future. While the evidence we have suggests that most disputes are settled locally without recourse to the Secretary of State and others, this is not always the case and it is important that the Government has a modernised dispute resolution system in place which gives users of the system the ability to challenge decisions about the compliance of their project in an effective way.
218. The existing statutory determinations and appeals procedures provide powers for the Secretary of State/Welsh Assembly Ministers (hereafter referred to solely as the Secretary of State) to adjudicate in disputes between people carrying out building work subject to the Building Regulations and a building control body.

219. Determinations are available (under sections 16(10) (a) and 50(2) of the Building Act 1984) from the Secretary of State on a question arising as to whether plans of proposed work submitted to an LA or an AI conform to the Building Regulations. Only persons proposing to carry out building work can apply, so the determination must relate to a specific piece of work which has not yet begun. There is no power for a person to seek a determination from the Secretary of State as to whether or not work already undertaken complies with the regulations. Nor is there a power for the Secretary of State to issue a determination in relation to work submitted to an LA on a Building Notice.
220. The Secretary of State also considers appeals against an LA's refusal to relax or dispense with a requirement of the Building Regulations (under section 39 of the 1984 Act). Although we have no evidence of how often LAs agree to formal relaxations or dispensations, in practice, an appeal against an LA's refusal has rarely been allowed, although each case is considered on its own merits. This is because the requirements in the Building Regulations are 'functional' and have evolved over the years from earlier versions of the regulations where the requirements were far more prescriptive. The requirements are expressed in terms of what is 'reasonable' or 'adequate' in the context of achieving compliance in each case, and as such are designed to allow for flexibility in the application of the Building Regulations. It therefore follows that making out a case against a LA's refusal to grant a relaxation or a dispensation of a functional requirement is likely to be very difficult unless very special circumstances exist. Given this, departmental guidance encourages applicants to apply, wherever possible, for determinations to resolve disputes.
221. In 2006/07, 13 decisions were issued by the Secretary of State for Communities and Local Government: five determinations and eight appeals³⁸. These decisions took an average of seven to eight months to process from the date of the application/ appeal to the date of the decision, which is similar to what would be expected if the decision were to be made by a court or tribunal. While the system has the advantage that decisions are made by those who have knowledge of the legislation, making the final decision more acceptable to all parties, the process is protracted. The time it takes to issue decisions can mean that developers either just reluctantly accept the LA's decision (which may stifle innovation and result in a worse end product) or begin – and possibly complete – work before the dispute is resolved (which may lead to enforcement action being taken).
222. Although a few disputes are complex in nature and of a larger scale, determinations and appeals usually involve typical building work such as loft conversions and domestic extensions, stairways, or non-provision of lifts or WCs which would be best settled at local level. We hope the development of better, more targeted guidance and proposed changes to the system made in this consultation document will help to reduce these cases. Nevertheless, we need to ensure that the disputes resolution system which remains is fit for purpose.

³⁸ Another seven cases were closed with no decision issued for various reasons.

Proposal 4.5: A fast-track dispute resolution service and modernised statutory system

223. Stakeholders and evidence gained from various sources tell us that the above statutory determination and appeal procedures are restrictive, protracted and outdated. Alternative dispute resolution schemes devoted to building control matters that already exist are also not open to all members of the public and can be variable in their approach. The Government has therefore been considering what improvements could be made to the system.
224. We believe that there would be value in establishing a recognised fast-track dispute resolution scheme run by the industry itself. This would be a more efficient means of resolving disputes about compliance and we consider that most disputes could be settled by this scheme.
225. The Government will work with the Building Control Alliance (BCA), which brings together the representative organisations of private (ACAI) and local authority (LABC) building control, along with the ABE, RICS and CIOB, to deliver such a scheme. This would offer a simple, consistent process with quick turnaround times through a review of the case by a panel of private and public building control professionals and a consumer or design representative. The scheme would be available in relation to all building control disputes at any stage of the plans or building work process.
226. Whilst use of the scheme will be voluntary and the result of the panel's considerations would not be legally binding, the Government believes that many parties would welcome the opportunity for a speedy review of their case by independent experts and would be satisfied by the panel's findings.
227. In the unlikely event the matter escalates to the Secretary of State (or another statutory process – see below) or the courts afterwards, the panel's findings could be submitted as evidence.
228. The Government thinks the benefit of such a scheme is that it would bring together a body of collective technical expertise from the building control profession, allowing them to assist both customers and colleagues alike, by providing access to timely independent expert review of dispute cases. This is likely to bring about better levels of compliance with, and more consistent interpretation of the Building Regulations by BCBs. To this end, as part of the scheme the BCA will consider whether the outcome of cases should be published, as a way of assisting the building control profession in carrying out their functions where they are considering similar cases (although each case should, of course, be considered on its own merits and previous decisions will not be binding). The Department currently publishes and disseminates the Secretary of State's determinations and appeal decisions, and feedback has been positive. This has also led to a reduction in the number of cases received.

229. In addition to the introduction of the BCA-led fast-track dispute resolution scheme, the Government is also committed to replacing the current statutory procedures with a more efficient process for those few substantive cases where it is felt a more formal decision is needed, and which will therefore take longer to complete. We have therefore been looking at the options for replacing the current determination and appeal provisions. We recognise that there may be benefits in allowing continued recourse to the Secretary of State for certain cases but we would also like to consider other alternatives.
230. One option could be to introduce a new statutory 'appeal' procedure to the Secretary of State relating to compliance with the Building Regulations, which would be accessible at any stage in the building work process where Full Plans had been submitted to the BCB. If we proceeded with this we would be minded to exclude work put forward on a Building Notice because it is our view that only disputes about more complex, major projects should be considered by the Secretary of State (although such projects would, of course, have recourse to the BCA-led dispute resolution scheme, and, ultimately to the courts). This approach would be consistent with our proposal to discourage inappropriate use of Building Notices for more substantial works.
231. Further consideration would need to be given to when an 'appeal' to the Secretary of State could be triggered, but we think one should be eligible to submit an appeal within a reasonable period of time from the BCB refusal to accept a design proposal, issuing of conditional approval or refusal to issue a Completion Certificate, or in the case of an AI, a refusal to issue a plans or final certificate.
232. Other options to replace the current statutory procedures include the possibility of the Secretary of State ceasing to make determinations or consider appeals altogether and:
- leaving it to the parties involved to resolve disputes themselves, or to seek recourse to the proposed BCA-led fast-track dispute resolution scheme or the courts where appropriate; or
 - allowing for disputes to be settled by independent experts chosen by the parties, or by an independent statutory tribunal.
233. We propose that the parties involved would pay the costs of using the BCA-led dispute resolution scheme or the other options identified above.

Questions:

Q57. Do you agree a voluntary industry led dispute resolution scheme, with independent panel members, would be beneficial to users of the building control system?

Q58. *Have you had a technical dispute in the last year which you would have taken to this scheme had it existed?*

Q59. *What would deter you from using such a scheme?*

Q60. *Do you agree that the current statutory determination and appeal procedures are in need of reform?*

Q61. *(LAs only) How many formal relaxation or dispensation applications have you received in the last three years and how many of these have you consented to?*

Q62. *Would repealing the right to appeal to the Secretary of State against a LA's refusal to relax or dispense with a requirement of the building regulations cause you any difficulties?*

Q63. *Do you consider that continued recourse to the Secretary of State to resolve disputes where necessary is beneficial?*

Q64. *Would you support a provision giving a new right of appeal to the Secretary of State along the lines outlined in Proposal 4.5, or would you support the other options suggested?*

Q65. *If you support the other options, do you have a preference as to which option you support, and why?*

Q66. *Do you have any other proposals on how best to resolve building control disputes?*

234. To clarify, if taken forward, the BCA-led dispute resolution scheme and the new statutory procedure would sit alongside existing schemes for handling disputes between AI and LA building control (the ACAI/LABC scheme³⁹). It would also sit alongside routes of complaint for applicants unhappy with the service their building control body has provided, whereby they are advised to follow that organisation's internal complaints procedure and ultimately make a procedural complaint to the Local Government Ombudsman (in the case of LAs) or CIC (where an AI has been used). Beyond this, an applicant who is dissatisfied with their BCB's decision or service would need to consider with their legal adviser whether the matter might be best pursued in the courts. All these options will remain.

³⁹ <http://www.labc.uk.com/site/index.php>
<http://www.acai.org.uk/>

Chapter 5

Improved Performance and Capacity

Introduction

235. Stakeholders have a clear concern that barriers to improved performance are not picked up because of a lack of performance information. In the absence of specific objective evidence it is difficult to communicate what building control is for and uphold the added value of the profession.
236. This chapter looks at ways to strengthen the performance management system and addresses the accusation that the presence of competition in the building control system acts as a barrier to delivering a quality service. It also considers the issue of local authority building control resources and charging, and points to further areas of action we could pursue to strengthen the building control profession.

Issues

237. BCBs tell us they want more information available to demonstrate to peers, potential customers and commentators that they are doing a good job. Anticipated future requests on the profession to demonstrate the energy efficiency of buildings and compliance with the regulations generally will only make the need to demonstrate the system is working efficiently and delivering compliance more pressing.
238. At the same time, it has been alleged that private sector building control provides a lower level of service and customer care than afforded by local authority building control. It is, for example, suggested that the presence of a private sector service provider means that potential clients shop around until they find the cheapest fees or someone willing to accept an interpretation of the regulations which suits their ends. In the absence of any formal evidence of this, the Government does not assent to this view. Nevertheless, we do need to continue to be aware of these concerns and support procedures and working practices which expose and discourage counterproductive activity by any building control bodies.

239. The Government's view remains that competition between local authorities and Approved Inspectors in the provision of building control services provides a stimulus to greater efficiency and higher standards of service to the customer as long as appropriate performance standards are applied. For this reason we will continue working with the relevant bodies to strengthen and develop the performance standards and indicators produced in 2006.
240. These standards – applicable to building control bodies in both the local authority and private sectors – were first published in 1999 in the Building Control Performance Standards handbook. In 2000, the Department was instrumental in setting up and supporting the Building Control Performance Standards Advisory Group (BCPSAG) to keep the 1999 document under review, and promote higher standards of service delivery on the part of all building control bodies. In 2006, BCPSAG, consisting of the LABC, Local Government Association, ACAI and others with an interest in building control, produced a revised edition of the handbook and a set of seven performance indicators⁴⁰.
241. More recently the group has asked all local authorities and Approved Inspectors to submit returns against the new indicators in order to assess the comparative performance of the service being delivered by individual BCBs. This helps to provide the means for BCBs to identify any areas where improvements could be made in their delivery of a quality service.
242. We are aware that the BCPSAG-devised indicators have been criticised for being voluntary, too focused on processes and procedures and, for failing to be aligned to any strategic objectives. The development of a vision for building control, as discussed in Chapter 1 of this document, and the following proposals are intended to help industry address these criticisms.
243. This chapter also considers local authority building control resources and the charging regime. While building control is self financing,⁴¹ we have anecdotal evidence that not all the revenue received from building control charges for providing the service – in particular, any surpluses arising – is being reinvested in the service as it is required to be and that this situation is contributing to shortfalls in long-term maintenance and development of capacity and capability. This is largely to do with increasing pressures on resources from other parts of local government. For this reason many have called for LA building control charges to be safeguarded for the on-going provision of the service.

⁴⁰ www.planningportal.gov.uk/uploads/br/bcpi/building-control-performance-standards_june06.pdf

⁴¹ This excludes enforcement and non-regulatory functions such as work relating to Dangerous Structures.

244. LAs are obliged under the Building (Local Authority Charges) Regulations 1998 to set charges in a publicly available “scheme” and at such a level that they cover, with certain exceptions, the costs directly or indirectly incurred by the LA in performing their main functions under the Building Regulations. The LABC regards this current system to be inflexible, restrictive and uncompetitive, especially given that private sector Approved Inspector fees are a matter of negotiation between the client and the building control provider. This chapter therefore considers the steps we are intending to take to introduce more efficiency into the charging regime and increase the resource capacity of local government building control departments.
245. Generally speaking, the expertise, knowledge and professionalism of building control surveyors are well known. However, the picture of the building control profession often communicated is one of an ageing workforce which has found it increasingly hard to recruit and retain qualified staff, particularly in local authorities. Yet there are many LAs that have overcome these challenges such as Birmingham (see box). We hope the proposals in this document to create a vision for the future and update the tools and practices at the profession’s disposal will help local authorities present a more attractive picture.

Through an emphasis on total quality (Charter Mark, IIP, ISO 9000, CIOB CBC, Quality awards), **Birmingham City Council** has attracted, retained and developed people and achieves a customer satisfaction rate of over 80 per cent. Integral to this ethos is a ‘positive’ enforcement service, including working closely with homeowners, elected members and local MPs to tackle ‘cowboy builders’. Birmingham also offers a service where building control surveyors are part of the developers design team, offering options and advice for achieving Building Regulation compliance.

Government Proposals

Proposal 5.1: Embed and develop the building control performance indicators

246. The Government is committed to continued working with stakeholders to enable them to review the effectiveness of the building control performance indicators and develop a monitoring system.
247. The Building Control Performance Standards Advisory Group (BCPSAG) voluntary performance indicators form the basis for the first set of returns, expected at the end of this financial year (April 2008), from every building control body, public and private. BCPSAG wrote round last June encouraging bodies to collect the data so that meaningful returns could be compiled. The group rightly pointed out that completion of these new indicators will provide building control with data to assist in demonstrating how its service is achieving national standards for the benefits of clients.

248. The Government hopes building control has put the mechanisms in place to collect the data needed in order to get a national picture of the industry's performance. IT-based systems should make this possible. We will continue to work with BCPSAG and other stakeholders to help enable them to monitor the indicators.
249. The 2006 Local Government White Paper, *Strong and Prosperous Communities*, promised local authorities greater flexibility to set priorities. This meant that, among other things, indicators for assessing performance across a range of services would be reduced to around 200. It rightly paves the way for local authorities and their partners to look less to Whitehall for legitimacy and direction, and more to the communities they serve. For this reason, we will not be looking to make the BCPSAG indicators mandatory.
250. The Government believes these indicators represent a positive starting point for collecting performance data across the private and public sector. We think it is important that stakeholders continue to develop these indicators to make them as meaningful and output focused as possible. The Government is also keen for the public's views on service quality to become the core test of local performance. We hope the development of the strategic vision will give them a sufficient framework within which to be developed.

Questions:

Q67. Do you agree that we should further develop the building control performance indicators?

Q68. Do you have any further suggestions on how to improve the monitoring and performance of building control?

Proposal 5.2: Strengthen the overarching performance management system

251. Performance management helps building control providers to monitor their service delivery and thereby achieve continual improvement. We have begun helping the industry to develop a vision for building control and have a first set of industry agreed indicators across private and public providers. These will not, however, tell stakeholders how well the system is working overall or what levels of overall compliance are really being achieved.
252. It is the Government's view that local authorities and Approved Inspectors are best placed to identify their own developmental needs and how to address them, either through building up in-house capacity, or by supplementing in-house skills with those from external specialist sources. With our support, we hope building control bodies will put in place structures and adopt tools such as peer review initiatives or audits, across the two sectors, to support and drive sustainable business improvement through shared learning and the development and dissemination of best practice.

253. We have started collecting evidence from experiences in the Construction Industry Council's Rethinking Construction initiative and the Scottish audit scheme. In Scotland, BCBs are subject to periodic audits conducted by the Scottish Building Standards Agency and progress between audits is monitored by annual scorecard returns which can be found on the Internet.⁴²
254. We are conscious that we need a scheme which can span both sectors while not putting undue pressure on industry or local authorities and is in line with the principles of better regulation. We want to support industry in taking this forward and would welcome your views and input on your experiences of these and similar schemes and how we could apply them.

Question:

Q69. Do you agree some form of peer review/audit for the reasons described here would be helpful?

Proposal 5.3: Continue to promote industry standards in a competitive marketplace

255. Ministers are keen to ensure that there is open competition between local authority building control and Approved Inspectors, without artificial constraints. They are also determined to ensure that competition in this area does not drive down standards; instead they are keen to maintain and improve them. It is the Government's view that competition between local authority building control and Approved Inspectors can provide a stimulus to greater efficiency and higher levels of customer service as long as appropriate performance standards are applied and an effective monitoring system is deployed. The industry-wide BCPSAG performance indicators will provide the means for building control bodies to identify any areas where improvements could be made in their delivery of a quality service.
256. It has been suggested, however, that private sector building control provides a lower level of service, customer care and protection than afforded by local authority building control. Building control legislation places certain duties on both local authorities and Approved Inspectors. An Approved Inspector is required by regulation 11 of the Building (Approved Inspectors etc.) Regulations 2000 (as amended) to take such steps as are reasonable, within the limits of professional skill and care, to ensure that regulations 4 and 7 of the Building Regulations 2000 (as amended) are complied with. Effectively this means that AIs must ensure that building work complies with the requirements of the Building Regulations within the limitations given.

⁴² www.sbsa.gov.uk

257. The Department currently conducts no formal monitoring of AIs itself. However, the Construction Industry Council (CIC) is responsible for ensuring that all Approved Inspectors are checked against rigorous requirements before being permitted to carry out building control.
258. CIC also administers a formal investigation system dealing with complaints from customers about the service they received by AIs. This is open to all involved in the building control process, eg clients, local authorities and other statutory bodies. A range of sanctions can be applied for any complaints that are upheld by a panel of independent building control practitioners. A proven complaint about an Approved Inspector can lead to the removal of their CIC approval to practice.
259. There is, however, no evidence to suggest that complaints against Approved Inspectors are a cause for particular concern, any more than those about local authority building control. Indeed, there have been around 18 formal complaints against Approved Inspectors since the CIC was appointed as designated agent in 1999. Of these only one complaint has been upheld, and was judged to require the lowest sanction available, an “admonishment”. Despite this encouraging record, the CIC’s Approved Inspector management board is currently considering requiring all Approved Inspectors to make mandatory performance indicator returns as part of their re-approvals process.
260. In the case of local authority building control providers, if a customer is not happy with their service they can go through internal complaints handling procedures offered by that authority. If this fails to satisfy the applicant then the Local Government Ombudsman can be approached to consider cases of ‘maladministration’. There have been only three cases reported on Building Control since 2005; compared to 57 planning cases.⁴³

Questions:

Q70. Do you think these complaints procedures are fit for purpose?

Q71. How might they be improved?

Proposal 5.4 Promote shared approaches to working

261. In the Local Government White Paper⁴⁴ the Government recognised that in order to deliver the transformed services and value for money that communities want, LAs will have to challenge traditional methods of delivery in order to drive efficiency.

⁴³ www.lgo.org.uk/planning.htm

⁴⁴ *Local Government White Paper: Strong and Prosperous Communities October 2006.*

262. There may be potential benefits for frontline services such as building control from partnership working and sharing. For example, the Government supports the work the LABC is doing through its LABC Partner Authority Scheme to help companies that operate in multiple locations and deal with many local authorities. The scheme enables a company or adviser to have a one-to-one working relationship with a preferred local authority for advice and plan appraisal, while the site inspections are carried out by the local authority where each project is carried out. Currently LABC Partnering has over 2,500 successful partnership agreements throughout the country.
263. The Local Government White Paper also recognised the significant opportunities to improve the quality and efficiency of local government services by joint working and collaboration with private sector groups. There are already good examples of LAs and AIs working together in partnership arrangements. These and other approaches should be encouraged to maintain a good level of service. For example, the NHBC and Milton Keynes Building Control have agreed a scheme to allow surveyors from both organisations to gain experience in all aspects of building control to aid their professional qualifications and to become more rounded. The scheme offers trainees from both sectors places on training presentations and workshops, practical experience of checking plans and inspections, access to guides, secondments, mentoring, study groups, case studies, etc.

Q72. Are there other examples of positive working relationships of which you are aware and which we might disseminate as examples of co-operation and good practice in providing a modern building control service?

Proposal 5.5: Enabling a 'level playing field'

264. As mentioned above, the Government is committed to ensuring the presence of competition in the building control system does not act as a barrier to delivering a quality service. It has, however, become apparent that there are a few variances between the public and private BCBs which may need to be addressed in order to create a more level playing field.
265. We will therefore be undertaking a review of the Approved Inspector regulations. These regulations set out the procedures which determine how AIs operate. This review will, among other things, identify areas of concern to stakeholders. One such example is the issue of signatures on Initial Notices and associated documentation which has been a long standing source of dispute between LAs and AIs. The current regulations specify that a signature from the AI and from the "person intending to carry out the work" is required. However, when a signature from the person intending to carry out the work is absent, some LAs will still accept the initial notice while others reject it on the grounds that "the initial notice is not in the prescribed form".

266. We are considering relaxing a similar requirement for a signature from the person intending to carry out the work when applying to an LA under either Full Plans or Building Notices. Our survey of LAs and AIs shows that around 80 per cent of Full Plans applications made to LAs are handled by agents so this would help to reduce a regulatory burden on this process. On the other hand, it will remove an opportunity to encourage and educate the customer about building control. We are therefore considering whether it would be desirable to remove the need for this signature altogether. It should be understood that these proposals are in addition to the new “e-signature” regulations scheduled for April, which will enable the use of electronic signatures on initial notices, final certificates, etc.
267. Similarly, we are also considering removing the need to include a signed certificate of insurance with the initial notice. This requirement also presents a considerable burden on both the issuing insurance providers and AIs given the thousands of initial notices issued each year. If the need for a signed certificate is removed, we would, however, propose a requirement for a copy of the insurance certificate to be submitted (if required), so an LA could use the policy number to verify an AI’s cover in much the same way as a homeowner can check on the status of a member of a Competent Persons scheme through their scheme membership number.
268. We will continue to develop this and other “deregulatory” proposals, with the help of the ACAI, CIC, LABC and other interested parties for inclusion in a formal consultation document later this year. Such other proposals may include a removal of the distinction between “individual” and “corporate” classes of AIs, which should simplify the designated agent approvals process; clarification of the “regulation 10” requirement that requires AIs not to have a professional or financial interest in the work they are seeking to supervise; and a simplification of the statutory undertakers consultation requirement, possibly by removing the stages that have been shown to offer the least value. It should be borne in mind that the proposed changes above are not all that we propose. They represent the key changes that we consider are necessary to streamline the system. These proposals, along with others, will be fully consulted upon later this year.

Questions:

Q73. Do you welcome the move to review the AI regulations in the following way:

- *Remove the need for a signature of the person doing the work on an initial notice?*
- *Remove the need for a signature on the insurance certificate?*
- *Simplify the approvals process by establishing a single class of approved inspector?*
- *Clarification of the regulation 10 requirement?*
- *Removal of some stages of statutory approvals?*

Q74. Are there other areas covered by the AI Regulations which you think should be covered by the above review?

Proposal 5.6: Review of the LA building control charges regime

269. As mentioned in paragraph 241, LABC regards the current building control charging system to be inflexible, restrictive and uncompetitive, thereby contributing to a non-level playing field, which is not good value for the public. In addition, there is concern that resources which should be used to fund LA building control functions, including supporting services such as recruitment, training and development, appear at times to be used for other purposes. The Government is therefore currently reviewing the local authority building control charging regime, and is considering what more can be done to safeguard charges income.
270. Responsibility for setting building control charges was devolved to individual LAs in April 1999 (via the Building (Local Authority Charges) Regulations 1998) which provided for authorities to directly reflect the full costs of carrying out their functions in their charges, thereby encouraging more efficiency and competitiveness in the building control service. Although the charges regulations have served their purpose fairly well, LABC believes that more flexibility is needed and has been particularly concerned about the requirement in the regulations that LAs should pre-fix and publish all of their charges in a scheme in advance of handling any building control project. This has restricted their ability to set accurate charges based on their actual costs, particularly for larger projects, which has led to over or undercharging in some cases.
271. Furthermore, the annual monitoring exercises carried out by the Department have shown that some LAs have consistently set unnecessarily high charges which have generated significant surpluses (ie income over costs), and that the Government is concerned that this money may have been used for other local authority services instead of being reinvested back into the building control service (ie either by offsetting against future costs, resulting in reduced charges, or used to improve the quality of delivery of the building control service). LAs are not empowered under the charges regulations to levy charges other than for the purpose of recovering the costs of carrying out their prescribed building control functions. In the Government's view, if charges are fixed which are consistently disproportionate to the cost of the building control functions performed, this means that LAs may be acting outside of their powers to charge. We are aware that some Local Government auditors have also made findings to this effect in relation to some authorities.
272. The review will therefore aim to introduce into the building control charging system more flexibility and accuracy, ie reviewing what LAs charge for and how they set their charges, and better matching charges with full costs of functions so that the LA building control service is properly resourced. These proposals include the possibility of:

- introducing a system for quotations for charges for building control services in relation to major schemes;
- introducing a range of different factors for LAs to base their charges on and removing the restrictions relating to charging according to estimated cost of the work and floor area;
- removing the link between charges for Full Plans, Building Notices and other prescribed functions, and considering whether LAs should charge for other functions;
- more discretion to make reductions and refunds, including for green/sustainable projects and those using Competent Person Schemes;
- clarification of the exemption relating to work for disabled people.

273. The review will also aim to introduce more transparency so that it is clear that charges income, including surpluses, is used to cover the cost of providing building control only. We propose to do this by:

- amending the accounting requirements in the charges regulations;
- issuing accounting guidance; and
- clarifying the requirement for details of building control income and expenditure to be clearly indicated in LA accounts, which auditors and others can monitor.

274. It is anticipated that these changes will allow LAs to compete on a more level playing field with AIs and to provide better value for the public. The Department is currently discussing the detailed proposals with the LABC, following earlier consultation with the Building Regulations Advisory Committee. A separate, more detailed consultation paper on charges will be issued in 2008. However, it would be helpful if consultees would respond initially on:

Questions:

Q75. Do you agree that the current local authority building control regime is inflexible and restrictive and is in need of review, particularly with regard to competition with approved inspectors?

Q76. Is there evidence that surpluses derived from LA building control charges income is being used to fund other services within LAs?

Q77. Do you believe that the proposals identified in paragraphs [271] and [272] will provide the flexibility and transparency sought?

Annex A

The Building Regulations and the Building Control System: a Brief Explanation

Introduction

1. This section aims to give a brief explanation of the main components of the building control system and how it operates, and the reason for and scope of Building Regulations. It is not, however, comprehensive and readers should go to the Planning Portal, their Local Authority Building Control departments or the Department's website for more information.

Building Regulations

2. Building Regulations exist to ensure that our buildings are safe, energy efficient and accessible for everyone who uses them or lives or works in and around them.
3. The regulations apply to most new buildings and many alterations of existing buildings in England and Wales, whether domestic or non-domestic. Building regulations promote:
 - Standards for most aspects of a building's construction, including its structure, fire safety, sound insulation, drainage, ventilation and electrical safety.
 - Energy efficiency, and to some extent, the wider sustainability of buildings.
 - The needs of all people who use buildings including those with disabilities.
4. Building Regulations are made under powers provided in section 1 of the Building Act 1984 (as amended by the Sustainable and Secure Buildings Act 2004). The current regulations which set the building standards and requirements mentioned in paragraph 3 above are contained in the Building Regulations 2000 (as amended).
5. The Building Regulations contain various sections dealing with definitions, procedures, and what is required in terms of the technical performance of building work. For example, they:
 - define what types of building, plumbing and heating projects amount to 'building work', which consequently must comply with the Building Regulations;

- specify what types of buildings are exempt from control under the Building Regulations (Crown buildings etc);
 - set out the notification procedures that must be followed when starting, carrying out, and completing building work; and
 - set out the technical 'requirements' with which the individual aspects of building design and construction must comply.
6. The *requirements* with which building work must comply are contained in a schedule (Schedule 1) to the Building Regulations 2000 (as amended) and are grouped under 14 'Parts'. The Parts deal with individual aspects of building design and construction. They are listed in the table below.

The 14 'Parts' of Schedule 1 to the Building Regulations	
A Structure	H Drainage and waste disposal
B Fire safety	J Combustion appliances and fuel storage systems
C Site preparation and resistance to contaminants and moisture	K Protection from falling, collision and impact
D Toxic substances	L Conservation of fuel and power
E Resistance to the passage of sound	M Access to and use of buildings
F Ventilation	N Glazing – safety in relation to impact, opening and cleaning
G Hygiene	P Electrical safety

7. The requirements within each Part set out the broad objectives or functions which the individual aspects of the building design and construction must set out to achieve or deliver. They are therefore often referred to as the 'functional requirements' and are expressed in terms of what is 'reasonable', 'adequate', or 'appropriate'. Not all the functional requirements may be relevant to every building project, but all those which are relevant must be complied with as part of the overall process of complying with Building Regulations. These functional requirements are written with the clear and specific intention of not being prescriptive (so as to preserve design freedoms and flexibilities and allow for innovation).

8. To assist people in interpreting the requirements and gaining some assurance that their approach will achieve compliance with the regulations, the requirements are supplemented by a series of 'Approved Documents'. These provide practical guidance on ways to comply with the functional requirements. Each document contains:
 - general guidance on the performance expected of materials and building work in order to comply with each of the requirements in that part of the Building Regulations; and
 - practical examples and solutions on how to achieve compliance for some of the more common building situations.
9. The guidance in the Approved Documents does not amount to a set of statutory requirements and does not have to be followed if a designer/developer wishes to design and construct the building work in some other way, providing they can show that it still complies with the relevant requirements.

The Building Control System

10. The building control system is the system through which Building Regulations are applied and enforced.
11. Unlike the Planning system, the building control system works on a 'compliance basis' as opposed to an 'inspection basis'. This means that it is the responsibility of the person carrying out the building work to ensure that they comply with Building Regulations. That might be the person who owns the building if they are doing the work themselves or the contractor they have employed (depending on the agreement between them).
12. Anyone wanting to carry out building work which is subject to Building Regulations is required by law to make sure it complies with the regulations and, with some exceptions, to use one of the two types of Building Control Service available:
 - the Building Control Service provided by local authorities; or
 - the Building Control Service provided by private companies known as 'Approved Inspectors' (AIs).

13. If the local authority provider is chosen then there is a further choice of depositing Full Plans or giving them a Building Notice, which contains much less information. Which option is chosen depends on the type of building project – for example, Full Plans must be deposited where the Regulatory Reform (Fire Safety) Order applies (non-domestic properties and the common parts of blocks of flats). To start work without doing either is a contravention of regulation 12 of the Building Regulations 2000 for which the local authority can prosecute.
14. If an Approved Inspector is engaged to provide the service, the client and the AI must give the LA an initial notice. Once this notice has been accepted (within five days) or deemed to be accepted by the passing of five days without notice of rejection, the AI is responsible for supervising the work. The AI must have no professional or financial interest in the work he/she supervises.
15. Users are charged for both the local authority and AI services. In general, Approved Inspectors tend to be used by commercial customers (for either housing or non-housing developments) whereas local authorities are used by the full range of customers (domestic and commercial).
16. If a local authority considers that work that has been done is non-compliant and the responsible person has refused to put it right, they may bring a prosecution in a magistrates' court. Alternatively, or in addition, the local authority can serve an enforcement notice on the owner of the building requiring the alteration or removal of the offending building work. Unlike a local authority, an AI has no power to enforce the regulations. She/he is, however, obliged to inform his/her client where work contravenes the regulations and unless the works are put right can cancel the initial notice. The local authority will then be able to take forward any necessary enforcement actions.

If at any point a customer disagrees with a decision made by a building control body, the Building Act 1984 contains two procedures – determinations and appeals – which provide for the Secretary of State or the Welsh Assembly Government, as appropriate, to adjudicate. Determinations relate to questions arising regarding compliance with the Building Regulations of Full Plans applications for proposed building work; appeals are made against decisions by local authorities to refuse applications to relax or dispense with one or more requirements of the regulations.

Annex B

RESPONSE FORM

The Future of Building Control : Consultation

Respondent Details:	
Name:	Please return by: 10 June 2008 to:
Organisation:	Sustainable Buildings Division Communities and Local Government Floor 2, Zone H6, Eland House, Bressenden Place, London, SW1E 5DU Email: thefuture@communities.gsi.gov.uk Fax: 0207 944 5719
Address:	
Telephone:	
Fax:	
e-mail:	
Is your response confidential? If so please explain why. (See disclaimer on page 9) Yes <input type="checkbox"/> No <input type="checkbox"/> Comments:	
Provision is made throughout this questionnaire for you to provide additional comments. If, however you wish to provide more detailed comments on any aspect of the consultation then please feel free to append additional materials and supplementary documents, clearly marked and cross referenced to the relevant questions, as necessary.	
The Department of Communities and Local Government wishes to engage better with its stakeholders by automatically notifying you of changes to the regulations and approved documents and of consultations on building regulations issues. Because of the UK Data Protection Act 1998 we need your consent before we can do this. Please indicate your consent by ticking the consent box below. I/We hereby consent to the recording, storage and processing of my/our personal information by the Department of Communities and Local Government, and any data processor you may use, for the purpose of enabling stakeholder engagement <input type="checkbox"/>	

Organisation type (tick one box only)			
House or property developer	<input type="checkbox"/>	Approved Inspector Corporate Individual	<input type="checkbox"/> <input type="checkbox"/>
Commercial Developers	<input type="checkbox"/>	Local authority – other (please specify)	<input type="checkbox"/>
Housing Association (Registered Social Landlords)	<input type="checkbox"/>	Fire & Rescue Authority	<input type="checkbox"/>
Property Management	<input type="checkbox"/>	Other non-governmental organisation	<input type="checkbox"/>
Builder – Main Contractor (commercial/volume housebuilder)	<input type="checkbox"/>	Householder	<input type="checkbox"/>
Builder – Small Builders (repairs/maintenance/extensions)	<input type="checkbox"/>	Trade body or association	<input type="checkbox"/>
Builder – Specialist Sub Contractor	<input type="checkbox"/>	Research/academic organisation	<input type="checkbox"/>
Manufacturer	<input type="checkbox"/>	Professional body or institution	<input type="checkbox"/>
Architects	<input type="checkbox"/>	Testing bodies	<input type="checkbox"/>
Civil/Structural Engineer	<input type="checkbox"/>	Specific interest or lobby group	<input type="checkbox"/>
Consultancy	<input type="checkbox"/>	Journalist/media	<input type="checkbox"/>
Individual in practice, trade or profession	<input type="checkbox"/>	Insurer	<input type="checkbox"/>
Local authority – Building Control	<input type="checkbox"/>	Other (please specify):	<input type="checkbox"/>
	<input type="checkbox"/>		<input type="checkbox"/>
	<input type="checkbox"/>		<input type="checkbox"/>
Geographical Location			
England	<input type="checkbox"/>	Wales	<input type="checkbox"/>
England and Wales	<input type="checkbox"/>	Other (please specify)	<input type="checkbox"/>

Questions
Chapter 1: A Vision for Building Control
<i>Proposal 1.1: Develop a shared vision for the future of Building Control</i>
<p>Q1. Do you agree that a vision for building control based on the boxed text in chapter 1 would be useful?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q2. Are the areas covered in the boxed text generally the right ones?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q3. Are there other areas a vision statement should cover?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q4. Is what we say about quality generally correct?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q5. Are there other issues under quality which we need to cover?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know <input type="checkbox"/></p> <p>Comments:</p>
Proposal 1.1: Further comments:
<i>Proposal 1.2: A 'Procedural Guide' to explain what Building Control is for</i>
<p>Q6. Do you agree that a procedural guide which sets out the purpose of building control, the processes, role and responsibilities and a brief explanation of the regulations would be helpful?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q7. An on-line only version of the procedural guide which could be downloaded by users would be easier to keep up-dated. Would you support this approach?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q8. Do you agree more needs to be done to communicate the benefits of using building control and that raising awareness particularly amongst those that pay the fees should be an explicit part of a building control service responsibility?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q9. Do you have any good examples of which we should be aware or organisations that should be engaged to lead in co-ordinating this work?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Comments:</p>
Proposal 1.2: Further comments:

<i>Proposal 1.3: To create a seamless planning and building control service</i>
<p>Q10. Do you think we should do more to require planning and building control services to operate as a single function to ensure better joining up for the customer?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q11. Do you have examples of successful close working relationships in your LA which we could disseminate?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Comments:</p>
<i>Proposal 1.4: Other tools for a seamless service</i>
<p>Q12. Do you agree with our aim to further e-enable the building control system and its processes?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q13. What are the other barriers to more e-enabling that we need to address?</p> <p>Comments:</p>
Proposal 1.4: Further comments:
Chapter 2: A Better Approach to Delivering Regulations and Guidance
<i>Proposal 2.1: Introduce a Periodic System of Review</i>
<p>Q14. Do you support the introduction of a 3 yearly review of the regulations, whereby no one issue/subject will be reviewed more than once every 2 cycles, unless necessary through exceptional circumstances?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q15. Do you agree with our analysis of why a shorter or longer time frame does not work?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q16. Do you agree that we should start the first cycle of review in line with commitments to review Part L (i.e. starting in 2010)?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
Proposal 2.1: Comments:
<i>Proposal 2.2: Introduce a standstill period between reviews</i>
<p>Q17. Do you support the introduction of a 6 month standstill period?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>

Proposal 2.2: Comments:***Proposal 2.3: Rename, revise and reduce Approved Documents***

Q18. Do you agree that Approved Documents should be renamed? If yes, any suggestions?

Yes **No**

Q19. Do you think our approach to merging and reducing the number of Approved Documents over time is the right one?

Yes **No**

Q20. Do you:

- Use the Approved Documents on-line?

Yes **No**

- Or did you purchase a Part?

Yes **No**

- Or a full bound set?

Yes **No**

Q21. Do you have other suggestions to improve the presentation and usability of these documents?

- Hard copies

Yes **No**

- Electronic copies

Yes **No**

Comment:

Proposal 2.3: Further comments:**Proposal 2.4: Project guides**

Q22. Do you support the development of project guidance for domestic extensions and loft conversions?

Yes **No** **Don't Know**

Q23. What in your view are the other areas where compliance is thought to be low and a project guide might be of help?

Comment:

Proposal 2.4: Further comments:***Proposal 2.5: Establish criteria for references to third party documents***

Q24. Do you find references in the Approved Documents helpful?

Yes **No**

<p>Q25. Do you think our proposal to assess third party guidance against a set of criteria (clear and accurate, freely available on the Internet, not commercially biased) is correct?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q26. What other criteria need to be applied?</p> <p>Comment:</p>
<p>Q27. Are there other problems with third party documents which we need to address?</p> <p>Comment:</p>
<p>Proposal 2.5: Further comments:</p>
<p><i>Proposal 2.6: Make best use of the Planning Portal</i></p>
<p>Q28. Do you agree the Planning Portal needs to be re-branded to reflect its role in hosting building control content?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q29. Do you use the planning portal?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q30. If yes, do you find it useful?</p> <p>Comment:</p>
<p>Proposal 2.6: Further comments:</p>
<p>Chapter 3: Modernising Inspection and Enforcement</p> <p><i>Proposal 3.1: Provide specific guidance on risk assessing projects</i></p>
<p>Q31. Do you agree specific guidance on risk assessing projects would help?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q32. For what particular projects would you most welcome guidance in the first instance?</p> <p>Comment:</p>
<p>Q33. (BCBs only) What guides do you currently use to help you risk-assess applications and draw up an inspection notification framework?</p> <p>Comment:</p>

Proposal 3.1: Further comments:
<i>Proposal 3.2: Remove Statutory Notification Stages for Local Authorities and replace with a risk based approach to inspection (a Service Plan)</i>
Q34. Do you agree we should remove statutory notification stages? Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know <input type="checkbox"/>
Q35. Do you agree we should replace it with a requirement to issue a Service Plan? Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know <input type="checkbox"/>
Proposal 3.2: Further comments:
<i>Proposal 3.3: Make Issuing of Completion Certificates by Local Authorities Mandatory</i>
Q36. Do you agree with making the issuing of completion certificates for all works mandatory, whether submitted using a Building Notice or Full Plans? Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:
Q37. Do you agree that we should introduce one mandatory inspection as part of the service plan and to support the issuing of the completion certificate? Yes <input type="checkbox"/> No <input type="checkbox"/>
Q38. What might the practical implications and problems of making at least one inspection mandatory be? Comment:
Proposal 3.3: Further comments:
<i>Proposal 3.4: Limit Building Notices to minor works</i>
Q39. Are we right to want to limit Building Notices? Yes <input type="checkbox"/> No <input type="checkbox"/>
Q40. Are the areas we propose to require Full Plans the right ones (i.e. loft, cellar and garage conversions, erection of new buildings and extensions)? Yes <input type="checkbox"/> No <input type="checkbox"/>
Q41. What might the unintended consequences be? Comment:

<p>Q42. Are there any areas we have not covered which in your view need to be considered? Comment:</p>
<p>Proposal 3.4: Further comments:</p>
<p><i>Proposal 3.5: Allow Local Authorities to issue Stop Notices</i></p>
<p>Q43. Do you agree stop notices would be of benefit to local authorities in enforcing the building regulations? Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know <input type="checkbox"/></p>
<p>Q44. In what circumstance might they most usefully be applied and what are the perceived difficulties? Comment:</p>
<p>Proposal 3.5: Further comments:</p>
<p><i>Proposal 3.6: Allow Local Authorities to issue fixed monetary penalties</i></p>
<p>Q45. Do you agree the threat of a Fixed Monetary Penalty could act as a useful deterrent to breaches of the regulations? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q46. If the power to issue fines existed how might local authorities most appropriately apply them? What criteria should we consider using? Comment:</p>
<p>Proposal 3.6: Further comments:</p>
<p><i>Proposal 3.7: Extending time for prosecution</i></p>
<p>Q47. Do you agree that it would be useful to set the enforcement action time limits for all forms of formal enforcement at two years? Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:</p>

Chapter 4: Alternative Routes to Compliance

Proposal 4.1: Improvements to the Competent Persons Schemes

Q48. Are we right to continue with our current approach to encourage more schemes in existing areas and to continue not to approve Competent Persons schemes in the areas of structure, fire and underground drainage as built?

Yes No

Q49. Do we need to do more to improve existing systems than our current proposals (i.e. to require UKAS accreditation, encourage publication of leaflets, resolving data transfers and addressing difficulties)?

Yes No

Comment:

Proposal 4.1: Further comments:

Proposal 4.2: Investigate the case for other forms of Certification

Q50. Do you see any merit in whole building certification?

Yes No

Q51. Do you think it is appropriate to develop third party certification (certification of parts of a project) but only within the Competent Person Scheme framework?

Yes No

Comment:

Q52. If yes, in what areas?

Comment:

Proposal 4.2: Further comments:

Proposal 4.3: Further encourage the Appointed Person role

Q53. Do you think we should regulate for the Appointed Persons role or simply promote the adoption of this role as good practice?

- Regulate?

Yes No

- Promote Good Practice?

Yes No

Comment:

<i>Proposal 4.4: Extension of the Pattern Book approach</i>
<p>Q54. Should the pattern book approach be extended? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q55. What areas do you think the pattern book approach could cover? Comment:</p>
<p>Q56. Do you agree that a pattern book scheme could be developed to cover air-tightness testing and accredited details for Part L in dwellings? Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know <input type="checkbox"/> Comment:</p>
<i>Proposal 4.5: A Fast Track Dispute Resolution Service and Modernised System of Appeal</i>
<p>Q57. Do you agree a voluntary industry led dispute resolution scheme, with independent panel members, would be beneficial to users of the building control system? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q58. Have you had a technical dispute in the last year which you would have taken to this scheme had it existed? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q59. What would deter you from using such a scheme? Comment:</p>
<p>Q60. Do you agree that the current statutory determination and appeal procedures are in need of reform? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q61. (LAs only) How many formal relaxation or dispensation applications have you received in the last three years and how many of these have you consented to? Comment:</p>
<p>Q62. Would repealing the right to appeal to the Secretary of State against a LA's refusal to relax or dispense with a requirement of the building regulations cause you any difficulties? Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know <input type="checkbox"/></p>
<p>Q63. Do you consider that continued recourse to the Secretary of State to resolve disputes where necessary is beneficial? Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know <input type="checkbox"/></p>

Q64. Would you support a provision giving a new right of appeal to the Secretary of State along the lines outlined in proposal 4.5, or would you support the other options suggested?

- Secretary of State?

Yes No

- Other options?

Yes No

Q65. If you support the other options, do you have a preference as to which option you support, and why?

Comment:

Q66. Do you have any other proposals on how best to resolve building control disputes?

Yes No

Comment:

Proposal 4.5: Further comments:

Chapter 5: Improved Performance and Capacity

Proposal 5.1: Embed and Develop the Building Control Performance Indicators

Q67. Do you agree that we should further develop the Building Control Performance Indicators?

Yes No

Q68. Do you have any further suggestions on how to improve the monitoring and performance of Building Control?

Comment:

Proposal 5.2: Strengthen the overarching Performance Management System

Q69. Do you agree some form of peer review/audit for the reasons described here would be helpful?

Yes No

Comment:

<i>Proposal 5.3: Continue to promote industry standards in a competitive market place</i>
<p>Q70. Do you think these complaints procedures are fit for purpose? Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Q71. How might they be improved? Comment:</p>
<i>Proposal 5.4: Promote Shared Approaches to Working</i>
<p>Q72. Are there other examples of positive working relationships of which you are aware and which we might disseminate as examples of co-operation and good practice in providing a modern building control service? Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:</p>
<i>Proposal 5.5: Enabling a "level playing field"</i>
<p>Q73. Do you welcome the move to review the AI Regulations in the following way:</p> <ul style="list-style-type: none"> • Remove the need for a signature of the person doing the work on an initial notice Yes <input type="checkbox"/> No <input type="checkbox"/> • Remove the need for a signature on the insurance certificate Yes <input type="checkbox"/> No <input type="checkbox"/> • Simplify the approvals process by establishing a single class of approved inspector Yes <input type="checkbox"/> No <input type="checkbox"/> • Clarification of the regulation 10 requirement Yes <input type="checkbox"/> No <input type="checkbox"/> • Removal of some stages of statutory approvals Yes <input type="checkbox"/> No <input type="checkbox"/>
<p>Q74. Are there other areas covered by the AI Regulations which you think should be covered by the above review? Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:</p>
<i>Proposal 5.6: Review of the local authority Building Control Charges Regime</i>
<p>Q75. Do you agree that the current local authority building control regime is inflexible and restrictive and is in need of review, particularly with regard to competition with approved inspectors? Yes <input type="checkbox"/> No <input type="checkbox"/></p>

Q76. Is there evidence that surpluses derived from local authority building control charges income is being used to fund other services within LAs?

Yes **No**

Comment:

Q77. Do you believe that the proposals identified in paragraphs 271 and 272 will provide the flexibility and transparency sought?

Yes **No**

Comment:

Please make any further additional comments here, ensuring that you clearly refer to any relevant questions or responses submitted above.

Any other comments:

Annex C

The Consultation Criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation. Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (eg under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless ministers conclude that exceptional circumstances require a departure.

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

The full consultation code may be viewed at:

http://bre.berr.gov.uk/regulation/consultation/consultation_guidance/index.asp

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Albert Joyce,
Communities and Local Government Consultation Co-ordinator
Zone 6/H10
Eland House
Bressenden Place
London SW1E 5DU

or by e-mail to: albert.joyce@communities.gsi.gov.uk

Please note that responses to the consultation itself should be sent to the contact shown within the main body of the consultation.

Annex D

The Review of Building Control Working Group

Name	Title	Organisation
Michael Finn	Chairman	Building Regulations Advisory Committee
Alan Crane (CBE)	Chair Professional Practice Board	Chartered Institute of Building
Bill Dunster	Director	Zedfactory Ltd
Bob Cooper	Technical Development Manager	Jhai
Caroline Kemp	Member	NHBC Consumer Committee
Chris Kendall	Director	Planning Inspectorate
David Gibson	Chief Executive	Association of Building Engineers
David Lush (OBE)	Chairman	Construction Industry Council Approved Inspectors Register Management Board (CICAIR)
David McCulloch	Chairman	Building Control Alliance
John Cover	Technical Director	Gleeson Homes
Kelvin Williams	Group Head of Planning and Building Control	Wealden District Council
Neil Cooper	Group Head of Building Control	National House Building Council
Nigel Pound	Member	Federation of Master Builders
Paul Allen	Consultant	Trading Standards Institute
Paul Overall (CBE)	Chief Executive	LABC
Paul Timmins	Chairman	Association of Consultant Approved Inspectors
Peter Caplehorn	Practice Committee Building Regulations and Health and Safety advisor	RIBA