



Department of
Finance

An Roinn

Airgeadais

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Building (Amendment) Regulations (Northern Ireland) 2016

PUBLIC CONSULTATION DOCUMENT C.2

Consultation Proposals

August 2016

(closing date for receipt of responses is 4:00 pm on Friday 7th October 2016)

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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 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 The Energy Performance of Buildings Directive 2010/31/EU (EPBD) requires Member States to transpose its requirements into national law. A number of these are currently implemented through Part F of the Building Regulations. Articles 3 and 4 of the directive, respectively require an approved methodology and its use when calculating minimum energy performance standards for buildings. Article 9 requires the adoption of nearly-zero energy standards for new buildings from certain dates.

1.4 Directive 2014/61/EU, on measures to reduce the cost of deploying high-speed electronic communications networks, also requires Member States to transpose requirements into national law. The Directive sets measures to support the roll-out of high-speed broadband¹ across the EU. The majority of requirements are to be transposed directly into law by the UK Government and a separate consultation has been completed by the Department of Culture, Media and Sport² in regard to this. However, it is proposed that Article 8 requirements should be implemented through each devolved administration's building regulations. The full text of Article 8 is set out in Annex A.

1.5 Article 8 of Directive 2014/61/EU requires in-building physical infrastructure (e.g. appropriate ducts and distribution) to facilitate future connections to high-speed broadband.

¹ The Commission defines a 'high-speed' network as being capable of delivering access speeds of at least 30 Mbps

² <https://www.gov.uk/government/consultations/eu-broadband-cost-reduction-directive>

2. INTRODUCTION TO CONSULTATION PROPOSALS

2.1 The purpose of this consultation is to obtain comments and views of interested parties on proposals for changes to parts of the Building Regulations.

2.2 The proposals for amendments to Parts A and F of the Building Regulations and for the new Part M are included in principle form; see Sections 4, 5 and 6 respectively for each Part. This will give consultees an overview of all of the proposed alterations and additions to the current regulations.

2.3 The Department is proposing minor amendments to Part F to provide legislative clarification on the implementation of Articles 3, 4 and 9 of the EPBD. The amendments are not expected to change existing working practices.

2.4 The Department is proposing a new Part M (Physical infrastructure for high-speed electronic communications networks) of the Building Regulations to implement Article 8 requirements of Directive 2014/61/EU.

2.5 The purpose of Article 8 of Directive 2014/61/EU is to provide in-building physical infrastructure (e.g. ducts and distribution) to facilitate subsequent installation of high-speed broadband services. In larger multi-dwelling buildings, Article 8 requires the provision of a common access point from which cabling may later be installed through the in-building physical infrastructure to the individual dwellings within the building. **Article 8 does not require that buildings are connected to broadband services nor the installation of communications cabling within buildings.**

2.6 Article 8 requirements apply to cases of new buildings and major renovations (where the existing in-building physical infrastructure is being substantially replaced or renovated). This infrastructure must also be technologically neutral to maintain effective competition.

3. CONSULTATION PACKAGE – CONTENT AND RESPONSE

3.1 In addition to these proposals, the documents making up this consultation are:

- Dear Consultee letter;
- Consultation Response Form;
- Consultation Draft Technical Booklet M; and
- Consultation Regulatory Impact Assessment.

All of the documents are available online at <https://www.finance-ni.gov.uk/consultations>

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 karen.mckernon@finance-ni.gov.uk

Alternatively your response may be posted to:

Karen McKernon
Consultation Co-ordinator
Department of Finance
Building Standards Branch
3rd Floor,
Northland House
3-5A Frederick Street
BELFAST BT1 2LW

The Department will consider all the responses to this consultation received on or before the closing date, which is **4.00 pm on Friday 7th October 2016**.

Submissions made after this date cannot be considered.

Code of practice on consultations

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 on the 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.

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 Department proposes to amend regulation 4 of the current Part A regulations.

4.3 In general, building regulations do not apply to buildings belonging to statutory undertakers (excluding dwellings and those buildings used as, offices, shops, showrooms or passenger stations). It is proposed, in keeping with the spirit of Article 8 of Directive 2014/61/EU, that any buildings belonging to statutory undertakers must comply with the in-building physical infrastructure requirements of the Building Regulations. There will be no obligation on statutory undertakers to comply with the procedural requirements. This would be in line with the current application of regulations 40, 43A and 43B in Part F of the Regulations (see Consultation Document *'Response form for consultees'* Question A1).

4.4 It is proposed, in keeping with the spirit of Article 8, that buildings listed in Class 1 of Schedule 2 shall also be subject to new Part M regulations 77A and 77B. This will apply to:-

- (a) any building subject to the Explosive Acts (Northern Ireland) 1875 and 1924;
- (b) any building subject to the Nuclear Installations Act 1965 (including a dwelling, office or canteen); and
- (c) any building subject to Part II of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 (including where used as residential accommodation or an institution).

As with the proposals for statutory undertakers, there will be no obligation to comply with the procedural requirements in these cases (see Consultation Document *'Response form for consultees'* Question A2).

4.5 It is worth noting that all buildings will be subject to the application of regulation 77A, so that the exemptions offered under the proposed 77A may be enjoyed in all cases. In particular, the proposed regulation 77A(2)(a) exempts Historic Monuments and Protected Buildings where the work would unacceptably alter the character or appearance of the building.

PROPOSALS FOR AMENDMENT OF THE BUILDING REGULATIONS

5. Minor Amendments to Part F of the Building Regulations

5.1 The Department is proposing amendments to Part F regulations to clarify transposition of Articles 3, 4 and 9 of the EPBD.

5.2 The Department is proposing amendments to regulation 40 to provide legislative clarification that the National Calculation Methodology should be applied at all stages of a building energy assessment (including “as designed” and “as constructed” calculations). These proposals follow similar amendments to England’s building regulations³ and effectively reflect the guidance of paragraph 2.17 of Technical Booklet F1 and paragraph 2.31 of Technical Booklet F2.

5.3 The Department is also proposing an amendment to regulation 43B to ensure that nearly zero-energy requirements should apply only to public buildings occupied and owned by public authorities from 1st January 2019. This is intended to reflect the specific requirements of Article 9.1(b) of the EPBD.

5.4 The Department recognises that further changes to Part F and additional impacts will need to be consulted upon when clarifying guidance on nearly zero-energy requirements associated with regulation 43B. These will be developed under a separate workstream and do not form part of the proposals in this package.

5.5 The wording for the proposed amendment is as follows:

Amendments to Part F (Conservation of fuel and power)

1.—(1) In regulation 40 (Target carbon dioxide emission rate)—

- (a) in paragraph (1) after “38(3)(b),” insert “minimum energy performance requirements in the form of”;
- (b) in paragraph (1) after “calculated” insert “and expressed”; and
- (c) in paragraph (2) after “rate” insert “, with all carbon dioxide emission rates calculated and expressed using a national calculation methodology”.

(2) In regulation 43B (Nearly zero-energy requirements for new buildings) in paragraph (2)(a) after “occupied” insert “and owned”.

Impact Assessment

5.6 These proposals are not anticipated to affect any current working practices and, as such, no impact assessment has been developed.

³ Ref The Building Regulations &c (Amendment) Regulations 2016 SI2016/284

Timing and Next Steps

5.7 It is proposed that these clarifications should come into operation some 21 days after the laying of the regulations and in any case no later than 31st December 2016.

PROPOSALS FOR AMENDMENT OF THE BUILDING REGULATIONS

6. New Part M (Physical infrastructure for high-speed electronic communications networks)

Regulations

6.1 The Department proposes to implement EU requirements for high-speed broadband in-building physical infrastructure through a new Part M of the Building Regulations. The Regulations offer an established route for setting requirements for buildings. The intention is to transpose the EU requirements (see Annex A) into the Building Regulations as closely as possible.

6.2 Once requirements are set in the Building Regulations, developers will be required to provide ductwork or similar infrastructure, so that high-speed broadband service providers could install their cabling without disruptive building works. Subject to situations deemed not to be applicable (see regulation 77A and item 6.5 below) this would apply to new buildings and in cases where existing broadband infrastructure is subject to major renovation.

6.3 It will fall to district councils to ensure that the requirements of any new Building Regulations have been met.

6.4 The proposed new requirements are set within the draft Technical Booklet M.

6.5 The Department is proposing that the following types of building or building work be exempt from requirement 77B:

- (a) buildings and work described in Classes 2 to 9 of Schedule 2 (Classes of exempted buildings) to the Building Regulations;
- (b) buildings for which compliance with requirement 77B would unacceptably alter their character or appearance and which are –
 - (i) protected in accordance with Article 3A(2) of the Building Regulations (Northern Ireland) Order 1979; or
 - (ii) including a building being any monument subject to Part II of the Historic monuments and Archaeological Objects (NI) Order 1995.
- (c) buildings situated in isolated areas where the prospect of high-speed connections is considered too remote to justify equipping the building with high-speed ready in-building physical infrastructure or an access point. An example of this would be a building in an area that is so isolated that –
 - (i) no duty is placed on a communications provider to meet the full cost of installing a telephone line; and
 - (ii) satellite or other wireless high-speed services are all unavailable.
- (d) major renovation works (*encompassing structural modification of the entire, or significant part of the, in-building physical infrastructure*) in cases in which the cost of compliance with requirement 77B would be

disproportionate to the benefit gained. It is anticipated that a developer would need to demonstrate that in their particular case compliance costs would be unreasonable.

6.6 The Department would welcome comment on these cases for exemption listed above (see Consultation document '*Response form for Consultees*' Question M2).

Technical Booklet

6.7 The Department is publishing a draft version of a Technical Booklet M (TBM) alongside this consultation paper. The guidance in TBM is aimed at giving advice on demonstrating compliance with regulatory requirements for in-building physical infrastructure for high-speed electronic communications.

6.8 TBM proposes to include within Section 1 General definitions of key terms.

6.9 TBM also proposes to include guidance in relation to;-

- (a) performance and introduction of provisions;
- (b) situations where the requirements of regulation 77B are not applicable; and
- (c) multi-dwelling buildings.

6.10 TBM proposes to include within Section 2 guidance in relation to;-

- (a) introduction to regulation;
- (b) location of points;
- (c) in-building physical infrastructure ductwork (including diagrams 2.1 and 2.2); and
- (d) satellite and wireless communications.

6.11 The Department welcome views on the TBM – particularly whether it would be helpful to include any other information (see Consultation document '*Response form for Consultees*' Questions M3 and M4).

Impact Assessment

6.12 The Department is publishing a consultation stage Regulatory Impact Assessment (RIA) alongside this consultation paper. The RIA is based upon three principal assumptions:

- that all the main ways of delivering broadband to buildings (copper or fibre solutions) are capable of delivering in excess of 30 Mbps, when linked to appropriate (external) infrastructure;
- the regulatory costs associated with the implementation of Article 8 of the 2014/61/EU Directive are extremely low, as there will be very few occasions when the necessary in-building infrastructure to enable connections to high-speed broadband is not already intended to be provided in new buildings and major renovations;
- that the main impact of setting building regulations requirements could be on custom self-build or single rural house development, but even then the impacts would be limited due to the availability of fixed landline provision.

6.13 The Department welcomes further evidence to inform a final stage RIA (see Consultation document '*Response form for Consultees*' Question M5).

Timing and next steps

6.14 The Department must ensure that proposed regulations implementing Article 8 of the 2014/61/EU Directive are in place in 2016 and come into operation in January 2017. The provisions of Article 8 therefore need only apply to buildings for which a building regulations application has been submitted after 31 December 2016.

7. ANNEX A

DIRECTIVE 2014/61/EU ON MEASURES TO REDUCE THE COST OF DEPLOYING HIGH-SPEED ELECTRONIC COMMUNICATIONS NETWORKS

Article 8 In-building physical infrastructure

1. Member States shall ensure that all newly constructed buildings at the end-user's location, including elements thereof under joint ownership, for which applications for building permits have been submitted after 31 December 2016, are equipped with a high-speed-ready in-building physical infrastructure, up to the network termination points. The same obligation applies in the event of major renovation works for which applications for building permits have been submitted after 31 December 2016.
2. Member States shall ensure that all newly constructed multi-dwelling buildings, for which applications for building permits have been submitted after 31 December 2016, are equipped with an access point. The same obligation applies in the event of major renovation works concerning multi-dwelling buildings for which applications for building permits have been submitted after 31 December 2016.
3. Buildings equipped in accordance with this Article shall be eligible to receive the voluntary 'broadband-ready' label in Member States that have chosen to introduce such a label.⁴
4. Member States may provide for exemptions from the obligations provided for in paragraph 1 and 2 for categories of buildings, in particular single dwellings, or major renovation works in cases in which the fulfilment of those obligations is disproportionate, such as in terms of costs for individual or joint owners or in terms of type of building, such as specific categories of monuments, historic buildings, holiday homes, military buildings or other buildings used for national security purposes. Such exemptions shall be duly reasoned. The interested parties shall be given the opportunity to comment on the draft exemptions within a reasonable period. Any such exemption shall be notified to the Commission.

⁴ The UK does not maintain a 'broadband-ready' labelling scheme.