

**Review of
The Building Regulations
(Northern Ireland)
Order 1979
(as amended 1990)**

Second Stage Consultation

PAPER 1: The Department's Proposals

July 2005

Review of the Building Regulations (Northern Ireland) Order 1979

Second Stage Consultation – The Department’s Proposals

Contents	Page
Foreword	2
Introduction	4
<i>PART 1: The Building Regulations (NI) Order 1979 - An examination of the current provisions</i>	
1.0 Purpose	7
1.1 Legal definitions	7
1.2 Building Regulations	8
1.3 Meeting the requirements of Building Regulations	11
1.4 Northern Ireland Building Regulations Advisory Committee	12
1.5 Consideration of applications by district councils or other bodies	13
1.6 Notification of intent and inspection of site	14
1.7 Powers of entry and inspection	15
1.8 Expiry of plans	16
1.9 Enforcement of Building Regulations	17
1.10 Contravention of the Building Regulations	18
1.11 Penalties and offences	19
1.12 Rights of appeal	20
1.13 Powers to approve types of building matter	21
1.14 Type relaxation of the requirements of Building Regulations	23
1.15 Relaxation of Building Regulations	24
1.16 Continuing requirements	25
1.17 Power to require tests	26
1.18 Materials unsuitable for permanent buildings	27
1.19 Application of Building Regulations to the Crown	28
<i>PART 2: Proposed new powers</i>	
2.0 Purpose	30
2.1 Competent Persons scheme	30
2.2 Off-site inspection of prefabricated components	31
2.3 Historic or listed buildings	31
2.4 Approval of building control authorities	32
2.5 Dangerous buildings	33
2.6 Building Regulations register	33
<i>PART 3: Responding to the consultation document</i>	35

Foreword



*By The Rt Hon Lord Rooker,
Minister for Finance and Personnel*

I welcome the opportunity to launch this second round of public consultation on the review of the primary legislation relating to building regulations in Northern Ireland, namely the Building Regulations (Northern Ireland) Order 1979 (as amended 1990).

It goes without saying that there are certain matters relating to buildings on which we can all agree. We all want our houses, the buildings in which we work and those we visit to be accessible, and to provide dry, warm and comfortable serviced environments which are accessible and safe, so that for example should a fire break out there will be adequate warning, and we can exit these buildings safely.

Building regulations are at the forefront of these matters: regulations currently made by the Department of Finance and Personnel (under powers granted by the 1979 Order), and enforced by district councils.

Since the 1979 Order came into operation, it has been amended only once in 1990. Since then there have been major changes and developments to the building process, both in materials used and in construction methods applied. For example, there has been a marked rise in the use of pre-fabrication, a trend that as I write shows no signs of abating.

In addition, matters such as protection of the environment have been raised to a much higher level of public awareness. We need to ensure that when erecting new buildings or when refurbishing existing buildings, we avoid causing undue harm or

damage to the environment by developing in more sustainable ways. It is imperative therefore that legislation continues to be developed to reflect these changes, and to meet the needs of the population and business.

This consultation represents the final opportunity for you to contribute to the formulation of the Department's policy on building regulations before the review passes to its legislative stages. Your input will help develop new building regulations legislation that will impact on the lives of everyone in Northern Ireland for some time to come. I would therefore encourage you to take this opportunity to contribute to its development.

In launching this consultation, I would like to thank those who contributed to the first round of public consultation. Your comments and suggestions were most welcome and have helped formulate the Department's proposals. In addition, I wish to acknowledge the work of the Northern Ireland Building Regulations Advisory Committee and its relevant sub-committee, which have advised the Department in the development of this consultation.

JEFF ROOKER

Minister for Finance & Personnel

Introduction

The purpose of this consultation is to continue the process of reviewing the Building Regulations (Northern Ireland) Order 1979 (as amended 1990) (“the 1979 Order”), and to get the views of consultees on proposed amendments to this legislation.

The 1979 Order is the primary legislation for building regulations in Northern Ireland. It sets out the powers, duties, responsibilities and rights of the Department, district councils and applicants in relation to building regulations matters, including giving the Department of Finance and Personnel responsibility for writing regulations in the form of secondary or “subordinate” legislation. These Regulations currently are the Building Regulations (Northern Ireland) 2000 and the Building (Prescribed Fees) Regulations (Northern Ireland) 1997. These regulations are not being reviewed as part of this exercise.

This consultation sets out the Department’s proposals for new primary legislation to replace the 1979 Order. The proposals take account of responses to an initial consultation exercise, which took place between January and May 2004, and existing legislation in England and Wales, in Scotland and in the Republic of Ireland. The proposals incorporate new powers including, but not limited to, those that are given by the European Communities Act 1972, which provide for transposition of the relevant elements of the EU Directive on the Energy Performance of Buildings insofar as they may be enforced through building regulations.

Within this consultation, you will read of our proposals to introduce powers to address the issue of dangerous buildings. By taking such powers, the scope of the Bill would be extended beyond solely building regulations; such a change would need to be reflected in the name of the new legislation, which, it is proposed, would be the Building (Northern Ireland) Act/Order 2006 (whether the Bill is an Act or Order is determined by which legislative authority the Bill is laid before – if at Westminster, it will be an Order, if the Northern Ireland Assembly it will be termed an Act).

Under the current timetable, the new Bill will be available by the end of 2006, although it will not come into operation before mid-2008. This lead-in period is to permit transposition of the Building Regulations and associated documentation as may be required by provisions in the new Bill.

It must be emphasised that the proposals in this consultation are by no means exhaustive or final, and we welcome any additional suggestions, comments or views that you may wish to make.

The 1979 Order, together with the subordinate legislation, may be accessed through The Stationery Office website, links to which (together with links to the analysis of this review's first round of public consultation) can be found on our website at the following address:

<http://www.dfpni.gov.uk/buildingregulations/links.htm>

PART 1: The Building Regulations (Northern Ireland) Order 1979

- an examination of the current provisions

1.0 Purpose

In this Part of the consultation, we set out the current provisions of the 1979 Order and explain their purpose. We also indicate whether or not the existing provisions should be amended and if so, what we consider the amendment to be.

The Building Regulations (Northern Ireland) Order 1979 contains 27 Articles that set out the various powers, duties, responsibilities and rights of the authorities named within it, namely the Department and district councils. The 1979 Order also sets out duties imposed on an applicant and establishes the circumstances under which he has a right of appeal against a decision of a district council.

1.1 Legal definitions

Within all legislation particular words or phrases are defined for the purposes of that particular piece of legislation.

The 1979 Order contains a comprehensive list of definitions for terms that occur throughout the legislation, including definitions of “building”, “site” and “premises”. The definitions contained within the 1979 Order also apply to any subordinate legislation written under the powers given in the 1979 Order except where an alternative definition is stated in the subordinate legislation.

The definition of “site” under the legislation refers only to the actual footprint of the building. Although new regulations have been introduced that extend the

impact of the regulations beyond the footprint (for example, the accessibility requirements now address the approach to the building from the boundary of the site), we are satisfied that under current provisions, regulations can be made to cover to the boundary, rather than just the footprint of the building.

It is proposed that the definition of “site” be amended to include up to and including the boundary, rather than just the building’s footprint.

1.2 Building Regulations

Building Regulations are intended to set out requirements that can reasonably be expected to be attained in buildings, having regard to the need for securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings. They also have regard to furthering the conservation of fuel and power. These, in essence, are the “principles” of building regulations.

The matters for which the Department may make building regulations are set out in Schedule 1 to the 1979 Order. These matters are categorised under the following 21 headings:

- the preparation of sites;
- the suitability, durability and use of materials and components (this includes types of surface finishes);
- structural strength and stability, including - precautions against overloading, impact and explosion; measures to safeguard adjacent buildings and services, and for underpinning;
- fire precautions - buildings should be constructed and services and fittings provided to resist the outbreak of fire, to ensure that there is safe and effective means of escape, to restrict the damage caused by the fire and to facilitate fire fighting;

- resistance to moisture and decay;
- measures affecting the transmission of heat;
- measures affecting the transmission of sound;
- measures to prevent infestation;
- measures to control the emission of noxious or offensive substances such as gases, fumes, grit or dust;
- drainage (including waste disposal units);
- cesspools, and other means of storage, treatment and disposal of foul matter;
- the storage, treatment and removal of waste;
- installations utilising any source of fuel or power (e.g. central heating systems) and any appliances, storage tanks or other equipment associated with these installations;
- telecommunications services (including wiring installations for TV, radio or telephones);
- lifts, escalators, hoists, conveyors and moving footways;
- any plant that provides air under pressure;
- standards to be achieved in relation to heating, artificial lighting, mechanical ventilation and air conditioning of buildings. This also includes the provision of power outlets;
- open space around buildings, and the natural lighting and ventilation of buildings;
- the dimensions of specific rooms and other spaces within buildings, and accommodation for specific purposes within buildings;
- the means of access and egress from buildings and parts of buildings; and
- the prevention of danger and obstruction to persons in and about buildings, including passers-by.

Additionally, the 1979 Order allows the Department to make building regulations for any matters connected with or ancillary to the above matters.

Government is placing increased emphasis on matters such as sustainability, security, and environmental issues. This emphasis is also being supported by a number of other factors, including:

- increased public awareness of environmental issues (as reflected in responses to the first round of consultation on this review),
- the desire for closer harmonisation with the legislative provision in England & Wales, and
- emerging and future EU legislation.

In order to ensure that the NI legislative provision anticipates future needs, as well as addressing current requirements, it is proposed that the “principles” of Building Regulations be extended to also include:

- ***the promotion of sustainable development; and***
- ***the enhancement and protection of the environment.***

It is further proposed that the list of matters on which Building Regulations may be made is extended to include:

- ***security of buildings;***
- ***sustainable use and management of water;***
- ***waste management (demolition, reuse and recycling);***
- ***durability of materials and materials life cycles; and***
- ***pollution (emissions) and nuisance.***

1.3 Meeting the requirements of Building Regulations

The Building Regulations express technical requirements mainly in functional wording (i.e. they identify a reasonable standard that should be attained), but refer to provisions (which may be in the form of British or European Standards or Technical Booklets) which, if followed, satisfy the requirements.

Technical Booklets are prepared by the Department solely to provide a “deemed-to-satisfy” method of demonstrating compliance with the requirements of the regulations. These Technical Booklets and other referenced documents have allowed the Department, without jeopardising the ability to innovate, to set certain standards of performance. They also provide a degree of predictability and certainty by giving particular methods and standards of building that, if followed, will satisfy the requirements of the building regulations.

The provisions contained in Technical Booklets cover a limited range of circumstances and forms of construction. Situations frequently arise where it is not only appropriate but also necessary to demonstrate compliance with the building regulations with a form of construction outside those set out in the Technical Booklets.

The other legislative authorities within the British Isles, in support of functional requirements, use a system of providing practical guidance (through a series of publications) on the materials, levels of performance, safety, protection etc., which are to be taken into consideration when determining whether the requirements of building regulations have been met. Such guidance always applies, but as with the deemed-to-satisfy provisions in our Technical Booklets, there is no obligation to adopt any particular solution as, although following the guidance, the form of construction can vary considerably depending on individual circumstances.

There is merit in moving towards a system of guidance publications for a number of reasons:

- it would permit more rapid reaction to new guidance, standards or Directives coming from GB or Europe;
- it may encourage more creativity and flexibility in design and materials;
- it would facilitate the Department in achieving its policy of closer technical harmonisation with other GB legislative authorities as appropriate; and
- it would also relax some of the onerous legislative requirements associated with providing deemed to satisfy provisions.

It is proposed to move from deemed-to-satisfy to the provision of practical guidance in support of performance-based regulations.

1.4 Northern Ireland Building Regulations Advisory Committee

The Northern Ireland Building Regulations Advisory Committee (NIBRAC) is a statutory body that the Department has a duty to consult when creating or amending building regulations. NIBRAC may also advise the Department on any other matter connected to building regulations referred to it by the Department.

We consider the role undertaken by NIBRAC to be of great assistance to the Department when amending building regulations, and the need for this role is expected to continue.

When seeking new members to NIBRAC, the Department has sought nominations from various professional bodies and organisations either associated with the construction industry or which have an active interest in, or are affected by, building regulations. Successful nominees have been appointed by the Minister, not to represent any organisation or body, rather

their role being to bring their individual knowledge and expertise on particular aspects of construction and building regulations to the Committee.

In line with the Nolan Principles for public appointment, the Department, when seeking applications for membership to NIBRAC, is adhering to guidance contained in the Office of the Commissioner of Public Appointments for Northern Ireland's (OCPANI's) Code of Practice. OCPANI guidance recommends that nominations to NIBRAC must come from suitable individuals who meet the application criteria, and not from professional bodies or associations. Membership of NIBRAC is unpaid, however members are entitled to repayment of all out-of-pocket expenses incurred in connection with the business of NIBRAC.

It is proposed that the provisions relating to the appointment of members to NIBRAC are worded to comply with OCPANI guidance, i.e. to permit self-nomination by suitably qualified individuals.

1.5 Consideration of applications by district councils or other bodies

Under the active provisions of the 1979 Order, district councils are the only bodies to which notification of intention to undertake work may be submitted. District councils are also the only bodies that determine whether or not submitted plans conform to the requirements of the Building Regulations.

Although these roles rest solely with district councils, there are dormant powers in the 1979 Order [Article 5(1)(e)] to assign similar roles to any person or group of people. These powers have remained dormant and there are currently no plans at present to commence them.

It is considered that district councils should remain the sole provider of these roles for the foreseeable future. However, it is also considered that there

should be provision within the Bill to assign the function to any other party, including private sector organisations, as currently exists in the 1979 Order. This power would remain dormant until such time as it becomes appropriate to commence it. Such powers could also be used to establish a competent person scheme (see Section 2.1).

It is not proposed to make any amendment to existing provisions in relation to this matter.

1.6 Notification of intent and inspection of site

Where plans of proposed works are submitted to a district council, the district council must either pass the plans if they are not defective or do not contravene any building regulation, or reject the plans where they are defective or are in contravention of any regulation. District councils may also pass plans provisionally, in stages, or subject to any modifications it feels are necessary to ensure compliance. Should a District Council decide to pass plans by stages, it may impose conditions requiring the depositing of further plans, and may prevent the commencement of work related to these plans until such plans are deposited. The 1979 Order also allows district councils to charge fees for any of their functions that relate to building regulations.

Under existing provisions, a district council has a prescribed period (currently 56 days) within which to decide if an application meets the requirements of building regulations. Should the district council fail to reach a decision within this time, an applicant may consider that his plans have been rejected, and appeal to the Department as if his plans had been rejected.

It had been suggested in some responses to the first round of consultation that where a district council has not made a decision on whether an application meets the requirements of the Building Regulations, the application should be

deemed to have been approved rather than rejected. It is our opinion that such a move would present a risk of development taking place in accordance with the application, but which does not adhere to the requirements of the building regulations; therefore we propose that the existing provisions should be retained.

Should an applicant not wish to deposit plans for a dwelling, he may instead submit a Building Notice that must include certain information prescribed by the Building Regulations

There are no proposals to further amend the provisions relating to the deposit and approval of plans.

When the 1979 Order was written, plans could only be submitted to Building Control in hard copy (e.g. paper format). We wish to ensure that plans and other submissions to district councils may also be made electronically and therefore would propose to word the new Bill accordingly.

It is proposed that the wording of the provisions is amended to explicitly facilitate the processing of electronic submissions.

1.7 Powers of entry and inspection

On occasion it may be necessary for authorised officers to enter premises to ascertain whether or not the premises comply with the requirements of the 1979 Order and the building regulations.

Under the 1979 Order, an authorised officer may enter a building to carry out a number of tasks:

- to check for conformity with the Regulations and the requirements of the 1979 Order (i.e. site inspections);
- to apply tests for conformity with Building Regulations;
- where there is reasonable cause to do so, to determine whether or not there has been a change of use of the premises or if such a change of use is proposed; or
- to exercise any of his functions under the 1979 Order or its Regulations.

In order to gain entry to determine an actual or proposed change of use, the officer must give 3 days notice to the owner/occupier of the building. In certain circumstances (for example, where it may not be appropriate to give such notice, or where entry has been refused), a Justice of the Peace may issue a warrant authorising the officer to enter the premises by force if necessary. The warrant expires after 28 days.

We are satisfied that the provisions relating to the entry and inspection of premises are appropriate and do not foresee a need to strengthen or amend them.

It is not proposed to make any amendment to the provisions relating to the entry and inspection of premises.

1.8 Expiry of plans

In order to restrict development against out-of-date building regulations, plans against which no work has commenced within three years of their deposit are no longer considered active.

Under the existing provisions, district councils may serve notice on an applicant where a period of three years has elapsed from the date of deposit of the plans with the district council and on which no construction work has started, to the

effect that the deposit of their plans shall be of no consequence; i.e. as if that deposit had not been made.

During the course of the initial consultation exercise, concerns were expressed that under the existing Article, starting work on the first unit effectively activated plans for multiple housing units. This allowed development to take place beyond the three-year limit imposed by the existing provisions.

In order to address these concerns, it is proposed in the new Bill that each unit in an application for multiple dwelling units shall be considered as an individual application for the purpose of deeming plans to be of no effect. In this way, developers may still avail of the opportunity to submit plans for multiple units, but where work on any of those units has not commenced within three years from the date of the deposit of the plans, approval for those units shall be deemed to have lapsed.

1.9 Enforcement of Building Regulations

In order to ensure that the provisions of building regulations are adhered to, it is necessary to empower a body to enforce the regulations.

Under the 1979 Order, district councils are identified as the enforcement authority. The Order also allows the Department to use the regulations to prescribe the qualifications necessary to act as an enforcement officer.

The penalties and offences contained within the 1979 Order are all criminal in nature rather than civil. Therefore only recognised statutory bodies such as government departments or district councils may bring prosecutions. It would not be possible for a private organisation to take a criminal prosecution against an individual for any offence committed under the 1979 Order, therefore enforcement of the Building Regulations will remain a district council function.

It is not proposed to make any amendment to the provisions relating to the enforcement of building regulations.

1.10 Contravention of the Building Regulations

Where work has been carried out that is in contravention of the building regulations the district council may, within a prescribed period, issue a notice stating that there has been a contravention of the regulations, stating which regulation has been contravened, and requiring that the contravention is put right.

Such a notice may either require removal of the work in question, or its alteration to comply with the regulations. In cases where, after 28 days, the requirements of the notice are not met, the council is permitted to carry out the necessary work and recover the costs from the person on whom the notice was served. Contravention notices must be served within 18 months of the date of completion of the work in question.

The person upon whom the contravention notice has been served has the option of obtaining a report from a suitably qualified person on the work to which the contravention notice relates. If upon receipt of such a report the district council withdraws the contravention notice, it may pay to that person any expenses reasonably incurred as a consequence of serving the contravention notice, including the cost of obtaining the report.

The serving of a contravention notice does not have to be the first step in the process to rectify a contravention of the regulations. There is sufficient scope in the provisions to permit negotiations between a builder and authorised officer to try to resolve the matter before resorting to the serving of a contravention notice.

Rather than use primary legislation to prescribe the period within which a contravention notice may be served, we consider it more appropriate to list the prescribed periods within the Building Regulations.

Apart from transferring any prescribed time periods from the Bill to the Building Regulations, there are no proposals to alter any of the existing provisions relating to contravention of the Building Regulations.

1.11 Penalties and offences

Anyone failing to comply with certain provisions of the 1979 Order is guilty of a criminal offence under the Order, and is liable on summary conviction to a fine. The fine does not exceed level 2 on the standard scale for the offence of obstructing an officer from legally entering premises, and level 5 for all other offences, with additional daily fines for each day the offence continues after conviction.

The 1979 Order states the offences that may be committed by non-compliance with the requirements of the Order and the Building Regulations, namely:

- the contravention of, or non-compliance with, a continuing requirement;
- the contravention of any condition imposed on a direction for type relaxation of building regulations;
- the contravention of any condition relating to materials unsuitable for permanent buildings, or the failure of a person to remove such materials as instructed;
- the obstruction of an authorised officer exercising his powers to enter premises;
- the disclosure by an authorised officer or other person entering the premises of any manufacturing process or trade secret (unless disclosure was made in the performance of their duty); and

- the failure to adhere to the requirements of a contravention notice.

It is considered that the list of offences in the Order is adequate, and that the scale of penalties is appropriate, and it is not therefore considered that there is a need to alter existing offences or penalties other than to provide for any new provisions that may be included in the new Bill.

There are no proposed amendments to the provisions relating to penalties and offences other than to provide for any new provisions that may be included in the new Bill.

1.12 Rights of appeal

Where a person is dissatisfied by a particular decision of a district council, he may have recourse to appeal against that decision.

At present, the right of appeal on a number of matters relating to building regulations, and the body to which the appeal may be made are:

- appeal to the Department where plans have been rejected by a district council on the grounds that they are defective or do not comply with any building regulation;
- appeal to the Department where plans have been rejected by a district council on the grounds that materials were used that have been deemed unsuitable for permanent buildings; or where councils impose conditions or time restrictions on such materials that the applicant feels are unreasonable;
- appeal to the Department where a district council has refused an application to dispense with or relax any provision of building regulations, or grant such an application subject to conditions;
- appeal to the Department where a district council has served a contravention notice on that person; and

- appeal to the courts where a person is unhappy with a district council's requirement for tests to confirm conformity with building regulations; or with a district council's decision on how the costs of such tests should be met (not yet commenced);

In all cases where the Department is the appeals body, its decision is final except on a point of law, on which the Court will decide.

The Order also allows the Department to charge fees in relation to appeals, and to write regulations setting out the procedures to be followed in connection with any of the above appeals to the Department.

It was clear from the initial consultation that respondents were generally content with the range of appeals available to them. There was some confusion, however, over the actual requirements of the appeals processes. Although outside the scope of this Review, the Department recognises that some guidance to potential appellants encompassing the right of appeal and the procedures, prescribed timescales etc. may be helpful, and is proposing to make that guidance available on its website.

It is not proposed to make any amendment to the existing appeals processes.

1.13 Powers to approve types of building matter

The purpose of this power is to allow certain types of building matter to be approved as having satisfied the requirements of the building regulations.

Under the 1979 Order, the Department is empowered to approve a particular type of building matter as complying with particular requirements of the regulations, and also to delegate to any person these powers of approval. This

“type” approval can either be made of the Department’s own accord, or on application to the Department for such an approval. These powers in relation to type approval so far have not been commenced.

Having made such an approval, the Department may issue a certificate setting out the terms of the type approval. These certificates may also impose conditions and time limits on the approval.

There is considerable merit in using these powers, for example, to allow district councils limited powers of type approval. For example, a house builder could submit plans for a particular type of house for type approval to one district council, and use that type approval to build in another council area.

This would be type approval of superstructure only, as approval of sub-structures and site-specific matters (e.g. foundations, drainage) would still have to be carried out by the district council within whose boundary the development was to take place. The apportionment of fees etc connected with these functions would have to be prescribed in amendments to the Fees Regulations.

In order to ensure that type approved developments do not take place in compliance with out-of-date building regulations, it is proposed that any change to the technical requirements of the Building Regulations coming into operation would render all existing type approvals invalid, except in cases where specific approval for sub-structure and other site-specific matters had already been requested by deposit of plans from the district council within whose boundary the development was to take place.

It is proposed that the power to approve types of building matter should, for example, be retained to permit district councils to type approve plans. Where these plans transcend council boundaries, any of the affected councils should be allowed to type approve the plans, with the mutual consent of the other affected councils.

1.14 Type relaxation of the requirements of building regulations

In some cases, it may be appropriate for the Department to relax the requirements of building regulations for a particular type of building matter.

Under current provisions in the 1979 Order for type relaxation, the Department may relax the requirements of building regulations either of its own accord, or following an application to it for such a relaxation. Before giving any direction under this power, the Department must consult with any parties that are representative of the interests concerned.

When the 1979 Order came into operation, regulations were written in a prescriptive manner (i.e. they specified the steps to be taken to meet the requirement). Since then building regulations have become more functional; in other words they consist of a generalised statement requiring adequate or reasonable measures to be taken, backed up by provisions that if met would be taken as satisfying the requirement. As most building regulations are functional, the need to exercise the power to relax building regulations for a particular type of building or building matter has lessened.

However, as some prescriptive regulations remain, circumstances may arise where type relaxation of a prescriptive requirement is desirable. We therefore consider that there is merit in retaining the powers to relax a requirement.

It is proposed that the existing provisions relating to type relaxation of any requirement of building regulations are retained.

1.15 Relaxation of Building Regulations

Whereas the previous section sets out circumstances where the Department can relax the requirements of building regulations with regard to the type of building or building matter, it may also be appropriate for the Department or, if the Department determines, district councils, to relax any provision of the building regulations for a particular building or class of building.

Where it is considered unreasonable to apply any provision of the building regulations to any particular building and an application for relaxation has been made, the Department can give a direction dispensing with or relaxing that provision.

The power to relax or dispense with any provision of building regulations for a particular building may only be exercised following receipt of an application requesting such action. Through Building Regulations, the Department has given this power to district councils, except in cases where the applications are made by district councils, or in respect of relaxations to either Part A (Interpretation and general) or Part D (Structure) of the Building Regulations.

The power to relax or dispense with provisions of the regulations for a particular class of building rests solely with the Department, and may only be exercised following consultation with NIBRAC.

These relaxations may also be extended to existing work, except where the work in question has been the subject of a court order requiring its demolition, removal or alteration. Where an application has been made for a relaxation of building regulations for existing work, a contravention notice cannot be served until the application has been withdrawn or disposed of.

It is beneficial to both the Department and district councils to have such powers available and to be able through Building Regulations to give district councils the power (with certain exceptions) to relax requirements for particular

buildings. We do not foresee any need to alter or amend the existing provisions.

It is not proposed to make any amendment to the provisions relating to relaxation of any provision of the building regulations.

1.16 Continuing requirements

As well as specifying the constructional requirements to which a building should comply, the 1979 Order provides that building regulations may also require certain elements to be subject to ongoing maintenance or inspection. These are known as “continuing requirements”.

Under the powers contained in the 1979 Order, continuing requirements may be imposed upon:

- conditions applied to the use of any service, fitting or equipment;
- inspection or maintenance of services, fittings or equipment; and
- the making of reports on the condition of services, fittings and equipment.

In addition, the 1979 Order permits the enforcement authority to carry out whatever work is necessary to remedy the contravention, and retrieve the cost of the work from the owner/occupier, provided that it has given the owner adequate notice and time to correct the contravention himself.

The powers relating to continuing requirements and to the requirement of tests (see Section 1.17) in the 1979 Order have not yet been commenced, but will be commenced within the period of this consultation to ensure that, if required, certain requirements of the EU Directive (2002/91/EC) on the Energy Performance of Buildings may be implemented through building regulations.

In addition, there may be as yet unseen future legislation or Directives that may require powers to impose continuing requirement.

It is proposed that the existing provisions in relation to continuing requirements are carried into the new Bill. The Bill itself would not prescribe any particular continuing requirements that may be applied, but rather would designate that the Building Regulations state the specific requirements to be adhered to.

1.17 Power to require tests

In some circumstances it may become necessary to require tests to be carried out to ascertain any non-compliance with building regulations.

Under the 1979 Order, although the power has not been commenced, district councils may require a person to carry out any reasonable tests to confirm that there is no contravention of building regulations. District councils also have the power to conduct the tests themselves.

The tests that may be requested are currently limited to the following:

- tests of the soil or subsoil of the site;
- tests of any material or components used or proposed to be used in the construction of the building; and
- tests of any service, fitting or equipment provided or proposed to be provided in or connected with a building.

The cost of the tests would be met by the person required to carry them out, but if that person felt that it would be reasonable for district councils to meet all or part of that cost, the council may on application to it, decide to meet all or part of the costs. If a person felt that any specific test imposed in the council's

requirement was unreasonable, or if he was unhappy with the council's direction on costs, he may appeal the matter to a court of summary jurisdiction. The powers relating to the requirement of tests and to continuing requirements (see Section 1.16) in the 1979 Order have not yet been commenced, but will be commenced within the period of this consultation to ensure that, if required, certain requirements of the EU Directive (2002/91/EC) on the Energy Performance of Buildings may be implemented through building regulations.

We are proposing that the existing provisions are brought across into the new Bill with one minor amendment: rather than listing the type of tests that can be requested in the Bill, the provisions will refer to the Regulations, wherein a list of the tests that can be requested will be prescribed.

It is proposed that the new Bill contains powers to require tests, but that the range of tests will be prescribed by the Regulations.

1.18 Materials unsuitable for permanent buildings

Within the 1979 Order, there are provisions preventing the use of materials or components considered to be unsuitable for use in the construction of permanent buildings.

These provisions enable the Department to use building regulations to prescribe a type of material or component as unsuitable for use in particular circumstances. They also allow district councils to reject plans where such materials or components are included, or to impose conditions relating to the removal of these materials or components where an approval is to be granted.

In cases where such conditions are imposed on an application, or where an application is rejected on these grounds, the applicant has the right to appeal the decision of the district council to the Department.

It is important that powers are retained in the new Bill to prevent unsuitable materials being used in construction. The existing powers have proven to be satisfactory when applied, and we do not see the need to amend them. Likewise, we would wish to retain an applicant's right of appeal against any decision or condition relating to unsuitable materials.

It is not proposed to make any amendment to the provisions relating to materials unsuitable for permanent buildings.

1.19 Application of Building Regulations to the Crown

Crown buildings are currently exempt from the requirements of the building regulations. There are provisions in the 1979 Order to bind the Crown to the substantive requirements of the Building Regulations, although these provisions have never been commenced.

Although not legally required to do so, it has long been the practice that Crown buildings are constructed in accordance with the requirements of building regulations.

Within most new legislation there has been a general move away from Crown exemption towards legislation that binds the Crown to its provisions. We accept the merits of such a move, but realise also that a blanket removal of Crown exemption would not be appropriate for all buildings.

If the new Bill is to bind the Crown, it will be necessary to introduce mechanisms for consideration of Crown applications; for example, the Department may determine all applications for Crown development, or may appoint a person or persons to do so on its behalf.

It is proposed that the new Bill removes Crown exemption, except where doing so would prejudice the safety and security of people working in or around a particular building or class of building. The Bill will also put in place those provisions necessary for the determination of Crown applications.

PART 2: Proposed New Powers

2.0 Purpose

In this Part of the consultation we set out the proposed new powers that the Department would wish to introduce in the new Bill, and examine the introduction of new schemes under existing powers.

2.1 Competent Persons scheme

The power to allow self-certification is contained within the 1979 Order, although it has not been commenced. While we have no immediate plans for competent persons schemes, it is possible that we will wish to consider this option at a later stage.

In England & Wales, Competent Persons schemes of self-certification have been introduced, which permit individuals and organisations meeting prescribed standards of competence and being members of participating bodies to self-certify that their work complies with the requirements of the Building Regulations, rather than submit applications to a local authority or approved inspector.

It is proposed that powers are put in place to allow the establishment of competent persons schemes at such time as it is appropriate to do so.

2.2 Off-site inspection of pre-fabricated components

Within the construction industry there is an increasing trend towards “modular” construction, where entire rooms are constructed in pod-like modules that are then transported to the site and fitted to the structure of a building. In addition, the increasing popularity of timber and steel frame construction methods has led to an increasing number of components being constructed off-site.

Due to the nature of these construction methods where components may be concealed by the time the structure arrives on site, it may be more difficult for district councils to satisfy themselves by onsite inspections that building regulations are being adhered to. Permitting off-site inspection of prefabricated components would facilitate the role of district councils in the enforcement of Building Regulations. This may be an example where type approval powers identified in Section 1.13 may be exercised.

It is proposed that new powers are introduced in the new Bill to permit the option of off-site inspection of components.

2.3 Historic or listed buildings

Historic monuments that are subject to Part II of the Historic Monuments and Archaeological Objects (NI) Order 1995 are exempt under Schedule 1 Class 1(c) of the Building Regulations. Work proposed to listed buildings may however not be exempt.

Although building regulations applications submitted to district councils for listed buildings or buildings within Conservation Areas have long been given special regard due to their nature, there is nothing within the existing legislation that requires district councils to do so.

It is proposed that where applications are submitted for listed buildings or buildings located within a Conservation Area, the new Bill should require that district councils apply building regulations in such a manner that the special characteristics of such buildings are not compromised.

2.4 Approval of building control authorities

As stated previously in this consultation document, it is proposed that existing powers be brought across into the new Bill that assign the checking and inspection functions of building regulations to any prescribed person or class of persons.

The existing Group Chief system that currently exists within district councils provides a structure within which the building control function of district councils is effectively self-governed. However, should the Building Control function ever become available to private sector persons or bodies, the Department may wish to license all building control bodies to provide this function.

While there are no proposals to commence these powers, nevertheless it may become appropriate to do so at a later date. In order to ensure a level playing field, it would become necessary to introduce powers to license building control authorities to administer the requirements of the Building Regulations and to ensure that mechanisms are in place to both monitor their performance and to withdraw the licence from those authorities that fail to fulfil their building control duties and obligations under the Bill.

It is proposed that powers are introduced to appoint and monitor any bodies wishing to carry out the building control function, and to remove these powers where it has been shown that an authorised body has not been fulfilling its building control duties. These powers shall remain dormant until such time as it may become appropriate to commence them.

2.5 Dangerous buildings

At present, there is no single source of legislation that allows district councils to take action in relation to buildings that are presenting a danger to the public. Instead, district councils' building control officers use a series of powers from older pieces of legislation (in some cases dating back 150 years) to allow them to serve notices on the owner/occupier requiring that their building is made safe.

There is merit in introducing powers to address this issue into the new Bill. These powers should allow district councils to serve notices on owners/occupiers requiring them to make safe any of their buildings that in the opinion of a district council is presenting a danger to the public, or to permit the district council to take action themselves should there be a real and immediate danger to the public.

It is proposed that new powers are introduced to allow district councils to take any action necessary to make safe a dangerous building. It should be noted that the introduction of such powers is dependent on the permission of those Departments with responsibility for the legislation under which these powers are currently exercised.

2.6 Building Regulations register

Under current provisions, local authorities are not required to keep any record of plans or other documents submitted in relation to building regulations. Scotland introduced a requirement for all local authorities to maintain a register containing information relating to applications for building standards, and England & Wales are proposing to commence provisions contained in the Sustainable and Secure Buildings Act 2004 for a similar requirement.

It is our opinion that the introduction of similar provisions within Northern Ireland would be beneficial to all persons with an interest in building regulations.

It is proposed that the new Bill confers a duty on a district council to maintain a register containing information relating to all applications for building regulation approval within its boundary, together with any other information relating to building regulations that may be prescribed by the Department.

PART 3: Responding to this consultation document

We look forward to receiving your comments and views on the proposals contained in this consultation. There are a number of ways in which you can respond:

- This consultation document, including the associated response form can be accessed on the DFP website www.dfpni.gov.uk/buildingregulations or at www.consultationni.gov.uk/current.
- Additional copies of the consultation documents can be obtained by telephoning (028) 9055 7326, or by e-mailing consultation.bru@dfpni.gov.uk.
- The consultation documents and response form can also be made available upon request in alternative formats by contacting the Consultation Response Co-ordinator.
- Responses may be submitted to the following email address:
consultation.bru@dfpni.gov.uk.
- Completed response forms can be returned by post to:
Consultation Response Co-ordinator
Office estates & Building standards Division
Building Regulations Unit
10th Floor, River House
48 High Street
BELFAST BT1 2AW
- Or they can be faxed to (028) 90518359.

Please note that the closing date for submissions is 4.00 PM on Friday 4 November 2005. Late responses will not be considered.