



Department of

**Finance**

An Roinn

**Airgeadais**

[www.finance-ni.gov.uk](http://www.finance-ni.gov.uk)

# **The Building (Amendment) Regulations (Northern Ireland) 2016**

**PUBLIC CONSULTATION DOCUMENT C.6**

## **Departmental Response to Public Consultation including summary of responses**

**November 2016**



# EXECUTIVE SUMMARY

## The Public Consultation

1. The Department of Finance (the Department) carried out an eight week Public Consultation exercise from 15<sup>th</sup> August to 7<sup>th</sup> October 2016 on proposed amendments to The Building Regulations (Northern Ireland) 2012 (as amended), which included :
  - minor amendments to Part F, Conservation of fuel and power - necessary to clarify certain requirements of The Energy Performance of Buildings Directive 2010/31/EU (the EPBD), with no impact to current working practices;
  - a new Part M, (Physical infrastructure for high-speed electronic communications networks) – to implement Article 8 of Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks (i.e. high-speed broadband). This relates to ‘in-building physical infrastructure’ measures (i.e. ductwork). Provisions for such infrastructure outside the building are attended to under other legislation<sup>1</sup> ;
  - amendments to Part A (Interpretation and general), in order to apply the new Part M procedurally; and
  - a new Technical Booklet ‘M’ in guidance to support the Part M requirements.
2. The Department has developed the amendments to be consistent with the approach taken by England, Scotland and Wales, in line with the Joint Ministerial Memorandum of Understanding and Concordat on EU Policy Issues.<sup>2</sup>
3. A Regulatory Impact Assessment was carried out for the Part M requirements. This indicated very modest costs:
  - initial familiarisation costs to industry and District Council enforcement of £67,000 (total); and
  - a further £20,000 per annum
4. The Department issued 273 consultation letters and published the Consultation Documents on its website.

## Outcome

5. 13 responses were received. The majority of responses were supportive of the proposals, although District Councils did not agree that the supporting guidance, Technical Booklet M, was sufficiently clear on all points.
6. The Department therefore intends to implement the legislative requirements largely in accordance with the Consultation Proposals and to amend the guidance to clarify the points raised, where practicable. There are, however, some suggestions which would be best considered as part of future reviews or consolidation.
7. No change to the Consultation Stage RIA costs or assumptions is envisaged.

---

<sup>1</sup> Ref: S.I. 2016 No. 700 The Communications (Access to Infrastructure) Regulations 2016

<sup>2</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316157/MoU\\_between\\_the\\_UK\\_and\\_the\\_Devolved\\_Administrations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf)

# CONTENTS

	Page
1. Executive Summary	1
2. Contents	2
3. Background and Introduction to Proposals	3
4. Overview of the Consultation	5
5. Summary of Outcomes	7
6. Responses to Consultation Questions	8
Question A1	8
Question A2	9
Question F1	11
Question M1	12
Question M2	14
Question M3	15
Question M4	17
Question M5	18
Question G1	20
7. Annex A – List of Respondents	21

## BACKGROUND AND INTRODUCTION TO PROPOSALS

1. The Department of Finance (the Department) has responsibility for maintaining the Building Regulations.
2. Building regulations apply to most building work and are made generally to ensure the health, safety, welfare and convenience of people in and around buildings, to further the conservation of fuel and power, protect and enhance the environment and to promote sustainable development. 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). It is proposed that the amendment, The Building (Amendment) Regulations (Northern Ireland) 2016, will be made using the same powers. Section 2(2) powers of the European Communities Act 1972 will further empower the Part F, Conservation of fuel and power, amendments.
3. The Energy Performance of Buildings Directive 2010/31/EU (EPBD) requires Member States to transpose its requirements into national law. Articles 3 and 4 together require that an approved methodology is used in the calculation of minimum energy performance standards for new buildings. Article 9 requires the adoption of nearly-zero energy standards for new buildings from certain dates.
4. The proposed amendments to Part F provide legislative clarification on the implementation of Articles 3, 4, and 9 of the EPBD. These are intended to assure the EU Commission on correct legislative transposition and are expected not to change existing working practices. One amendment will clarify that the National Calculation Methodology shall be used in all emissions ratings calculations (including 'as-built' and 'design' emissions ratings calculations) required under Part F, whilst the other clarifies that nearly zero-energy building (NZEB) requirements will apply to new buildings occupied and owned by public authorities from 1 January 2019.
5. 'Directive 2014/61/EU, on measures to reduce the cost of deploying high-speed electronic communications networks' sets requirements to support the roll-out of high-speed broadband across the EU. The majority of requirements have been transposed directly into law by the UK government by The Communications (Access to Infrastructure) Regulations 2016 after a consultation by the Department of Culture, Media and Sport<sup>3</sup> (DCMS). These regulations apply throughout the UK. However, as Article 8 requires measures within buildings, this article is to be implemented through each devolved administration's building regulations. Article 8 is to apply from 1 January 2017.
6. It is therefore proposed that a new Part M (Physical infrastructure for high-speed electronic communications networks) should be introduced to implement the requirements of Article 8 through the Building Regulations to building regulations applications from 1 January 2017.

---

<sup>3</sup> <https://www.gov.uk/government/consultations/eu-broadband-cost-reduction-directive>

7. In conformity with Article 8, the new Part M will require that all new buildings, and buildings subject to major renovation works, are equipped with the necessary high-speed ready in-building physical infrastructure (e.g. appropriate ducts and distribution) from the building's access point to the network termination point. Multi-dwelling buildings will also be required to provide a common access point from which ducting (or other 'physical infrastructure') will allow high-speed broadband cables to be fed to the individual dwellings within the building when needed.
8. The infrastructure should also be technologically neutral to maintain effective competition, so the in-building infrastructure should be able to facilitate future connections to any of the high-speed broadband<sup>4</sup> service providers' networks which are likely to be available in the area.
9. A new Technical Booklet M has been developed to provide guidance for common building situations in support of the Part M requirements.
10. Additional amendments to Part A (Interpretation and general) of the Building Regulations are also necessary to apply the new Part M measures procedurally.

---

<sup>4</sup> The Commission defines a 'high-speed' network as being capable of delivering access speeds of at least 30 Mbps

## OVERVIEW OF THE CONSULTATION

11. The purpose of the consultation was to obtain comments and views of interested parties on proposals for changes to Part F of the Building Regulations, for a new Part M and associated Technical Booklet and for changes to Part A to implement the Part M requirements procedurally.
12. The consultation was launched on 15th August 2016, concluded on 7th October 2016 and was published via the Department's web site. 273 letters were sent to highlight the Consultation Proposals to industry, relevant bodies and individuals
13. The consultation was divided into eight questions and an opportunity for other comments. The first two questions asked the respondent about the proposed changes to Part A. The third question was specific to the minor amendments proposed to Part F. There were then 5 questions about the proposed new Part M and one final opportunity for respondents to submit any additional or general comments.
14. The consultation received a total of 13 responses within the timeframe of the consultation as note in the table below.

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
	Number	Number	%	Number	%	Number	%
A1	12	11	92%	1	8%	0	-
A2	12	11	92%	1	8%	0	-
F1	12	10	83%	0	-	2	17%
M1	12	12	100%	0	-	0	-
M2	12	10	83%	2	17%	0	-
M3	12	3	25%	9	75%	0	-
M4	12	3	25%	9	75%	0	-
M5	12	9	75%	2	17%	1	8%
G1	13	-	-	-	-	-	-

15. The majority of the responses came from District Councils, who have responsibility for the enforcement of the building regulations through their Building Control services. The District Councils generally provided a unified line of response, which accounts for the large swing in support for individual measures in the table above.
16. One respondent replied to the consultation without completing the standard form. The Department has noted this comment, which was on a matter unrelated to the proposals, under Question G1- general comments.

17. Table of Respondents (see Appendix A for further detail)

District Councils	8
Public Sector Construction	1
Industry (Construction)	2
Industry (Communications)	1
Member of the Public	1

18. Two responses were received from District Councils after the closure of the consultation. These are not recorded in the statistics of this summary, but as they reflect similar input from other council areas, their views were noted.



## SUMMARY OF OUTCOMES<sup>5</sup>

19. In answer to queries received in a number of responses; Part M shall be principally applied through amendments to Regulation 5 (Application to the erection of a building) and Regulation 7 (Application to structural alterations and extensions) within Part A .
20. In relation to the Part F proposals; all respondents accepted that there should be no impact from the proposals on existing working practices, or expressed no view. Therefore no change is envisaged from the Consultation Proposals for Part F amendments.
21. The majority of responses were supportive of the Part M proposals, although many did not agree that the Technical Booklet M guidance was sufficiently clear. The Department therefore intends to implement the requirements largely in accordance with the Consultation Proposals, but will make amendments to Technical Booklet M guidance as follows:
  - i. Further clarify 'major renovation works' in relation to Part M;
  - ii. Further clarify that the guidance applies equally to domestic and non-domestic buildings;
  - iii. Highlight the relevant sections of the PAS 2016:2010 document and clarify how this document applies;-
  - iv. Appropriately cite the CLG guide 'Data Ducting Infrastructure for New Homes' 2008;
  - v. Amend Technical Booklet M's diagrams and/or associated notes to emphasise that external service ducts sit outside the requirements of Part M;
  - vi. Cite 'The Communications (Access to Infrastructure) Regulations 2016' to provide context on external infrastructure.
22. In terms of the Part M legislation; as a result of consultation responses, the Department proposes adding the word 'only' to Regulation 77A, to clarify that the requirements for Part M are restricted to the erection of a building or major renovation works to a building.
23. No change to the Consultation Stage RIA for Part M related costs or assumptions is envisaged. It is anticipated that the impact will be very low.
24. Whilst no other changes from the Consultation Proposals are anticipated, all suggestions from respondents have been carefully scrutinised. In many cases, the Department noted these would be better attended to under reviews of particular Parts, or under any future consolidation of the Building Regulations when suggestions may be implemented, if practical. However, any such reviews would be disproportionate at this stage, particularly in the context of the need for implementation from 1 January 2017. Many suggestions have also been weighed against the benefits of consistent application of the Directive alongside England, Scotland and Wales.

---

<sup>5</sup> At date of publication these remain subject to receipt of comments from the EU Commission in response to notification procedures under Directive 2015/1535/EU and legal advice

## RESPONSES TO CONSULTATION QUESTIONS

25. . The Department’s considerations are shown in *italics* for ease of reading.

**Question A1: Do you agree with the proposal to require “building work” in connection with buildings belonging to statutory undertakers to comply with the requirements of Part M?**

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
A1	12	11	92%	1	8%	0	-

26. ‘Statutory undertakers’ is defined in Regulation 2 (Interpretation and general) of the building regulations and relates to railways, canals, docks, harbours or other public undertakings. The building regulations apply in full to many of the buildings belonging to such statutory undertakers, (for example dwellings, office, shops showrooms and passenger stations), but do not normally apply to all other statutory undertaker buildings. In common with the application of EPBD requirements, it is proposed that Part M requirements should apply to all statutory undertaker buildings, unless exempt on other grounds.

27. Five (42%) of those who replied to the consultation agreed with the proposal in question A1 without further qualification. Six (50%) of the respondents supported the proposed amendments whilst adding the suggestion that the existing definition of ‘building work’ in Regulation 2 of the Building Regulations would need to be amended to include ‘major renovation’.

*On the issue of amending the definition of ‘building work’ in Regulation 2, major renovation works, as defined in the new Part M, is a ‘structural alteration’ by definition and hence is already covered in the definition of ‘building work’. The Department considers that no change is necessary.*

28. One respondent did not agree with the proposal, stating that all the exemptions should apply and that the application of certain regulations applying to statutory undertakings appears to be developing in a piecemeal fashion due to European Directives, without consideration of the overall need and benefit in this sector and instead should be considered in its own right.

*A review of Part A (Application and interpretation) or a future consolidation of the Building Regulations may permit further consideration of respondent’s suggestion, but would be disproportionate under this amendment.*

*No further action is proposed at this stage.*

**Question A2: Do you agree with the proposal to require “building work” in connection with buildings relevant to Class 1 of Schedule 2 to the Building Regulations to comply with the requirements of Part M?**

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
		Count	Percentage	Count	Percentage	Count	Percentage
A2	12	11	92%	1	8%	0	-

29. This proposal relates to certain buildings related to nuclear and explosives uses and to certain historic monuments, which are otherwise exempt from complying with building regulations.

30. Of the respondents who supported the proposal, two (17%) agreed without comment while one (8%) agreed with supportive comments. Eight respondents (67%) agreed that the requirements of Part M should apply, but suggested that this should be controlled under other legislation which regulates for such classes of buildings.

*The Department recognises the role of other controlling legislation however, as no other legislation is currently in place to control this requirement, this needs to occur through building regulations on this occasion. Application through the new Part M would be consistent with the implementation elsewhere in the other administrations.*

*No change is proposed.*

31. Six respondents (50%) agreed with the proposal but also suggested that it would be beneficial to extend the Part M proposals to apply to Class 7(a) buildings where the intended use is as an office or shop. *Class 7(a) buildings are certain small detached buildings, which meet certain requirements including that they are not used for sleeping accommodation.* The respondents suggested these buildings should still remain exempt from the procedural requirements, provided they comply with the requirements of Part M. They suggested this could be achieved in a similar way to conservatories, where it is necessary for the requirements of Part V (glazing) as part of the requirements for a conservatory to be regarded as exempt.

*The Department understands the case for Part M (or other Parts of the building regulations) to apply to shops and office buildings, irrespective of their size. However many buildings benefit from this widespread exemption. Neither England, Scotland nor Wales have applied their equivalent regulations to this class of building.*

*Application in a similar way to Part V’s application to conservatories would make many small buildings which are currently exempt subject to all the building regulations when building work is done to them. This could have a very significant impact.*

*The Department has therefore concluded that this would be an onerous and unwarranted extension of the Building Regulations and proposes no further action at this stage.*

32. One respondent (8%) replied 'no' to the question, stating that it was their opinion that all classes of exempt buildings should be exempt from the requirements of the new regulations. This respondent reasoned that if it is considered that certain parts of the regulations should be applicable to exempt buildings then this can only be successfully administered and achieved by introducing groups of partially exempted and wholly exempted structures.

*The Department recognises the intention and potential benefit of clearer classifications, as suggested. A review of Part A or a future consolidation of the Building Regulations may permit further consideration of the respondent's suggestion, but would be disproportionate at this stage. The Department considers that the Directive requires the application of Part M to these buildings.*

*No further action is proposed at this stage.*

**Question F1: Do you agree that the proposed amendments to Part F regulations will not affect current working practices?**

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
		Count	Percentage	Count	Percentage	Count	Percentage
F1	12	10	83%	0	-	2	17%

33. The proposals relate to Part F (Conservation of Fuel and Power) to require that all emissions calculations (target, calculated and as-built) are calculated using the approved National Calculation Methodology and to clarify that from 1<sup>st</sup> January 2019 newly constructed buildings occupied and owned by public authorities should be 'nearly zero energy buildings'.

34. Ten respondents (83%) supported the proposed changes to the wording and were of the opinion that these changes will not have any significant impact on working practices. Two (17%) were of no view on the issue.

*No change is required.*

35. One respondent had 'no view' but noted that nearly zero-energy building requirements have yet to be defined.

*As noted in the consultation, this does not form part of the current proposals, but is expected to form part of a future work stream. No change is required.*

**Question M1: Do you agree with the proposals for new Part M regulations requiring in-building physical infrastructure, when;-**

- a) a building is erected; or**
- b) existing in-building physical infrastructure is subject to major renovation?**

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
		Count	Percentage	Count	Percentage	Count	Percentage
M1	12	12	100%	0	-	0	-

36. All of the respondents agreed with the proposal, with one making no comment but eight (67%) suggested the term ‘major renovation’, which is currently defined in Regulation 38, should be amended and transposed into Part A definitions (regulation 2).

*The definition of ‘major renovation works’ for Part M purposes is completely separate from the term ‘major renovation’ as used in Part F. Both terms are used exclusively for their respective Parts and hence there is no need to define in Part A.*

*No change is proposed.*

37. One respondent (8%) further suggested that Regulation 5 and 7 would also need to be amended to include part M. In terms of Regulation 7, Part M should only be applicable to ‘major renovation works’.

*The Department’s draft regulations will amend Regulation 77A to reflect the position outlined in this response. (See also paragraph 54)*

38. One respondent (8%) suggested that terms used in the definition of ‘major renovation works’ such as ‘structural modifications’ and ‘significant’ may lead to variations in interpretation across NI as to when this regulation should be applied.

*The Department acknowledges this issue, but notes that a case by case assessment is likely to be required. Quantitative guidance on these issues would not be in keeping with the other administrations nor is it likely to give sufficient flexibility in application.*

*Other administrations have indicated that it would be reasonable to expect the Part M requirements to apply if major renovation work is taking place, for instance the re-wiring of a building<sup>6</sup>. The Department will amend the guidance to clarify the expectation of what constitute ‘major renovation works’.*

39. Eight of the respondents (67%) also suggested extending the requirements to apply where buildings are sub-divided to create either additional apartments/flats or are changed into HMO’s or where an existing non-domestic building is sub-divided to create a number of smaller business units.

<sup>6</sup> DCLG Consultation response and summary April 2016- para 39

*In line with the Directive requirements and the measures transposed in England and Wales equivalent regulations, Part M will not apply to a building when a material change of use takes place. In relation to the sub-division of a building to create additional flats/apartments or HMOs or where an existing non-domestic building is sub-divided to create a number of smaller units, this will invariably involve major renovation works along with the material change of use and it is this work which should in most cases trigger the requirement to comply with Part M.*

*No change is proposed.*

40. It was suggested by nine respondents (75%), that further clarification is needed when a 'shell building' is subject to 'fit out' applications or where an existing non-domestic building is to be extended or altered.

*In common with the rest of the regulations, the Department expects that the first fit-out of a space in a building should be generally considered as part of the erection of a building. Other fit-outs would be covered by requirements where a building is to be extended or altered, when the work constitutes a 'major renovation'.*

*No change is proposed*

41. Seven respondents (58%) also suggested that further guidance and clarification is required in relation to situation 'b'. For example, does Part M apply if an existing building 'fortuitously' has in-building physical infrastructure and intends to renovate it? or does this only apply to a building renovating its in-building physical infrastructure to which Part M applied when the building was newly constructed?

*The Directive does not discriminate between in-building physical infrastructure constructed before or after the introduction of the Directive. The Department believes that the proposed guidance reflects this. As this is in common with requirements in other Parts of the Building Regulations, further clarification should not be required.*

*No change is proposed.*

42. One respondent (8%), who supported the proposals, noted that in the definition of 'Access point' the term 'undertakings' is used which appears to be referred to elsewhere as 'service providers'. The respondent suggested the use of one consistent term to describe those providing electronic communication services to avoid possible confusion.

*The Department has defined the term 'service providers' within the Technical Booklet as a more user-friendly term for the purposes of guidance booklet only. The term 'undertakings' is used in the proposed regulation to reflect the precise wording used in the Directive. The Department is content with the definitions used, believes the term used in guidance is more user-friendly and helps avoid confusion with public or statutory undertakers.*

*No change is proposed.*

**Question M2: Do you agree with the proposed exemptions, as set out in Consultation Proposals document paragraph 6.5?**

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
M2	12	10	83%	2	17%	0	-

- 43 The proposed exemptions are properly described in the detail of paragraph 6.5 of the Consultation Proposals, but relate to–
- certain buildings which are normally exempt from the Building Regulations (Classes 2-9 of Schedule 2 to the Building Regulations);
  - 'protected buildings' and monuments; (i.e. certain historic buildings) where the work would lead to an unacceptable alteration of their character or appearance;
  - buildings in isolated areas where the prospect of a broadband service is remote; and
  - disproportionate major renovation works.

44. A number of the District Council respondents also requested that consideration should be given to the use of 'due regard to' when dealing with historic buildings and monuments and that this would be consistent with general application of the building regulations.

*The Department notes that the obligation for district councils to take due account of the desirability of preserving the character of 'protected buildings' under Article 3A of The Building Regulations Order 1979 will continue to apply. However, Article 8(4) of the Directive suggests exemption of protected buildings where the works would unacceptably alter the character or appearance of these buildings. The Department is seeking to take advantage of this exemption, consistent with England, Scotland and Wales.*

*No change is required*

45. Four respondents (33%) agreed with the proposed exemptions with no particular comments or with supportive comments. Five of those who agreed and two who disagreed with the proposed exemptions (67% in total) suggested that clarification is required as to what constitutes an 'isolated area' and the means by which Building Control can determine if an unreasonable duty is being imposed on a communications provider.

*The Department expects that there would be very few areas where the isolated areas exemption would apply and that the local District Councils are best placed to assess whether a building is located in an isolated area or not. The guidance is clear that in almost all such cases, the building would have to be isolated so that no duty would be placed on a communications provider to meet the cost of installing a telephone line under the Universal Services Order (if it was a dwelling on the site) and the provision of broadband by satellite or other wireless providers would not be viable. It is anticipated that any applicants seeking exemption will be keen to present suitable evidence to support their position. This extent of guidance corresponds with the other administrations.*

*No change is proposed.*



**Question M3: Is the proposed guidance in the draft Technical Booklet M sufficiently clear, in relation to;-**

- 1. Performance guidance**
- 2. Situations where the requirements of regulation 77B are not applicable (Section 1); and**
- 3. Multi-dwelling buildings (Section 1)**

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
		Count	Percentage	Count	Percentage	Count	Percentage
M3	12	3	25%	9	75%	0	-

46. Those who disagreed with the proposal (75%) suggested the Department should provide further guidance on what areas in Northern Ireland may be considered ‘too remote’.

*The Department believes these cases will be very rare (as noted in paragraph 45). The Department considers that a map or other geographical method is not likely to be practical, particularly as satellite or other wireless alternatives to cabled broadband can be dependent on site specific issues, such as over-shading of the signal. The Department again notes that the extent of guidance in the Consultation Proposals is in keeping with England, Scotland and Wales.*

*No change is proposed.*

47. One respondent suggested that the Department should include worked examples in Technical Booklet M of the application of the proposed Regulation 77A(2)(c) in relation to disproportionate costs.

*The Department considers that this exemption has been provided to cater for unforeseen and exceptional occasions, such as fit-out works for the temporary use of a building prior to its demolition. Each case will have to be considered individually. The guidance provided in Technical Booklets is intended to outline performance standards and methods of compliance only for common situations. These situations of disproportionate cost are expected to be very uncommon and therefore sit outside the scope of this guidance.*

*The Department may consider further guidance if appropriate assessment criteria emerge from the EU Commission or other appropriate sources, but no change is proposed at this stage.*

48. Respondents answering 'no' (75%) also felt there was no guidance in Technical Booklet M for single or multi-occupancy non-domestic buildings or further publications referred to or referenced. One respondent suggested that there was therefore no reasonable 'standard' to be applied or to benchmark against. Nine respondents (75%) suggested providing additional guidance for both multi-occupancy and large, single occupancy non-domestic buildings.

*The Department notes that most of the clauses in the guidance relate to all buildings. The diagram for single occupancy buildings relates to both domestic and non-domestic situations. No particular considerations are necessary for a large, rather than a small, single-occupancy building (the provisions do not apply to a building's internal network systems cabling within a unit). The guidance notes that the diagram provided for a multi-dwelling building would also satisfy the requirements of a 'mixed use building'.*

*The Department notes that the extent of guidance in the Consultation Proposals is consistent with that of England, Scotland and Wales, but will amend the guidance to emphasise how non-domestic buildings are covered.*

49. Five respondents commenting 'no' (42%) also stated that PAS 2016:2010 is considered to be a useful guide, but that the NHBC Foundation guide referred to is not relevant and is liable to cause confusion. They suggested that Communities and Local Government Guidance 'Data Ducting Infrastructure for New Homes' 2008 should be cited.

*The Department will clarify the first citation of the PAS document in the proposed Technical Booklet in relation to ductwork to limit reference to the relevant parts of the PAS.*

*The proposed guidance has also cited both the PAS and NHBC guidance under the title 'Further Information'. This is intended as background reading which may provide some relevant insight to the wider issues involved, but should not be regarded as guidance to the requirements of the Building Regulations. Both documents are comparably cited in other administrations' equivalent documents.*

*The Department notes that the Department for Communities and Local Government chose not to cite its 2008 'CLG' guide as it considered the document outdated in placing a heavy emphasis on internal network wiring to rooms within a home. Such wiring is beyond the requirements of the proposals. Furthermore, some diagrams, particularly those for blocks of flats, are not consistent with the Technical Booklet example diagrams. However, the CLG document does provide some useful guidance; for example on the sizing of riser ductwork for multi-dwelling buildings.*

*The Department will cite the CLG document either where it has relevant parts that are particularly applicable, or under 'further information'.*

**Question M4: Is the proposed guidance in Section 2 of the draft Technical Booklet M sufficiently clear, in relation to;-**

- 1. Location of points;**
- 2. In-building physical infrastructure ductwork (including diagrams 2.1 and 2.2); and**
- 3. Satellite and wireless communications?**

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
		Count	Percentage	Count	Percentage	Count	Percentage
M4	12	3	25%	9	75%	0	-

50. Of the three respondents (25%) who replied with a 'yes', two replied without comment or with a positive comment, while one questioned if the guidance was sufficiently clear when different providers were providing their services to an individual apartment block.

*The Department considers that it is clear that an apartment block would normally be a multi-dwelling building and that all the requirements under regulation 77B would therefore apply. No further change is proposed.*

51. The nine respondents (75%) who were not content that the guidance was sufficiently clear, again argued that there appears to be no guidance or further publications referred to in Section 2 of Technical Booklet M for non-domestic buildings.

*See paragraph 48 in response to Question M3.*

*The Department acknowledges that the 'further publications' referred to in the proposed Technical Booklet M only relate to domestic buildings. The Department may consider updating its Technical Booklet guidance in the event that a suitable further publication for non-domestic buildings becomes available, but no further changes are proposed at this stage.*

52. Seven (58%) of those answering 'no' to the question also commented there is no benefit in requiring buildings to comply with Part M if the Building Regulations do not legislate for the provision of suitable service ducting from the site boundary/curtilage to the building. These respondents also suggested that if the provision of service ductwork does not form part of the proposals, then diagrams 2.1 and 2.2 should be amended accordingly, to remove the underground service duct and terminal chamber.

*The Department notes that whilst it may be sensible for developers to provide external ducting, this is beyond the remit of Article 8 of the Directive. The Department is anxious not to 'gold-plate' requirements and not to interfere with any other legislative provisions in relation to the external infrastructure requirements. This position is consistent with England, Scotland and Wales.*

*The Technical Booklet's diagrams will be amended to emphasise that these should normally sit outside the requirements of Part M. The Department will also review the proposed Technical Booklet with a view to citing The Communications (Access to Infrastructure) Regulations 2016 to provide context on legislation governing external infrastructure.*

**Question M5: Do you agree with the assumptions, costs and impacts set out in the Part M consultation stage RIA?**

Question Number	Total Responding	supporting the proposal		opposing the proposal		no view	
		Count	Percentage	Count	Percentage	Count	Percentage
M5	12	9	75%	2	17%	1	8%

53. Two of the respondents (17%), who supported the proposals, noted that the costs involved were minimal and easily absorbed or viewed them as wholly proportionate. Six of respondents (50%) felt that the assumed 30 minutes per surveyor for set-up and training costs appears grossly inadequate given the time that will be required to understand the background, the associated matters and the extent of control in the proposed Part M. They also highlighted there could be a significant on-going cost assessing applications, advising customers in the office and associated time while undertaking inspection on sites. Of these six, two (17%) opposed the proposal.

*The Department has developed the assessment informed by the research and development carried out for England, with suitable adjustments for the situations here. The Department is unaware of any reason why the training cost impact should be greater than in England. It is intended that the impact of the requirements should be periodically reviewed and further evidence of any further or additional impact may be available for consideration at this stage. No change is proposed to the RIA at this stage.*

54. Six respondents (50%) also noted that in the RIA it is intended to amend Part A regulations 4,5,6,7,8,9,11 and 17 of the Building Regulations, however no proposals have been tabled in the consultation proposals document in relation to these matters.

*The Department notes that Part A proposals are outlined in Section 4 of the Consultation Proposals, but acknowledges that this focussed on consideration of exemptions, rather than the proposed application of the new Part M.*

*It is proposed to implement the requirements of the proposed regulations primarily through an amendment of Regulations 5 (Application to the erection of a building) and 7 (Application to structural alterations and extensions) and to amend the proposed Regulation 77A to clarify that the requirements apply **only** to the erection of a building or to major renovation work.*

*Other amendments will be developed under Regulation 4(Exemptions), the table to Regulation 8 (Application to change of use) to clarify that Part M is not applied through this procedure, Regulation 9 (Provision of information) and Regulation 11 (Type approvals). Amendments to Regulations 6,9, and 17 are no longer envisaged.*

*These changes to the proposed regulations address this issue.*

55. One respondent (8%) noted that the costs are likely to be informed by the clarity of the guidance provided and also asked what measures the Department plans to ensure the requirements are disseminated.

*The Department will consider if it has resources necessary to offer the customary short introductory seminar on the proposed regulations and will take soundings from industry and council bodies to see if this would be worthwhile or necessary. No change is proposed to the RIA at this stage.*

56. One respondent (8%) asked what the Department's intentions are with regard to offsetting the costs of the introduction and ongoing costs of this new regulations for Councils.

*The Department will consider this under any review or amendment to the Building (Prescribed Fees) Regulations (Northern Ireland) 1997. However the costs of these measures are extremely low. No change is proposed to the RIA at this stage.*

**Question G1: Please set out any additional comments you have below.**

57. Twelve responses were received to this request, with seven (58%) taking the opportunity to express support for the proposals.
58. Four District Council respondents (33%) requested a meeting with the Department to discuss the proposals further.

*The Department attended a meeting with the District Councils, through the forum of Building Control NI, on 20<sup>th</sup> October to outline the position of the Department on the proposals. Officials will continue engagement on these matters with all parties, as necessary.*

59. Eight of respondents (76%) suggested that it would have been better to number the new regulations 100 and 101 in a new Part W to remove potential for confusion with regulation 77 which sits in Part L (Combustion appliances and fuel storage systems).

*The Department believes that the new 'Part M' title should be sufficient to differentiate 77A and 77B from the rest of the regulations. In addition, the current proposal has the following advantages–*

- I. The use of new 'A', 'B' clauses is well established in practice and helps identify amending regulations, which can then be re-numbered under any consolidation exercises;*
- II. The Commission and industry have been notified of the proposals under the Part M title, so significant advantage would have to be demonstrated to justify an amendment at this stage;*
- III. There is a reciprocal arrangement of Parts R and M with England's Parts M and R, which can be convenient for users of both sets of regulations.*

*The Department therefore considers that the proposal is unlikely to lead to confusion and will retain the proposed numbering.*

60. One respondent requested that 'Changing Places' toilet facilities for people with profound and multiple disabilities should be required through an amendment to Building Regulations.

*This is not a consideration of the current proposals but requirements for 'Changing Places' facilities are likely to be reviewed when Part R (Access to and use of buildings) is reviewed, or under other, separate consideration.*

## **APPENDIX A**

### **LIST OF RESPONDEES**

#### **District Councils                    8**

Newry, Mourne & Down District Council  
Lisburn & Castlereagh City Council  
Armagh City, Banbridge & Craigavon Bor. Council  
Building Control Northern Ireland (BCNI)  
Belfast City Council  
Fermanagh & Omagh District Council  
Antrim and Newtownabbey Borough Council  
Mid Ulster Council

#### **Public Sector Construction 1**

Northern Ireland Housing Executive

#### **Industry (Construction)        2**

Chartered Association of Building Engineers  
Chartered Institute of Architectural Technicians

#### **Industry (Communications) 1**

British Telecommunications plc

#### **Member of the Public            1**

Consent for release of name not provided