

# **The Building (Amendment) Regulations (Northern Ireland) 2020**

**Public Consultation Document C.2**

## **‘Consultation Proposals’**

**August 2020**

**(closing date for the receipt of responses is 4:00 pm on 09 October 2020)**

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## **1. BACKGROUND**

1.1 The Department of Finance (“the Department”) has policy responsibility for maintaining the Building Regulations.

1.2 Building regulations apply to most building work and are made primarily to secure the health, safety, welfare and convenience of people in and around buildings and for the conservation of fuel and power. The current Building Regulations are The Building Regulations (Northern Ireland) 2012 (as amended) (the Building Regulations), and were made using powers provided in The Building Regulations (Northern Ireland) Order 1979 (as amended).

1.3 The Building Regulations set mainly functional requirements (i.e. they identify a reasonable standard that should be attained) and are supported by Technical Booklets giving guidance, including performance standards and design provisions, relating to compliance with specific aspects of the Building Regulations for the more common building situations.

1.4 It is acknowledged that the design provisions in Technical Booklets are generic and cover a limited range of circumstances and forms of construction. Situations may arise where it is not only appropriate but also necessary to demonstrate compliance with the Building Regulations with a form of construction or method outside those set out in the Technical Booklets.

## 2. INTRODUCTION TO CONSULTATION PROPOSALS

2.1 The Building Regulations (Northern Ireland) 2012 (as amended) require that external walls on all buildings adequately resist the spread of fire over the walls and from one building to another (Regulation 36). Statutory guidance to Regulation 36 in Section 5 of Technical Booklet E (TBE) – ‘Fire safety’ sets out one way that external walls may meet the Building Regulations requirement for resisting fire spread. From paragraph 5.4 of TBE –

*“Where a building has a storey the floor of which is 18m or more above ground level, any materials used for supporting cladding and any insulation material incorporated within the wall construction (other than a masonry cavity wall complying with Diagram 4.5) should be a material of limited combustibility”.*

2.2 The definitions of combustibility are outlined in paragraphs 1.7 to 1.10 of TBE.

2.3 Since the Grenfell fire tragedy, there has been much debate about compliance with the Building Regulations requirement for external walls on buildings to adequately resist the spread of fire. Unlike other jurisdictions of the UK, the statutory guidance in TBE does not offer the alternative approach of testing the combined elements of a wall as a whole installed system so that it adequately resists the spread of fire in accordance with the (British Standard) BS 8414 test.

2.4 The BS8414 test although not offered as a route to compliance in TBE guidance, is generally accepted as an alternative solution and can be used as a method of demonstrating compliance with the requirement in relation to external fire spread. TBE does also not give any guidance in relation to the use of Assessments in lieu of tests (AILOTs). AILOTs are a third potential route to compliance for the requirement in relation to external fire spread.

2.5 Post Grenfell, Dame Judith Hackitt’s independent report into building regulations and fire safety indicated that when choosing between products that are non-combustible or of limited combustibility and products undergoing full-scale system tests (i.e. to BS 8414), the lower risk option is to use products that are non-combustible or of limited combustibility. Dame Judith Hackitt’s review has identified failings within the construction industry and the regulatory system. In addition to long term reform recommendations there is also a case for immediate action in relation to external fire spread

2.6 In response to major concern amongst some fire experts and the public that combustible cladding is not explicitly banned under statute, the Department considers that in addition to longer term reform, there is also a case for action in relation to external fire spread. The intention with this amendment is to:

- a. Prescribe in regulation on the use of non-combustible and limited combustibility products in external walls on certain types of buildings (‘relevant buildings’ as defined) – an effective ban on the use of combustible materials on these buildings;

- b. give recognition in TBE guidance to the alternative method of using BS 8414 large scale test data and BR 135 performance criteria to demonstrate compliance with external fire spread requirements for other buildings that are not relevant buildings; and
- c. give guidance in TBE on the use of AILOTs as a possible third route to compliance, again for non-relevant buildings. The purpose of the new guidance is to tighten up on the use of AILOTs and ensure that they are only used where appropriate, with sufficient, relevant test evidence and that they are undertaken by competent staff within appropriately certified organisations.

2.7 Regulation 26(2) in Part C of the Building Regulations requires that measures shall be taken to prevent or limit the ingress of radon from the ground into any dwelling situated in a radon affected area. A radon affected area is defined as *any area designated as such by the Health Protection Agency in the publication 'Radon in Dwellings in Northern Ireland: 2009 Review and Atlas'*.

2.8 Public Health England (PHE) and the British Geological Survey published in 2015 an updated atlas of radon maps for Northern Ireland based on geological information from Geological Survey of Northern Ireland and thousands of radon measurements taken.

2.9 The proposed amendment to Part C of the Building Regulations and associated guidance to radon in dwellings in Technical Booklet C (TBC) will:

- cite the PHE publication 'Radon in Northern Ireland: Indicative Atlas' from 2015 as the document to use in determining if a dwelling (new or existing) is in a radon affected area.
- Recognise BRE document BR 211 of 2015 'Radon guidance for protective measures in new buildings' in TBC as the guidance to follow in determining the level of protection required for a dwelling in a radon affected area.

2.10 This consultation is seeking views on our proposals on the above along with any other comments on the regulatory change or associated guidance changes in the draft Technical Booklets.

2.11 The purpose of this consultation is to obtain comments and views of the public and all interested parties on proposed changes to Part A (Interpretation and general), Part B (Materials and workmanship), Part C (Site preparation and resistance to contaminants and moisture) and Technical Booklets B (Materials and workmanship) C (Site preparation and resistance to contaminants and moisture) and E (Fire safety).

### **3. CONSULTATION PACKAGE – CONTENTS AND RESPONSE**

3.1 This consultation has been issued by the Department of Finance, which has responsibility for maintaining the Building Regulations for Northern Ireland. This document, together with the other consultation documents, is available online at:

<https://www.finance-ni.gov.uk/consultations>

The consultation documents are:

- Dear Consultee letter
- Consultation Proposals
- Response Form for Consultees
- Regulatory Impact Assessments (Drafts for Consultation)
- Technical Booklet B (Consultation version only): Materials and workmanship
- Technical Booklet C (Consultation version only): Site preparation and resistance to contaminants and moisture
- Technical Booklet E (Consultation version only): Fire safety

Draft Technical Booklets for B, C and E are being issued as part of this package to demonstrate to the reader the proposed changes to those booklets, for consultation purposes only. Prior to the changes coming into operation at a later date, the intention is to publish 'An Amendments Booklet' which will need to be read in conjunction with the existing Technical Booklets for B, C and E.

#### **Responding to this consultation**

3.2 We look forward to receiving your comments and views concerning any of the proposals contained in this consultation. In order to assist our analysis of responses please use the Response Form included on the website and submit your reply electronically to [info.bru@finance-ni.gov.uk](mailto:info.bru@finance-ni.gov.uk)

Alternatively your responses may be posted to:

Karen McKernon  
Consultation Co-ordinator  
Department of Finance  
Building Standards Branch  
6<sup>th</sup> Floor  
Goodwood House  
44 - 58 May Street  
Belfast  
BT1 4NN

The Department will consider all the responses to this consultation received on or before the closing date, which is 4.00 pm on 09 October 2020.

***Submissions made after this date cannot be considered.***

## **Code of practice on consultations and Data Management**

3.3 In light of the requirements of the Code of Practice on Access to Government and the Freedom of Information Act, responses may be made available to the public on request. We may also wish to make responses to this consultation available to the Northern Ireland Assembly and for public inspection either at the Building Standards Branch office or website.

3.4 You have the option of indicating that you wish your response to remain confidential and the Department will generally respect that request. Should it be decided that the public interest must override that request, the Department will contact you before disclosure and if appropriate, provide you with an opportunity for your response to be withdrawn.

3.5 Information provided in response to this consultation, including personal data (see Annex A), may be published or disclosed in accordance with the access to information regimes (These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection ACT 2018 (DPA), the EU General Data Protection Regulation, and the Environmental Information Regulations 2004.

3.6 If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. 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. The Department of Finance will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at Annex A.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the complaints procedure.

# PROPOSALS FOR AMENDMENT OF THE BUILDING REGULATIONS

## 4. PART A (Interpretation and general)

4.1 Part A of the Building Regulations has two main purposes:

- To establish processes and procedures relating to the application of the regulations; and
- To define the main terms used in the regulations.

4.2 The new requirement to ban the use of combustible materials on certain buildings will apply through a material change of use of a building. Where a building through modification (a material change of use) becomes a 'relevant building' as defined by regulation 23(4) and the walls contain combustible material, the material will need to be replaced.

4.3 The Department proposes to amend regulation 8 'Application to material change of use' of the current Part A regulations and the Table to Regulation 8 (Application to material change of use) and the 'Notes to Table 8'. The amended Table and Notes will demonstrate for each Case whether the new requirement applies or not.

## Proposed Amended Regulation 8 and Table to Regulation 8 of Part A (Interpretation and general)

(Red text is new, black text is existing, strikethrough text to be deleted)

### "Application to material change of use

8.—(1) For the purposes of these regulations a change in the purposes for which or the circumstances in which a building, or part of a building, is used shall only be regarded as a material change of use if after that change any one of the following cases applies—

- |           |   |
|-----------|---|
| Case I    | the building is used as a dwelling house, where immediately prior to the change it was not;   |
| Case II   | the building contains a flat, where immediately prior to the change it did not;   |
| Case III  | the building is used as a hotel or boarding house, where immediately prior to the change it was not;  |
| Case IV   | the building is used as an institution, where immediately prior to the change it was not;   |
| Case V    | the building is used as a place of assembly or recreation, where immediately prior to the change it was not;                                      |
| Case VI   | the building is used as a shop, where immediately prior to the change it was not;   |
| Case VII  | the building is used as an office, where immediately prior to the change it was not;  |
| Case VIII | the building is used as a store, where immediately prior to the change it was not;  |
| Case IX   | the building, which contains at least one dwelling, contains a greater or lesser number of dwellings than it did immediately prior to the change; |
| Case X    | the building contains a room for residential purposes, where immediately prior to the change it did not;  |



- Case XI the building, which contains at least one room for residential purposes, contains a greater or lesser number of such rooms than it did immediately prior to the change;
- Case XII the building, by virtue of its change of use, is not an exempted building where immediately prior to the change it was.

(2) Where there is a material change of use to the whole or part of a building the provisions of the regulations set out in the Table to this regulation shall apply.

(3) Where a material change of use neither involves nor is accompanied by an alteration or extension, the provisions referred to in the Table to this regulation shall apply to the building or part of the building in which the change of use occurs as if it were a new building identical to the building as it exists and to be used for the same purpose or purposes as the building will have after the change of use.

(4) Where a material change of use involves or is accompanied by an alteration or extension—

(a) the provisions referred to in the Table to this regulation (other than regulation 6) shall apply to the building or part of the building in which the change of use occurs as if it were part of a new building identical to the building as altered or extended and to be used for the same purpose or purposes as that building will have after the change of use; and

(b) the application of regulation 7 by paragraph (2) shall apply any requirements of that regulation which are additional to those directly applied by the Table to this regulation.

(5) Where a change of use will result in an exempted building being put to a use as described in Cases I to XI, the provisions of those regulations applicable to Case XII shall apply in precedence to those of Cases I to XI.

**Table to Regulation 8 (Application to material change of use)**

Part		Cases											
		I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
A	Interpretation and general	*	*	*	*	*	*	*	*	*	*	*	*
B	Materials and workmanship	—	*0	—	*0	—	—	—	—	*0	*0	*0	*
C	Site preparation and resistance to contaminants and moisture	*1	*1	*1	*1	*1	*1	*1	*1	*1	*1	*1	*1
D	Structure	*2	*2	*2	*2	*2	*2	*2	*2	*2	*2	*2	*
E	Fire safety	*3	*3	*3	*3	*3	*3	*3	*3	*3	*3	*3	*3
F	Conservation of fuel and power	*4	*4	*4	*4	*4	*4	*4	*4	*4	*4	*4	*4
G	Resistance to the passage of sound	*5	*6	*6	—	*7	—	—	—	*6	*6	*6	*
H	Stairs, ramps, guarding and protection from impact	—	—	—	—	—	—	—	—	—	—	—	*
J	Solid waste in buildings	*	*	*	*	*	—	—	—	*	*	*	*
K	Ventilation	*	*	*	*	*	—	—	—	*	*	*	*
L	Combustion appliances and fuel storage systems	*8	*8	*8	*8	*8	—	—	—	*8	—	—	*8
M	Physical infrastructure for high speed communications networks	—	—	—	—	—	—	—	—	—	—	—	—
N	Drainage	—	—	—	—	—	—	—	—	—	—	—	—
P	Sanitary appliances, unvented hot water storage systems and reducing the risk of scalding	*9	*9	*9	*9	*9	—	—	—	*9	*9	*9	*9
R	Access to and use of buildings	—	—	*10	*10	*10	*10	—	—	—	—	—	*
V	Glazing	*	*	—	—	—	—	—	—	*	—	—	—

## Notes to Table to Regulation 8 (Application to material change of use)

\* Denotes Parts which apply.

– Denotes Parts which do not apply.

<sup>0</sup> Regulation 23(2) only in Part B. In Cases X and XI where the building created is a hostel, hotel or boarding house, all of Part B shall not apply.

<sup>1</sup> All regulations except regulation 27 in Part C.

<sup>2</sup> Part D shall apply to those parts of the building affected by any increase in imposed loading resulting from the change of use.

<sup>3</sup>~~In the application of Part E the requirements of regulation 36 in that part shall only apply, in relation to external walls, when the height of a building exceeds 20 m (such height shall be measured from the mean level of the ground adjoining the outside of the external walls of the building to the level of half the vertical height of the roof of the building, or to the top of the walls or of the parapet, if any, whichever is the higher).~~

<sup>4</sup> Regulation 39 only in Part F.

<sup>5</sup> Regulations 49 and 50 only in Part G.

<sup>6</sup> Regulations 49, 50 and 51 only in Part G.

<sup>7</sup> Regulation 52 in Part G in relation to school buildings only.

<sup>8</sup> Regulations 70, 71, and 73 only in Part L.

<sup>9</sup> All regulations except regulation 88 in Part P.

<sup>10</sup> In the application of Part R—

(a) when satisfying the reasonable provision requirements for access and that access is by means of stairs and/or ramps, such stairs and/or ramps shall also satisfy the relevant requirements of Part H;

(b) where the change of use is only to part of a building—

(i) Part R shall apply to that part and any sanitary accommodation provided in or in connection with that part; and

(ii) access to that part shall be provided by making reasonable provision for either independent access or suitable access through the building.”

# PROPOSALS FOR AMENDMENT OF THE BUILDING REGULATIONS

## 5. PART B (Materials and workmanship)

5.1 The Department is proposing an amendment to regulations 22 and 23 of Part B of the Building Regulations.

5.2 Regulation 22 will be amended to give two new definitions for “External wall” and “Specified attachment”.

5.3 Regulation 23 will be amended to require through –

- (i) 23(2) that materials which become part of an external wall, or specified attachment, of a ‘relevant building’ are of European Classification A2-s1, d0 or Class A1, classified in accordance with BS EN 13501-1: 2018;
- (ii) 23(3) will provide a list of components exempt from the requirement of 23(2); and
- (iii) 23(4) will provide a definition of ‘relevant building’ for the application of 23(2) and a definition of ‘above ground level’.

5.4 The proposal will require certain types of buildings (relevant buildings), with a floor 18m in height above ground level, to have external walls and any specified attachments, of materials that are of European Classification A2-s1, d0 or A1, classified in accordance with BS EN 13501-1: 2018 ‘*Fire classification of construction products and building elements Classification using test data from reaction to fire tests*’. We consider that to avoid complexity, the ban should apply throughout the entire height of the wall. Materials tested to the equivalent National Classification to BS 476-11 will no longer be acceptable for these buildings.

5.5 The effective ban of combustible building materials will be focused on buildings where the risks are greatest. It will apply to high rise residential buildings over 18 metres in height. It will also apply to hospitals, residential schools, care homes and student accommodation over 18 metres in height. The 18 metre threshold is consistent with existing building regulations’ guidance. The height threshold is subject to public consultation and we would welcome your views to question B3 in the Response Form questionnaire.

5.6 The ban will apply to all components of the external wall system. There will be some components of the wall system that are necessary for the wall to function correctly, and where a Class A1 or A2 product is not available. A proposed exemption list will allow the use of some components where there is no practical alternative to using materials that are not Class A1 or A2 and where the risk of external fire spread caused by the use of combustible materials would be so minimal that it would be disproportionate to ban their use. These components include cavity trays for certain situations, seals, gaskets, fixings, sealants, backer rods, doors, frames, windows and associated glass (see 23(3)).

5.7 The types of building subject to the ban will be defined as ‘relevant buildings’ and is principally buildings with a storey at least 18 metres above ground level that have either one or more dwellings, an institution or a room for residential purposes (excluding any room in a hostel, hotel or a boarding house). The inclusion of hostels, hotels and boarding houses is subject to public consultation and we would welcome your views on question B2 in the Response questionnaire.

5.8 For these ‘relevant buildings’, all the materials in the external wall bar the components on the exemption list will need to comply. For alteration work to relevant buildings, only the materials fitted during the alterations (new or having been removed) will have to comply. Any alteration work will have to comply with the requirements of regulation 7 ‘Application to alterations and extensions’.

5.9 For ‘relevant buildings’, the alternative approach of using BR 135 classification report and BS 8414-1 or BS 8414-2 test data will not be permitted. This approach will be an alternative approach for all other types of buildings that are not ‘relevant buildings’. Also the new requirement will mean materials which become part of an external wall or specified attachment of a relevant building are of European Classification A2-s1, d0 or A1 regardless of supporting test evidence or expert opinion i.e. assessments in lieu of tests (AILOTs) will not be permitted for relevant buildings.

## **Proposed Amended Regulation 22 and 23 of Part B (Materials and workmanship)**

(Red text is new, black text is existing, strikethrough text to be deleted)

### **“Interpretation**

**22.** In this Part-

“External wall” includes a reference to-

- (a) Anything located within any space forming part of the wall;
- (b) Any decoration or other finish applied to any external (but not internal) surface forming part of the wall;
- (c) Any windows and doors in the wall; and
- (d) Any part of a roof pitched at an angle of more than 70 degrees to the horizontal if that part of the roof adjoins a space within the building to which persons have access, but not access only for the purpose of carrying out repairs or maintenance;

“Harmful substances” includes fumes and vapours; ~~and~~

“Relevant work” means-

- (a) The erection of a building;
- (b) The structural alteration or extension of a building;
- (c) The provision of any service or fitting; or

- (d) The backfilling of any excavation carried out in connection with (a), (b) or (c);  
and

“Specified attachment” means-

- (a) A balcony attached to an external wall;
- (b) A device for reducing heat gain within a building by deflecting sunlight which is attached to an external wall; or
- (c) A solar panel attached to an external wall.

### **Fitness of materials and workmanship**

23. (1) In any relevant work-

- (a) the materials used shall-
  - (i) be of a suitable nature and quality in relation to the purposes for and the conditions in which they are used;
  - (ii) be adequately mixed and prepared;
  - (iii) be applied, used or fixed so as adequately to perform the functions for which they are designed; and
  - (iv) not continue to emit any harmful substance longer than is reasonable in the circumstances; and
- (b) the standards of materials and workmanship need be no more than are necessary to-
  - (i) secure the health, safety, welfare and convenience of persons in or about the building; and
  - (ii) further the conservation of fuel and power.

(2) Subject to paragraph (3), building work shall be carried out so that materials which become part of an external wall, or specified attachment, of a relevant building are of European Classification A2-s1, d0 or Class A1, classified in accordance with BS EN 13501-1:2018.

(3) Paragraph (2) does not apply to-

- (a) cavity trays when used between two leaves of masonry;
- (b) any part of a roof (other than any part of a roof which falls within paragraph (d) of external wall in regulation 22 if that part is connected to an external wall);
- (c) door frames and doors;
- (d) electrical installations;
- (e) insulation and water proofing materials used below ground level;

- (f) intumescent and fire stopping materials where the inclusion of the materials is necessary to meet the requirements of Part E;
  - (g) membranes;
  - (h) seals, gaskets, fixings, sealants and backer rods;
  - (i) thermal break materials where the inclusion of the materials is necessary to meet the thermal bridging requirements of Part F; or
  - (j) window frames and glass.
- (4) In this regulation -
- (a) a “relevant building” means a building with a storey (not including roof-top plant areas or any storey consisting exclusively of plant rooms) at least 18 metres above ground level and which -
    - (i) contains one or more dwellings;
    - (ii) contains an institution; or
    - (iii) contains a room for residential purposes (excluding any room in a hostel, hotel or boarding house); and
  - (b) “above ground level” in relation to a storey means above ground level when measured from the lowest ground level adjoining the outside of a building to the top of the floor surface of the storey.”

## Technical Booklet B

5.10 The Department is issuing a ‘consultation version only’ of a Technical Booklet B (TBB) alongside this consultation paper (see paragraph 3.1). The guidance in TBB is aimed at giving advice on demonstrating compliance with regulatory requirements for fitness of materials and workmanship and urea formaldehyde foam.

5.11 The consultation version TBB includes under Part B regulations the new definitions for ‘External wall’ and ‘Specified attachment’, the new requirement of regulation 23(2), the exemption list under 23(3) and definitions under 23(4).

5.12 Under Section 2 ‘Fitness of materials and workmanship’ of TBB, a new sub-heading ‘Non-combustible materials in external walls of tall buildings’ is included and a new paragraph 2.14A refers the reader to regulation 23(2) and to Section 5 of TBE for details on use of combustible materials in external walls of certain buildings over 18m in height.

5.13 The Department welcomes views on the changes in the issued TBB, particularly whether it would be helpful to include any other information.

# PROPOSALS FOR AMENDMENT OF THE BUILDING REGULATIONS

## 6. PART C (Site preparation and resistance to contaminants and moisture)

6.1 The Department is proposing an amendment to Part C and in particular regulation 25(3) 'Application and interpretation' to amend the definition of "radon affected area" to make reference to a Public Health England (PHE) publication 'Radon in Northern Ireland: Indicative Atlas' of 2015.

6.2 The Radon in Northern Ireland Indicative Atlas presents a simplified version of the Radon Potential Dataset for Northern Ireland, with each 1-km grid square being classed according to the highest radon potential found within it, so it is indicative rather than definitive. The Radon Potential Dataset for Northern Ireland provides the definitive map of radon Affected Areas in Northern Ireland.

### **Proposed Amended Regulation 25 of Part C (Site preparation and resistance to contaminants and moisture)**

(Red text is new, black text is existing, strikethrough text to be deleted)

#### **"Application and interpretation**

**25.**-(1) Regulation 28 in respect of resistance to ground moisture of floors and walls, and weather resistance of walls, shall not apply where the building is intended to be used wholly for-

- (a) storing goods, provided that any person who is habitually employed in the building is engaged only in storing, caring for or removing the goods; or
- (b) a purpose such that compliance with regulation 28 would not serve to increase protection to the health or safety of any person habitually employed in the building.

(2) Regulation 29 applies only to a dwelling.

(3) In this Part-

"Containment" includes any substance which is or could become corrosive, explosive, inflammable, radioactive or toxic and includes deposits of faecal or animal matter;

"Floor" includes any base or structure between the surface of the ground, or the surface of any hardcore laid upon the ground, and the upper surface of the floor;

"Moisture" includes water in liquid, solid, semi-solid or gaseous form but not flood water;



“Radon affected area” means any area designated as such by the Health Protection Agency **Public Health England** in the publication ‘Radon in Dwellings in Northern Ireland: 2009 Review and Atlas **Indicative Atlas**’; and

“Wall” means any opaque part of the external envelope of a building that is at an angle of 70<sup>0</sup> or more to the horizontal and includes piers, chimneys, columns and parapets which form part of the wall.”

## **TECHNICAL BOOKLET C**

6.3 The proposed amendment to Part C will be accompanied by guidance changes in Technical Booklet C (Site preparation and resistance to contaminants and moisture) (TBC). The Department is issuing a ‘consultation version only’ of a Technical Booklet C (TBC) alongside this consultation paper (see paragraph 3.1).

6.4 The consultation version TBC involves amendments to Section 3 ‘Resistance to contaminants’ and heading ‘Naturally occurring contaminants – radon’ and sub-headings ‘radon affected areas’ and ‘radon protection in dwellings’.

6.5 The proposed changes are aimed at providing guidance to enable applicants to demonstrate compliance with the requirements of regulation 26(2) on the measures to be taken to prevent or limit the ingress of radon from the ground into any dwelling situated in a radon affected area.

6.6 Public Health England recommends that radon levels should be reduced in dwellings where the annual average is at or above 200 becquerels per cubic metre (200 Bq/m<sup>3</sup>). This is termed the Action Level. Public Health England defines radon affected areas as those with 1% chance or more of a house having a radon concentration at or above the Action Level of 200 Bq/m<sup>3</sup>.

6.7 The changes to TBC include –

- Referencing the 2015 PHE publication ‘Radon in Northern Ireland: Indicative Atlas’. This new reference will replace the previous ‘Radon in dwellings in Northern Ireland 2009 Review and Atlas’;
- Referencing the UKradon website for a free download of the 2015 PHE publication and also to highlight where free interactive UK radon maps are available;
- Replacing the reference to the Northern Ireland Environment Agency (NIEA) with Public Health England, Geological Survey of Northern Ireland and the British Geological Survey for further advice;
- Amending the guidance with reference to 2015 BRE publication BR 211 ‘Radon guidance on protective measures for new buildings’. This 2015 edition

incorporates for the first time, Northern Ireland indicative atlas maps for identifying a radon affected area and subsequent protective measures necessary. This guidance in BR 211 replaces reference to previous BRE publication BR 413;

- Referencing Section 4 of BR 211 which considers the level of protection measures required including consideration of the use of site specific radon risk reports (where available) as an optional measure in a radon affected area; and
- Referencing BR 211 as appropriate guidance to follow in the application of regulation 26(2) for extensions, alterations to existing dwellings and buildings converted to a dwelling through a material change of use. Existing references to GBG 73 (2008) and BR 267 (2008) for radon protection measures for domestic extensions and alterations and conversions to existing dwellings respectively to be deleted;

6.8 The Department welcomes views on the changes to the issued TBC, particularly whether it would be helpful to include any other information.

## PROPOSALS FOR AMENDMENT OF TECHNICAL BOOKLET E

### 7. Technical Booklet E (Fire safety)

7.1 No amendments to Part E (Fire safety) are proposed.

7.2 However due to the new requirement of regulation 23(2) in Part B (Materials and workmanship), new guidance to that requirement will be inserted into Technical Booklet E (Fire safety) TBE.

7.3 In TBE, the Department is proposing –

- (i) New guidance in Section 5 ‘External fire spread’ in relation to external walls and specified attachments for ‘relevant buildings’ which will be subject to the requirements of new regulation 23(2);
- (ii) Amending the existing guidance in Section 5 in relation to external walls for all other buildings outside the scope of regulation 23(2); and
- (iii) Introducing new guidance in relation to Assessments in lieu of tests (AIIOTs).

7.4 Guidance to support the new requirement 23(2) will be placed in Section 5 ‘External fire spread’ of TBE where guidance is already provided to regulation 36 (External fire spread). The requirements of regulation 36 will continue to apply to all buildings however where the new regulation 23(2) applies, the requirements therein will prevail over the guidance provisions in TBE to regulation 36.

7.5 The new guidance reiterates the requirement of regulation 23(2) for all materials in ‘relevant buildings’ which become part of an external wall or specified attachment achieve European Class A2-s1, d0 or Class A1, other than those exempted by regulation 23(3).

7.6 A list of ‘relevant buildings’ are given to include student accommodation, care homes, nursing homes, sheltered housing, hospitals and dormitories in boarding schools.

7.7 The guidance makes it clear materials achieving equivalent limited combustibility class using an alternative classification method to satisfy the requirement of regulation 23(2) cannot be accepted. For ‘relevant buildings’, materials must achieve the European classification A2-s1, d0 or A1.

7.8 New definitions for “external wall”, “specified attachment” and “relevant building” referring to the definitions in regulation 22 and 23(4) of Part B will be located in Section 1 – General ‘Definitions’ of TBE.

7.9 The guidance clarifies that when a building is changed such that it becomes a ‘relevant building’ under regulation 23(4), then the walls and specified attachments must only contain materials achieving European Class A2-s1, d0 or Class A1.

7.10 A list of further considerations for 'relevant buildings' is given highlighting that the provisions of regulation 23(2) apply in addition to the requirements of regulation 36. Glass (including laminated glass) associated with window and door frames will be exempt under the list of exemptions in regulation 23(3). Window spandrel panels and infill panels must comply with regulation 23(2). Other attachments to the wall which are not specified attachments as defined should be considered for their impact on the risk of fire spread over the wall.

7.11 For non-relevant buildings, the guidance provisions in Section 5 of TBE to regulation 36 will continue to apply. This amendment will introduce the alternative option of demonstrating compliance with external fire spread requirements through meeting the performance criteria of BR 135 using BS 8414-1 or BS 8414-2 large scale test data. In TBE terms, this will mean buildings that have a storey above 18m but are not 'relevant buildings' must either meet an acceptable standard of performance in the BS 8414 system test or be of limited combustibility (i.e. A1 or A2 s3, d2 or better in European classification when tested to BS EN 13501).

7.12 Existing Table 5.1 'Provisions for external surfaces of walls' and Diagram 5.1 'Provisions for external surfaces of walls' are deleted and replaced with new Table 5.1A 'Reaction to fire performance of external surface of walls'. This Table gives the European Classifications only for all building types (including relevant buildings) and all heights. For external surfaces of walls, the equivalent National Classifications when tested to BS 476-11 may also still be acceptable for non-relevant buildings however these will no longer be cited in TBE.

7.13 The amended guidance will also clarify that in relation to buildings of any height or use, regulation 36 applies to all buildings and in order to comply with regulation 36, consideration should be given to the choice of material or product (including their extent and arrangement) used for the external wall, or attachments to the wall to reduce the risk of fire spread over the wall.

7.14 For non-relevant buildings, alongside the option of a BS8414 test compliance route, where directly applicable BS 8414 test data is not available, an assessment in lieu of test (AILOT) will also be an option however more stringent rules will need to be adhered to as per the new guidance in TBE.

7.15 The principle of carrying out AILOTs is well established and often a necessary part of design and construction for classifying the fire performance of construction products and systems. Such assessments may be the only way of classifying in some circumstances and they also provide a practical and proportionate approach where minor changes are made to a construction product or system.

7.16 The purpose of the new guidance in Section 1 'General' under the sub-heading 'Performance of materials, products and structures' of TBE is to tighten up on the use of AILOTs and ensure that they are only used where appropriate, with sufficient relevant test evidence and that they are undertaken by competent staff within appropriately certified organisations.

## **8. DRAFT REGULATORY IMPACT ASSESSMENT – PART B**

8.1 The Department is publishing a consultation stage Regulatory Impact Assessment (RIA) alongside this consultation paper. In summary:

- The impact assesses the proposed ban on the use of combustible materials in external wall systems and specified attachments such as balconies for certain 'relevant buildings'.
- It will mean only materials, subject to exemptions, that are A2-s1, d0 rated and above under the European classification system set out in the standard BS EN 13501-1 will be allowed.
- The analysis compares the ban against a 'Do nothing' option of no change to the Building Regulations.
- The change should make it easier to comply with the relevant building regulations' requirements by making the routes to compliance clearer.
- The proposed ban should not have a significant impact on housing supply. The extra costs involved will be small in proportion to the total build cost.
- The costs to industry are estimated on the forecast of stock and rate of new build of blocks of flats, student accommodation, care premises, hospitals and dormitories in boarding schools all with a top storey over 18m in height (based on last 3 years Planning application figures supplied by Analysis, Statistics and Research Branch (ASRB) of Corporate Policy and Planning Division of the Department for Infrastructure).
- The provision of new guidance in Technical Booklet E (TBE) to tighten up on the use of Assessments in lieu of tests (AILOTs) will result in the costs of undertaking an AILOT in the cases where they can continue to be used, to be higher, given the tighter requirements which will apply. However the extra costs will be offset by expected benefits of improved compliance arising from better quality, more rigorous and transparent assessments.

## 9. DRAFT REGULATORY IMPACT ASSESSMENT – PART C

9.1 The Department is publishing a consultation stage Regulatory Impact Assessment (RIA) alongside this consultation paper. In summary:

- The impact assesses the proposed amendment to the definition of “Radon affected area” within the Building Regulations and amendment to the associated Technical Booklet C guidance on “Resistance to contaminants”. It will mean an update to the radon affected area indicative atlas maps reference from the 2009 publication to the 2015 publication. More dwellings will be located in a radon affected area under the new maps.
- The 2015 edition of the BRE publication BR 211 ‘Radon protective measures for new buildings’ (incorporating Northern Ireland indicative atlas maps) will be referenced.
- Site-specific radon risk reports, currently included within the 2015 edition of BR211 (Section 4: Determining the level of protection) will be referenced.
- The analysis compares the amendment (Option 2) against the option of doing nothing (Option 1)
- Option 1 was not considered valid as it would have maintained the use of out-of-date indicative atlas maps, where this position neglects to address this percentage of affected homes not receiving appropriate radon protective measures.
- Option 2 may result in an overall cost implication however, this option targets the correct affected areas along with the levels of protection necessary.
- It is anticipated at this stage there will be a minimal cost impact given that the regulatory change is light and there may also be potential health benefits that may apply a compensating effect to the costs of the amendments – however these have been excluded due to uncertainty with projected health benefit estimating.
- The Department considers that the amendments will have no significant effect on competition in any markets.
- The amendments apply to relevant dwelling buildings (where building regulations apply) and therefore have an effect on the house-building sectors, property owners, developers, etc. with no adverse impact on equality of opportunity or the needs of rural customers.
- The Department does not expect an Environmental Impact from the preferred Option to affect the wider environment outside the homes and it will not result in additional greenhouse gases being emitted.

- The preferred Option is primarily focussed on population health improvement. The proposed amendments are likely to lead to a positive impact on public health and welfare which will bring a number of non-monetised social benefits with cancers avoidance which might otherwise have been caused by radon.

## **10. TIMING AND NEXT STEPS**

- 10.1 The Department proposes that these amendments to the regulations and Technical Booklets should come into operation as soon as possible after the laying of the Statutory Rule to amend the regulations.

# Annex A

## Personal data

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally), not the content of your response to the consultation.

### 1. The identity of the data controller and contact details of our Data Protection Officer

The Department of Finance (DoF) is the data controller. The Data Protection Officer can be contacted as follows:

Data Protection Officer  
Department of Finance  
Room 23, Dundonald House  
Upper Newtownards Road  
Belfast  
BT4 3SB

Tel: 028 9052 4961

Email: [dataprotectionofficer@finance-ni.gov.uk](mailto:dataprotectionofficer@finance-ni.gov.uk)

### 2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

### 3. Our legal basis for processing your personal data

The Data Protection Act 2018 states that, as a government department, DoF may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation. In addition to the statutory requirement in the Building Order to consult on building regulations matters there is an expectation of appropriate public consultation on substantive changes to the Building Regulations.

### 4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the consultation.

### 5. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record



- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.