Achieving Building Standards: Final Report

Communities and Local Government

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Science Applications International Corporation (SAIC) (LTD)
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Introduction

The purpose of building standards is the protection of the public interest in the occupancy, use and performance of buildings. The Building Regulations therefore underpin the health and safety of us all. As a nation, we spend about 90% of our time in buildings which, in turn, produce over a third of the UK's harmful carbon dioxide emissions. It is therefore vital that in looking to the future we make every effort possible to ensure that standards are not only achieved but also continue to improve.

For the Building Regulations to be satisfied and adequate standards to be achieved there needs to be an effective combination of compliance and enforcement. Since their introduction the standards have been adapted to keep pace with advances in design, technology, materials and construction and other issues such as energy conservation. However, there are now growing concerns about the level of compliance with building standards as well as criticism about the pace of change and their increasing complexity.

This report was commissioned by the Department for Communities and Local Government, responsible for the creation and maintenance of the Building Regulations and associated guidance, as part of a programme of work to consider the current situation of Building Regulations, how they are managed and maintained and to identify what might be done to improve this. As the first step in this process, Science Applications International Corporation (SAIC) was asked to review the current building regulation and control regime and provide:

- An independent view of how successfully suitable/adequate building standards are being achieved; the underlying reasons for the level of compliance; the barriers to compliance and the issues arising, and

- Recommendations for further work to address the issues identified.

This report therefore, examines the achievement of building standards, identifies the major issues, provides recommendations for further work to address the issues and indicates the way forward for the system in the future.

Our approach

We began our study of this complex and wide ranging topic with a comprehensive review of approximately 100 documents, including studies and research projects from industry bodies, and a brief study of similar activity in other countries and approaches taken by other industries.

An analysis of stakeholders established the potential impact of Building Regulations on different groups and their influence on achieving building standards. This formed the basis for a stakeholder consultation involving approximately 200 individuals. Direct interviews were conducted with 31 organisations representing the key stakeholder groups, including; Local Authorities, Approved Inspectors, compliance agents, professional bodies, trade associations, industry bodies, contractors, manufacturers and suppliers.

A set of evaluation criteria was established using principles introduced by the Better Regulation Task Force in 1997 and the Hampton principles of inspection and enforcement. They formed the basis for a research questionnaire used in the face-to-face interviews and designed to explicitly uncover areas for major improvements. 68 responses were obtained.

We used an online discussion forum to provide a useful supplement to the direct consultation. Approximately 100 individuals posted 175 comments providing a substantial body of genuinely useful feedback and ideas for improvement. It was accessed and read by thousands, averaging approximately 200 individuals per day.

An analysis of the results obtained from these sources built up a substantial evidence base and led to a critical evaluation which was conducted against the policy-making and delivery process for Building Regulations as well as the evaluation criteria. This established what works, what does not work, the level of compliance, the underlying reasons for compliance and any lessons to be learned. This included a diagnosis of the issues, consideration of the evidence and exploration of innovative new ideas.

Key Findings

The issues and ideas identified in this analysis are a consensus view built up through the desk research, workshops, interviews, interaction, the online forum and the questionnaire. It should be noted that the review took place soon after the recent updates to Part L of the regulations (Conservation of fuel and power) that attracted much adverse criticism from the industry. Any particularly strong stakeholder vested interests were recognised and filtered out in the analysis. There was a consistent level of agreement across all stakeholder groups leading us to believe that the areas identified for improvement remain valid. The main findings, as they relate to the evaluation criteria, are outlined below:

Proportionality

The most positive reactions to Building Regulations were around the original 1984 Act and the early Approved Documents dealing with Health and Safety, but that this has now been eroded and obscured. There is general recognition of the importance of newer areas dealing with energy performance and the environment, but criticism that the ways chosen to address these areas has led to increased bureaucracy and costs. There is little data and analysis of the impact on, in particular, the smaller enterprises in the construction market.

Building Regulations are not working as well as they should. Larger building projects are trying to work with them and have sufficient resources to absorb the inefficiencies of the system. Smaller projects do not have the funding for the level of resource required to ensure compliance and the system is driving more of them away. However, the largest volume of building projects fall into this category, which also represents the highest risk to compliance.

There is a perception that adequate consideration is not given to alternatives or complementary approaches to Building Regulation as a means of achieving policy objectives. This includes the use of advertising and education, market forces, financial incentives and self-regulation. These approaches may be more effective and/or cheaper than prescriptive regulation and could include:

- Considering methods for increasing the performance standards of the existing building stock and reviewing the impact of consequential improvements on smaller projects

- Considering alternatives to the traditional building control process, potentially allowing more self-certification of compliance by competent persons obviating the need for inspection by a building control body (providing it is effectively managed and monitored)

- Adopting lighter-touch regulatory procedures for certain building types similar to some other European countries.

It is well recognised that regulation can have a disproportionate effect on small businesses and so it's vitally important that adequate attention is paid during consultation to the economic impact and the practicalities of implementation and enforcement on different groups, particularly small builders. It is also important to ensure that Approved Documents provide guidance that is proportionate to the needs of different industry groups and types of building project.

Accountability

Both the regulators (Communities and Local Government) and the enforcers (Building Control Bodies) of Building Regulations would benefit from having clear standards and criteria against which they can be judged. However, the current devolved building control system has impeded development of a comprehensive system to date. There is now an opportunity to develop a more effective national performance management system that is aligned to the achievement of strategic objectives, facilitates control and allows feedback between the different groups making, delivering or affected by Building Regulations.

There is a perception, by some, that competition between Local Authority Building Control and Approved Inspectors has led to a reduction in building standards. There is also tension between the roles of Local Authority Building Control as a commercial and last resort service provider and enforcer. Appropriate roles and responsibilities will need to be established in order to develop an adequately resourced inspection and enforcement function.

Consistency

Nearly two-thirds of stakeholders interviewed pointed to a lack of an overall, stable strategy and direction for Building Regulations against which they could plan their own activities over a reasonable time period of, say, five years.

There is a perception across the industry that there is no 'joined up' working across those Government Departments having an impact on building and construction. There is now duplication and conflicting requirements that generate confusion and additional costs and bureaucracy. There is little or no visible integration at the strategic, tactical and local operational levels.

At the operational level, there is a perception that there is no joining up of the construction cycle from design, through build and operate. There is a gap emerging between 'development control' (planning) and 'building control' in the newer areas of interest, such as the environment, that is adding to complexity and increased frustrations. There is also inadequate consideration of the 'operate and maintain' phase, once a building has been completed.

This demonstrates a need for increased integration between all the various control regimes concerned with the construction process. This could include:

- Ensuring that there is consistency between the different parts of the Building Regulations to remove possible confusions, duplications, inconsistencies and ambiguities and also ensuring that Building Regulations are co-ordinated with other appropriate legislation

- Merging construction Health and Safety legislation with the Building Regulations (this would require resolving of the differences in the approach between the two sets of legislation, e.g. in relation to responsibilities)

- Aligning the planning, building control and health and safety regimes to provide clear guidance to contractors at each stage of the process, potentially using a single application process, support system and monitoring through the construction cycle

- Combining the use of building control (LABC) and health and safety inspectors (HSE) to bring buildings into a single, rather than twin, inspection and enforcement regime. This concept could be developed further to include the fire authorities and environmental health to ensure a fully integrated inspection regime across the building's life-cycle.

Transparency

The system has evolved in a piecemeal manner resulting in inadequate stakeholder management. Poor communications are leading to a negative stakeholder perception of Communities and Local Government and Building Regulations and there is a perceived lack of joined up processes between policy makers and implementers. This would be improved by formalising and improving stakeholder management and communications to ensure appropriate representation and deliver two way communication.

While the time for consultation on developing policy was thought adequate, the majority of stakeholders believed that there was inadequate time and resource applied to the practicalities of implementation and enforcement and the differential impact on different stakeholder groups. Any future changes should address the need for implementation plans which are realistic and allow sufficient time and resource to ensure smooth transition, adequate training, appropriate support and effective implementation.

Targeting

While positive comments were made by larger enterprises about the flexibility for innovative design that is allowed by Building Regulations, there was much criticism made of the lack of appropriate guidance tailored to the needs of different customer groups; in particular for the smaller contractor where the risk of non-compliance is largest. It will be important to ensure an appropriate balance between the use of prescriptive and performance based criteria based on project type, recognising that the need for freedom to innovate within larger/complex projects must be balanced against the needs of the smaller building contractor and DIY householder seeking simple, prescriptive criteria against which they can readily comply.

The key to focusing the regulations will be to gain an understanding of stakeholder's needs and drivers and use them in an integrated system of compliance and enforcement that targets the right groups to achieve the right behaviour. This should be achieved through placing responsibility in the right place and potentially supporting those responsible with increasing use of Appointed Persons (co-ordinators/competent persons) to facilitate compliance. Compliance should be 'designed in' by placing effort to influence activity higher up/earlier in the construction cycle by targeting owners (clients) and designers.

Best practice dictates that the regulations should be continually reviewed to ensure that they are still necessary and effective. This should be addressed by continuing steps to simplify the regulations to ensure that the administrative burden is reduced, through investigating new potential initiatives and implementing existing plans such as the e-enablement of the Building Control Service.

Enforceable

A general lack of resources presents significant challenges to the achievement of building standards. There are significant gaps in budget and people resource. There is insufficient Communities and Local Government capacity and capability to deliver meaningful change exacerbated by resource pressures, skills drain and lack of succession plan. Building Control Bodies are also constrained by resources and are thus prioritising and addressing the areas that they perceive to be important e.g. Health & Safety.

The current issues surrounding compliance and enforcement need to be addressed to ensure that the regulations are practical to enforce. This could be achieved by the formalisation and development of activities currently undertaken using individual judgement within building control. This could include adopting inspection based on risk assessment to concentrate resources on the areas that need them most, educational programmes tailored to major stakeholders and developing risk based sanctions that use the judicial system, monetary penalties and stop notices to ensure effective enforcement.

Impact

At present, building standards are largely serving their purpose of protecting the public interest.

However, the future of building standards lacks clear vision and consequently there is no effective long-term strategy or plan to deliver.

As a result the Building Regulation control system is evolving in an inefficient and ineffective manner with particular issues including; poor stakeholder management & communication, significant gaps in resourcing (both budget & people), lack of integration at strategic, tactical & operational levels, lack of joined up processes and little effective performance management.

Compliance is frustrated by excessive complexity and a lack of clarity which is eroding customer buy-in. Customer-centric approaches are not used as much as they should be to encourage compliance. Enforcement bodies lack the appropriate tools and resources to ensure that standards are achieved. Effective enforcement is limited and the regulations are perceived to have no teeth.

Building standards are not fully achieving their desired outcomes. For the original desired outcomes on Health & Safety, Building Regulations are largely working – despite the system. For the newer desired outcomes such as the conservation of fuel & power, Building Regulations aren't working because of the system.

Building Regulations are now at a tipping point. The way they are developing does not fully comply with the government's regulatory best practice and, if left unchecked, will place an unnecessary administrative burden on businesses and citizens. The context in which they operate has significantly changed since their last major revision and the control system is no longer fit for purpose. The building regulation and control regime needs to be adjusted in order to remain relevant and provide an effective contribution to addressing the issues and challenges raised by climate change. Only a step change will ensure this happens.

Recommendations

The key recommendations of the review are to:

- Establish a clear vision for building standards that also describes the positioning with other regulatory regimes. Develop and communicate a strategy and a stable plan to deliver it

- Improve stakeholder management and communications by reviewing the range of stakeholders and their needs, identifying and communicating the key messages from the strategic plan and setting up appropriate delivery channels

- Work with other government stakeholders and industry to develop the business case for integration across central and local government and over the whole life of buildings

- Review and revise simplification plans with stakeholders in line with recommendations of the Better Regulation Commission report on Risk, Responsibility and Regulation to review the stock of regulation affecting the building process to make sure it allocates risk appropriately

- Review the organisational design for the Sustainable Buildings Division in Communities and Local Government and at local building control level leading to changes in resources, roles and responsibilities, and the relationships with external organisations that will be required to meet the future needs of building regulation and control

- Review and revise processes and procedures, for policy development and implementation that identifies the full cost and resource implications of the proposed regulation, the impact on each industry groups and, in particular, on small firms. The process should also recognise the time required for implementation

- Rationalise then design and implement new customer-centric guidance and processes. In particular this should provide the smaller contractor and DIY householder with simple prescriptive guidance for simple projects with no external references – e.g. a small buildings guide. At the same time there should be a balance to encourage innovative design solutions

- Develop and implement an effective compliance & enforcement regime based on risk based management that focuses on a small number of strategic cases supported by education programmes tailored to the different stakeholder groups. Develop approaches that apply risk-based sanctions such as legal proceedings, on the spot fines or stop notices, as a last resort

- Develop and implement an effective national performance management regime, building upon the system developed by the Building Control Performance Standards Advisory Group as a starting point, with data and processes to enable effective review and evidence-based decision-making.

Next steps

Immediate work:

- The first and most essential piece of work is to establish and agree a clear vision and delivery strategy

- In tandem with this work, it is critical to develop a strategy for integrating stakeholders more effectively into the transformation process and establish an appropriate stakeholder group

- Work should also start as soon as possible on developing an essential change programme to show how the system will transform from the current position over time to deliver the vision.

Within the next few months initiate projects to:

- Use the stakeholder group to develop the Communities and Local Government Simplification Plan to generate further administration burden savings
- Implement transitional process improvements to provide consistency and control for policy development and implementation
- develop a compliance and enforcement strategy
- initiate project based guidance using the Interactive House on the Planning Portal.

In the next nine to eighteen months initiate the programme design and resources required for transformation as well as:

- Execute the stakeholder management and communications strategy
- Commence organisational design project
- Develop a risk based compliance and enforcement system
- Develop an effective national performance management system
- Rationalise and refocus guidance.

From eighteen months onwards deliver the transformation programme, changing the organisation, and begin to implement initiatives within the programme including, for example:

- Begin integration initiatives and other projects such as e-enabled Building Control
- Implement compliance education and information and risk-based enforcement
- Pilot and then launch the performance management system
- Deliver new customer-centric guidance.

1 Introduction

1.1 Purpose

The purpose of this document is to provide an independent review of the current Building Regulation regime. This examines the achievement of Building Standards, identifies the major issues, provides recommendations for further work to address the issues and indicates the way forward for the system in the future.

This document has been prepared by Science Applications International Corporation (SAIC) at the request of the Department for Communities and Local Government.

1.2 Why review Building Standards?

The purpose of Building Standards is the protection of the public interest in the occupancy, use and performance of buildings. Building Standards underpin the health and safety of us all. As a nation, we spend 85-90% of our time in buildings which, in turn, produce over a third of the UK's harmful carbon dioxide emissions. It is therefore vital that in looking to the future we make every effort possible to ensure that standards are not only achieved but also continue to improve.

Sustainable Buildings Division (SBD) of Communities and Local Government is responsible for the creation and maintenance of the Building Regulations and associated guidance under the 1984 Building Act. Other built environment responsibilities of the Department include related EU Directives, other non statutory building standards (e.g. the Code for Sustainable Homes) and initiatives (e.g. related to existing buildings) and minor legislation (e.g. Party Wall and Architects Acts).

SBD's role under the 1984 Act is circumscribed: it principally concerns policy development and roll-out, and working with a statutory advisory committee the Building Regulations Advisory Committee (BRAC). Delivery at national and local level relies on a fully devolved building control system.

The absence of a direct Communities and Local Government supervisory role is partially compensated for by Ministerial powers, for example to determine appeals (which has produced a body of case-law), and Communities and Local Government's ability to influence stakeholder behaviour in forums such as those dealing with performance standards. There is, however, no power or mechanism to clearly gauge levels of compliance to ascertain success/failure of regulations over time and in different sectors.

Since their introduction the standards have been adapted to keep pace with advances in design, technology, materials and construction and other issues such as energy conservation. To achieve this SBD's work on regulations and guidance is supported by a significant annual programme of research and technical support that provides a generally robust technical evidence base for policy.

The stakeholder base for the Building Regulations is very broad, embracing people and organisations from a variety of sectors. It ranges from specialists (e.g. architects, engineers and building control officers) to all sectors of the public and business groups, each with varying degrees of awareness and knowledge of the Building Regulations and how they are affected by them.

For the Building Regulations to be satisfied and adequate standards to be achieved in the built environment there needs to be a combination of compliance and enforcement. Both of these are subject to other influences.

Compliance is influenced by:

- Awareness: the right information, in the right format at the right time
- Complexity: increased complexity of technical and procedural requirements can often result in non-compliance
- Willingness: the balance of professional capability and efforts and costs required
- Incentives: combining awareness and willingness to demonstrate the incentives for achieving compliance with the standards.

Enforcement bridges the gap to the suitable / adequate standards that are not achieved by voluntary compliance alone. This is influenced by:

- Awareness: professional capability through being told about the standards and the standards being readily understandable and applicable to a situation
- Complexity: streamlined systems are key to encouraging buy in from enforcers and compliers alike
- Willingness: the effort required to ensure the standards are met against the perceived impact of the standards not being met. A risk assessment by an enforcer (or verifier) that will be partly related to the resources available for them to carry out their function.
- Resources: concerning the expectations and reality of the role of the enforcer (or verifier) in terms of how much dependence is placed upon them to ensure standards are achieved and whether that balance is realistic.

However, the government has recognised that there are some issues with the existing system of Building Regulation, including concerns about both compliance and enforcement. There has been some criticism that the pace of review and change to the Building Regulations and associated guidance has been too great and that together with increasing technical complexity is resulting in practitioners failing to understand the requirements, leading to non-compliance. Furthermore that the enforcement bodies have also been unable adequately to keep up with developments and are suffering resourcing problems, thus further weakening compliance levels.

The achievement of building standards is critical for realisation of the desired outcomes from Building Regulation. Therefore, Communities and Local Government is currently undertaking a wide ranging review of the principles of and requirements for building standards. This includes consideration of alternative ways of spreading the compliance burden, for example by the introduction of Appointed Persons and self-certification (Sustainable and Secure Buildings Act). The results of this scoping study will form an important input to this review.

1.3 Terms of Reference

This review considered matters from 1st January 2001, when the Building Regulations 2000 came into force. Our terms of reference for the conduct of the study are provided below:

Aim

The overall aim of the study was to provide Communities and Local Government with:

- An independent view of how successfully suitable/adequate building standards are being achieved
- the underlying reasons for the level of compliance
- the barriers to compliance and the issues arising and
- recommendations for further work to address the issues identified.

Objectives

In meeting this aim, the specific objectives of the study were to provide:

- A review of reports, articles and correspondence on how successfully building standards are being achieved in new buildings and alterations of existing buildings
- Consultation with sufficient stakeholders to then report on whether people understand what is required of them and the building projects with which they are involved, their perception of what constitutes compliance with the requirements of the Building Regulations and whether – specifically – the guidance provided in the Approved Documents is fit for purpose
- Establishment of whether the intention and capability of the Building Regulations control system matches the expectations of it and, where it doesn't match, the reasons for this
- Consideration of models for achieving standards from other regulatory regimes, for example the general Health and Safety system

- Recommendations to Communities and Local Government for further work to address the emerging issues, with particular respect to compliance (including new solutions such as appointed persons), communication (with stakeholders) and the possible shape and direction of the Building Regulations control system of the future.

1.4 Document Structure

The remainder of this document is arranged in the following structure:

- **Section 2** – Approach – outlines the methodology adopted for delivery of the study
- **Section 3** – How should Building Standards work? – describes what Building Standards are trying to achieve, who's involved and why this is important and outlines a best practice framework against which achievement can be evaluated
- **Section 4** – Are Building Standards working? – provides an analysis of how the current regulatory system is working
- **Section 5** – What could be improved? – indicates potential improvements drawn from an analysis of the system against the Principles of Good Regulation
- **Section 6** – Is there another way? – includes consideration of models for achieving standards from other regulatory regimes
- **Section 7** – Conclusions – summarises the major issues identified, opportunities for improvement and alternative options
- **Section 8** – Recommendations – provides a list of prioritised recommendations for further work to address the major issues and opportunities for improvement
- **Appendix 1** – Evaluation Criteria – provides an outline of the criteria used to evaluate the system
- **Appendix 2** – Desk Research – details the documents considered by the study
- **Appendix 3** – Consultation – lists the individuals consulted
- **Appendix 4** – Discussion Forum – explains the initiation and use of the online forum and outlines the key themes of the discussion.

2 Approach

The methodology adopted for delivery of the study included the following activities:

2.1 Establish Evaluation Criteria

A review of the regulations and other relevant instruments was undertaken in order to define what building standards should be trying to achieve (their desired outcomes). International and Government best practice in policy-making, regulation and enforcement were studied in order to establish an outline of best practice and determine objective criteria against which the achievement of the desired outcomes could be evaluated. An outline of the best practice process for Building Regulation policy-making and enforcement was derived and this was used as the basis for a questionnaire which was used to elicit responses relevant to the evaluation criteria during the consultation. This activity is explained further in Section 3 – How should Building Standards work? The evaluation criteria are outlined in Appendix 1.

2.2 Conduct Desk Research

A comprehensive review of relevant sources of information was conducted. This considered approximately 100 documents from a variety of sources including; the deliberations of the BRAC, articles in building magazine, various reports from studies and research projects (e.g. studies on poor compliance) and representations from industry bodies. This was combined with a brief study of similar activity in other countries and alternative industries where compliance is important. The latter looked at the Heath and Safety and Fire Safety regimes which are both strongly linked to the Building Regulation regime. This helped to establish an outline of best practice and generate ideas for alternative solutions. Full details of these documents are provided in Appendix 2 – Desk Research. The review of alternative systems is contained in Section 6 – Is there another way?

2.3 Plan Consultation and Analysis

A stakeholder-centric facilitated workshop was conducted with Communities and Local Government personnel in order to gather information to effectively focus the research and analysis. This also enabled further development of the Stakeholder Map that we established during our previous scoping study (User Friendly Building Regulations – 2005). This mapped key stakeholders against the main activities/areas of interest relevant to Building Regulations. Stakeholder Analysis was conducted to establish the potential impact of Building Regulations on each stakeholder group and their influence on achieving building standards. This facilitated production of an Impact/Influence Matrix which was used to prioritise the stakeholder groups for consultation and communication. This formed the basis for preparing the Stakeholder Consultation Plan, which aimed to establish the views of the stakeholders in the 'Consult' and 'Consult and Carry' sections in the matrix. A representative sample was selected from a comprehensive list of relevant stakeholders. This sample provided an appropriate balance of stakeholders across the various activities/areas of interest.

2.4 Consult Stakeholders

The Stakeholder Consultation involved approximately 200 individuals across a balanced selection of relevant stakeholders. Direct interviews were conducted with 31 organisations representing the key stakeholder groups, including; Local Authorities, Approved Inspectors, compliance agents, professional bodies, trade associations, industry bodies, contractors, manufacturers and suppliers. The results of these interviews were confirmed and consolidated at a stakeholder workshop held at the end of the consultation. The questionnaire was issued during the interview process and 68 were completed by a variety of individuals from the groups involved. An online discussion forum was employed to provide a useful supplement to the direct consultation. The forum proved to be very popular, with approximately 100 individuals posting 175 comments. This provided an excellent source of additional stakeholder input and produced a substantial body of genuinely useful feedback and ideas for improvement. The forum was an extremely effective communication medium and was accessed and read by thousands, averaging approximately 200 individuals per day. A full list of individuals consulted is provided at Appendix 3 – Consultation and details of the online forum are provided in Appendix 4.

2.5 Conduct Analysis

An analysis of the results obtained was conducted to establish what works, what does not work, the level of compliance, the underlying reasons for compliance and any lessons to be learned. This included a diagnosis of the issues, consideration of the evidence and exploration of innovative new ideas. The results from the stakeholder questionnaire were analysed against the policy-making and delivery process for Building Regulations as well as the evaluation criteria. The issues identified in this analysis represent a consensus view built up from evidence obtained through desk research, workshops, interviews, interaction, the online forum and the questionnaire. Surprisingly, there was a consistent level of agreement across all stakeholder groups. Any particularly strong stakeholder vested interests were recognised and were filtered out in the analysis. The analysis is presented in Sections 4 to 6 and the conclusions and recommendation in Sections 7 and 8.

3 How should Building Standards work?

3.1 How are the standards set?

The governments' policy-making process is the mechanism through which Building Standards are set and should, in theory, follow the best practice outlined below.

What is policy?

Policy is the translation of government's political priorities and principles into programmes and courses of action to deliver desired changes.

This concern with achieving real changes in people's lives is reflected in the Government's overall strategy for improving public services published in March 2002 (Reforming our public services: principles into practice).

Promoting good practice in policy making is fundamental to the delivery of quality outcomes for citizens and to the realisation of public sector reform. Policy makers should have available to them the widest and latest information on research and best practice and all decisions should be demonstrably rooted in this knowledge.

The features of good policy-making are considered in detail in Better Policy-Making[1] and Professional Policy-Making for the 21st Century[2]. These state that in order to be fully effective policy-making will need to encompass three key 'themes' – vision, effectiveness and continuous improvement and nine 'features' which together encapsulate all the key elements of the policy-making process:

Vision

- **Forward Looking** – clearly defines outcomes and takes a long term view, taking into account the likely effect and impact of the policy in the future five to ten years and beyond

- **Outward Looking** – takes account of the national, European and international situation, learning from the experience of other countries and communicates policy effectively

- **Innovative, Flexible** – willing to question established ways of dealing with things and encourage new and creative ideas while also identifying and managing risk

Effectiveness

- **Evidence based** – bases policy decisions and advice upon the best available evidence from a wide range of sources, ensuring that evidence is available in an accessible and meaningful form

1 Better Policy Making, Centre for Management and Policy Studies, November 2001

2 Professional Policy-Making for the 21st Century, Strategic Policy Making Team, Cabinet Office, September 1999

- **Inclusive** – involves all key stakeholders at an early stage and throughout its development, consulting those responsible for implementation and those affected by the policy and carrying out an impact assessment

- **Joined Up** – looks beyond institutional boundaries to the government's strategic objectives, setting cross-cutting objectives, defining and communicating joint working arrangements across departments and ensuring that implementation is part of the policy process

Continuous Improvement

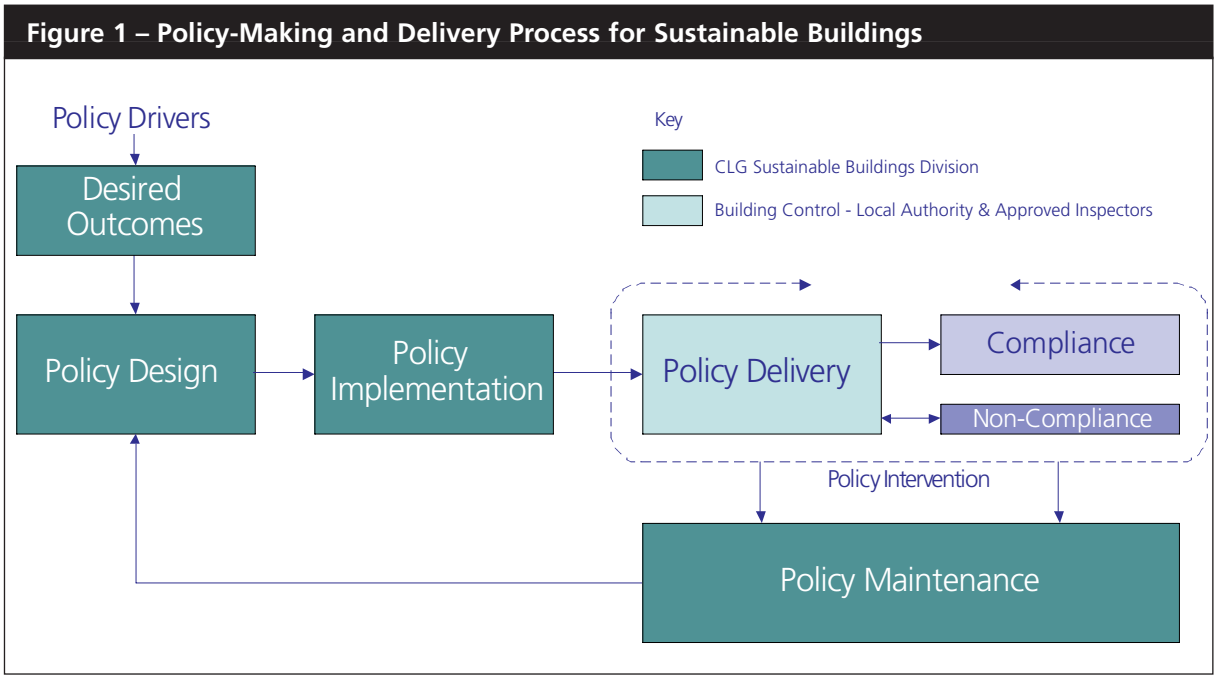
- **Evaluated** – builds systematic evaluation of the effectiveness of policy into the policy making process

- **Reviews** – constantly reviews existing policy to ensure it is really dealing with problems it was designed to solve without having unintended detrimental effects elsewhere

- **Learns lessons** – learning from experience of what works and what doesn't.

In order to assess whether Building Standards were working we drew on this best practice advice and the National Audit Office report on Modern Policy-Making[3] to establish what should be happening. From this a framework was developed to identify the various stages in the process of making, delivering and maintaining the government's policy on Sustainable Buildings. The diagram below illustrates the five major phases of activity:

Figure 1 – Policy-Making and Delivery Process for Sustainable Buildings



3 Modern Policy-Making: Ensuring Policies Deliver Value for Money, National Audit Office, November 2001

- **Desired Outcomes** – takes the policy drivers from Government and expresses them in terms of the desired outcomes from Sustainable Buildings

- **Policy Design** – develops policy solutions through collecting evidence, appraising options, consulting with stakeholders, working with others and managing risks

- **Policy Implementation** – puts these solutions into effect by communicating the policy, providing guidance, supporting those who deliver, engaging with a wide number of stakeholders and testing different options

- **Policy Delivery** – covers the activities of those responsible for delivering the policy, including the fully devolved building control system to deliver building regulations, operating processes and enforcing compliance

- **Policy Maintenance** – covers testing success and making it stick, monitoring and measuring performance, evaluating success and taking adjusting action.

3.2 Achieving policy objectives

The policy makers in Communities and Local Government have a wide range of options available for implementing policy objectives. Best practice dictates that they should consider them all, rather than automatically assume prescriptive regulation is required. The options chosen will have implications for the incentives facing stakeholders; the burdens imposed on them; levels of compliance; and ultimately the success of a policy. The unintended consequences need to be taken into account, as well as the desired outcomes. Solutions that give stakeholders the flexibility to solve problems themselves are often preferable to imposing rules on them. Below are some of the alternatives available:

Do nothing

Government consistently faces demands from interest groups and the media to take action, often in response to one-off incidents or tragedies. In many cases the most appropriate response is to do nothing, as government action may be unnecessary, or worse, have costly unintended consequences.[4]

Advertising campaigns and education

Government can influence the behaviour of individuals and firms through information, advice and persuasion – perhaps reinforced by other incentives or penalties. This approach was used to good effect in the campaign against drink driving.

4 Risk Responsibility and Regulation – Whose risk is it anyway, Better Regulation Commission, October 2006

Using the market

Government can remove problems preventing markets from working effectively or can introduce a market where none exists. Often markets do not function effectively if participants do not have all the information necessary to make an informed decision. Industries can adopt codes of practice, regulating the provision of information themselves or Government can require producers of goods or services to provide relevant information or provide the information itself.

Financial incentives

Financial incentives may take the form of taxes, charges and levies; tax breaks and subsidies; and price caps in non-competitive industries. These create incentives to achieve the outcomes government wishes to secure (e.g. increased innovation or reduced pollution), and have the advantage of leaving managers to manage.

Self-regulation and voluntary codes of practice

Self-regulation and voluntary codes of practice have the advantage of involving stakeholders themselves in the process of regulation, and may be cheaper and more flexible to use than government enforced rules. There are many forms of self-regulation and the level of government intervention will vary, according to the risk posed by the activity being regulated.

Prescriptive regulation

Government can prescribe the behaviour it expects from business and individuals by setting rules or standards. There are areas where this is the best means of achieving a policy objective. However, prescriptive regulation, like many other means of government intervention, may have unintended consequences, and without enforcement compliance may be limited. It will often be less flexible and less sympathetic to the way markets work than other tools.

3.3 What are Building Standards trying to achieve?

Regulation may widely be defined as any government measure or intervention that seeks to change the behaviour of individuals or groups. It can both give people rights, and restrict their behaviour.

Government interventions have an impact on us all, both at home and in the workplace. In prosperous societies there are constant demands for more regulation to protect the environment, workers or consumers. But where regulation is poorly designed or overly complicated it can impose excessive costs and inhibit productivity.

The job of government is to get the balance right, providing proper protection and making sure that the impact on those being regulated is proportionate. Politicians differ about the appropriate level of intervention, but all governments should ensure that regulations are necessary, fair, effective, affordable and enjoy a broad degree of public confidence.

Most building works, including alterations and/or extensions to existing buildings, are subject to **minimum** standards of construction in order to safeguard the public interest.

The powers to make Building Regulations are contained in the Building Act 1984. The 1984 Act provides that they may be made for the purpose of:

- securing the health, safety, welfare and convenience of persons in or about buildings
- furthering the conservation of fuel and power
- preventing waste, undue consumption, misuse or contamination of water

These represent the **desired outcomes** for Building Regulation.

These purposes have been further extended by the Sustainable and Secure Buildings Act 2004 to provide a power to make regulations (not yet used) relating to furthering the protection or enhancement of the environment, facilitating sustainable development, and furthering the prevention or detection of crime. These indicate the potential future direction of Building Regulation.

The current Building Regulations 2000 (as amended) contain procedural requirements and a broad range of what are termed functional (i.e. performance-based) requirements with which building work must comply. The functional requirements are grouped under fourteen 'parts' (A-P less I), as indicated in the table below and, in essence, they provide a baseline of minimum standards to assure the delivery of **'fit for purpose'** new and refurbished buildings. The requirements are expressed in broad, functional terms in order to give designers and builders the maximum flexibility and provide opportunity for innovation.

The Building Regulations are supported by statutory Approved Documents which give (optional) practical and detailed technical **guidance** on ways to comply with the parts/requirements of the regulations. This includes examples on how the requirements can be met in some of the more common building situations. There is also guidance which covers the overall requirements for the appropriate use of materials and adequate standards of workmanship (Regulation 7).

Owners and builders are required by law to obtain building control approval, which provides an independent check that the Building Regulations have been complied with. Building control is carried out by local authorities and private sector Approved Inspectors.

The table below provides details of the current parts of the Building Regulations:

Table 1 – Building Regulation – Parts

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

An analysis of the parts against the desired outcomes is provided below:

- The majority of the requirements within Building Regulations relate to securing the **health and safety** of persons in or about buildings (Parts A-D, F-K, N & P). The core requirements from this perspective are structure (A) and fire safety (B). The Building Regulations operate along side other construction legislation (e.g. the Construction (Design and Management) (CDM) Regulations 1994) and also the Regulatory Reform (Fire Safety) Order 2005. These are administered by the Health & Safety Executive and Communities and Local Government (Fire and Resilience) respectively

- Two parts relate to the **welfare and convenience** of persons in or about buildings (Parts E and M) which work in conjunction with other regulation such as the Disability Discrimination Act 1995 administered by the Commission for Equality and Human Rights (CEHR) within Communities and Local Government (Equalities)

- The requirements relating to the **conservation of fuel and power** are contained in Part L. This is the key area to influence the environmental impact of buildings, with energy efficiency seen as the key to the reduction of harmful greenhouse gas emissions (CO2) to avoid dangerous climate change. This is one of a number of strategic priorities to achieve the Department for the Environment, Food and Rural Affairs (DEFRA) principle aim of sustainable development

- The requirements relating to preventing waste, undue consumption and misuse of water are not covered yet. The requirement for **preventing contamination of water** is covered in Parts H2 and J6. Any activities in this area need to coordinate with DEFRA, who are responsible for all aspects of water policy in England, including water supply and resources, and the regulatory systems for the water environment and the water industry.

The consideration and possible introduction of new or amended Building Regulations or supporting guidance involves a number of key stages and documents across the policy-making process:

- **Research** provides part of the evidence base for change
- **Building Regulations Advisory Committee** (BRAC) provides initial and ongoing scrutiny of proposals
- **Consultations** with the wider professional and general public give proposals an important test
- **Regulatory Impact Assessments** (RIAs) set out the details of the costs and benefits of the new or amended policy and the reasons for it
- **Circulars** (and Circular Letters) are an important part of the dissemination of the policy.

3.4 Developing an evaluation framework

To ensure that regulations are necessary, fair, effective, affordable and enjoy a broad degree of public confidence, any policy intervention, and its enforcement, should meet the five principles which the Better Regulation Task Force first introduced in 1997[5]. Working from this starting point, the evaluation framework for considering improvements to Building Regulation has been derived from these Principles of Good Regulation:

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeting.

These represent internationally recognised regulatory best practice which the Cabinet Office recommends that Government Departments should use when evaluating existing regulations. They are used widely across government, in particular the economic regulators, within both departments and agencies (e.g. the Council for Healthcare Regulatory Excellence). They are also used within the stakeholder community, for example, the Housing Corporation is required to follow the principles through its Management Statement issued by the Secretary of State. Private sector stakeholders are also aware of their existence and have replicated them on their web sites (e.g. The Association of Building Engineers). The principles were developed in 1997 (revised 2003) and are now well established. They have been accepted by Government Departments as a framework for developing better regulation and are often quoted back at Departments by stakeholders when challenging new regulations.

5 Principles of Good Regulation, Better Regulation Task Force, 2003

The Special Engineering Alliance noted that: "In many respects the Building Regulations do not conform to the tenets of good regulation. We have to address a situation in which the regulatory regime has become so unwieldy that it has almost been rendered unenforceable."[6]

The Legislative & Regulatory Reform Act 2006 aims to make it quicker and easier to tackle unnecessary or over-complicated regulation and help bring about a risk-based approach to regulation. The Act will allow the Government to do more to strip away outdated and unnecessary red tape to further reduce burdens on businesses, public and voluntary sectors. From 8 January 2007 the Act will be used to help deliver the Government's Better Regulation agenda. One of the key features of the Act is that it requires regulators to have regard to the five principles of good regulation, and creates a power to put on a statutory footing a code of practice for regulators.

Pat McFadden MP, Cabinet Office Minister said: "This Act will help ensure that where regulation is necessary, it is as transparent and user friendly as possible."

To ensure that the Evaluation Criteria provide an appropriate balance between policymaking and its delivery the Principles of Good Regulation have been refined and supplemented with other tests of good regulation (e.g. to be effective regulation must be practical to enforce). This was drawn from other relevant regulatory reform initiatives in the UK such as the Enforcement Concordat which enables the protection of the public, the environment and groups such as consumers and workers through the 'business-friendly' enforcement of regulation. The Concordat, introduced in 1998 by the Cabinet Office and Local Government Association, is voluntary but has been adopted by 96% of all central and local government organisations with an enforcement function.

The Legislative and Regulatory Reform Act contains a power to issue a code of practice for regulators. The Government has announced that it intends to use this power to issue a statutory Code of Practice – the Regulators' Compliance Code. The Code will enable the 'Hampton principles'[7] that address regulatory inspection and enforcement to be established in UK law. The Code will work alongside the Enforcement Concordat and will ensure that regulatory best practice is adopted and carried out by regulators. These principles of inspection and enforcement have therefore been used to supplement the Principles of Good Regulation to provide balanced, comprehensive and up to date evaluation criteria for Building Regulations. Full details of the criteria are provided at Appendix 1.

It is anticipated that the current draft of the Regulators' Compliance Code will be revised and updated during consultation and that implementation of the Code will also be consistent with the recently published Macrory Penalties Principles[8] and framework for regulatory sanctioning which should help to enable the Hampton vision of risk based regulation to be realised.

6 Special Engineering Contractors Group Briefing, Building Regulations, August 2006

7 Reducing administrative burdens: effective inspection and enforcement, Philp Hampton, March 2005

8 Regulatory Justice: Making Sanctions Effective, Professor Richard Macrory, November 2006

Communities and Local Government has realised that it can make a real difference in the delivery of the Government's Better Regulation Agenda and has committed to reducing the burden imposed by Government regulation and to following the 5 principles of good regulation.

Angela Smith MP (Minister for Building Regulations and Better Regulation), in the foreword to the Communities and Local Government Simplification Plan, stated that: "Regulation has a part to play in achieving these aims [viz "achieve our vision of a prosperous and cohesive communities that offer a safe healthy and sustainable environment for all], but should, wherever possible, be done in a risk-based and proportionate way. Any proposal should always consider how it affects those organisations that help drive the British economy- namely business (particularly SMEs), charities and the voluntary sector"

3.5 Who's involved and why is this important?

As with any regulatory regime, there will be many individuals or groups with an interest or involvement with it, or who are affected by its activities and outcomes. These are the regime's stakeholders. They include those managing and working within the regulatory system and those who are directly or indirectly contributing to, or affected by, the regulation or its outcomes.

Whether stakeholders are individuals or groups, it is vital to remember that they are all human beings, with feelings, perceptions, desires and influence. In any regulatory situation, there will be those who support the regulation and those who oppose it. There will be those who gain from it and those who lose – and those who are convinced they will lose despite all evidence to the contrary. There will be those who anticipate an opportunity and those who see only a threat. There will, of course, be those who are indifferent to the regulation; this may turn out to be helpful or unhelpful, depending on the influence they have. Understanding stakeholders' interests in the regulatory regime, and the impact that regulation will have on them, and then implementing a strategy to address their issues and needs, is an essential part of successful policy implementation.

The objective of analysing stakeholders is to achieve a thorough understanding of their requirements and their interest in, and impact on, the regulations so that communications address their particular interests, issues and needs. Stakeholders' positions (in terms of influence and impact) may be rational and justifiable, or emotional and unfounded, but they must all be taken into account since, by definition, stakeholders can affect the policy delivery process and hence compliance with and enforcement of the regulations.

The stakeholder base for the Building Regulations is very broad, embracing people and organisations from a variety of sectors. It ranges from specialists (e.g. architects, engineers and building control officers) to all sectors of the public and business groups, each with varying degrees of awareness and knowledge of the Building Regulations and how they are affected by them.

The stakeholder map below looks at the key players involved in the main activities relevant to building regulations. In the diagram, the map has been simplified and only shows principal activities and interactions. While many stakeholders have an interest in multiple areas, an attempt has been made to limit stakeholder groups to a primary area of interest in order to aid clarity.

At the top of the map are the Owners who consist of householders, private social and commercial landlords, tenants, investors and developers. The main needs of this group relate to the effective occupancy and use of buildings and the capital value/revenue streams associated with them.

The next level consists of the stakeholders involved in the classic Design, Build and Operate process. The Design, Build and Supply grouping are, between them, responsible for the actual construction of buildings. The activities of some stakeholders in the Design and Build groups can span both of these areas, with design and build contracts blurring the lines between them. These design and build activities are the most visible features of the construction process. The stakeholders include architects, planners and engineers as well as building contractors with projects ranging from the simple to the complex. The needs of individuals in Design and Build range from small builders looking for prescriptive specifications for regular jobs through to the architects and consulting engineers wanting the ability to take the functional (performance based) approach for innovative and highly complex design projects.

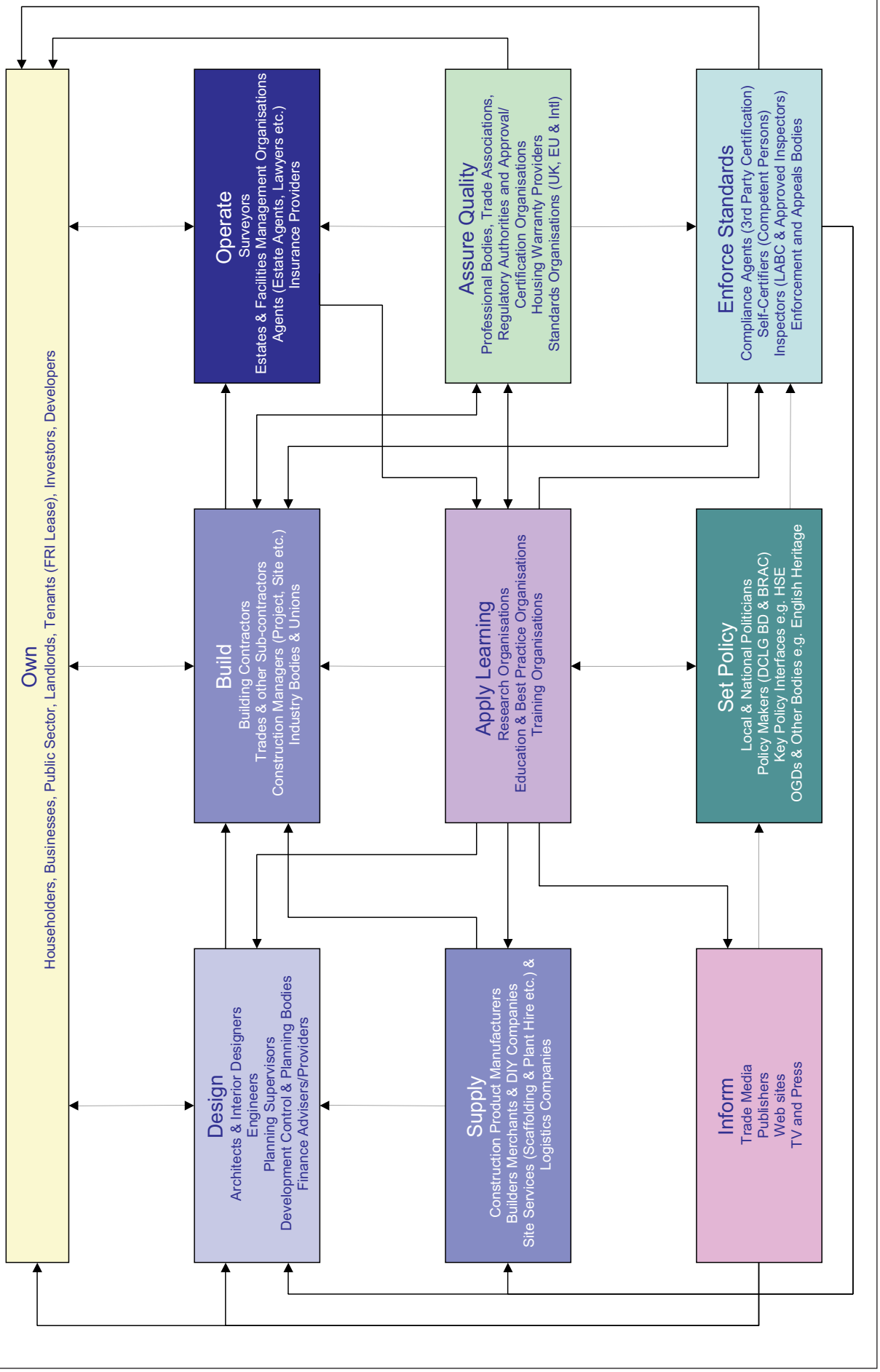
The stakeholders in the Operate group have, historically, had less impact on building regulations. However, this may change as the focus on the performance of buildings increases and it becomes increasingly important to collecting information on, for example, the energy performance of buildings to comply with the European Energy Performance of Buildings Directive (EPBD) and inform the updating of regulations.

The efficient operation and whole life cost of buildings has been subject to much scrutiny over recent years. It is widely recognised that across the Design, Build and Operate process the following cost ratio applies 1:3:30, where 30 represents the ongoing cost of operating the building. Despite this there has been limited success in integrating all stakeholders across the process in order to deliver a product (building) that performs effectively.

The Supply sector includes construction product manufacturers, builders merchants and DIY companies. This grouping is affected by the lead times for, and rate of change of, the building regulations, but also provides essential channels for information to the smaller builders and DIY householders that can impact on the levels of compliance.

The Set Policy, Enforce Standards and Assure Quality grouping are concerned with the design, implementation and delivery of building standards and include Communities and Local Government, local authority Building Control Officers (BCOs) and Approved Inspectors, Compliance Agents and standards organisations. Key issues range from the development of a longer-term plan, the time allowed for implementation, the commercial competition between BCOs and AIs, and the enforcement of the newer areas of regulation.

Figure 2 – Stakeholder Map – Building Regulations



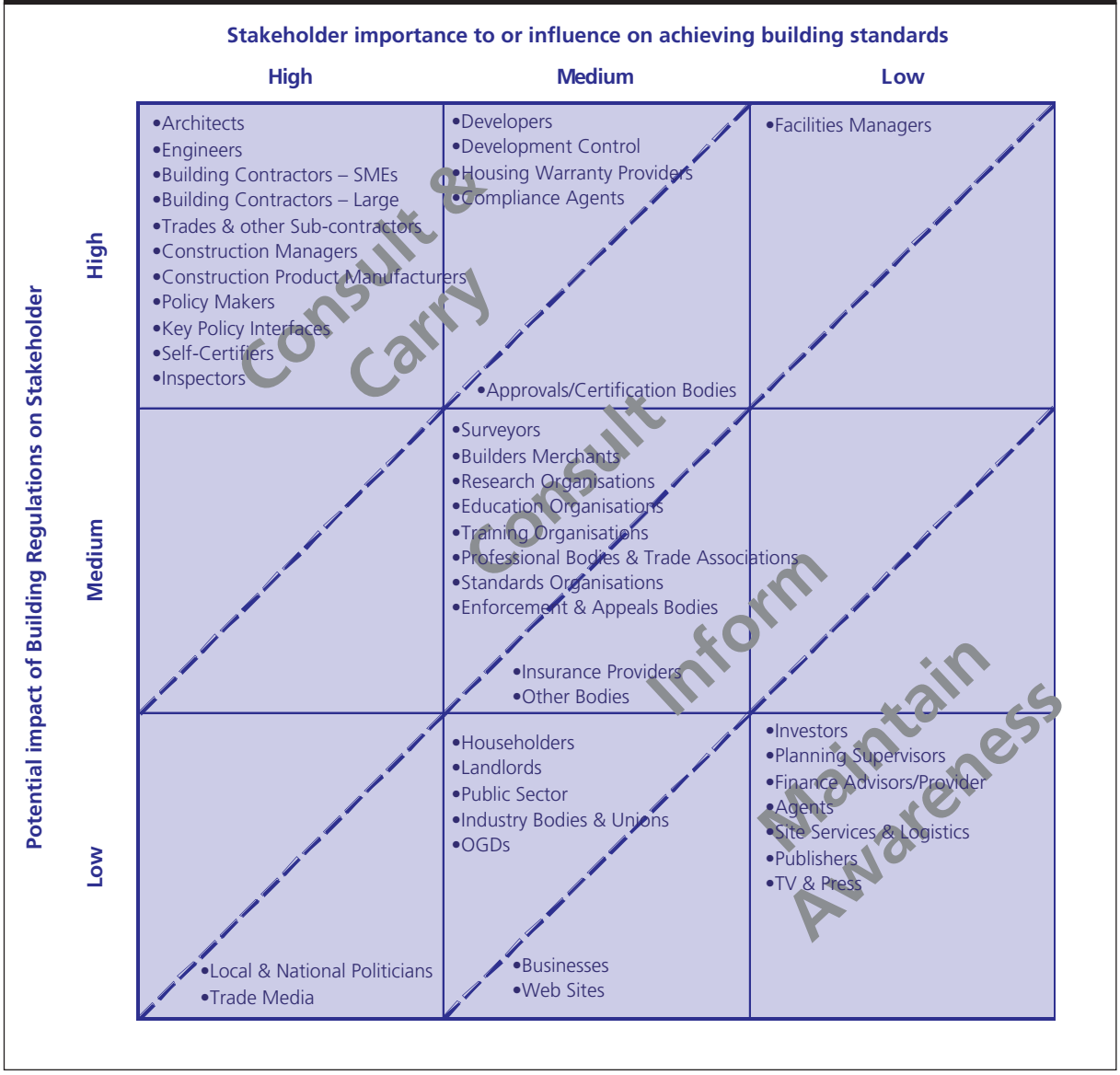
The Apply Learning group is central to the development of all the other stakeholder groups. It contains research, best practice, education and training organisations. The Inform group covers trade media, publishers and other media channels like the internet and TV. Both can be used as a channel to the construction community for increasing awareness and expertise.

It should be noted that each major grouping within this map has a very strong and distinct culture. Many of these clash with each other rather than working in harmony. Of particular note is the culture within the construction industry. This is highly resistant to change and has consistently maintained its focus on a quick turnaround at minimal cost rather than succumb to pressure to move towards a higher quality, value based approach. Headway has been made via the Strategic Forum for Construction and the efforts of organisations such as Constructing Excellence, but it has been a slow process.

The profile of the various stakeholder businesses should also be recognised and considered. There are a number of large organisations operating in the Own, Design and Build groupings in particular and these have a major influence on the way that business is conducted. However, the majority of businesses in the construction industry, about 70%, are SMEs and a high proportion of these are sole traders with no employees. This high proportion of SMEs means that the industry is very fragmented and comprised of a large number of uncoordinated businesses. The professional bodies and trade associations provide a focus but the vast number of these also makes coordination difficult. Several umbrella bodies have sprung up to address the situation, such as the Construction Industry Council, but again these have struggled to secure a united front across the diverse needs of the entire stakeholder community.

An initial Stakeholder Analysis was conducted to assess each stakeholder group in terms of their importance to achieving building standards and the potential impact of Building Regulations on them. From this an Impact/Influence Matrix was developed in order to prioritise stakeholder groups for consultation and communication. The results of this analysis are provided below:

Figure 3 – Building Standards Impact/Influence Matrix



3.6 Testing the theory

A generally held view within the stakeholder community is that the original objectives, format and content of the 1984 Building Act would meet the government's principles that good regulation should be proportionate, accountable, consistent, transparent and targeted. However Building Regulations are perceived to have developed from this starting point in an uncoordinated manner. With the inclusion of new areas, such those relating to building performance, this is seen to have diminished their original clarity and purpose. For example, guidance in the supporting Approved Document to Part L introduces complexity and cost for training, design time and testing that is disproportionately high for smaller and less complex buildings.

The observations and comments about the regulatory system tend to concentrate on recent experience and difficulties in the development, implementation and delivery of Building Regulations. This has to be balanced, for example, against the view that the functional requirements are succinctly set out in the Building Regulations and, that for certain sectors of the construction industry, they provide the flexibility to develop and have approved innovative design solutions.

However, the fact remains that there are now growing concerns about the level of compliance with building standards as well as criticism about the pace of change and their increasing complexity. We therefore conducted analysis during this study based on:

- Identifying and understanding the wide range of stakeholders involved in, or affected by, Building Regulations and their different needs

- Understanding the different stages through which Building Regulations pass and what is currently happening during this process. This involves:

  – Agreeing the desired outcomes

  – Designing the policy through consultation

  – Allowing time and resources for implementing the policy

  – Delivering the policy including enforcing compliance, and

  – Maintaining the policy through monitoring performance and taking adjusting actions.

- Measuring performance against the Principles of Good Regulation and the Hampton Principles of effective Inspection and Enforcement, that recommend regulations must:

  – Be appropriate to the risk they aim to address (proportionate)

  – Be developed by regulators able to justify their decisions (accountable)

  – Have rules and standards that are consistent and fairly applied (consistent)

  – Be open, simple and user-friendly (transparent)

  – Focus on the problem and minimise any side effects (targeted).

  – Be practical to enforce (enforceable).

- Considering alternative models for achieving standards from other regulatory regimes.

4 Are Building Standards working?

4.1 Understanding the evolution of Building Regulation

Before any analysis of the current system of Building Regulation it is important to understand how building standards have developed. A brief history of the development of the Building Regulations, courtesy of the Royal Institute of British Architects (RIBA)[9], is provided below:

19th Century Building Byelaws

The purpose of the UK Building Regulations, or Building Byelaws, when they were introduced in the mid-19th century, was to mitigate the health and safety risks of the crowded dwellings that were being constructed to meet the needs of the industrial revolution. The byelaws, which set only basic standards for drainage, structure, fire spread, daylight and ventilation, were adopted and enforced indifferent ways by each local authority, first in the cities, then in the towns and finally in the rural areas.

1936 Public Health Act and Model Byelaws

By the 1930s the local byelaws applied not just to dwellings but to most types of occupied buildings, but their lack of consistency and growing complexity were causing concern. The solution was to consolidate the growing amount of related legislation under the Public Health Act 1936. At the same time the local authorities ceased to be responsible for setting the requirements, which were replaced by consistent Model Byelaws, but they continued to be responsible for enforcing the regulations. Builders now had to give the local authority notice of their intentions and, recognising the increased complexity of the requirements, the Act gave builders the right to deposit plans and have the local authority tell them whether the work they showed would meet the requirements.

1965 and 1976 National Building Regulations

In1965 national regulations replaced the Model Byelaws supported by deemed-to-satisfy (prescriptive) provisions based on British Standards. In 1976 the regulations introduced sound insulation and thermal insulation (but only to limit condensation). By the 1980s it was accepted that the purposes of the continuously growing body of regulations were not being well served by requirements expressed in prescriptive form, not least because technical innovation was being stifled.

9 Improving the Building Regulations, RIBA Practice Policy Paper, 2006

1984 Building Act

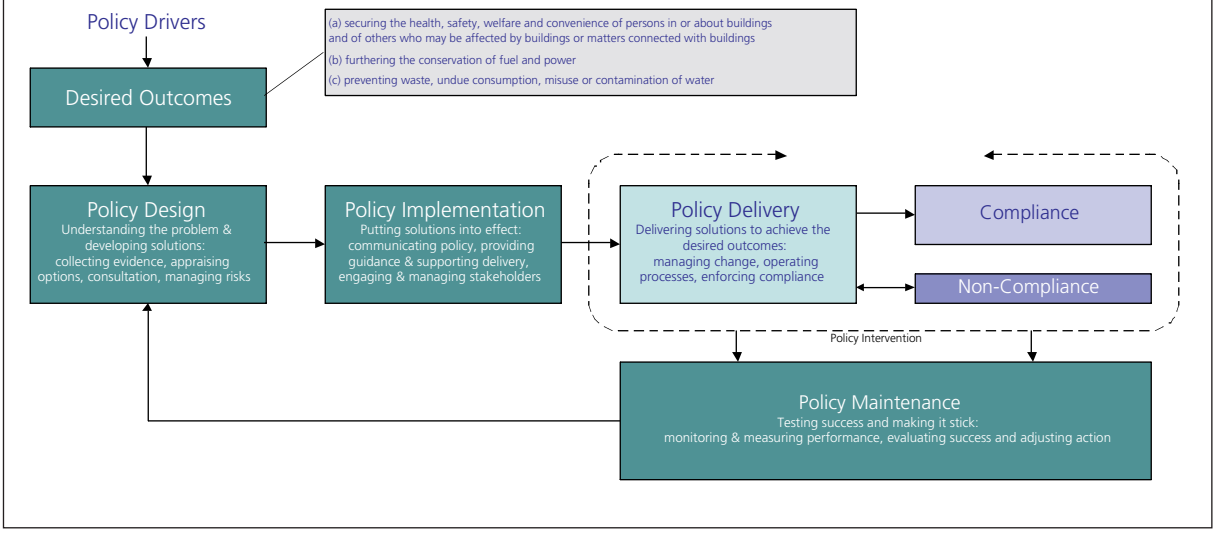
The solution, implemented in the Building Act 1984 (consolidating the Public Health Act and building-related provisions in some sixty other Acts), introduced the dual approach that we have today: mandatory functional requirements (the Regulations) supported by optional practical guidance (the Approved Documents) to cover the more common building situations, with compliance with British Standards as an alternative approach to cover the more complex situations. The1984 Act extended the purposes for which regulations could be made beyond health and safety to include welfare and convenience. This was principally to cover energy conservation and provisions for the disabled. At the same time private certification of compliance was introduced as an alternative to dependence on local authorities.

4.2 The current system of Building Regulation

The current system of Building Regulation appears, on the surface, to work. Buildings are not falling down or failing dramatically and large numbers of people are not dying or being injured by them. The system seems to be delivering the core desired outcome, which is protecting the public interest in relation to health and safety.

However, as mentioned earlier, in order to assess how Building Standards were actually working we drew on best practice advice to establish what should be happening. From this a framework was developed to identify the policy-making and delivery process Building Regulation:

Figure 4 – Policy-Making and Delivery Process for Building Regulation



We used this process model to structure our analysis of the regulatory system to determine whether Building Standards are working. This asked the fundamental question 'does the intention and capability of the Building Regulations control system match expectations of it?'

Looking backwards the answer would appear to be yes. The 1984 Building Act and its supporting documentation was seen as an exemplar of clear, practical and targeted legislation when it was introduced. From the interviews and reviews of published papers, the original introduction of the Legislation and the guidance in the Approved Documents was generally supported as it moved away from a bureaucratic process and allowed flexibility to enable different and innovative approaches.

Since their introduction the standards have been adapted to keep pace with advances in design, technology, materials and construction and other issues such as energy conservation. To achieve this Building Division's work on regulations and guidance is supported by a significant annual programme of research and technical support that provides a generally robust technical evidence base for policy. The focus and objectives for Building Regulations has also developed over time, with an increasing emphasis on environmental matters such as sustainable development and energy performance.

The current system is largely delivering a built environment that is not a danger to life or resulting in needless injury and which, over recent years, has ratcheted up the energy performance of buildings[10]. It will be important to ensure that this base position is not eroded or threatened by any future developments and changes.

However the general view is that, over the past twenty years, the logical and flexible format of the Building Regulations (Act, Statutory Instrument and Approved Document) has been eroded and obscured. The regulations seem to have developed with a technical focus, at the expense of practicality, and as a result are now seen to be excessively complicated.

The Royal Institute of British Architects (RIBA) summarised this: "The Approved Documents have now been revised several times and have become unduly complex, with anomalies and conflicting requirements. They have lost their original drafting clarity and no longer achieve their original purpose of giving clear guidance on compliant construction details and methodologies" and "This has been exacerbated by the introduction of regulation within the practical guidance of the Approved Documents and the extensive use of a wide range of different Third Party Documents to establish the standards and 'deemed to satisfy' solutions".[11]

The sections below provide an analysis of the current position in the regulatory system using the structure of the Policy-Making and Delivery Process for Building Regulation to examine the various components.

10 Review of the Sustainability of Existing Buildings – The Energy Efficiency of Dwellings – Initial Analysis, Communities and Local Government 2006

11 Improving the Building Regulations, RIBA Practice Policy Paper, 2006

4.3 Desired Outcomes

> *"Our vision is of prosperous and cohesive communities, offering a safe, healthy and sustainable environment for all" Communities and Local Government 2006*

There are a variety of drivers for change within the built environment that influence the government in its formulation and development of policy for the system of Building Regulation and control. These are used to inform and establish the desired outcomes for the Building Regulations. Since 1984, the areas covered by Building Regulations have been extended and now cover:

- Securing the health, safety, welfare and convenience of persons in and around buildings
- Furthering the conservation of fuel and power
- Preventing waste, undue consumption, misuse or contamination of water.

These have also been further extended by the Sustainable and Secure Buildings Act 2004 which provides a power to make regulations (not yet used) relating to:

- furthering the protection or enhancement of the environment
- facilitating sustainable development
- furthering the prevention or detection of crime.

These indicate the potential future direction of Building Regulation. Their presence confirms the recent shift in focus from the original desired outcomes for health and safety towards improving environmental outcomes.

The recent Stern Review[12] has shown that there is now an overwhelming body of scientific evidence that indicates that climate change is a serious and urgent issue. And whilst there are some remaining uncertainties about the eventual impacts, the body of evidence is now sufficient to give clear and strong guidance to policy-makers about the urgent need for action.

Emissions of greenhouse gases, particularly carbon dioxide, are the main cause of climate change. The UK emitted more than 150 million tonnes of carbon dioxide in 2004 (carbon equivalent) (MtC). Energy use in buildings accounted for nearly half these emissions, and more than a quarter came from the energy we use to heat, light and run our homes. It is therefore vital that in looking to the future we make every effort possible to ensure that standards, and in particular those relating to the energy performance of buildings, are not only achieved but also continue to improve.

12 Stern Review on the Economics of Climate Change, 2006

Recent initiatives, such as the introduction of the Code for Sustainable Homes, also support this changing focus towards environmental matters and the obvious desire to address the issues and challenges raised by climate change.

In December 2006, the Code for Sustainable Homes (a new national standard for sustainable design and construction of new homes) was launched. By integrating elements of this voluntary Code into new homes and obtaining assessments against the Code, developers will be able to obtain a 'star rating' for any new home which will demonstrate its environmental performance. It will provide valuable information to home buyers, and offer builders a tool with which to differentiate themselves in sustainability terms. The Code for Sustainable Homes was launched as part of a package of measures towards zero carbon development, including an over-aching consultation: 'Building A Greener Future' on the shift to zero carbon and a consultation on the draft of a new Planning Policy Statement: 'Planning and Climate Change'.

The Code for Sustainable Homes has been introduced to drive a step-change in sustainable home building practice. It is a standard for key elements of design and construction which affect the sustainability of a new home. It will become the single national standard for sustainable homes, used by home designers and builders as a guide to development, and by home-buyers to assist in their choice of home.

It will form the basis for future developments of the Building Regulations in relation to carbon emissions from, and energy use in homes, therefore offering greater regulatory certainty to developers. And in this era of environmental awareness amongst consumers and increasing demand for a more sustainable product, it will offer a tool for developers to differentiate themselves.[13]

These initiatives are beginning to bring together the thinking on desired outcomes for environmental matters in relation to buildings and construction. However, the primary target at the moment remains new housing and more needs to be done to sweep in the other aspects of the industry, for example, covering other types of building such as commercial and industrial as well as the existing building stock.

There appears to be general support for higher building standards in order to address environmental issues. Desired Outcomes received the most positive responses in the questionnaire. Over 94% strongly agreed or agreed with the statement: "There is a need to improve building performance standards to deal with new technologies, climate change and energy resource". However 64% of the respondents did not believe that sufficient thought had been given to alternative or complementary approaches to Building Regulation.

4.3.1 Strategic Planning

Despite the recent initiatives in relation to climate change mentioned above, there remains a lack of clear vision about what the Government wishes to achieve through Building Regulations and consequently there is no effective strategy or plan to deliver.

13 Code for Sustainable Homes – A step-change in sustainable home building practice, Communities and Local Government, 2006

The scale and rate of change to the Building Regulations has risen rapidly over the last twenty years. While this was accepted as necessary to improve continuously the UK building stock, concern was expressed by the majority of those interviewed, supported by published reports, that there was no consistent, published long term vision and plan for construction and the Building Regulations that would give the industry sufficient lead times to plan properly.

The view from nearly two-thirds of building control and other construction industry professionals interviewed was that Communities and Local Government should publish a 5-year plan for building regulation review and stick to the timings – "don't change core principles, once agreed". This must provide clarity of purpose and long-term vision and goals for the improved performance of buildings, while enabling the industry and manufacturers to gear up and prepare adequately. Aspirations and goals should be targeted at market sectors with clearly established principles, clear forward targets and published performance levels that change at regular intervals. Since building regulations set a minimum standard, this will encourage an overall rise on building performance. This has been started for the new housing market with the introduction of the Code for Sustainable Homes and now needs to be developed.

A small number of respondent indicated that this should give a 10-year view (e.g. "zero carbon by 2017") with a review of progress at 5 years. Interestingly, within the consultation: 'Building A Greener Future' Communities and Local Government have set out proposals for improving the energy performance of building regulations so that over time all new homes meet the energy/carbon standards set out in the Code. The table below shows the levels of improved energy/carbon performance that are proposed over time:

Table 2 – Proposed Timetable for Improving Part L

Date	2010	2013	2016
Energy/carbon improvement as compared to Part L (Building Regulations 2006)	25%	44%	zero carbon
Equivalent energy/carbon standard in the Code	Code level 3	Code level 4	Code level 6

This is an excellent start in one specific area, but it still needs to be fully developed and must be brought together with all other factors into a clear and holistic vision, strategy and plan that covers all of the built environment.

4.3.2 Cross-government Integration – Strategic Matters

Over the past twenty years, there has been an increase in legislation that also deals with issues covered by Building Regulations. Examples include:

- Construction Design and Management Regulations (CDM) 1994
- Disability Discrimination Act 1995
- Sustainable and Secure Buildings Act 2004
- Regulatory Reform (Fire Safety) Order 2005
- Climate Change and Sustainable Energy Act 2006.

The Sustainable Buildings Division has been working with the Health and Safety Executive on the revision of the CDM Regulations, the owners of the Disability Discrimination Act and also worked closely with the Regulatory Reform (Fire Safety) Order team. They also took an active part in supporting the introduction of the Sustainable and Secure Buildings Act and contributed to the development of the Climate Change and Sustainable Energy Act.

However, despite this cooperation the perception remains that there is little effective working between Government departments to ensure Building Regulations are co-ordinated with other legislation and processes.

Even though health and safety is one of the fundamental and original objectives of Building Regulations, the overall regulation of health and safety is fragmented.

RIBA noted, "HSE/CDM legislation mainly concerns health and safety in the design and the construction process of buildings. In theory this should complement the Building Regulations. However, in practice it tends to overlap with them. CDM is administered under separate legislation and enforced by the Health and Safety Executive, rather than by the Local Authority building control system of the Building Regulations. This disassociation has not produced the desired effect of significantly improving the safety record of the UK construction industry"

The interviews and published reports suggested that these approaches have caused duplication and conflicting requirements and generated confusion. These were aligned with the findings of our stakeholder workshop, where all industry representatives agreed that activity needs to be integrated across government departments including Communities and Local Government, the Department for Trade and Industry, the Department for the Environment Food and Rural Affairs, HM Treasury & the Office of Government Commerce, the Health and Safety Executive and the Fire and Rescue Service.

The management of sustainability and green issues came in for particular comment, both in the development of desired outcomes and in their delivery through the construction industry.

"Merton said it would create a market of £700m for renewable energy equipment in the UK- instead it added £700m to building costs"

"It doesn't necessarily make sense to bolt a wind turbine on the side of a leaky building"

The positive aspect is that it has opened up the debate on energy conservation and renewables. However more than half of the Local Authority BCOs and Approved Inspectors pointed to "green machismo" where a planning authority insisted that new major developments must have 15-20% renewable energy generation within them and over-rode alternative methods to conserve energy and reduce waste generation. This was interpreted as a lack of integration between the departments responsible for planning and building and led to the call for a consistent set of desired outcomes on which to base policy and implementation.

These issues have been around for some time now, yet remain unresolved. The Construction Industry Council delivered a report in 2003[14] which recommended that the government should urgently work to reinforce synergies between the regulations that affect the delivery of buildings.

This covered a range of issues and proposals relating to the legislation and its enforcement associated with the total life cycle of buildings. It set out the industry's recommendations for changes to the existing separate regimes to produce a cohesive and integrated framework for all legislation and its implementation as it affects buildings in order to eliminate overlap and waste. The regulations covered included Building Regulations, Fire Regulations, Water Regulations, and Construction (Design & Management) Regulations.

Other industry bodies have since expressed the view that regulations should be harmonised in order to reduce the burden on the construction industry, most recently the Specialist Engineering Alliance (SEA)[15] which includes the Association of Consultancy and Engineering, the Chartered Institute of Building Services Engineers, Specialist Engineering Contractors Group, Building Services Research and Information Association, the Federation of Environmental Trade Associations and the Association for the British Electrotechnical Industry. These organisations represent consultants, contractors, manufacturers and research interests relevant to their sector and their views on this matter are reasonably indicative of the industry as a whole.

This issue should be addressed by Communities and Local Government and the other relevant departments and agencies working with the Cabinet Office Better Regulation Executive (BRE), which is responsible for delivering the Government's commitment to cutting red tape across the private, public and voluntary sectors so that businesses can be more productive, public services more efficient and social enterprises freed from bureaucracy.

4.3.3 Stakeholder Management

> *"The changes needed to realise this vision will not happen overnight. Some will require legislation, others will require a shift of long-established culture and practice in regulators and business and an overall commitment to reform. These changes cannot be introduced in isolation, but rather in partnership with industry, enforcement staff, sponsoring departments and the wider community"*
>
> Professor Richard Macrory on implementing his vision for Regulatory Justice

Understanding stakeholders' interests in the regulatory regime, and the impact that regulation will have on them, and then implementing a strategy to address their issues and needs, is an essential part of successful policy implementation.

The objective of analysing stakeholders is to achieve a thorough understanding of their requirements and their interest in, and impact on, the regulations so that communications address their particular interests, issues and needs. Stakeholders'

14 Regulation for Buildings: Harmonisation of Regulation, Construction Industry Council, 2003

15 Building Regulations, SEC Group Briefing, 2006

positions (in terms of influence and impact) may be rational and justifiable, or emotional and unfounded, but they must all be taken into account since, by definition, stakeholders can affect the policy delivery process and hence compliance with and enforcement of the regulations.

The Sustainable Buildings Division is committed to and uses extensive formal consultation when developing policy and proposals for legislative change, distributing consultation papers to identified stakeholders, managing the receipt of responses as well as publishing them and their results (in the form of Regulatory Impact Assessments – see later) on the internet. The Division employs a stakeholder database for this purpose. Divisional staff also go out on road shows and attend other events in order to assist with the assimilation of new or altered requirements that affect various stakeholders.

However, despite these formal requirements and arrangements, there is a lack of effective Stakeholder Management and Communications in relation to the system of Building Regulation. Communities and Local Government has a limited understanding of their stakeholders and there is no active or coordinated stakeholder management and communications strategy/plan.

Little work has been done within Communities and Local Government and Sustainable Buildings to specifically understand the stakeholders for Building Regulation. A limited analysis was conducted during our scoping study on user-friendly Building Regulations in 2005 but we found no other documentary evidence on the subject.

Individuals within Sustainable Buildings Division appear to have relationships with some stakeholders but Stakeholder Management and Communications is not managed as a discrete activity and the results from these relationships risk being variable and inconsistent. Across the various stakeholder groups there is a perception that some stakeholders are being favoured, while others remain unrecognised.

It should be noted that Communities and Local Government report that some stakeholders are poor at responding to consultations, even when chased and that some stakeholders' remarks cannot be accommodated as they are biased or prejudiced. Generally, Communities and Local Government feel that they have good relationships with their stakeholders and that they are responsive to stakeholder comments, including them in the outcomes from consultation.

However, over 80% of the respondents to the questionnaire disagreed strongly or disagreed with the statement that "All those affected by building regulations are consulted before decisions are taken". This was reinforced in the findings from the interviews and workshops that some stakeholder groups felt that their needs were ignored.

4.3.4 Stakeholder Communications

Communication is central to any change process. The greater the change, the greater the need for clear communication about the reasons and rationale behind it, the benefits expected, the plans for its implementation and its proposed effects. The objectives of the communications process are to:

- keep awareness and commitment high
- maintain consistent messages within and outside the organisation
- ensure that expectations do not drift out of line with what will be delivered.

Successful communications will be judged on the ability to meet these objectives and are based on four core elements:

- message clarity: to ensure relevance and recognition
- stakeholder identification and analysis: to send the right message to the right audience
- a system of collection: to obtain feedback and assess the effectiveness of the communications process
- a system of delivery: to bring the above together.

Messages must be consistent. They should be few in number, simple, and brief, and derived from the organisation's objectives. It may be useful to use touchstone statements, soundbites or wordbites as the foundation for more complex communications and then to repeat these at regular, planned intervals. This approach will help stakeholders to recognise specialised elements within an understandable framework. It also ensures the organisation is seen to be speaking with one voice.

Within Sustainable Buildings Division the systems and processes for communication with stakeholders seem to be limited to the general formal requirements for government communications e.g. regarding press releases etc.

There appears to be no formal Communications Plan which describes what will be communicated and the authority required, how it will be communicated, by when, and by whom, in relation to the activities of the Buildings Division.

As a result there is a lack of clear communication from Communities and Local Government to stakeholders about the drivers for and the desired outcomes of Building Regulations. Key messages are not being promoted and communicated to the appropriate stakeholder groups. Two-thirds of respondents to the questionnaire responded negatively when asked about the clarity of explanation and general communication regarding Building Regulations.

In absence of the above, stakeholders *perceive* Building Regulation to be driven by knee jerk reactions to current hot topics such as sustainability and energy. They view Building Regulations as being increasingly politically, rather than practically, driven – *"getting a tick in the box for Kyoto", "the usual political rush to be seen to be doing something without sufficient regard for implications"*

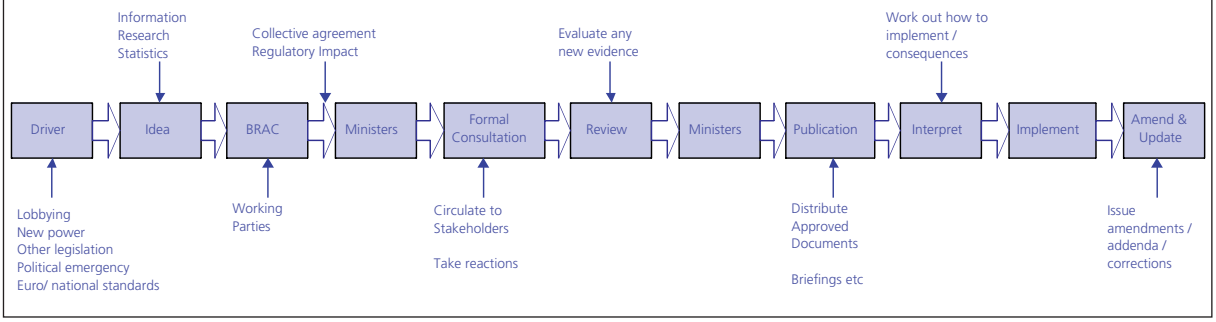
Events over the past few years and, in particular, negative perceptions driven by the recent Part L implementation, have led stakeholders to distrust Communities and Local Government as it appears that they are prone to changing their minds, setting out plans one day only to reverse them later.

4.4 Policy Design

> *"Government should focus on providing simple, clear policy that is strategic in nature and doesn't change every six months"*
>
> *"Government needs to set the policy and leave the "how" to industry"*

This stage covers the development of policy solutions to generate the agreed desired outcomes, through collecting evidence, appraising options, consulting with stakeholders and managing risks.

Figure 5 – Policy Design & Implementation



The initial part of the consultation process is generally seen as adequate with sufficient time for the interested parties to be consulted on policy requirements. However all stakeholder groups believed that inadequate attention is paid during consultation to the practicalities of implementing the regulations. 73% of respondents to the questionnaire disagreed strongly or disagreed with the statement: "In addition to technical and specialist inputs, the consultation process takes into account the practicalities of implementing and then enforcing the Building Regulations"

Many stakeholders commented on the pace of change, with at least 2 major amendments each year for the past six years covering nearly all Parts of the regulations. For example, it was announced in 2002 that Part L would not be reviewed again until 2008, whereas it was significantly reviewed in 2005.

The inclusive Construction Design and Management (CDM) Regulations revision was seen by many stakeholders as a good example for consultation because the Health and Safety Executive were seen to take the trouble to involve the right stakeholders with the right aspects of the proposed changes. Whereas, preliminary work on the introduction of Home Improvement Packs was seen as an example of where consultation needed improvement, as many stakeholders felt that only the Royal Institute of Chartered Surveyors (RICS) was effectively consulted.

4.4.1 Regulatory Impact Assessment

Government departments assess the likely outcomes of regulating in order to try to achieve the right balance between under-regulating, which may fail to protect the public, and over-regulating, which may create excessive bureaucracy. Since 1998, the Government has used Regulatory Impact Assessments (RIAs) to assess likely outcomes, producing around 150 to 200 a year.

RIAs identify the costs and benefits of a policy proposal and the risks of not acting. They are intended to inform the policy decision making process and communicate clearly the objectives, options, costs, benefits and risks of proposals to the public to increase the transparency of the process.

There are three stages to an RIA:

- Initial RIA – Carried out at the early policy development stage. This can help identify areas where departments need more information
- Partial RIA – This builds on the Initial RIA and should accompany the formal public consultation for the proposal
- Final RIA – This builds on the analysis in the Partial RIA, updating it in the light of consultation and further analysis and information. The Final RIA should accompany legislation when presented to Parliament.

The Cabinet Office Better Regulation Executive (BRE) is responsible for ensuring the effective use of RIAs as part of its wider work with other Government departments, agencies and regulators to help ensure that regulations are fair and effective. The BRE's work involves:

- Promoting the Principles of Good Regulation
- Identifying risk and assessing options to deal with it
- Supporting the Better Regulation Commission and its work to ensure that regulation and its enforcement accord with the five Principles of Good Regulation
- Removing unnecessary, outmoded or over-burdensome legislation through the powers as enacted in the Regulatory Reform Act
- Improving the assessment, drawing up and enforcement of regulation, taking particular account of the needs of small businesses.

Since 1999 Buildings Division has completed 12 RIAs covering impacts to the majority of the various Parts of the Building Regulations. They are required to follow the central guidance provided by the BRE and clear any regulatory proposals with them as appropriate. Further details on Better Regulation are provided in Section 5.

However, 72% of respondents to the questionnaire strongly disagreed or disagreed with the statement that "Those responsible for developing building regulations sufficiently recognise the economic impact of those affected by their implementation and enforcement". This was supported by interviews with building control professionals, manufacturers and suppliers and professional bodies. The major negative impacts were seen to be on smaller projects and the smaller end of the builder community, whilst larger projects were able to absorb the costs.

Stakeholders also questioned what they see as the excessive cost of some elements of the Building Regulations against the originally perceived risks and actual benefits delivered. Part P, in particular, was mentioned as "a waste of time, very bureaucratic & costly" compared with the initial objective of reducing the small number of deaths.

A particular issue was consequential improvements in Part L. The BCOs and AIs who were interviewed recognised their validity in closing loopholes and upgrading the existing building stock, but saw them as difficult to explain and implement for smaller projects where they could trigger consequential actions that put up bills from £00's to £000's. *"It is difficult to justify why a recent job for a small extension ended up with £48k worth of consequential improvements"*. This suggests that insufficient attention was paid to the impact on different sectors of the construction industry.

4.4.2 Communities and Local Government Capability & Capacity

Several stakeholders questioned Communities and Local Government's (Sustainable Buildings Division) capability and capacity to deliver meaningful change. It was perceived that existing resources were overstretched and directed away from core building matters to other matters e.g. sustainability.

There is also the possibility of a skills gap particularly as seven of the eight senior technical officers are due to retire soon with no succession plan in place.

Stakeholders see considerable scope for a more cohesive approach to the development, delivery and maintenance of Building Regulations through a central organisation (currently Sustainable Buildings Division). The current complex structure of the various parts, the current level of resourcing and organisation structure is not conducive to joined-up action. If conflicts between the various parts are to be addressed, it is important that the broader implications of changes are taken into account within a revised organisation structure. Many stakeholders suggested that an independent agency (e.g. similar to the Scottish Building Standards Agency) might provide a better structure.

4.4.3 Cross-government Integration – Tactical Matters

There is a need for better integration with other departments on tactical issues and approaches to problems (inter-departmental co-ordination). Joint solutions to problems are rarely seen. Many initiatives that are perceived as a single issue to customers are only half realised or thought through because they cross departmental boundaries. For example, there is a bewildering amount of information and potential initiatives in relation to sustainable development and determining simple targets and a single, clear view of relevant initiatives is almost impossible as they are spread over several departments.

Co-ordination with Health and Safety has been patchy, with links established in the revision of Part H but none for the revision of Part C.

When reviewing the impact of the revised CDM Regulations an HSE study[16] confirmed the lack of integration between the planning, building control and health and safety regimes and concluded that this creates an unacceptable burden on SMEs.

16 CDM Regulations 2006, Small Business and One-off/Occasional Clients Responsibilities, Tim Kind, April 2006

This shows that there is also a need for much better co-ordination within the department (intra-departmental co-ordination), a point raised by several stakeholders. In particular, the activities and interfaces between Development Control (Planning) and Building Control need to be better integrated. There is a real danger that Local Authorities will, if left unchecked, begin to develop alternative systems for regulating buildings on the premise of local control of sustainable elements like renewable energy. The level of coordination with planning has been limited so far. It includes amendments to Part H to link with planning guidance on off mains foul drainage, linking the timing of the Part C review to new environmental and planning guidance on contaminated land and support to planning guidance on development and flood risk.

Stakeholders also cited instances where co-ordination of activity between Buildings Division and the unit in Communities and Local Government responsible for implementation of the Home Improvement Pack could have been improved.

4.4.4 Implementation Planning

"There has been increased complexity in building regulations, but insufficient time and resources has been allowed for complementing this with practical implementation. [RIBA]"

"The final legislation rarely seems to reflect the BCO / practitioner view".

Implementation was the area of the process that came into most criticism in the interviews and questionnaire. The general view expressed was that inadequate attention was paid to this aspect in the design of policy.

73% of respondents to the questionnaire disagreed strongly or disagreed with the statement: "In addition to technical and specialist inputs, the consultation process takes into account the practicalities of implementing and then enforcing the Building Regulations"

67% of respondents to the questionnaire disagreed strongly or disagreed with the statement: "When new policies are being developed, explicit consideration is given to how they can be enforced using, where possible, existing systems and data to minimise the administrative burden imposed"

Comments were received from a cross-section of stakeholders that some recent changes were drafted by specialist consultants, without a real awareness of the practicalities of construction and compliance or the effectiveness of the outcomes. This is supported by comments in published reports.

4.4.5 Alternative Measures

Nearly two-thirds of those responding to the questionnaire disagreed strongly or disagreed with the statement: "Sufficient thought has been given to possible alternatives, or complementary approaches, to building regulation in these emerging areas that can be applied to enable, for example, the UK to meet carbon emissions and energy efficiency targets".

The stakeholders recognise that Building Regulation is only one way to deliver policy outcomes and that other measures will be critical for success: however it is not clear how this will be achieved. For example, in order to achieve any meaningful reductions in carbon emissions, then the performance of the existing building stock must be tackled and it is likely that this will be achieved through a variety of measures.

Many stakeholders expressed disappointment that the Home Condition Report, within the forthcoming Home Information Pack, had not been utilised to best effect and that its impact had been watered down. It was seen as a missed opportunity to tie in all certificates and provide owners with clear and consolidated information on their building. This was seen as a *"an example of Government wanting to rush things through with insufficient thought".*

The current Building Regulation system only affects new or significantly altered buildings, which represents approximately 1% p.a. of the UK building stock. RIBA identified targeted incentives to improve the performance standards of existing buildings, such as:

- Reduce Stamp Duty on purchases of houses with higher performance ratings and offer Council tax discounts for energy efficiency or waste reduction to give incentives to owners and occupiers of existing building stock

- Revise Building regulations Part L and the energy audit of the forthcoming Home Inspection Report to a Carbon emission rating.

- Enhance capital allowances to businesses and housing providers who upgrade their buildings to a better energy performance level.

- Use a simple unified system of energy certification for all buildings based on carbon generated per sq m floor area.

- Promote the use of the new Code for Sustainable Homes and extend these codes to other building types.

- Provide clear guidance -with an awareness/training programme to enable building users to reduce their energy usage and costs.

4.4.6 Stakeholder Engagement

Although involved in consultation, stakeholders believed there was inadequate feedback to industry on the outcome of the consultation. 66%of those responding to the questionnaire disagreed strongly or disagreed with the statement: *"How and why the final versions of the regulations are reached is clearly explained and communicated"*. Some stakeholders felt that Communities and Local Government had decided the outcome before the consultation started *["just ticking boxes"]* and that, as soon as the regulation was published, there was a *"collective sigh of relief from Communities and Local Government"* as implementation was passed to the Building Control community.

The Building Control community and professional organisations such as the British Property Federation would welcome a short rationale as to why regulations were introduced, in the form they were introduced, that they could use with their client organisations.

There was a plea during a workshop to *"Get facts right and don't treat people like idiots by saying something is two years early when it was clearly one year late"*. This leads to stakeholder alienation where they don't believe ministers explanations.

Three commentators in building control expressed concern over the Building Regulations Advisory Committee. They felt that it should be more assertive when offering advice to Ministers on Building Regulations and that it needs to act more as a counterweight to political and other pressures. This was particularly noticeable over Part L, but applies to other areas outside of the original desired outcomes relating to Health and Safety. More generally, the view held by many stakeholders was that a wider industry user group was needed, for example with more BCO advisors [LA and AI], and that it should be representative of all stakeholders.

However, the implementation of recent changes to the Approved Document for Part B were seen by stakeholders as a good example of practices that could be utilised throughout the Division. This included a review of the previous version (Backward Look), a study on the potential changes which involved the stakeholders and their views on what needed to be done (Forward Look), a web based consultation and some simple but effective measures such as providing a version of the AD with the proposed changes highlighted (using the track changes mechanism) and text boxes at appropriate points to provide an explanation for the changes. This activity was used to supplement the more traditional formal approaches to consultation employed by the Division (see earlier comments).

4.5 Policy Implementation

"We need something that we [BCOs] can actually apply."

"We deal with practical people who need to see the logic. There seems to be a void between legislation and common sense"

"Implementation is all about good management; Part L was totally mismanaged!"

The policy implementation stage puts the policy design into effect by communicating the policy, providing guidance, supporting delivery and engaging with a wide number of stakeholders.

Of all the stages in the policy making and delivery process, policy implementation received the most criticism from stakeholders. This is probably due to the relatively recent implementation of revisions to Part L. The way that these changes were effected, in particular the short timetable, has been universally unpopular and subsequent non-compliance, as well as issues with enforcement, is now a recognised problem. This particular implementation should serve as an example of how not to do things in the future.

Of the eight questions that scored lowest overall in the questionnaire, five were directly concerned with implementation. The table below shows the percentage of respondents who **disagreed strongly** or **disagreed** with the statement:

Table 3 – Areas for Improvement – Policy Implementation

Implementation	
Statement	**Disagree**
Sufficient time and resource is provided for training and gearing up of, for example, designers, professional bodies, manufacturers, suppliers, builders and building control officers for implementing building regulations to ensure a high rate of compliance	83%
The period between consultation and implementation of new and amended building regulations is adequate to develop implementation plans and briefings that will enable a high level of compliance	76%
Introduction of the new building regulations does not lead to an unacceptable burden on building control bodies or additional costs to the householder or businesses.	73%
The resulting building regulations are clear, simple and easy to understand, practical to implement and focus only on core objectives such as health & safety, sustainability, etc	78%
Guidance, examples and support for those affected by building regulations are issued in plain language and in sufficient time before they come into effect	74%

On the positive side, some respondents acknowledged that, through successive implementations, there has been a step change in most areas covered by building regulations since 1984; *"even energy where there has been improvements in the overall performance of buildings"*.

4.5.1 Implementation Timescales

> *"The rate of change is too quick. Change needs to have greater predictability, implemented incrementally and be better managed"*

Over 90% of those interviewed endorsed the need to get an adequate period for implementation to allow for the training and gearing up of builders, designers, manufacturers, suppliers, builders merchants and compliance officers as well as building awareness and providing the necessary information, support and training material.

However they also commented that the period between publication of the approved new legislation and its implementation has become shorter, without supporting guidance and compliance tools in place. This has resulted in partial and poor compliance. In particular it has been difficult for the Building Control Officer to recognise and establish standards of compliance.

The period between publication and implementation used to be six months; this is generally acceptable to stakeholders and allows building control, suppliers etc to gear up with implementation plans. However this was severely reduced for Part L, which consequently had a negative impact on its chances for successful implementation.

Implementation has a widespread impact. For example, builders merchants carry high levels of stock that may become non-compliant and hence non-profitable if there is too short a period. The suggestion from the product supply community is a one-year minimum with a recognised transition period. It was also pointed out that "the most successful levels of compliance were achieved for areas where the supply industry was behind the changes".

4.5.2 Complexity and Clarity

> *"The current levels of complexity and lack of clarity within Building Regulation are barriers to compliance and there is an urgent need for someone to stand back, out of the weeds, and sort it all out"*
>
> *As previously noted: "The Approved Documents have now been revised several times and have become unduly complex, with anomalies and conflicting requirements. They have lost their original drafting clarity and no longer achieve their original purpose of giving clear guidance on compliant construction details and methodologies"*
>
> [RIBA]

Guidance has gone from prescriptive to functional. However the regulations need to be clearly distinguished from the practical guidance in the Approved Documents that should provide options on ways of achieving the functional requirements and performance standards.

The removal from the Approved Documents of standard compliance details for generic construction types was seen as not helpful. This has resulted in increasing reference to Third Party Documents, such as British Standards and the need to refer to Robust Details and Trade Association Guides to provide this guidance.

This further complicates comprehension, compliance and implementation. Many of these documents are voluminous and costly, often give conflicting information and cover wider issues than the Approved Documents require.

This undermines the effective implementation of the new standards and makes the job of the building control body more difficult and far less efficient due to more complex and demanding sets of references and having to deal with poorly prepared applications and greater expectation of 'help' from the applicants [source RIBA and BCO / AIs interviews]. This issue is made worse by the fact that some of the references are out of print. For example the Reading University report on Colour & Contrast for Part M and eleven of the seventeen 2nd tier documents required to interpret Part L.

In some instances, unduly complex revisions mean that consultants specialising in specific areas of the regulations are required, thus imposing additional consultants' fees on the consumer where these were not previously needed. The complexity of the revisions also affects the ability of Building Control Officers to enforce the regulations if they do not have specific training.

Implementation of the more complex Building Regulations is affecting smaller and medium sized contractors the most. Increased referrals out to deeper levels of documentation are particularly frustrating. [Part L in particular]. *"Even BCOs have difficulties working out the connections!"*

The Approved Documents should be written in the practical language of the user (designer, manufacturer, constructor, and occupant) rather than the legal language of the enforcer (statute writer, technical expert legislator). They should try to strike a balance between the level of information required to provide effective guidance with the needs and capacity of the users.

4.5.3 Guidance and Support

With very few exceptions, stakeholders in all professions supported the principle that permits the applicant to make a choice between prescriptive and performance-based methods of compliance.

Equally, all stakeholders involved with SME contractors (particularly sole traders) and householders, were very clear that simple, prescriptive guidance was an essential prerequisite for compliance.

Communities and Local Government has recognised that provision of effective and targeted guidance is an important issue and is taking steps to try and make their guidance more user-friendly. They have moved guidance to the Planning Portal and developed an 'Interactive House' that provides information about how the Regulations might apply to various types of building project. This software tool also covers planning issues and is available via the Planning Portal web site.

The Buildings Division is also working on other project based guidance to develop this concept further. They are developing national guidance which draws on the guidance produced by many Local Authorities to address frequently asked questions (for their local designers, builders and architects to meet local conditions e.g. radon) or targeted at specific common projects e.g. loft conversions. To the extent that this initiative can proceed it should reduce the scope for duplicated effort within Local Authorities and promote consistency of approach amongst the target audience.

However, despite the excellent progress with initiatives such as the Interactive House to help those impacted by them interpret the regulations, the underlying implementation of Building Regulations is still not citizen/business-centric or targeted at the needs of different groups. This has a negative impact on compliance e.g. for the large number of simple, small projects undertaken by householders.

For larger projects, architects and developers require the capability for innovation and flexible design afforded by performance based standards and generally have access to experts in the newer areas of regulation. These projects have the ability to absorb the extra costs of employing experts to interpret regulations as the associated fees represent a small proportion of the overall costs.

For the smaller contractors and the DIY householder, this provides too much choice and is too open to interpretation. There is also no easy way to pull together all the information for a particular project /area such as "change of use". Neither DIY householders nor small builders have the time and expertise, to consult the Building Regulations and both may take short cuts or inadvertently non-comply.

Smaller builders, for example, *"just want to know what to put in place"*. Generally the smaller contractors like, for example, the Robust Details approach for Part E, and would welcome simple guidance for particular types of construction – loft conversions, extensions etc. RICS would support simplified Approved Documents for sectors such as Schools, Housing of less than 3 storeys etc. All of the stakeholders supported the recent developments to improve guidance and universally the Interactive House was seen as a good idea.

Many stakeholders were receptive to the classification of the different parts by elements as a mechanism for rationalising the guidance documents. Some suggested using the European Construction Products Directive classifications in line with the way that Scotland had reorganised their guidance. This would result in a move away from the current 14 Parts to a more manageable six:

- Mechanical resistance and stability
- Safety in case of fire
- Hygiene, health and the environment
- Safety in use
- Protection against noise
- Energy economy and heat retention.

Stakeholders were also in favour of recent moves to distinguish between 'Dwellings' and other buildings within the guidance documents. This has been used in the recent revisions of both Part L and Part B. A similar system, using the classifications 'Domestic' and 'Non Domestic', is operated in Scotland. Some stakeholders thought that dwellings (small buildings) would benefit from the provision of their own simplified rules and guidance. For example, the Home Builders Federation suggests a rationalised building standard for homes based around three elements:

- Structure – this element should be reasonably stable with few changes over time and therefore suitable for greater use of type approval like the Robust Details for interior walls and floors currently used for resistance to the passage of sound (Part E)
- Services – this element has seen many changes and technological advances recently and this is likely continue into the future – it will therefore need to be updated regularly
- Sustainability – this element could contain targets for the level of performance that could change over time – this is largely what is proposed in the Code for Sustainable Homes.

The rationalisation of the number of guidance documents and improvement to their contents is a subject that has been under discussion for some time and is also suggested in other reports such as the review by the Better Regulation Executive[17] which noted that, in relation to guidance documents:

- *"There are too many parts. There is scope for reducing the number of parts from 14 to (say) 10"*
- *"The 14-part structure of the regulations is complex, and imposes a disproportionate burden on small business. An option for simplification is to provide one single approved document to cover less complex types of residential buildings"*
- *"Principles are preferable to rules. The approved documents, which should focus on general principles, have become prescriptive in tone and go into too much detail"*
- *"There is a need to reduce the number of references to subordinate documentation".*

4.5.4 Recent Implementations

The recent Part L experience coloured the views of those interviewed towards implementation of building regulations. The changes to Part L of the Building Regulations take into account the UK Government's Energy White Paper and are a means of implementing some elements of the EU Directive on the Energy Performance of Buildings, which aims to cut carbon emissions across Europe. Part L represented a step change in complexity for both domestic and commercial clients. The changes introduced much tougher energy performance standards, which were largely welcomed. However, they also introduced new concepts such as moving away from elemental performance measurement to a whole building approach, pressure-testing of buildings to detect leaks and the use of computer software to calculate compliance which the industry found difficult to get to grips with.

These changes came into force on 6th April 2006. The Communities and Local Government effort to support the changes centred around a dissemination and training strategy developed in conjunction with an expert panel of stakeholders. This included the following activities:

- Provision of expert speakers for over a hundred key seminars and events – from autumn 2004
- Setting up a Building Control Group to contribute to implementation – September 2004
- A programme of 'Train the Trainers' workshops to inform key training providers – June 2005
- A programme of seminars across the country aimed at all building control managers – September 2005
- Support for road show seminars for building control surveyors and designers which included training on Part L – October to December 2005

17 Cabinet Office, Better Regulation Executive, Learning Exercise on the Building Regulations, 2006

- Writing a range of articles for key journals to support dissemination of the changes and production and promotion of leaflets aimed at installers and householders explaining the energy performance standards for new and replacement boilers – January 2005 ongoing

- Holding a Train the Trainer workshop for the Simplified Building Energy Model (SBEM) on the design of low energy non-domestic buildings – March 2006

- Setting up a help desk facility for, among others, Part L – April 2006

- A comprehensive programme of detailed workshops for building control surveyors, to provide practical training for 2,400 delegates – April to June 2006 and September 2006

- Development and issuing of an e-Learning tool to all 4,000 building control surveyors – July/August 2006

- A programme of building control implementation seminars for building control managers – November 2006 ongoing.

Its implementation was heavily criticised by industry and it was seen by stakeholders to have been rushed through with little thought put into the practicalities of implementation. Some implementation issues cited by stakeholders are outlined below:

- The draft Approved Document published in September 2005 was missing 21 reference documents, including vital documents required for new calculation methods

- The final version of the changes was published on 15th March 2006, less than a month before they were due to come into force (on 6th April 2006)

- When it came into force several third-party guidance documents referenced within the Approved Documents had not been published and the final version of the computer software required for checking compliance had not been formally approved

- The Approved Documents are seen as difficult to read, with some contradictions, and require an understanding of a large number of second-tier documents to fully interpret them

- Training for Building Control Officers was delayed from January to April because the documentation had not been finalised – this had a knock on effect for the support of key stakeholder groups, such as small house builders and general builders, who did not possess the resources to assimilate and comply readily with the changes.

During the study the stakeholder community expressed fear that the implementation of changes to Part B would be as bad as that for Part L. In November they were aware that the changes had been through the consultation process but the documentation and guidance had not been released. Their fear was that it would be released in January 2007 which would only leave a few weeks to prepare before the planned implementation date in April 2007. In the end the guidance was released on the 18th December, 16 weeks prior to the effective date. In general the implementation of changes to Part B has received positive feedback from stakeholders, but there is a long way to go yet to make up for the damage caused by the Part L changes.

There were fewer problems with other recent implementations, some views expressed by stakeholders include:

- Part P – There was inadequate thought about implementation. Initially Part P did not require a BCO to inspect, but the update put the onus on the BCO to provide inspection and completion certificates when a householder asked. BCOs are not electricians and have to outsource inspection to 3rd parties, or their own authority's electricians. However, they can't recover this extra cost from the client via fees. This may not have been Communities and Local Government intention, but it was the effect.

- Part E – Few problems as Robust Details are seen as an excellent way of providing guidance/compliance

- Part M – "Wasn't brilliant but was manageable as it's slightly easier to understand than Part L"

- Part F – Is seen as getting more complex; guidance has become more convoluted, whereas it used to be simple. *"The last set of changes was very poor".*

4.6 Policy Delivery

Policy Delivery covers the activities to deliver Building Regulations, operating processes and enforcing compliance.

These activities are the primary concern of the Building Control Bodies (Local Authority Building Control and Approved Inspectors). They are supported by other measures to improve compliance such as the use of compliance agents (e.g. Robust Details Ltd for Part E) and Competent Person Self-certification Schemes.

4.6.1 Building Control Bodies – Capacity and Capability

Building Control is the only commercial operation in a council. BCOs and building professionals perceive that ring fencing has not worked and *"Councils are siphoning off fees"*. This has led to a reduction in resources that are now insufficient to meet the requirements; this particularly affects the training and resource for ensuring compliance with the newer Building Regulations.

The complexity of newer regulations tends to lead to the need to use specialist surveyors. Medium and smaller authorities in particular do not have resource to provide this as well as maintaining a high quality general service.

Generally, building control is an under-rated job, with the view that BCOs can be "picked off the shelf". Most building control teams do not have a full complement of surveyors. 50% of BCOs are over 50 and many local authorities are anticipating greater resourcing problems in the near future as these personnel retire. Replacement BCOs are not cheap, highly qualified and in short supply with the result is that generally the teams have expensive plan checkers rather than site inspectors. The nature of the current building control service results in local authority BCOs spending a large amount of their time advising and educating small builders and members of the public.

Improving the capacity and capability of all building control bodies will be an important factor in the delivery of any government interventions in the built environment. However, these are likely to include the newer and more difficult areas of control such as improving energy performance and innovating to address the need for a step change in the level of house building identified in Kate Barker's review of Housing Supply.

It is also important that Building Regulations are implemented consistently across the country, providing both stability and certainty. They should be seen to be fair and acceptable and their application, in given circumstances, should not vary by location.

However, the essence of a performance – based system is that it allows for alternative approaches to cater for varying site and project conditions if necessary. The Communities and Local Government Determinations and Appeals system provide a body of published caselaw, and Communities and Local Government staff can give informal guidance. But, some stakeholders feel that there is scope for further guidance to improve consistency. Ultimately, due to the nature of the current building control system this has proved problematical and distinct variances in interpretation of regulations are apparent across the country.

4.6.2 Roles and Responsibilities

"It is difficult to be in both the public service and competitive arenas and do a good job!"

"Do Government actually want Local Authority building control or want to move to all private Approved Inspectors?"

The impact of competition from the private sector, introduced some 20 years ago has led to local authority BCOs becoming more customer-oriented.

The BCOs consulted generally believed that the introduction of AIs had led to contractors "shopping around" for an AI that will give an approval. They felt that there is particular competition for larger projects and, in some areas, high value residential work.

Neither Local Authority BCOs nor Approved Inspectors see a level playing field. Local Authority BCOs expressed the view that AIs can refuse to take on clients and leave Local Authority Building Control as the backstop, which puts the Local Authority in the position where it must take on the lower value / higher cost work. Conversely the AIs were concerned that they are under more scrutiny but that an *"LA BCO can get away with it"*. This was claimed particularly over the introduction of Part L, where some AIs suggested that Local Authorities were slow to implement the changes on the ground, which offered them a business advantage.

Local Authority Building Control now appears to have three functions:

- As a *commercial provider* of building control services, earning fees from client organisations in competition with Approved Inspectors;

- As a *supplier of last resort* of building control services, for clients where Approved Inspectors have not been approached or where Approved Inspectors have no interest in acting;

- As the *enforcer* of building regulations as AIs can't take enforcement action.

Generally there is no conflict over the first two roles, except for the possible impact on revenues where the local authority cannot set their own fee rates and have to accept a higher proportion of low revenue jobs than their AI counterparts.

However, some stakeholders see tension between the service supplier role and the enforcer role, expressed by one BCO as the *"policeman paid by the convicts"*.

One impact of competition is that many BCOs increasingly see their role as advising and persuading the developer to comply with regulations, rather than enforcing through the courts. Some take the view that too heavy-handed an approach will drive business to AIs. This may reduce their effectiveness as enforcers.

Several interviewees suggested it would be better to separate the enforcement and building control functions, either within the Local Authority or by creating a separate organisation with an inspectorate function, qualifying this by stating: *"Enforcement is currently an under-funded activity. This needs to be addressed whether enforcement stays within the current arrangements or there is a separate function."*

In a CIC report on Approved Inspectors' Regulations [26 October 2004], it was suggested that standardised forms should be introduced across LA Building Control and Approved Inspectors. *"It would be more efficient and assist the e-commerce initiative."* This is supported in the interviews where the view was expressed that a common set of processes and documentation should be introduced for building control to aid users' understanding and introduce clarity [source: BCO, AI and Architects interviews]

4.6.3 Compliance Planning

Both local authority BCOs and AIs recognised that the design stage is key for influencing later compliance, *"before serious money is committed to actual construction"*.

BCOs do get involved in the design phase of construction work and spend time going out to developers to discuss in the hope that they will agree to take LABC Services. They are conscious of the danger of developers using the LA BCO as a free source of advice and then going out to AIs for the inspection stage. Some authorities now ask for a commitment to use BCO before agreeing to the meetings; others are considering charging and then offsetting the fees against inspection charges for inspections, if the contractor goes with them.

The largest authorities are encouraging partnership working developed by LABC services with major developers, where there is a joint client / planning / building team very early in the project. This can be resource intensive and may not be practicable for smaller authorities, some of which have found that this approach ties up a BCO for major periods on large contracts.

The AIs saw possible Local Authority pressure on a contractor / developer who may wish to use an AI, but is concerned that the Local Authority planning group has not approved the plans; the developer may wish to be seen to stay with the local authority building control until the plans are passed.

The AIs interviewed all had previous experience as BCOs and stated that they now worked much more as part of the design team. They felt that this was an improvement, as their views were now more valued, and that this inclusive/team based approach was the way forward for building control.

There is a need for simplification of the planning and building regime as the current situation has generated potential tensions between the planning and building control functions. For example, the Greater London Authority deciding that each major development must have 20% renewable energy sources. Unfortunately these planning requirements impinge on building by insisting on a detailed plan at too earlier a stage and on technical solutions. There should be a general principle:

- Planning set the strategy
- Building solve the technical details.

Many stakeholders felt that there is a need to provide strong guidance to planners based on inputs from individuals with real building experience.

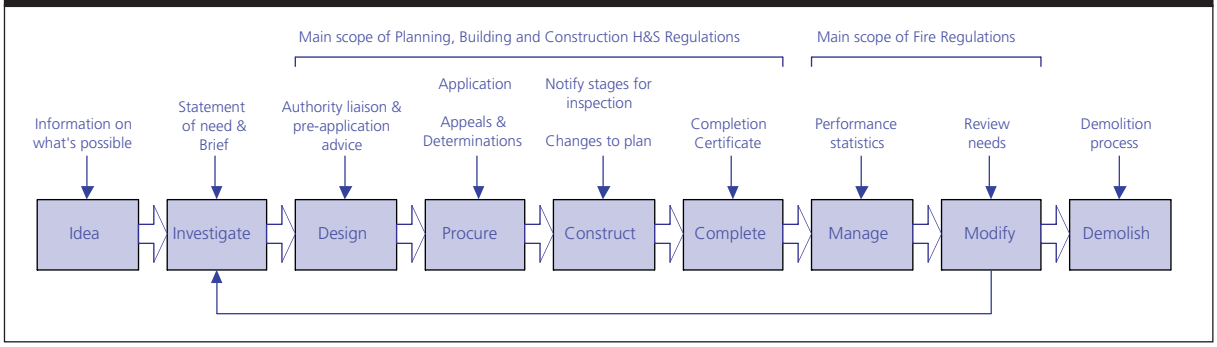
If performance standards for energy usage, carbon emission and waste generation of a new building are required by local authorities to be higher than the Building Regulations requirements, these could be specified as part of the planning approval process. However, demonstrating compliance with these standards should always be the function of the Building Regulations and part of the detailed design and procurement of a building. This means that a developer or a user only needs to establish the standards required of the new or altered building at the time they obtain certainty of development. Resources do not have to be wasted on developing the detailed methods of achieving these standards for schemes that do not obtain planning permission.

RIBA

4.6.4 Integration Across the Construction Cycle

The full construction cycle operates across the design, build and operate phases:

Figure 6 – The Construction Cycle



The interface between Building Control and building ownership and operation is extremely limited and ends on delivery of the completion certificate. This needs to be improved as it can lead to later problems e.g. conflicts between interpretation of appropriate fire safety measures between Building Control and the Fire Brigade leading to impact on the building owner/occupier after completion. There is currently no direct link between design and the fire authorities, as this is now achieved via Building Control. There is also no direct link between building ownership and the fire authorities until occupation.

This lack of consideration for the whole life of a building project is typical within the industry but this is an issue that needs to be addressed. Particularly with the increased focus on the actual performance of buildings, for example, who will check the boiler etc. under the requirements of the Energy Performance in Buildings Directive (EPBD)? This need to check that the building performs as it's designed to is considered in the Communities and Local Government research project examining the feasibility of an MOT test for buildings.

4.6.5 Interpretation

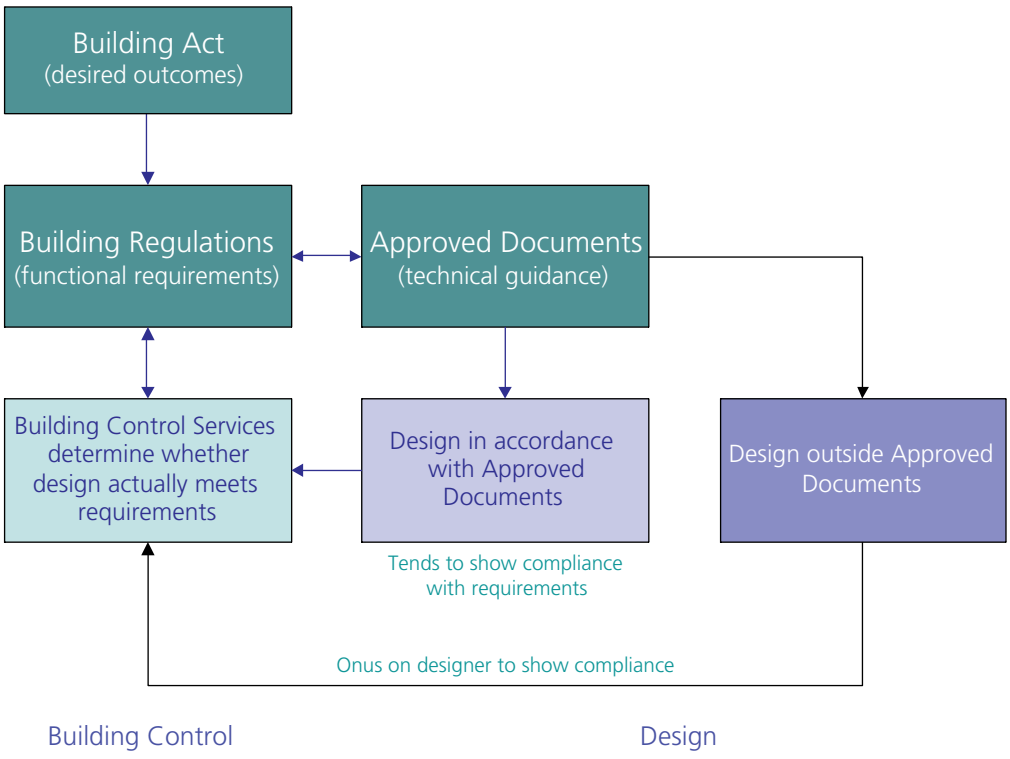
Many stakeholders, particularly those who had been in the industry for some time, expressed the view that the original Approved Documents (c1984) provided excellent, clear guidance to support the regulations. However, these same individuals now feel that the ADs have become complicated and difficult to interpret.

The role of Approved Documents is not clearly understood by all. Some interviewees noted that some BCOs interpreted the Approved Documents as the building regulations and were not approving innovative designs seeking alternative routes to meet the technical requirements.

RIBA expressed some concern that there was erosion of "the flexible procedure for innovative or complex building types to be considered on their merits on how they demonstrate their compliance in other ways."

The diagram below indicates the process for determining compliance and how this should relate to the guidance provided within the Approved Documents.

Figure 7 – Building Regulations – Assessing Compliance



There still appears to be a widely held misconception, even amongst those who should know better, that the Approved Documents are the Building Regulations. It would therefore be helpful to take action to further help distinguish the functional requirements from guidance.

4.6.6 The Existing Building Stock

The requirements for implementing the Energy Performance in Buildings Directive include measures to ensure that existing buildings larger than 1000m² will also be subject to energy performance improvements when they undergo major refurbishment or renovations. Their energy performance should be upgraded as much as is technically and economically feasible in accordance within Part L of the Building Regulations. These are known as 'consequential improvements'.

Although appreciating the principle of consequential improvements in closing loopholes and upgrading the existing building stock, the BCOs and AIs both see them as difficult to explain and implement when they could trigger consequential actions that put up bills from £00's to £000's. BCOs see this as draconian but also see no way around the issue. They believe that there is no level at which the BCO can say, "Enough is enough" and use common sense. *"There is no scaling or flexibility for smaller jobs, no sense of proportion."*

Other measures to address the performance of the existing building stock appear to be more successful. For example, the requirement to use efficient SEDBUK rated A or B boilers introduced within a previous revision to Part L.

The recent report entitled the Review of the Sustainability of Existing Buildings: The Energy Efficiency of Dwellings – Initial Analysis provides insight into some key areas for addressing the performance of the existing stock. Analysis of this report shows that the most cost effective measures to improve performance relate to various types of insulation. However, the report fails to drum home this key point and continues to explore options to improve performance using products, many of which are prohibitively expensive, untried or both. Greater emphasis should have been placed on user behaviour, as changes in attitude would ensure greater levels of performance (reduced carbon emissions) than reliance on product measures alone.

4.6.7 Building Operation

The post occupancy performance of a building has not been covered explicitly by building regulations. However there is an increasing interest in the operation of sites after construction, particularly for sustainability and energy performance. The British Property Federation are setting up a database for landlords to enter energy usage and comments on best practice. This will be available to members and non-members and provide the basis for a code of best practice

Similarly the NHBC, as well as being a major Approved Inspector, has a role as an insurer and warranty provider with at least a ten-year interest after occupation. From the claims they receive, they have a view on several aspects of Building Regulations [acoustics, sprinklers, contaminated land etc] that they use in improving their own standards and feedback to their inspectors.

The general view is that full implementation of the Energy Performance of Buildings Directive will go part way towards ensuring lifetime energy performance of buildings, and that any future implementation of an "*MOT Test for Buildings"* is likely to address other issues such as fire safety, structural safety and ventilation.

The recently amended Part B has now introduced a requirement for relevant information on a building to be assembled so that its use (fire safety) is better informed and that the owner/occupier's responsibilities under the Regulatory Reform (Fire Safety) Order can be satisfied.

4.7 Compliance & Enforcement

In his November 2006 report on Making Sanctions Effective, Richard Macrory notes:

"Sanctions are an important part of any regulatory system. They provide a deterrent and can act as a catalyst to ensure that regulations are complied with and indicate that non-compliance will not be tolerated. Sanctions also help to ensure that businesses are not compromising citizens' health and safety, polluting the environment, violating the rights of consumers or are distorting a free and competitive market. A broad range of flexible and proportionate sanctions that can be applied in cases of regulatory non-compliance at an earlier stage improve outcomes for society as a whole. Moreover, having access to risk-based sanctions will help to raise standards across industry and create a level playing field for all compliant businesses."

Some Local Authority BCOs believed that there was a lack of consistent enforcement through the AIs, as they *"all interpret the regulations differently"* encouraging "shopping around". AI's are perceived not to enforce some regulations as strictly as a BCO. They also believed that few AI jobs, if any, ever got referred back to LA. However, this needs to be balanced by the views of other stakeholders, who stated that Local Authorities are also known to interpret the regulations differently.

The AI view was that their client base tends to be the larger organisations that generally build to higher standards than required by Building Regulations, and with whom they have built up a professional relationship and so generally take paid-for advice on Building Regulations.

AIs get involved less frequently in smaller domestic or commercial work, but even here, they generally see no problems with compliance – withholding a completion certificate or the threat to refer to LA is generally enough.

AIs generally agree that they, as a body, must enforce Building Regulations in order to be seen as providing a "professional" service valued by their clients. If they don't, it is not good for their own commercial business if they are not seen to give good advice – "we are businessmen".

Problems with compliance and enforcement are much more likely to surface with those projects which use the services of Local Authority Building Control – the high volume of small domestic projects. BSRIA noted in August 2006, *"Anecdotal evidence suggests that small building contracts (especially for house building) performed by small contractors represent the highest risk of non-compliance".*

4.7.1 Customer Buy-in

The average customer does not understand the industry and who does what within it. They are often not aware of the regulations, let alone their responsibilities under them. Building Regulations requirements need to be advertised better and communicated in a much clearer manner. There is now more information available to the applicant about what they should ask their builder, but it is not enough.

While many stakeholders do 'buy-in' to the high-level concept that there should be a set of national standards that protect the public interest in relation to the built environment, they are less clear about its detailed implementation. Most are either not aware of the actual requirements or do not understand fully how the system should work. Many stakeholders who have had experience of the system, particularly members of the public, feel that some of the regulations do not make sense (as communicated) and they perceive them to focus on trivia or the implementation of nonsensical rules which appear to fly in the face of common sense. This was confirmed by feedback from the online forum. For example, the well known contentious issue of requiring door closers to be fitted (under Part B) was mentioned as a requirement that was complied with for inspection and then immediately removed. Communities and Local Government are aware of this particular issue and addressed it in the latest revision of Part B, but other inconsistencies and anomalies remain. Where these continue they sap the credibility/effectiveness of the regulations as a whole and should therefore be sought out and eliminated.

For the owners of buildings undertaking any improvement work cost/price is the key driver. The eventual selling price of the property is also a driver for this activity and a potential lever for compliance.

In relation to existing dwellings, the only effective way to sell increased standards is to offer incentives, e.g. council tax breaks for energy performance. Education and information will also have a key part to play and the possibility of using smart meters to tell owners how much energy they are using in £/min may help to improve energy performance.

The Completion Certificate is becoming more important despite the demise of the homeowner's pack. This is largely due to "solicitors who ask questions before completion". However this generally only kicks in when a house is sold. It has led to a larger number of enquiries to building control offices and even requests for completion certificates for jobs completed 15 years ago.

4.7.2 Construction Products

The European Union has focussed on the construction sector (and in particular use of construction products) across all its member states as it sees this as an activity of significance that requires attention and influence at a European level.

The construction sector is strategically important for Europe providing building and infrastructure on which all sectors of the economy depend. With 11.8 million operatives directly employed in the sector, it is Europe's largest industrial employer accounting for 7% of total employment and 28% of industrial employment in the EU-15. It is estimated that 26 million workers in the EU-15 depend in one way or another on the construction sector. About 910 billion Euro was invested in construction in 2003, representing 10% of the GDP and 51.2% of the Gross Fixed Capital Formation of the EU-15.

Construction is also an important sector of the economy in new Member States. In Poland, Czech Republic and Hungary alone, the turnover was about 38 billion Euro in 2003 and the market is estimated to be growing significantly at an average rate of +4.2% per year.

Moreover, the relationship between construction activities, and the built environment on the one hand, and sustainable development on the other, is both significant and complex. Construction uses more raw materials than any other sector, and the creation and operation of the built environment accounts for an important consumption of natural resources. There is also a pressing need to address the regeneration of many urban areas of Europe, in particular in the newly acceded countries, and the realisation of major trans-European infrastructure works.

The European Union is developing a coherent and expanding approach towards the various issues that concern building and infrastructure, including those related to social and territorial cohesion, sustainable development, research and technological development, the achievement of the internal market, etc. The specific mission of the EU Construction unit is to improve the framework conditions for the competitiveness of the construction and construction products industries by:

- Completing the Internal Market for construction products mainly through the implementation of the **Construction Products Directive**. In practical terms, by supporting the production of standards and European Technical Approvals

- Accompanying and encouraging actions from industry and Member States, especially in the field of sustainable construction and actions related to the promotion of Information Technology in the construction process and in the companies' management

- Assuring the coherence of other European policies with competitiveness in the construction sector by following and co-operating with initiatives of other Directorates which affect the industry

- Supporting EU enlargement by assisting new Member States and candidate countries in setting up the legal and technical instruments necessary to adopt the Construction Products Directive in an efficient and co-ordinated manner.

This activity will have a massive impact on the construction and construction product industries in the UK. The main thrust of activity is to ensure a level playing field across all Member States which facilities free movement and interoperability within the construction sector. This inevitably means greater standardisation, particularly in relation to construction products. The principle being that products should be able to meet the performance requirements of the various Building Regulations in force across all the Member States, allowing free use of products in all countries. The use of product based regulation is also seen by some stakeholders to be more effective than other measures e.g. the requirement to use only SEDBUK rated A or B boilers.

Furthermore, the position of suppliers e.g. Builders Merchants should not be underestimated. Other key stakeholders (e.g. CITB) have recognised that they can be a very useful channel for both communication and delivery of compliance through information and education e.g. BMF compliant selling leaflets.

4.7.3 Workmanship

NHBC, as well as being a major Approved Inspector, has a role as an insurer and warranty provider. In its experience, 95% of claims are the result of bad workmanship rather than a defect in the regulations.

Several of those interviewed suggested that levels of workmanship and therefore compliance could be improved through improved site supervision. However, they also stated that implementation of this needs to be balanced against the role of the building control professional and the misunderstanding by many contractors and householders that they act as a "Clerk of Works".

Workmanship is now particularly important for the successful implementation of measures to conserve fuel and power (Part L). The requirements for air-tightness mean that standards of construction must be improved and more attention paid to details in order to reduce heat loss through thermal bridging. This essentially means that previous practices, which were more lax, need to be tightened up to ensure that the end product is compliant and will pass the appropriate tests. This not only applies to core construction trades such as bricklaying but also the more technical. For example, the appropriate installation and subsequent commissioning of the water and heating system (e.g. boiler) are vital for its effective performance. This is very important as this system will account for over 75% of the buildings' Carbon Dioxide emissions.

4.7.4 Self-certification

Industry regulating itself was suggested by some stakeholders as the way forward. There is general support for more competent persons schemes but many stakeholders feel that these all need to be better organised and controlled by Communities and Local Government and also more integrated e.g. core level of competence applicable over several regulations such as health and safety, building and water.

There is now an increased use of self-certification for electrical and plumbing installations, thermal calculations, etc by accredited trades-people. However, concern was expressed that there are not any consistent requirements or compliance procedures between the different bodies operating these schemes. For example, the five different organisations authorised to run self-certification schemes for electrical installations do this in different ways.

RICS expressed concern that industry is not taking responsibility for compliance. "The culture in the UK is that if no one checks, it can't be important"- hence reliance on self-certification won't work!" This is the reason that many countries [Austria, New Zealand etc] are moving away from self-certification.

Some self-certification schemes are seen by stakeholders to be effective e.g. CORGI for gas safety (not via Building Regulations) but the implementation of more recent self-certification schemes is seen to be much more problematic. Many feel that competence requirements as well as management and control processes and procedures for the schemes have not been developed early enough and are not consistent. The absence of information and clear definitions has led to questions about the efficiency and effectiveness of the various schemes.

The key principle should be to ensure that responsibility rests with those best placed to manage it. There may be scope for further schemes which could naturally split between design & construction. However, any further development of this type of scheme will need careful consideration to ensure that it is practical, implementable and enforceable.

4.7.5 On-site Inspection

The views of the local authority BCOs and AIs is that legislation has increased the time needed for adequate inspection. *"It always comes down to the skill of the person on site and time to inspect [e.g. overhanging mortar, fit of flash fittings etc]"*. However they added that in designing policy, Government and civil servants don't put themselves in the shoes of the inspectors on site.

All interviews with BCOs and AIs described examples of clients "horse-trading" between LA BCO and AIs both on the basis of compliance and the overall cost of inspections. There is a suspicion that taking a service on the basis of least cost reduces the number of inspections that are made and the overall quality of the advice given.

Some of the recent Building Regulations and the Approved Documents require testing of the completed construction. This recognises the fact that effective installation (and, if appropriate, commissioning) is critical for effective operation. However, consideration should also be given to pre-construction testing of components with testing of completed construction only where the Building Control Officer has reason to be concerned about the satisfactory standard of the construction.

A recent BSRIA report[18] looked at the role and impact of Appointed Persons and concluded that they *"would not materially address the issue of a lack of on-site checking and supervision"*, but suggested *"a traceable link to individuals who had stated conformance"*. [e.g. a Building Log].

4.7.6 Enforcement

One fundamental principal generally operating across the construction industry is the attitude that – *'if I can get away with it I will'.*

Interpretation and enforcement are key drivers for compliance and the lack of an effective inspection and enforcement regime is a fundamental weakness. Many stakeholders felt that Building Regulations need teeth to be effective, but that this was currently not the case as those undertaking the work do not need to prove their competence and prosecution is not used.

A general view was that the level of enforcement has been eroded because of the expanding scope of regulations, particularly in the newer areas of building regulations, such as Parts L and P. Only the largest authorities had the resource to take on specialist surveyors with the result that Local Authority Building Control Officers often do not feel they have the expertise to enforce compliance outwith their core areas of expertise of structure, fire, water etc. [source: 7 BCO and AI interviews]. *"We're not electricians or mechanical engineers." "It is difficult to enforce if the enforcers don't understand."*

The Association for the Conservation of Energy stated in March 2006: *"Within the construction Industry, there is a total disregard for Part L. Unless the law is enforced energy savings will remain nothing but a trivial issue."* This was reinforced in the forum with views from Approved Inspectors and the general public stating that Local Authorities **must** enforce these regulations if they are to have any force or impact.

18 Appointed Persons – Summary Report – BSRIA – August 2006

A general view was to leave BCOs to enforce in their area of expertise [structure, fire, water etc] and use competent persons or an independent body for the other areas.

RICS were concerned that many are interpreting the ADs as the regulation. This applies not only to BCOs, but also to other commentators [including press] who see any deviation from the ADs as non-compliance. This may explain some of the perception of higher levels of non-compliance. RICS are concerned that only one side of the story is being told and that there needs to be more effort on communicating the positive results.

4.7.7 Prosecution

The general view was that there are better ways of enforcing regulations than taking people to court.

- Using persuasion was generally successful, as is the threat of withholding the completion certificate, which is becoming seen as valuable – this could be enhanced as a means of ensuring compliance and the public made more aware e.g. by using more stringent requirements within the Home Information Pack

- NHBC is a provider of warranty and insurance. This is a key lever for ensuring compliance. If a builder is not compliant, NHBC will refuse a certificate that, in turn, means a mortgage refusal and financial penalties. This is seen as far more effective than legal action: no warranty – no sale! They rarely have to hand back to LA BCO for prosecution.

Nevertheless, all those interviewed saw the need for effective enforcement powers to deal with a small number of cases where the developer is either too determined or too incompetent to comply.

The general view of the BCOs that were interviewed was that the time and resource to prepare a case and go to court was expensive and they would not generally go via this route except where there is a live “safety issue”.

The LABC input into a Cabinet Office study on Enforcement that summarised the views of the BCOs and AIs interviewed stated:

- There is a lack of understanding by, and expertise of, magistrates on construction matters

- The fines imposed are inadequate, both in terms of seriousness of the offence and the work put into preparing the case (although these costs are often recoverable)

- There are insufficient investigative powers

- The time limits in the Magistrates Courts Act often mean an insufficient period to take action after discovery (The move from six months from committing the offence to 2 years from discovery will help, but this needs implementing across all Parts.)

- The powers bite on the landowner/applicant where it is generally the builder who is at fault

- There is a lack of resources in local authorities that often means time-consuming enforcement action cannot be pursued.

There is general support for considering alternative penalties to give greater flexibility. This includes BCOs being able to issue stop notices and fixed notice penalties.

4.7.8 Risk Management

> *"Enforcement actions are taken across businesses of all sizes often with small businesses and legitimate businesses feeling more of a regulatory burden than larger companies, or those firms engaged in rogue trading activity. This strikes me as counter intuitive and repeat offenders as well as those that have an intentional disregard for the law should, under a risk based system, face tough sanctions". Risk based assessment also implies "a renewed focus on advice and education and less emphasis on inspections and enforcement for its own sake"*
>
> [Richard Macrory]

There is an informal system of risk management operating within Local Authority Building Control. They use a hierarchy of measures including informal contacts with builders, ad hoc and full time site presence, the provision of advice, the use of warnings and other appropriate mechanisms to establish a picture of and then mitigate risk in relation to developments. They give more attention to builders who have are either unknown or who have poorer records and reserve prosecution for really serious cases. LABC is also encouraging members to take a more formal risk-based approach to inspection and compliance, but this can lead to an emphasis on the small builder where the fee structure is not as attractive and there can be an impact on revenues.

NHBC use a key stage inspection regime similar to LAs. From their insurance background, they take a "risk based" approach to inspections. They have more inspections for those builders they consider are risky and fewer for proven practitioners.

A recent Building Services Research & Information Association (BSRIA) report[19] suggested *"A better role for LABC would be to stop performing conformance checking for all buildings and move to a regime of random in-depth checking of buildings backed up by effective penalties for non-compliance. One of the reasons given for current non-compliance is the lack of penalties / prosecution for non-compliance. This compares with penalties, such as demolition (in extreme cases) for breaches of planning approval."*

4.8 Policy Maintenance

The policy maintenance stage involves testing success and trying to make it stick. It requires the monitoring and measurement of performance as well as evaluating success and taking corrective action where necessary. This activity should act as the feedback loop which ensures that the policy intervention, in this case Building Regulation, remains on track and achieves its desired outcomes.

19 Appointed Persons – Summary Report – BSRIA – August 2006

However, the general view of stakeholders is that the desired outcomes (particularly those not relating to health and safety) are not being achieved due to weaknesses in the design, implementation and delivery of policy e.g. Part L 2006 is not being implemented by some Building Control bodies.

Stakeholders largely agree with the good intention of the policies but regard their implementation and delivery as a failure. Consequently, many stakeholders feel that Building Regulations are long overdue for a root and branch review.

There is a need to introduce benchmarks against which to measure compliance to standards. All building regulations should not only specify the implementation plan, but also how to measure impact.

Despite criticisms relating to the complexity of calculations, the revised Part L provided a model for a figure for a notional building that provides a benchmark against which improvements can be monitored over time and that can inform future consultations. However it is difficult to set benchmark standards for other areas. For example, Part B on Fire relies on inspection of individual pieces of equipment rather than a "whole building" model.

To date there has been little consideration of measures for suitable/adequate Building Standards and the BCOs don't see any feedback on levels of compliance performance – if it exists.

4.8.1 Performance Measurement

Achievement of the desired outcomes is not measured and thus it is difficult to establish whether standards are being achieved. However, there is a limited amount of measurement within post implementation reviews (where conducted) within the Building Regulations Research Programme. This is not part of an overall national monitoring system and is generally used to address issues which relate to a specific Part of the regulations.

The various information systems within Local Authority Building Control offices across the country do not form part of an integrated performance measurement system and cannot provide relevant data or statistics. These systems, from a variety of suppliers, are often part of a wider system used to manage both Development Control (Planning) and Building Control. These systems are generally effective for management of these functions at a local level but have all developed over time and outside of a national framework.

For example, the competent person self-certification scheme operators for Part P are obliged to report details of activity to the relevant Local Authority, which they do in an agreed format. However, the Local Authorities are not required to do anything with this data and not all of the LAs are set up to receive and process it. As a result it just sits in a storage e-mail account or folder in the LA and cannot be readily accessed or interrogated.

Under the current fully devolved system of building control, Communities and Local Government do not have systems for directly measuring outputs and outcomes. This causes issues for collecting data to interpret trends and provide useful information on a national level. This lack of meaningful information at the national level means that effective evidence based decision-making is hampered. Local Authority Building Control stakeholders believe that the lack of accessible evidence makes it difficult to assess the value of building control and also to measure its effectiveness.

Robust Details is the only company to be able to report nationally on a building regulation as it keeps a national database of performance results. The Part P Competent Person Schemes submit information to Local Authorities but there is no national database.

Some fundamental questions need to asked about what information is actually needed, why certain information is currently requested/produced and the overall value or potential value to be derived from the information balanced against the cost of obtaining and processing the data. It may be worth considering some form of national database for building control which could provide some useful statistics for decision making. This would obviously be more efficient if the building control notification system were electronic/automated.

4.8.2 Performance Management

Performance Management is a mechanism to help turn strategic vision into reality. It is the process of defining a vision and desired outcomes, setting performance standards, linking budget to performance, reporting results, and holding public officials accountable for results.

The existing non-directive legislative system of fully devolved building control appears to be the main reason for the absence of an effective national performance measurement or management regime for Building Regulation, leading to a lack of control. However, a clear vision, aims and objectives would need to be established in the first place before an effective regime could be implemented. In order to be effective this would need to encompass all elements of the system in an integrated manner and not just individual aspects.

To date the focus of activity has surrounded the performance of the building control bodies, primarily to ensure that competition does not lead to a reduction in the effectiveness of building control in helping to achieve compliance with the requirements of the Building Regulations:

- Before 1997 there were only two bodies operating in the Building Control arena in England and Wales: Local Authorities, consisting of approximately 400 Councils, and NHBC Building Control Services Ltd an Approved Inspector.

- In the face of emerging competition the associations representing Local Authorities developed a model policy and level of service document which was adopted by most Councils. The operations of NHBC Building Control Services Ltd. were governed by policy guidelines endorsed by Ministers of the day at the time the company was approved.

- January 1997 saw choice widened considerably with the approval of many more Approved Inspectors and from April 1999, Councils were authorised to set their own fees for carrying out the Building Regulation function. In the light of these and related developments it was considered that the time was right to develop an Industry wide agreed set of Performance Standards under which Building Control Bodies ("BCBs"), public and private sector, could offer competing services and against which all could be measured.

- With encouragement and support from Nick Raynsford MP, the then Minister for Construction, a Steering Group and a working party developed the Standards and Guidance. They set out the Standards necessary to be adopted by all to achieve best operational practice in the light of differences in the legislation affecting the public and private sectors.

- Since publication of the Standards, the Building Control Performance Standards Advisory Group has continued to meet regularly, in order to oversee their implementation, draw up performance indicators and review the effectiveness and currency of those Standards. To this end, a comprehensive consultation and survey was commissioned by ODPM in 2004 both to suggest likely improvements, and to generate suggestions toward the creation of meaningful Performance Indicators reflecting current practices.

- The Advisory Group considers that it has now fulfilled the first part of its remit and that the remaining task of actively monitoring against these standards remains to be addressed.

The underlying standards are seen as a good starting point for the basis of policy and procedures relating to building control performance. However, these Building Control Performance Standards are not mandatory and not yet monitored or audited. The standards have been recently revised to include Building Control Performance Indicators. This activity has been conducted in the absence of a clear overall strategy and the Performance Indicators thus serve to try and deliver the underlying building control standards. These indicators should be reviewed, once an overall strategy has been established, to determine their continuing fitness for purpose. This review should take place in the context of a national system for performance management; the strategy's Critical Success Factors and their associated Key Performance Indicators and should be balanced against the need to reduce the reporting burden on Local Authorities.

This attempt to implement a system shows that there is a need for assurance that control is being exercised. This will become more critical in the future as a variety of initiatives are rolled out. Statistics will be required for the implementation of the EPBD and these requirements have already been established in legislation as part of the reporting requirements introduced within the Sustainable and Secure Building Act.

An effective system would also be useful for the policy-making process and could provide an evidence base to improve Regulatory Impact Assessments for new initiatives or improvements to regulations.

4.8.3 Evaluation and Review

Many stakeholders complained about the fact that the various Parts of the Building Regulations are under continuous review.

Since their introduction, building standards have been adapted to keep pace with advances in design, technology, materials and construction and other issues such as energy conservation. To achieve this Sustainable Buildings Division's work on regulations and guidance is supported by a significant annual programme of research and technical support that provides a generally robust technical evidence base for policy.

The aims of this Building Regulations Research Programme include:

- Developing sound scientific evidence in support of reviews and amendments of the Approved Documents
- Representing and promoting UK interests in the development of international codes and standards referenced in the Approved Documents
- Keeping abreast of new technologies or design solutions to ensure that the Approved Documents are kept in line with technological progress
- Steering future development of the Building Regulations as a whole with the aim of making them more user friendly and cohesive.

The scope of the programme has continued to support the development of performance standards for the 'as built' design of buildings including new build, some refurbishment and alteration work, and change of use to existing buildings where this involves modifications to building design. The construction process and post occupancy issues have not been explicitly included but actual experience and research in these areas has been taken into account to ensure design standards set by the building regulations are appropriate in the broader context.

The programme has included reviews of legislative changes, in keeping with a longstanding commitment to measure the effects after a reasonable period of time. The frequency of such reviews has been typically 3 years – but it has been recognised that this may not be long enough to yield robust evidence, given the operation of long lead times on many projects and the transitional periods allowed for legislative change. Communities and Local Government policy officials also keep in informal contact with their stakeholders on the effects of regulations. But there is scope for a more consistent and formal approach across all the regulations to planning such reviews.

There should be a formal process and procedure for conducting review and evaluation activities within Sustainable Buildings Division. This should build on best practice advice within government and lessons learned from recent experiences such as the review of Part B. These activities should form part of a forward plan that is clearly communicated to stakeholders. They should demonstrate a clear feedback loop and ensure co-ordination and consistency across the various sections within the Division.

The stakeholders felt that research tends to be too technically focused, with a disproportionate technical influence on the policy decisions within Communities and Local Government, and that this has resulted in policy that diverges from key principles of better regulation and enforceability. They thought that it should be closely managed to ensure it remains focused on the main issues and is grounded in common sense which results in achievable recommendations and potential solutions.

RIBA suggested that this review process is much more effective when industry is fully engaged but that:

"There only has to be consultation on 'substantive' change and not 'procedural' change. Regrettably, several major changes have been considered 'procedural' and therefore not benefited from a proper consultation process, such as recent revisions to Part E."

4.9 Major issues and problem areas

A summary of the barriers to compliance and related issues is provided below:

- The most positive reactions to Building Regulations were around the original 1984 Act and the early Approved Documents dealing with Health and Safety, but that this has now been eroded and obscured. There is general recognition of the importance of newer areas dealing with energy and the environment, but criticism that the ways chosen to address these areas has led to increased bureaucracy and costs. There is little data and analysis of the impact on, in particular, the smaller enterprises in the construction market

- Nearly two-thirds of stakeholders interviewed pointed to a lack of an overall, stable strategy and direction for building regulations against which they could plan their own activities over a reasonable time period of, say, five years

- There are significant gaps in budget and people resource. There is insufficient Communities and Local Government capacity and capability to deliver meaningful change exacerbated by resource pressures, skills drain and lack of succession plan

- There is a perception across the industry that there is no "joined up" working across those Government Departments having an impact on building and construction. There is now duplication and conflicting requirements that generate confusion and additional costs and bureaucracy. There is little or no visible integration at the strategic, tactical and local operational levels

- The system has evolved in a piecemeal manner resulting in inadequate stakeholder management. Poor communications are leading to a negative stakeholder perception of Communities and Local Government and Building Regulations and there is a perceived lack of joined up processes between policy makers and implementers

- While the time for consultation on developing policy was thought adequate, the majority of stakeholders believed that there was inadequate time and resource applied to the practicalities of implementation and enforcement and the differential impact on different stakeholder groups

- While positive comments were made by larger enterprises about the flexibility for innovative design that is allowed by Building Regulations, there was much criticism made of the lack of appropriate guidance tailored to the needs of different customer groups; in particular for the smaller contractor where the risk of non-compliance is largest

- At the operational level, there is a perception that there is no joining up of the construction cycle from design, through build and operate. There is a gap emerging between "development planning" and "building regulations" in the newer areas of interest such as the environment that is adding to complexity and increased frustrations. There is inadequate consideration of the "operate and maintain" phase, once a building has been completed

- There is inadequate attention paid to approaches to affect compliance which is frustrated by excessive complexity and lack of clarity that erodes customer buy-in. Approaches to encourage compliance are generally not customer-centric and are not tailored to the benefits that could accrue to different stakeholder groups ["Carrots"]. Effective enforcement is limited and the regulations are perceived to have no teeth ["Sticks"] mainly through a lack of appropriate tools and resources. There is no consistent approach to risk management as an enforcement principle

- There is tension between the roles of Local Authority Building Control as a commercial and last resort service provider and enforcer. This is exacerbated by a reduction in the resource and training resulting in them prioritising and addressing the areas that they perceive to be important e.g. Health & Safety

- There is a need for a more effective national performance management system that facilitates control and allows feedback between the different groups making, delivering or affected by Building regulations

- Despite recent efforts to address the issue, the current situation is that generally Building Regulations do not meet the Principles of Good Regulation or those of effective inspection & enforcement leading to an unnecessary administrative burden on businesses and owners.

4.10 So – are Building Standards working?

Unfortunately the answer appears to be – not as well as they should.

Larger building projects are trying to work with them and have sufficient resources to absorb the inefficiencies of the system.

Smaller projects do not have the funding for the level of resource required to ensure compliance and the system is driving more of them away.

However, the largest volume of building projects fall into this category, which also represents the highest risk to compliance.

Building Control Bodies are also constrained by resources and are thus prioritising and addressing the areas that they perceive to be important e.g. Health & Safety.

The Government has recognised that there are some issues with the existing system of Building Regulation, including concerns about compliance and enforcement. In particular, the Communities and Local Government is interested in reviewing the effectiveness of its guidance, concerns about industry's ability to find the right resources, and questions about whether Building Regulations are targeting the right things in the right way.

As a result they have initiated a programme of work to consider the current situation of Building Regulations and how they manage and maintain them, and to identify what they might do to improve this. This report forms the first step in that process. Communities and Local Government has already started taking steps to address some of the issues but much work still remains.

5 What could be improved?

5.1 Using the Principles of Better Regulation

To identify major areas for improvement, a framework was developed that was based on the five principles introduced by the Better Regulation Task Force in 1997 and the Hampton principles of inspection and enforcement.

- **Proportionality:** remedies should be appropriate to the risk posed, and costs identified and minimised.
- **Accountability:** regulators must be able to justify decisions, and be subject to public scrutiny
- **Consistency:** rules and standards must be joined up and implemented fairly
- **Transparency:** regulators should be open, and keep regulations simple and user-friendly
- **Targeting:** regulation should be focused on the problem, and minimise side effects
- **Enforceability:** to be effective, regulation must be practical to enforce.

A research questionnaire was developed that asked respondents their level of agreement with a set of statements about building regulations based on the six areas above. 65 responses were provided. It should be noted that this questionnaire was used to supplement a face-to-face interview and designed to explicitly uncover areas for major improvements identified where respondents disagreed or disagreed strongly with a statement on how Building Regulations were meeting one of the elements of better regulation, inspection or enforcement. It should also be noted that the questionnaire was administered soon after the recent introduction of Part L updates that attracted much adverse criticism from the industry. However we believe that the areas identified for improvement remain valid.

5.2 Proportionality

> *"It is arguable that the burden of compliance with the Building Regulations is becoming disproportionate to the perceived benefits – especially since enforcement has been erratic and inconsistent."*
>
> [SEC Group Briefing]

General tests for proportionality include:

- **Don't use a sledgehammer to crack a nut:** Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed.

- **Consider all options:** All the options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply.

- **Consider small businesses:** "Think small first". Regulation can have a disproportionate impact on small businesses, which account for 99.8% of UK businesses.

- **Try to educate:** Enforcers should consider an educational, rather than a punitive approach where possible.

- **Balance enforcement measures:** Enforcement regimes should be proportionate to the risk posed.

- **Don't over-engineer:** For example, EC Directives should be transposed without gold plating.

From the questionnaire, the statement associated with proportionality that had the highest **positive** response was *"The 1984 Building Act and the* original *supporting documentation provided clear, practical and targeted guidance with flexibility to allow different and innovative construction solutions."*

The areas associated with proportionality in the questionnaire that emerged as requiring most improvement were identified by looking at the percentage of respondents who **disagreed strongly or disagreed** with specific statements. The four most **negative** comments (shown in priority order e.g. those with a higher level of responses stating strong disagreement appear first) were:

Table 4 – Areas for Improvement – Proportionality

Proportionality	
Statement	Disagree
Introduction of the new building regulations does not lead to an unacceptable burden on building control bodies or additional costs to the householder or businesses	73%
When new policies are being developed, explicit consideration is given to how they can be enforced using, where possible, existing systems and data to minimise the administrative burden imposed	67%
Those responsible for developing building regulations sufficiently recognise the economic impact on all those affected by their implementation and enforcement	72%
Sufficient support and resource is available to ensure that an educational rather than a punitive approach to compliance can be adopted	74%

Some areas for improvement are:

- **Ensure that adequate attention is paid during consultation to the economic impact and the practicalities of implementation and enforcement on different groups, particularly small builders**

  Three of the statements above form the questionnaire address the economic impact of compliance. From the interviews, the most negative impact was seen to be on smaller businesses whilst larger developers were seen to be able to absorb the costs. SBS Analytical Unit estimated that 87% of all construction companies [SIC code 45] had no employees.

- **Ensure that Approved Documents provide guidance that is proportionate to the needs of different industry groups and types of building project**

  A Building Services Research & Information Association (BSRIA) report[20] considered proportionate guidance for Building Regulations, stating for example:

  During the interviews, stakeholders felt that the guidance in the Approved Documents for Part E was proportionate as it applied to separating walls/floors and internal walls/floors. Noise transmission between separate dwellings was perceived to be a far greater risk than noise transmission between rooms in a dwelling, and this was reflected by higher performance criteria, more performance-based and complex methods of demonstrating compliance, and requirements for competency.

  An example of where some stakeholders felt that the guidance was disproportionate was the Part L Approved Documents. The National Calculation Method, mandatory air tightness testing, and approved competent persons schemes for both are applied to all new buildings, but the complexity and cost in terms of additional training, design time and testing was perceived to be disproportionately high for smaller and less complex buildings.

- **Consider methods for increasing the performance standards of the existing building stock**

  Building Regulations tend to address new buildings. Where they are used to address existing stock, such as Consequential Improvements, all the LA BCOs interviewed commented that the results increased bureaucracy and were inefficient.

5.3 Accountability

> *"The industry has become concerned that consultation over changes to the Building Regulations are inadequate. For example, in a recent consultation exercise concerning changes to Part P, respondents were given 48 hours in which to provide feedback on the proposed changes"*
>
> [SEC Group Briefing]

20 Usability of Performance Based Regulations, BSRIA, Nov 2006

General tests for accountability include:

- **Consult before making decisions:** Proposals should be published and all those affected consulted before decisions are taken.

- **Explain how decisions were reached:** Regulators should clearly explain how and why final decisions have been reached.

- **Work to clear performance standards:** Regulators and enforcers should establish clear standards and criteria against which they can be judged.

- **Allow for complaints and appeals:** There should be well-publicised, accessible, fair and effective complaints and appeals procedures.

- **Ensure clear lines of accountability:** Regulators and enforcers should have clear lines of accountability to Ministers; Parliaments and assemblies; and the public.

94% of those interviewed agreed in principle that the Government had taken **overall** accountability for dealing with new technologies, climate change and energy resources.

The areas associated with accountability in the questionnaire that emerged as requiring most improvement were identified by looking at the percentage of respondents who **disagreed strongly or disagreed** with specific statements. These correlated to insufficient time taken to consider the practical implications of implementation and the wider range of stakeholders that need to be included. The four most **negative** comments were:

Table 5 – Areas for Improvement – Accountability

Accountability	
Statement	Disagree
All those affected by new building regulations, or changes to existing building regulations, are consulted before decisions are taken; there is sufficient time and information to enable all to respond	81%
The consultation process adequately takes into account the full range of views and expertise from those affected by building regulations; feedback is given on how these views have been used to develop the final regulations	67%
When new policies are being developed, explicit consideration is given to how they can be enforced using, where possible, existing systems and data to minimise the administrative burden imposed	67%
How and why the final versions of the regulations are reached is clearly explained and communicated	66%

Some additional areas for improvement are:

- **Improve stakeholder management and communications**

  Over three quarters of those interviewed believed that, although sufficient time and breadth of consultation is allowed for defining policy, there is insufficient representation of groups that will be affected by the implementation of that policy. The involvement of the product and supply industry in considering how to implement was also seen to be inadequate.

  The majority of LA and private BCOs also stated in the interviews that there was insufficient clear communication on how and why a policy decision was reached that could be used with their own customers.

- **Address the perception that the political agenda drives the timings for implementation and does not allow sufficient time or resource to ensure design and implement effective implementation**

  The most quoted rationale in the interviews for the reduced time now allowed for implementation was that the political imperative now overrides consideration of the practicalities of implementing Building Regulations. This particularly was seen to apply to sustainability and environmental issues.

5.4 Consistency

> *"There is growing concern over recent years that the sheer volume of the Building Regulations together with second and third-tier documents is producing widespread inconsistency that is becoming a barrier to effective enforcement"*
>
> [SEC Group Briefing]

General tests for consistency include:

- **Integrate with other regulators:** Regulators should be consistent with each other, and work together in a joined-up way.

- **Ensure the regulations are joined-up:** New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin.

- **Don't keep changing things:** Regulation should be predictable in order to give stability and certainty to those being regulated.

- **Design out postcode enforcement:** Enforcement agencies should apply regulations consistently across the country.

The areas associated with consistency that emerged as requiring most improvement from the questionnaire were identified by looking at the percentage of respondents who **disagreed strongly or disagreed** with specific statements. The four most **negative** statements were:

Table 6 – Areas for Improvement – Consistency

Consistency	
Statement	**Disagree**
Different parts of building regulations are consistent with each other and there is no confusion in implementing them	72%
Across the end-to-end construction process, building regulations are "joined up" consistently with other areas such as planning approvals etc	69%
The overlap with other policy areas such as health and safety does not lead to more bureaucracy and cost	69%
While developing new, or amending an existing building regulation, policy makers take account of other building regulations, in order to create effective and joined up policy that avoids possible conflicts	60%

Some additional areas for improvement are:

- **Ensure joint working across Government departments to ensure Building Regulations are co-ordinated with other appropriate legislation**

- **Ensure that there is consistency between the different parts of the building regulations to remove possible confusions. Remove duplications, inconsistencies and ambiguities**

  There is an opportunity to implement recommendations 6 and 7 of Better Regulation Commission report on Risk, Responsibility and Regulation to review the stock of regulation to make sure it allocates risk appropriately and launch a 2007 campaign against regulatory inconsistencies and absurdities within Building Regulations.

- **Put in place a stable long term plan for Building Regulations against which industry can prepare adequately and that provides stability**

  In addition to the questionnaire, every stakeholder group that was interviewed and the publications of professional bodies supported the need for a stable long-term plan to provide consistency.

- **Ensure that there is effective integration across the construction cycle**

  This includes the relationship between planning and building at the operational level particularly in the area of sustainability and renewables and the possible effect of competition between local authority BCOs and Approved Inspectors in the design phase.

5.5 Transparency

> *"Building Regulations are not generally understood by industry, let alone by the enforcement Authorities. Advice and guidance on implementation and enforcement is often inadequate, provided late or not provided at all"*
>
> [SEC Group Briefing]

General tests of transparency include:

- **Give stakeholders enough time to respond:** Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents.
- **Issue clear guidance in good time:** Regulations should be clear and simple, and guidance, in plain language, should be issued 12 weeks before the regulations take effect.
- **Ensure that people are aware of their obligations:** Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished.
- **Help people to comply:** Those being regulated should be given the time and support to comply. It may be helpful to supply examples of methods of compliance.
- **Be clear about the consequences of non-compliance:** The consequences of non-compliance should be made clear.

The areas associated with transparency that emerged as requiring most improvement from the questionnaire were identified by looking at the percentage of respondents who **disagreed strongly or disagreed** with specific statements. The seven most **negative** statements were:

Table 7 – Areas for Improvement – Transparency	
Transparency	
Statement	Disagree
Sufficient time and resource is provided for training and gearing up of, for example, designers, professional bodies, manufacturers, suppliers, builders and building control officers for implementing building regulations to ensure a high rate of compliance	83%
The resulting building regulations are clear, simple and easy to understand, practical to implement and focus only on core objectives such as health & safety, sustainability, etc	78%
The period between consultation and implementation of new and amended building regulations is adequate to develop implementation plans and briefings that will enable a high level of compliance	76%
Guidance, examples and support for those affected by building regulations are issued in plain language and in sufficient time before they come into effect	74%
Approved Documents still provide adequate, practical guidance to understand how to comply with building regulations and are written in the language of the user	59%
The reference out to third parties within the Approved Documents has not led to additional complexity and costs for the average user	59%
In order to meet building regulations, guidance and templates are available that are suitable and adapted for the needs of different groups such as small builders and DIY householders	59%

Some additional areas for improvement are:

- **Ensure that the period between publication of Building Regulations and their implementation are adequate**

  The questionnaire and the interviews confirmed that the period allowed was inadequate to ensure awareness programmes, training, compliance processes and changes in resource and processes to be put in place

- **Revise and improve the guidance on Building Regulations offered to different groups**

  Guidance is not targeted to meet the needs of different user groups ranging from the flexibility to develop alternative compliance methods through to prescriptive guidance for smaller projects and simpler buildings.

  Approved Documents have not retained their original drafting clarity that gave clear guidance on compliant construction details and methodologies and show undue reliance on Third Party documentation.

5.6 Targeting

> *'With very few exceptions, stakeholders in all professions supported areas of the Approved Documents that currently permit the applicant to make a choice between prescriptive and performance-based methods of compliance. They were also in favour of expanding this principle to areas where the Approved Documents currently only give one method of compliance. In particular, simple prescriptive guidance should be available for smaller projects and simpler buildings, whereas more complex performance-based guidance should be available for larger and more complex buildings'*
>
> (BSRIA)

General tests of targeting include:

- **Define and communicate objectives clearly:** Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties.

- **Take stakeholders views and expertise into account:** Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken into account.

- **Focus on the problem:** Regulations should focus on the problem, and avoid a scattergun approach.

- **Use a goals-based approach:** Where appropriate, regulators should adopt a "goals-based" approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets.

- **Adapt guidance to users needs:** Guidance and support should be adapted to the needs of different groups.

- **Focus enforcement using risk:** Enforcers should focus primarily on those whose activities give rise to the most serious risks.

- **Keep checking that regulations are fit for purpose:** Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.

The most **positive** response from the questionnaire was that over 90% believed that there was a need to target on improving building performance standards to deal with new technologies, climate change and energy resource.

The second most **positive** response was that over 40% believed or believed strongly that the 1984 Building Act and the *original* Approved Documents provided clear, practical targeted legislation.

The areas associated with targeting that emerged from the questionnaires as requiring most improvement were identified by looking at the percentage of respondents who **disagreed strongly** or **disagreed** with specific statements. The four most **negative** statements were:

Table 8 – Areas for Improvement – Targeting

Targeting	
Statement	Disagree
The resulting building regulations are clear, simple and easy to understand, practical to implement and focus only on core objectives such as health & safety, sustainability, etc	78%
The methods for checking and enforcing compliance have been considered and are as simple and non-bureaucratic as possible involving no unnecessary level of inspection	66%
Sufficient thought has been given to possible alternatives, or complementary approaches, to building regulation in these emerging areas that can be applied to enable, for example, the UK to meet carbon generations and energy efficiency targets	64%
While developing new, or amending an existing building regulation, policy makers take account of other building regulations, in order to create effective and joined up policy that avoids possible conflicts [side effects introduce complexity]	60%

Some additional areas for improvement are:

- **Review the current effectiveness of inspection as means of ensuring compliance**

  From the interviews the effectiveness of inspection as a means of ensuring compliance particularly in areas where additional specialist knowledge, resource and training is required for elements outwith core expertise in structure, fire water, etc.

  Investigate the perceived reduction in resource and training available to the LA BCOs that possibly arises from inadequate ring fencing of money within councils for building control.

- **Ensue that adequate consideration is given to alternatives or complementary approaches to building regulation as a means of reaching targets**

- **Put in place an effective performance management regime for the Building Regulation and control system**

  There is inadequate data and processes for review and evidence–based decision making on the effectiveness of current/potential regulations and associated practices.

5.7 Enforceability

> *"There is considerable support from architects for building regulations to develop higher building performance standards to deal with climate change and sustainable energy usage. However, this must be done with a clarity of purpose; with a long-term vision for improved performance; as well as the regulations being practical and understandable for effective implementation and compliance."*
>
> (RIBA)

General tests of enforceability include:

- **Concentrate resources where they are needed most:** Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- **Operate an efficient and effective system:** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- **Make regulations easy to understand and enforce:** All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted
- **Don't inspect without reason:** No inspection should take place without a reason
- **Don't ask for unnecessary information:** Businesses should not have to give unnecessary information, nor give the same piece of information twice
- **Take swift action against persistent offenders:** The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- **Provide accessible advice:** Regulators should provide authoritative, accessible advice easily and cheaply
- **Design-in effective enforcement:** When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed
- **Resource enforcement properly:** Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- **Ensure economic progress is not impeded:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

The areas associated with enforceability that emerged from the questionnaires as requiring most improvement were identified by looking at the percentage of respondents who **disagreed strongly** or **disagreed** with specific statements. The seven most **negative** statements were:

Table 9 – Areas for Improvement – Enforceability

Enforceability	
Statement	Disagree
The period between consultation and implementation of new and amended building regulations is adequate to develop implementation plans and briefings that will enable a high level of compliance	76%
Introduction of the new building regulations does not lead to an unacceptable burden on building control bodies or additional costs to the householder or businesses	73%
When new policies are being developed, explicit consideration is given to how they can be enforced using, where possible, existing systems and data to minimise the administrative burden imposed	67%
The resulting building regulations are clear, simple and easy to understand, practical to implement and focus only on core objectives such as health & safety, sustainability, etc	78%
In addition to technical or specialist inputs, the consultation process adequately takes into account the practicalities of implementing and then enforcing building regulations	73%
Those responsible for developing building regulations sufficiently recognise the economic impact on all those affected by their implementation and enforcement	72%
The system of building control has not been made more complex and created an administrative burden for the building regulation enforcers	67%

Some additional areas for improvement are:

- **Move towards a risk based approach to inspection and enforcement that concentrates on a small number of the most persistent offenders complemented by an educational approach**

  From the questionnaire, a major area for improvement was to check that the methods for enforcing compliance are as simple and non-bureaucratic as possible with no unnecessary level of inspection.

  The interviews suggested the need for an improvement in the level of education for the industry rather than applying a punitive approach to enforcement. Over three quarters of the Building Control Officers in the interviews believed that they should concentrate on the most persistent offenders, but that they also required additional Local Authority resource to bring cases effectively to court. There was also support from professional bodies and BCOs for the use of on-site fines and stop notices as a proportionate alternative to court action.

- **Review the resource needed to support enforcement effectively**

  There is a potential tension between the role of the LA BCO as a provider of services and as an enforcer of building regulations. Consideration should be given to splitting these roles to create an independent inspection capability with adequate resourcing.

5.8 How could we simplify Building Regulations?

There is a clear rationale for reducing the administrative burden that regulations impose on business. Complying with the information requirements of UK regulations is estimated to cost some £20-40 billion p.a. This can hamper business, channelling resources away from more efficient uses and act as a constraint on innovation, productivity and growth. The approach to simplifying regulation put forward in the Better Regulation Task Force report 'Regulation: Less is More'[21] offers a way to reduce paperwork and administrative costs, saving businesses money and freeing up people for more productive activities. This seeks to achieve a better balance between new regulations coming in and simplifying existing regulations, including removing unnecessary ones.

Government departments are developing rolling programmes of simplification. Simplification is the term given to something that will reduce policy or administrative costs to business and frontline public services. The aim is to reduce regulatory burdens without removing necessary protections. Measures to simplify regulation could:

- **Deregulate** – remove regulations from the statute book, leading to greater liberalisation of previously regulated regimes

- **Consolidate** – bring together different regulations into a more manageable form and restate the law more clearly

- **Rationalise** – use 'horizontal' legislation to replace a variety of sector specific 'vertical' regulations and resolve overlapping or inconsistent regulations

- **Reduce administrative burdens** – simplify forms, increase the intervals between information requests and share data.

Departments are developing plans which will cover the sectors and include measures mentioned above. Plans will include targets for reducing administrative burdens following implementation of the Standard Cost Model in the UK.

The Communities and Local Government Simplification Plan indicates that Building Regulations are one of the department's principal measures to reduce the administrative burden on businesses. An administrative burdens measurement exercise has identified that Building Regulations are the second highest contributor (after Planning), with an estimated burden of £387m representing 17% of the total. There are several initiatives already in place which attempt to secure administrative burden savings, including:

- **Competent Persons Schemes** – alternatives to the traditional building control process, allowing self certification of compliance by competent persons obviating the need for inspection by a building control body – introduced in 2005

- **User Centred Guidance** – a programme of improvements to the way online guidance is provided and services accessed – introduced in 2006

21 Regulation – Less is More: Reducing Burdens, Improving Outcomes, Better Regulation Task Force, March 2005

- **Building Regulations Review** – a review of the Building Regulations and their management, examining the achievement of building standards, stakeholder awareness, compliance, communications and roles and responsibilities in order to identify further areas for administrative burden savings – initial findings due at the end of 2006

- **e-Enablement of the Building Control Service** – a range of initiatives to e-enable Building Control service delivery – anticipated in 2007.

However, these are just the first formative steps and much more can be done to integrate regulation better and simplify processes.

5.9 Suggested areas for improvement

A summary of the areas for potential improvement is provided below:

- Formalising and improving stakeholder management and communications to ensure appropriate representation and deliver two way communication

- Addressing the need for implementation plans which are realistic and allow sufficient time and resource to ensure smooth transition, adequate training, appropriate support and effective implementation

- Putting in place a stable long term plan for Building Regulations against which industry can prepare adequately and that provides stability

- Ensuring that there is work across Government departments to ensure Building Regulations are co-ordinated with other appropriate legislation

- Ensuring that there is consistency between the different parts of the building regulations to remove possible confusions and remove duplications, inconsistencies and ambiguities

- Ensuring that adequate consideration is given to alternatives or complementary approaches to building regulation as a means of reaching targets

- Considering methods for increasing the performance standards of the existing building stock and reviewing the impact of consequential improvements on smaller projects

- Ensuring that adequate attention is paid during consultation to the economic impact and the practicalities of implementation and enforcement on different groups, particularly small builders

- Ensuring that the period between publication of Building Regulations and their implementation are adequate to allow the building of awareness, training and resource to be put in place

- Ensuring that Approved Documents provide guidance that is proportionate to the needs of different industry groups and types of building project and revising and improving the guidance on Building Regulations offered to different groups

- Ensuring that there is effective integration across the construction cycle, particularly the overlap between development planning and building control

- Reviewing the current effectiveness of inspection as a means of ensuring compliance

- Considering alternatives to the traditional building control process, allowing more self certification of compliance by competent persons obviating the need for inspection by a building control body

- Considering splitting the role of LA BCOs as providers of service and as enforcers of Building Regulations to produce an adequately resourced inspection and enforcement function

- Moving towards a risk based approach to inspection and enforcement that concentrates on a small number of most persistent offenders complemented by an educational approach

- Putting in place an effective performance management regime for the Building Regulation and control system

- Continuing steps to simplify the regulations to ensure that the administrative burden is reduced, through investigating new potential initiatives and implementing existing plans such as the e-enablement of the Building Control Service.

6 Is there another way?

This section considers alternative models for achieving standards from the building control systems across Europe and from other relevant UK regulatory regimes. It also examines other important factors required for the achievement of standards.

6.1 Other Building Control Systems in Europe

The table below provides a detailed overview of building control in 15 European countries including England & Wales and Scotland. The most common features across the sample of European countries shown in the table were:

- Planning approved by a building authority
- Approval of plans by a building authority
- Announcements made to a building authority – start of construction
- Completion certificate provided by a building authority.

Overall, there are fewer differences in building control throughout Europe than might be expected:

Zoning and Planning – Looking at whether a building project accords with local development plans, is normally performed by government authorities, not by independent private persons or private building control organisations. The economic, political and social decisions remain the responsibility of the local or regional authorities.

The **application of technical requirements** is checked in various ways throughout Europe. In some countries, local authorities have to approve the way the private control organisations propose to carry out any checks by agreeing and monitoring an overall check control plan.

Control of Technical Requirements – The building authorities are still generally involved in the approval of the general plans and issuing of building permits, with some exceptions where this may be done by private building control institutions similar to the UK model. In those countries where the building authority approves the plans and technical details, the actual checking is sometimes partly transferred to independent private experts.

Control Activities during the Construction Phase – In most countries the start of the construction has to be notified to the authority. Depending on the complexity of the project, notice also has to be given to the authority at further critical stages of the construction process. There are differences between countries with regard to the frequency of inspections and to the organisation of such inspections. In a number of countries the inspections are partly delegated to private persons.

Completion of the Building – In most countries completion certificates are still being issued. In a few countries a declaration by the owner, builder or architect is sufficient for certain types of buildings.

Private Building Control – While building control originally used to be only performed by authorities, elements of private control can now be found in nearly all the countries examined, at least by means of delegation of tasks to independent private experts. In some countries there are full private building control systems that are often related to insurance systems.

Maintenance and use/Responsibility of control – Most countries operate similar regimes regarding maintenance and use: the owner is responsible for maintaining the building. The main bodies responsible for control are the local authority, the owner, the building authority, the fire authority, as well as the health and safety authority.

In all the countries looked at, local or regional authorities are in charge of the building permit systems i.e. to grant the permits. Only in England & Wales does an alternative system exist where private organisation can grant the permit for technical aspects.

Both private and public organisation can be responsible for checking the design application and the on site inspection. When private parties are responsible for these tasks, local authority building control stays in charge to supervise the control of these private organisations.

It was also noted, and confirmed by BSI, that the development for the common market for services and products in the construction sector in Europe will further increase the importance of private building control which can, unlike government authorities, extend its activities across national borders.

Table 10 – Comparison of European Building Control Systems

	Austria	Belgium	Czech Republic	Denmark	Finland	France	Germany	Ireland	Netherlands	Norway	Poland	Spain	Sweden	Scotland	England & Wales
Zoning and Planning															
Planning approval by building authority	x		x	x		x	x			x	x	x	x	x	x
Planning approval by other authority					x			x	x						
Building Plans Approvals															
Approval of plans by building authority	x	x	x	x	x		x		x	x	x	x	x	x	x
Approval of plans by private, independent expert	x						x			x					x
No approval of plans						x									
Construction phase															
Announcements to authority	x		x	x	x		x	x		x		x	x	x	x
Inspections by building authority	x				x		x	x	x			x	x	x	x
Inspections by other authority											x				
Inspections by private, independent expert	x		x	x		x	x			x		x	x		x
No inspections		x													
Completion															
Declaration by owner, builder or architect	x						x				x	x	x	x	
Completion certificate by authority	x	x	x	x	x		x		x	x		x	x	x	x
Completion certificate by private independent expert															x
Private buidling control schemes															
Complementary private building control available		x						x				x			
Complementary private building control partly compulsory				x		x									
Private building control accepted to replace control by authority															x
Responsibility for Operation, Maintenance and Repair															
Local authority						x		x				x		x	x
Owner	x				x		x				x				
Building authority	x			x	x				x	x	x		x		
Fire authority		x	x	X				x	x	x			x	x	x
Health & Safety authority			x	x				x		x			x	x	x

The recently revised system of the building control in Scotland provides some interesting ideas for alternatives, essentially within this:

- The duty to comply with the building regulations lies with the owner, or in some cases the client, for the work. Before work begins a building warrant must be obtained. For some simpler works a warrant is not required, but the regulations still apply. The owner or client again has the duty to comply. The role of issuing warrants and accepting completion certificates rests with verifiers, enforcement is by local authorities, and the system is overseen and updated by the Scottish Building Standards Agency (SBSA) advised by the Building Standards Advisory Committee. This agency is an executive agency of the Scottish Executive Development Department; that is to say it is an integral part of the Scottish Executive and answers directly to the responsible Scottish Minister.

- The SBSA works closely with the Scottish Association of Building Standards Managers (representing Local Authority verifiers) via the Building Standards Forum to resolve any issues, achieve a common understanding and the ensure effective operation of the building standards system. To support the verifiers, the system also allows for approved certifiers of design and approved certifiers of construction (installation) to self-certify that certain work complies with the building regulations.

- The building standards system is pre-emptive, ensuring so far as possible that the proposed works will comply with the regulations. It recognises that proposals can change during construction, so there are requirements for amendments to the proposals to be agreed and recorded. On completion, the owner or client must certify that the works have been constructed in accordance with the building warrant and the building regulations. The verifier will make reasonable inquiry to ensure the completion certificate is accurate before accepting the certificate. Usually an inspection of the works will be made, and on most projects some inspection of work in progress will also have been carried out. However verifiers cannot inspect all materials and work on every building site. It is the client that should put in place the contractual and practical arrangements needed to assure themselves that the desired quality of work has been achieved.

This analysis is largely based on a report by the Consortium of European Building Control[22]. We are aware of, but did not have access to, a more detailed report on fewer European countries by the Delft University of Technology[23] which provides a comparison of systems of building control and technical requirements. Further study on this subject, supplemented by analysis of the systems from other countries (including those outside Europe such as Singapore, Australia, New Zealand etc.), and in particular the lessons learned from the recent revision of the building control system in Scotland, would be extremely useful.

22 Building Control Systems in Europe, Consortium of European Building Control. 2006

23 Building Regulations in Europe, Part I: A Comparison of the Systems of Building Control in Eight European Countries & Part II: A Comparison of Technical Requirements in Eight European Countries, Housing and Urban Policy Studies, L Sheridan, H J Visscher and F M Meijer, 2006

6.2 Other Regulatory Regimes

6.2.1 Fire Regulations

The Regulatory Reform (Fire Safety) Order came into effect on 1st October 2006. The Order amends or replaces 118 pieces of legislation and applies to the majority of premises and workplaces in the UK.

The key objectives of the Regulatory Reform Order (RRO) are to:

- Create a single regime, which can be better understood and administered by businesses and the relevant authorities
- Create a regime clearly based on risk assessment and fire prevention and mitigation measures
- Increase compliance
- Focus resources for fire prevention on those premises which present the greatest risk
- Ensure that fire safety facilities and equipment (including fire alarms) are well maintained.

The main features are:

- Designers are required to carry out an initial fire risk assessment as part of the design process
- The fire risk assessment must be kept under review for all premises. Failure to comply with the order will almost certainly put an occupier in breach of its buildings insurance policies. To support compliance, a set of guides has been developed
- Building sites will be governed in part by the revised Part B of the Building Regulations governing fire safety
- Upon completion of the building, an updated fire risk assessment recording fire safety provisions included in the building design must be provided to building control
- The main enforcing authority is the local Fire Brigade; its task is to make sure that the new Order actually is enforced and to set penalties if it is not
- A 'responsible person' must be appointed. The responsible person is the key duty holder (usually the person who owns, occupies or controls the building) and is thus required to provide, carry out and maintain a Fire Risk Assessment, produce a policy, develop procedures (particularly with regard to evacuation), provide staff training and carry out fire drills. Upon request the fire risk assessment has to be presented to the fire safety enforcing authority
- A 'competent person' with 'sufficient training experience and knowledge' in fire control must be appointed to assist the responsible person. .

In summary, risk assessments must be carried out on all premises and buildings other than dwelling houses in single occupation. The intention is to prevent fires in the first place and to reduce the risks should fires break out. This outlines that employers, building owners and others with liability for the premises and its operation are now responsible to ensure the safety of everyone who uses their premises including those in the immediate vicinity. The emphasis is on the 'responsible person' to make the premises safe by using 'preventative measures'.

6.2.2 Health & Safety Regulations

The Health and Safety Commission (HSC) is responsible for the regulation of almost all the risks to health and safety arising from work activity in Britain with overall responsibility for the administration of the Health and Safety at Work (HSW) Act 1974.

The health and safety system is enforced by the Health and Safety Executive (HSE) or by Local Authorities (LA) according to the main activity carried out at the premises. HSE inspectors enforce health and safety legislation in over 600,000 establishments – involving around 13.2 million workers. They also inspect temporary establishments and transient sites, for example, in the construction industry. LAs enforce the HSW Act in around 1,250,000 premises such as places of entertainment, offices, hotels, warehouses and retail establishments involving around 10 million workers and members of the public.

Principles of Good Regulation: In developing its policy, HSC/E follows the principles of good regulation adopted by the Government and has built in these principles into the processes followed by its policy staff. This includes formal impact assessments to ensure that no one group is discriminated against unfairly and, in particular, outlines the impact on small firms and any measures to help them comply. The assessment also sets out the arrangements for compliance and sanctions for non-compliance, and how the policy will be monitored and evaluated.

HSC/E Simplification Plan 2006: HSC/E has developed a simplification plan drawing together a number of strands of HSE commitment to better, smarter regulation. It builds upon their strategy for health and safety to 2010 and beyond and is arranged around four strategic themes:

- **Developing closer partnerships** with business, workers and other stakeholders to improve health and safety outcomes.

- **Helping people to benefit from effective health and safety** management through better, smarter legislation that: is easy to understand and comply with; maintains and improves levels of worker and public protection, and helps to secure stronger commitment and compliance from businesses.

- **Focusing on core business and the right interventions** through initiatives to target consistent, proportionate enforcement activity where it will have the greatest impact and deal effectively with non-compliance.

- **Communicating the vision** providing clearer, simpler advice and information, particularly for small businesses, that will encourage greater compliance.

Proposed Construction (Design and Management) Regulations (CDM)

While the prime objectives of the building regulations are to promote health & safety in and around buildings there are other regulations affecting health & safety on building sites administered separately, by the Health and Safety Executive. Occupational health and safety during construction is covered by the Health and Safety at Work Act 1974 and associated regulations such as the proposed Construction (Design and Management) Regulations.

The new CDM regulations consolidate and revise the main pieces of existing construction health and safety at work legislation, namely – the Construction (Design and Management) Regulations 1994 (CDM 1994) and the Construction (Health, Safety and Welfare) (CHSW) Regulations 1996. The revision was undertaken following concerns about the complexity of CDM 1994 and the bureaucratic approach taken by many duty holders.

The proposals were developed in close collaboration with a range of stakeholders, representing all parts of the construction industry reflecting over 10 years' practical industry and HSE experience. Certain industry groups raised concerns, particularly in relation to perceived burdens on small and inexperienced construction clients. Action is being undertaken to address these with the help of the industry partners supported by a planned communications strategy and programme of targeted activities and events.

The aims for the revision are to reduce construction accidents and ill health by:

- Being clearer – making it easier for duty holders to know what is expected of them
- Being flexible, so accommodating the wide range of contractual arrangements found in the construction industry
- Emphasising the need to plan and manage work, rather than treating the paperwork as an end in itself
- Emphasising the communication and co-ordination advantages of duty holders working in integrated teams
- Simplifying the way duty holders assess competence.

The key changes are framed to reflect and progress the Better Regulation agenda, while maintaining or improving health and safety standards:

- Consolidation of existing key construction legislation and restructuring of Regulations
- Simplified trigger for formal appointments and plans; enhanced client duties
- New CDM Co-ordinator role introduced; clarification of designer duties
- Simplification of competence assessment

- Work underway with Communities and Local Government and LAs investigating scope for better integration of CDM, Building Control and Planning regimes.

A thorough final Regulatory Impact Assessment (RIA) concluded that CDM 2007 will place no undue burden on contractors, principal contractors or designers, as their duties are either clarified (particularly in the case of designers) or remain essentially unchanged. The greatest impact of the proposals will be on clients – who, because of their influence on the way projects are conducted, are central to CDM 2007's success in improving health and safety in construction.

As small and occasional clients may feel threatened and overawed by what they see as a "new" duty, these concerns will be addressed in a code of practice [CDM 2007 Approved Code of Practice] and guidance that sets out simply and clearly what duty holders (particularly small and occasional clients) need to do to comply with the Regulations. In contrast, larger clients generally welcome the proposals, as they see the revised duty as an opportunity to become more involved with the process, and in so doing they expect to realise broader business benefits.

HSE and the industry are working together to produce a joint launch programme, to be followed up with a full Benefits Realisation Plan (incorporating the communications plan) to ensure that the benefits of the package are realised. Key target audiences will be small clients, designers and CDM Co-ordinators, with key messages based on driving out bureaucracy and emphasising sensible risk management.

A report by Tim Kind (The Construction Design and Management Regulations 2006 Small Business and one-off/occasional Clients Responsibilities – Consultation and Report: HSE April 2006), the CCG and the SBTAF suggested that CDM 2007 and the Building Regulations and Planning regimes could be better integrated, and this would particularly benefit small clients. This report also expressed concerns about whether smaller clients had enough knowledge of the construction process to comply with the enhanced duty on management arrangements.

Housing Health and Safety Rating System

The Housing Health and Safety Rating System (HHSRS) is a new risk assessment tool used to assess potential risks to the health and safety of occupants in residential properties in England and Wales. The legislation came into effect in England on 6 April 2006 and in Wales later in 2006.

The guidance provided is aimed at non-specialists, in particular private landlords, to help them understand the requirements under the Housing Act 2004 in relation to the HHSRS and to further help them to identify the type of work that is needed on their properties to conform to the HHSRS.

6.3 Other Considerations

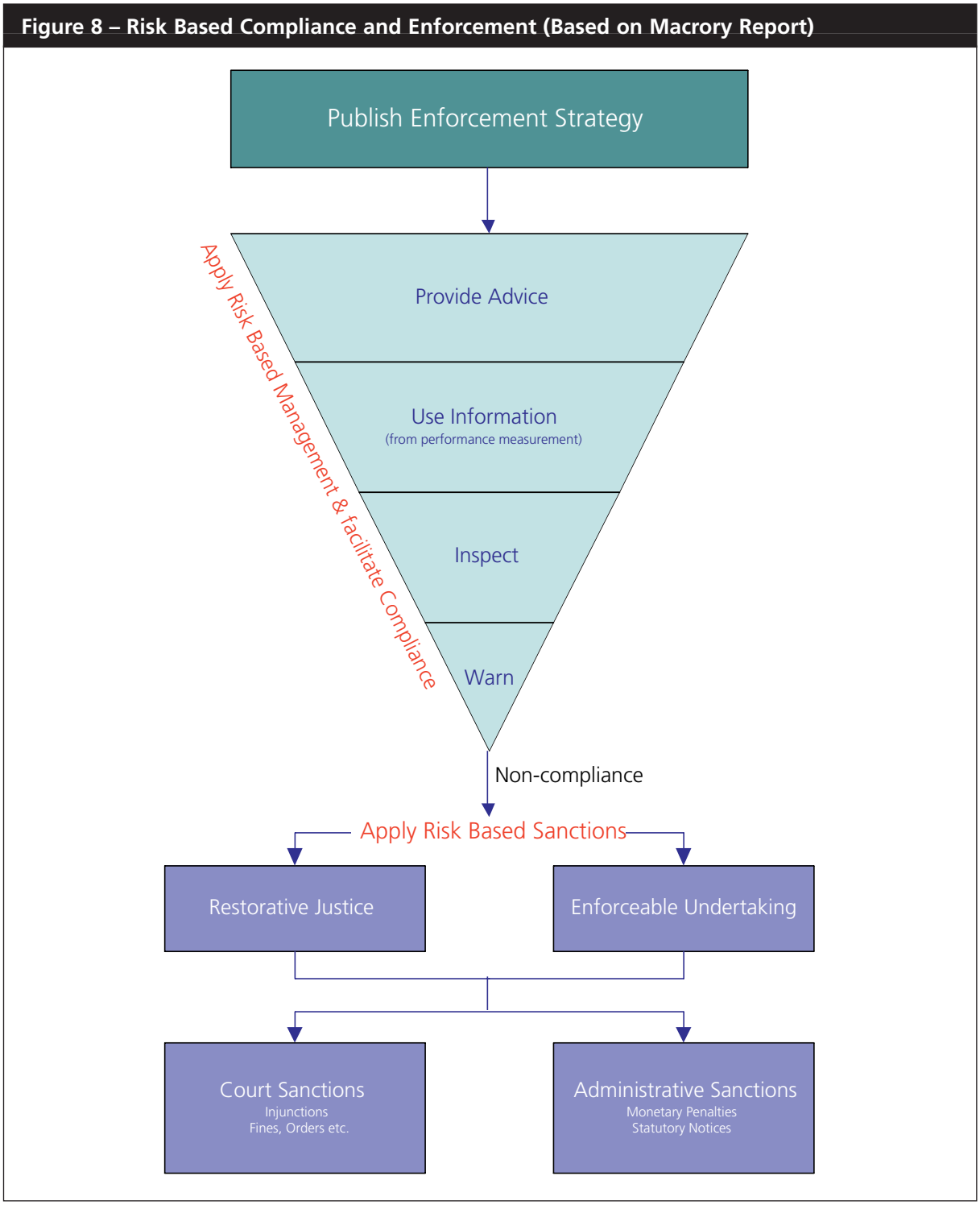
Other approaches and measures are needed to complement control regimes.

It is widely recognised that well organised and run projects are the safest and deliver the best outcomes at less cost.

Many other regulatory regimes, such as the FSA and the Pension Regulator, have adopted a risk based approach to enforcement supported by an increased emphasis on supporting education programmes.

The Macrory Report [November 2006] on effective compliance and enforcement recommended specific actions for regulatory regimes that covered the development of an Enforcement Strategy, designing in effectiveness of enforcement, using risk based management, identifying and inspecting high risk organisations, using self-certification for low risk projects, using risk-based sanctions as a last resort, educating the judiciary, using on the spot fines and stop notices and taking swift action against and publicising the impact on persistent offenders:

Figure 8 – Risk Based Compliance and Enforcement (Based on Macrory Report)



Education, training and information are central to influencing and achieving compliance. This can be achieved through engagement with a range of stakeholders in addition to construction industry training bodies. For example, through builders merchants and product suppliers.

Behaviour can be reinforced through recognition of good practice and practitioners both publicly and in, for example, an increased level of self-certification and inspection.

Driving for and influencing increased quality in products, people and processes across construction will be essential if the required improved performance of buildings is to be achieved.

Regulations should support value seeking behaviour rather than cost minimisation.

Incentives should act on key stakeholder drivers to facilitate compliance e.g. the proposed 0% Stamp Duty for Carbon Neutral Homes.

6.4 Potential Alternatives

Building Control Systems in other countries provide potential ideas for alternative solutions:

- Integrated Development and Building Control that aligns the planning and construction regimes to provide clear guidance to contractors at each stage of the process. For some countries this involves a single application process and monitoring through the construction cycle

- Ensure an appropriate balance between the use of prescriptive and performance based criteria based on project type; recognising that the need for freedom to innovate within larger/complex projects must be balanced against the needs of the smaller building contractor and DIY householder seeking simple, prescriptive criteria against which they can readily comply

- Exercising appropriate control, where, for example, a permit is required before building commences

- Inspection based on risk assessment by type, complexity and history of a design rather than individual judgement

- Appropriate responsibility placed on owners, designers and contractors; at present some regimes hold the contractor liable rather than the householder / owner

- Adopting lighter-touch regulatory procedures for certain building types similar to some European countries

- Following the general trend of privatisation of Building Control through delegated tasks to independent experts or contracting out to private control organisations to deliver the most effective inspection and enforcement regime – though appropriate control must first be established and maintained, for example none have gone as far as England & Wales.

Other regulatory regimes provide examples of best practice that suggest:

- Increased integration between all the various control regimes concerned with the construction process

- Merging construction health and safety legislation with the building regulations (this would require resolving of the differences in the approach between the two sets of legislation, e.g. in relation to responsibilities)

- Combining the use of building control (LABC) and health and safety inspectors (HSE) to bring buildings into a single, rather than twin, inspection and enforcement regime. This concept could be developed further to include the fire authorities and environmental health to ensure a fully integrated inspection regime across the building's life-cycle

- Developing and implementing a proportionate inspection system that identifies and high risk organisations and uses self-certification for low risk projects

- Placing effort to influence activity higher up/earlier in the construction cycle by targeting owners (clients) and designers

- Placing responsibility in the right place and supporting those responsible with increasing use of Appointed Persons (co-ordinators / competent persons) to facilitate compliance has been emphasised

- Combining the potential role of Appointed Person (Building Regulations) with that of the new role of Health and Safety Co-ordinator (Construction (Design & Management) Regulations). Potentially requiring that specific building projects would need the appointment of a 'Construction Supervisor' to check the competency of the designer, recommend specialists where necessary, oversee the work, carry out inspections or collect appropriate certificates and ensure that the design has been followed. At the end, the 'Construction Supervisor' could collect all necessary documentation and submit it to the local authority.

Other approaches and measures will be needed to complement control regimes:

- Developing and implementing an effective compliance & enforcement regime beginning with the publication of an Enforcement Strategy, building in risk based management that uses triage to identify and address the major problem areas linked with significant educational programmes tailored to major stakeholders

- Adopting inspection based on risk assessment to reinforce confidence and increase compliance levels while also developing risk based sanctions that use the judicial system [restorative justice] with an "educated" judiciary and monetary penalties and stop notices to ensure effective enforcement

- Understanding stakeholders needs and drivers and using them in an integrated system of compliance and enforcement that targets the right groups to achieve the right behaviour

- Using the Principles of Better Regulation as a formal framework for developing policy and implementation planning using, in particular, impact analysis for identify the effects on different groups, particularly smaller businesses.

7 Conclusions

7.1 Key Findings

The main findings, as they relate to the evaluation criteria, are outlined below:

Proportionality

The most positive reactions to Building Regulations were around the original 1984 Act and the early Approved Documents dealing with Health and Safety, but that this has now been eroded and obscured. There is general recognition of the importance of newer areas dealing with energy performance and the environment, but criticism that the ways chosen to address these areas has led to increased bureaucracy and costs. There is little data and analysis of the impact on, in particular, the smaller enterprises in the construction market.

Building Regulations are not working as well as they should. Larger building projects are trying to work with them and have sufficient resources to absorb the inefficiencies of the system. Smaller projects do not have the funding for the level of resource required to ensure compliance and the system is driving more of them away. However, the largest volume of building projects fall into this category, which also represents the highest risk to compliance.

There is a perception that adequate consideration is not given to alternatives or complementary approaches to Building Regulation as a means of achieving policy objectives. This includes the use of advertising and education, market forces, financial incentives and self-regulation. These approaches may be more effective and/or cheaper than prescriptive regulation and could include:

- Considering methods for increasing the performance standards of the existing building stock and reviewing the impact of consequential improvements on smaller projects

- Considering alternatives to the traditional building control process, potentially allowing more self-certification of compliance by competent persons obviating the need for inspection by a building control body (subject to clear management)

- Adopting lighter-touch regulatory procedures for certain building types similar to some other European countries.

It is well recognised that regulation can have a disproportionate effect on small businesses and so it's vitally important that adequate attention is paid during consultation to the economic impact and the practicalities of implementation and enforcement on different groups, particularly small builders. It is also important to ensure that Approved Documents provide guidance that is proportionate to the needs of different industry groups and types of building project.

Accountability

Both the regulators (Communities and Local Government) and the enforcers (Building Control Bodies) of Building Regulations would benefit from having clear standards and criteria against which they can be judged. However, the current devolved building control system has impeded development of a comprehensive system to date. There is now an opportunity to develop a more effective national performance management system that is aligned to the achievement of strategic objectives, facilitates control and allows feedback between the different groups making, delivering or affected by Building regulations.

There is a perception, by some, that competition between Local Authority Building Control and Approved Inspectors has led to a reduction in building standards. There is also tension between the roles of Local Authority Building Control as a commercial and last resort service provider and enforcer. Appropriate roles and responsibilities will need to be established in order to develop an adequately resourced inspection and enforcement function.

Consistency

Nearly two-thirds of stakeholders interviewed pointed to a lack of an overall, stable strategy and direction for Building Regulations against which they could plan their own activities over a reasonable time period of, say, five years.

There is a perception across the industry that there is no 'joined up' working across those Government Departments having an impact on building and construction. There is now duplication and conflicting requirements that generate confusion and additional costs and bureaucracy. There is little or no visible integration at the strategic, tactical and local operational levels.

At the operational level, there is a perception that there is no joining up of the construction cycle from design, through build and operate. There is a gap emerging between 'development control' (planning) and 'building control' in the newer areas of interest, such as the environment, that is adding to complexity and increased frustrations. There is also inadequate consideration of the 'operate and maintain' phase, once a building has been completed.

This demonstrates a need for increased integration between all the various control regimes concerned with the construction process. This could include:

- Ensuring that there is consistency between the different parts of the building regulations to remove possible confusions, duplications, inconsistencies and ambiguities and also ensuring that Building Regulations are co-ordinated with other appropriate legislation

- Merging construction health and safety legislation with the building regulations (this would require resolving of the differences in the approach between the two sets of legislation, e.g. in relation to responsibilities)

- Aligning the planning, building control and health and safety regimes to provide clear guidance to contractors at each stage of the process, potentially using a single application process, support system and monitoring through the construction cycle

- Combining the use of building control (LABC) and health and safety inspectors (HSE) to bring buildings into a single, rather than twin, inspection and enforcement regime. This concept could be developed further to include the fire authorities and environmental health to ensure a fully integrated inspection regime across the building's life-cycle.

Transparency

The system has evolved in a piecemeal manner resulting in inadequate stakeholder management. Poor communications are leading to a negative stakeholder perception of Communities and Local Government and Building Regulations and there is a perceived lack of joined up processes between policy makers and implementers. This would be improved by formalising and improving stakeholder management and communications to ensure appropriate representation and deliver two way communication.

While the time for consultation on developing policy was thought adequate, the majority of stakeholders believed that there was inadequate time and resource applied to the practicalities of implementation and enforcement and the differential impact on different stakeholder groups. Any future changes should address the need for implementation plans which are realistic and allow sufficient time and resource to ensure smooth transition, adequate training, appropriate support and effective implementation.

Targeting

While positive comments were made by larger enterprises about the flexibility for innovative design that is allowed by Building Regulations, there was much criticism made of the lack of appropriate guidance tailored to the needs of different customer groups; in particular for the smaller contractor where the risk of non-compliance is largest. It will be important to ensure an appropriate balance between the use of prescriptive and performance based criteria based on project type, recognising that the need for freedom to innovate within larger/complex projects must be balanced against the needs of the smaller building contractor and DIY householder seeking simple, prescriptive criteria against which they can readily comply.

The key to focusing the regulations will be to gain an understanding of stakeholder's needs and drivers and use them in an integrated system of compliance and enforcement that targets the right groups to achieve the right behaviour. This should be achieved through placing responsibility in the right place and potentially supporting those responsible with increasing use of Appointed Persons (co-ordinators/competent persons) to facilitate compliance. Compliance should be 'designed in' by placing effort to influence activity higher up/earlier in the construction cycle by targeting owners (clients) and designers.

Best practice dictates that the regulations should be continually reviewed to ensure that they are still necessary and effective. This should be addressed by continuing steps to simplify the regulations to ensure that the administrative burden is reduced, through investigating new potential initiatives and implementing existing plans such as the e-enablement of the Building Control Service.

Enforceable

A general lack of resources presents significant challenges to the achievement of building standards. There are significant gaps in budget and people resource. There is insufficient Communities and Local Government capacity and capability to deliver meaningful change exacerbated by resource pressures, skills drain and lack of succession plan. Building Control Bodies are also constrained by resources and are thus prioritising and addressing the areas that they perceive to be important e.g. Health & Safety.

The current issues surrounding compliance and enforcement need to be addressed to ensure that the regulations are practical to enforce. This could be achieved by the formalisation and development of activities currently undertaken using individual judgement within building control. This could include adopting inspection based on risk assessment to concentrate resources on the areas that need them most, educational programmes tailored to major stakeholders and developing risk based sanctions that use the judicial system, monetary penalties and stop notices to ensure effective enforcement.

7.2 Impact

At present, building standards are largely serving their purpose of protecting the public interest.

However, the future of building standards lacks clear vision and consequently there is no effective long-term strategy or plan to deliver.

As a result the Building Regulation control system is evolving in an inefficient and ineffective manner with particular issues including; poor stakeholder management & communication, significant gaps in resourcing (both budget & people), lack of integration at strategic, tactical & operational levels, lack of joined up processes and little effective performance management.

Compliance is frustrated by excessive complexity and a lack of clarity which is eroding customer buy-in. Customer-centric approaches are not used as much as they should be to encourage compliance. Enforcement bodies lack the appropriate tools and resources to ensure that standards are achieved. Effective enforcement is limited and the regulations are perceived to have no teeth.

The result of this is that building standards are not fully achieving their desired outcomes:

- For the original desired outcomes on Health & Safety: – Building Regulations are largely working – despite the system

- For the newer desired outcomes such as the conservation of fuel & power: – Building Regulations aren't working because of the system.

Building Regulations are now at a tipping point. The way they are developing does not fully comply with the government's regulatory best practice and, if left unchecked, will place an unnecessary administrative burden on businesses and citizens. The context in which they operate has significantly changed since their last major revision and the control system is no longer fit for purpose. The building regulation and control regime needs to be adjusted in order to remain relevant and provide an effective contribution to addressing the issues and challenges raised by climate change. Only a step change will ensure this happens.

8 Recommendations

8.1 Key Recommendations

The key recommendations of the review are to:

- Establish the vision for Building Standards and develop a strategy & plan to deliver it
- Improve stakeholder management and communications
- Work with other government stakeholders and industry to develop the business case for integration across central and local government and over the whole life of buildings
- Review and revise regulatory simplification plans with stakeholders
- Review and revise the organisational design for Communities and Local Government and at local building control level
- Review and revise processes & procedures, aligning them with the Principles of Good Regulation and paying particular attention to implementation
- Develop and implement an effective risk-based compliance & enforcement regime
- Develop and implement an effective performance management regime
- Rationalise then design and implement new customer-centric guidance and processes

These are explained in greater detail below:

8.1.2 Establish a strategy & plan for Building Regulations

Communities and Local Government must establish an agreed clear vision for Building Regulations that also describes its positioning with other regulatory regimes and government initiatives.

This report describes the current situation and can be used as the basis of a gap analysis. It should be supplemented by an analysis of the impact on the key stakeholder groups that will be affected. This will inform an effective stakeholder management and communications plan.

This analysis can be used to develop and agree a strategy to get from the current situation to the desired position articulated in the vision. This *must* cover all buildings and be very clearly articulated using and supplementing other work, such as the investment in the development of the Code for Sustainable Homes.

This work is the basis for a longer term strategy & plan for Building Regulations that includes:

- Long-term vision and goals for the improved performance of all buildings
- All the major stakeholder groups that will be affected
- Aspirations and goals targeted at different market sectors that provide stability and direction for, say 5 years, allowing the construction industry to develop their own plans;
- An integration of all elements that do, or will, impinge on building regulations
- Performance targets for buildings that are agreed and brought together in one place
- Adequate consideration of possible alternatives and complementary approaches
- Targeted and proportionate approaches for the existing building stock as well as new developments
- Clear communication of the direction and route for achievement of building standards to all stakeholders.

8.1.3 Improve stakeholder management and communications

Initial activity should review the range of stakeholders with whom Communities and Local Government needs to communicate and their specific needs. It builds on the work undertaken to produce this report through additional research, if necessary, workshops that "stand in the shoes of the customer / stakeholder" and a short consultation.

The key messages from the strategic plan and other sources that need to be communicated are identified and matched against the needs of each stakeholder group. This enables communication targets to be agreed by theme and group and updates made to the Communities and Local Government communication policy.

Existing representation of stakeholders should be reviewed leading to recommendations on appropriate stakeholder forums that are integrated into all consultation and implementation processes. The terms of reference and composition of existing groups and forums, such as the Building Regulations Advisory Committee (BRAC), the Building Control Performance Standards Advisory Group (BCPSAG) and the Construction Industry Council Approved Inspectors Register (CICAIR) should be examined to ensure that they remain valid (in line with the overall strategy). A gap analysis should be conducted and plans put in place to ensure that appropriate and effective stakeholder representation is achieved.

The Communities and Local Government Sustainable Buildings stakeholder database and its operation, maintenance and use should be reviewed and revised and the systems either updated or replaced.

Stakeholder owners within Communities and Local Government should be identified and established to act as a focus and, if appropriate, to act as "account managers". The communication objectives agreed above act as objectives against which to report.

The communication channels to stakeholders should be reviewed and, in particular, the use of the Planning Portal as a communication should be considered.

The outcome is a rolling 12-month management and communication plan across all delivery channels that can be implemented, monitored and updated.

8.1.4 Develop a business case for integrating operational processes across the whole life of a building

This should begin through a review of the operational relationships that occur across the design, build and operate processes of construction from the customer viewpoint using a series of workshops. This should:

- Encompass Development Control, Building Control, Health & Safety, Fire etc.
- Develop "customer journeys" as a way to integrate and simplify the customer experience.

This customer framework acts as a focus for analysing and integrating activities that affect the customer and can be used as a vehicle for identifying and resolving tensions between different functions by taking the customer viewpoint providing, for example:

- Guidance to development planners based on practical building experience
- Co-ordination with Fire, Health and Safety
- Co-ordination with other intra-departmental initiatives e.g. housing policy
- Co-ordination with other inter-departmental initiatives e.g. sustainable development
- The impact of commercial competition between local authority BCOs and Approved Inspectors and the need to rationalise building control documentation
- Development of an integrated inspection authority
- Need to grow links between the build and operate stages as this will become increasingly important because of sustainability and energy considerations and the need to look at overall building performance
- Simplification Plans with other regimes that are reviewed and agreed with stakeholders.

The intended outcome is a business case that addresses the opportunity, benefits, timescale and costs of integrating operational processes across the whole life of a building.

8.1.5 Review and develop simplification plans with stakeholders

This work seeks to implement recommendations 6 and 7 of the Better Regulation Commission report on Risk, Responsibility and Regulation to review the stock of regulation affecting the building process to make sure it allocates risk appropriately.

A first step should be to review and revise the current Building Regulations to remove any remaining duplication, ambiguities and conflicts between different parts. It should also bring together all performance standards and an explanation of their objectives that can be communicated to stakeholders.

The second step is to plan and execute a programme to bring together Building Regulations and other regimes by putting in place an inter-departmental audit – Communities and Local Government, Health & Safety, Fire, DEFRA etc. The objectives should be to move towards co-ordination of all building performance criteria to simplify regulation, reduce burden on industry and improve enforceability.

The outputs will be a set of linked simplification plans that are tested on the market by engaging with stakeholders and launched and monitored through a 2007 campaign to remove regulatory inconsistencies. In particular they should seek to:

- Develop closer partnerships with business, workers and other stakeholders to improve building outcomes.

- Help the wider building industry and owners to benefit from effective building control management through better, smarter legislation that is easy to understand, and integrated processes across the construction cycle that helpto secure stronger commitment and compliance.

- Focus on core issues and the right interventions through initiatives to target consistent, proportionate enforcement activity where it will have the greatest impact and deal effectively with non-compliance.

- Communicating the vision providing clearer, simpler advice and information, particularly for small businesses, that will encourage greater compliance.

8.1.6 Undertake organisational design for Communities and Local Government and at local building control level

An immediate activity should be an audit of the Sustainable Buildings Division in Communities and Local Government. This should look at the role, skills, responsibilities and profiles within the department that can be matched against the expected activities over the next three years.

A work programme should also review the roles of operational organisations, their current effectiveness and the changes that will be required to meet the future needs of building regulations. This should cover the role of Local Authority Building Control as commercial service providers, suppliers of last resort and enforcers of building regulations; it should consider the impact of splitting their enforcement role to provide an independent inspectorate and their continuing relationship with Approved Inspectors. The work should also look at Competent Persons and the scope for Appointed Persons as vehicles for improving compliance and the impact on the inspection and enforcement regimes.

The output will be a medium term design for the organisation at local level that identifies the emerging roles and responsibilities, and the relationships with external organisations. In turn this will inform the design and execution of a significant transformation programme.

8.1.7 Review processes & procedures, paying particular attention to implementation

This work should review the current consultation procedures for policy development and implementation, in particular, to ensure that there is adequate time and resource to ensure practical implementation.

This should lead to modification of processes, where necessary, and the publication of guidance templates for implementation of regulations that includes sign off between Communities and Local Government and operations groups.

These templates should be used to identify the full cost and resource implications of the proposed regulation against the perceived risks and actual benefits. They should also include formal impact assessments to ensure that no one group is discriminated against unfairly and, in particular, outlines the impact on small firms and any measures to help them comply. The assessment also sets out the arrangements for compliance and sanctions for non-compliance, and how the policy will be monitored and evaluated.

8.1.8 Develop and implement an effective compliance & enforcement regime

The intention should be to develop and implement a formal risk based management approach to compliance that allows focus on a small number of strategic cases supported by education programmes tailored to different stakeholder groups. This should build upon best practice, such as the Enforcement Concordat, the draft Regulators Compliance Code, the Hampton Review (Reducing Administrative Burdens: Effective Inspection and Enforcement), the Macrory Report (Regulatory Justice: Making Sanctions Effective), guidance from the Better Regulation Commission (e.g. Risk, Responsibility and Regulation: Who's risk is it anyway?) and the existing Building Control Performance Standards.

Following the Macrory Report recommendations, the first stage is to develop & publish an Enforcement Strategy. Further activity should include:

Developing an approach to risk based management that may include:

- Using customer needs and journey mapping to identify the advice and guidance relevant to different groups and agree a plan to make this available through web channels and partner organisations

- Designing and putting in place effective measurement processes that identifies high-risk organisations and trigger actions such as warnings and inspections

- Developing processes that reinforce self-certification etc for low risk projects and build in "random" monitoring of performance.

Developing approaches that apply risk-based sanctions as a last resort:

- Using on the spot fines and stop notices

- Use the courts, if necessary, and ensure that the judiciary and legal communities are educated in the role of building regulations and the likely impact of non-compliance;

- Identifying and pursuing persistent offenders
- Publicising enforcements.

8.1.9 Develop and implement an effective performance management regime

Establish the mechanism to help turn strategic vision into reality. Set performance standards, initiate systems to report results and link objectives and accountability to results.

This activity should consider the data, information and processes required for effective review and evidence-based decision-making. Work packages should investigate how performance management could be implemented to ensure that it does not put undue strain on Local Authorities and in line with the principles of Better Regulation – e.g. balanced measures for minimum impact, while at the same time delivering appropriate performance which achieves the strategic goals. This may be achieved through a variety of techniques, for example using the Balanced Scorecard.

The output should build on the work of the BCPSAG to date and develop it into a design for an effective national performance management system that will facilitate achievement of the revised strategy. It should also take into account recent best practice advice from government, including the HM Treasury document 'Choosing the Right Fabric: A Framework for Performance Management, 2001' and recommendations to include outcome measures within regulatory performance management frameworks made within the Macrory report as well as lessons learned from the experience of similar activities in Scotland. The new system should provide the means to comprehensively measure and manage the performance of the building control system. The best practice standards developed by the BCPSAG provide a sound baseline but work will be required to ensure that appropriate Critical Success Factors are identified and their interrelationships mapped and understood. In particular, it will be important to ensure that Key Performance Indicators are established that facilitate delivery of the required outcomes in a balanced and effective manner. The design of the system could also build on planned future developments to e-enable the building control system that offer an opportunity to provide a cost effective mechanism for performance measurement and reporting.

8.1.10 Design and implement new customer-centric guidance and processes

A major programme of work should review the Approved Documents and rationalise current guidance in line with stakeholders' needs that minimises external references where possible.

In particular this should provide the smaller contractor and DIY householder with simple prescriptive guidance for simple projects with no external references – e.g. a small buildings guide

However there should also be education and communication initiatives to reinforce the process for allowing solutions that are innovative and compliant but not in line with the Approved Documents

8.2 Next Steps

The recommendations outlined above should be delivered through an integrated programme of change. The case for change should be developed to inform management decision-making and then worked up into a full programme definition that provides a sound basis for moving forward. This will be used to direct and manage the delivery of a wide ranging transformation programme. An outline of these activities is provided below:

8.2.1 Immediate

First and most essential piece of work is to establish and agree a clear vision and from that develop a strategy to delivery it.

In tandem with this work it will be critical to conduct a more thorough analysis of the stakeholders and develop a strategy for integrating them into the transformation process more effectively and establishing a stakeholder group.

Work should also start as soon as possible on developing essential change programme infrastructure:

- This report should form the basis for the programme mandate, which should be confirmed and enhanced to define the strategic requirements of the programme and clearly map back to the overall strategic plans of the organisation

- The sponsoring group should be identified (senior management within Communities and Local Government) and tasked with identifying and appointing an SRO (at an appropriate level of seniority)

- A Programme Brief should be produced to detail the benefits, costs, timescales and risks involved such that: the programme can be identified in terms of what it is being set up to achieve and what the desired benefits are for the organisation and stakeholders involved and a management decision can be made on whether the programme is desirable and appropriate, and whether to commit the investment and resources required to proceed to the next process of defining a programme. This should include:

  – Description of the capability sought from changes to the business and/or its operations. Delivery of this capability is the end goal of the programme. The description forms an outline Vision Statement for the programme

  – Outline description of the benefits or types of benefits that should be delivered from the new capability, an estimate of when they are likely to be achieved, and an indication of how they will be measured. It is often necessary to consider 'dis-benefits' (where one of the parties may be worse off as a result of the programme) alongside the benefits in order to present a more complete and realistic 'picture' of the programme's outcome

  – Explanation of the risks to the programme that can be recognised at this point in time, any current issues that may affect the programme, and any known constraints, assumptions or conflicts that may potentially affect the programme. It is important to be able to balance the desired benefits arising from the programme against the risks and issues that may prevent the benefits from being fully realised

  - As much detail as is available on the estimated costs, timescales and effort required to set up, manage and run the programme from startup through to delivery and realisation of the benefits. The overall timescale for the programme may be relatively long, perhaps two to five years. To provide an indication of the effort and resources required, an initial listing of candidate projects or activities required should be included, together with rough timescales (see other recommendations)

A plan should be developed to show how the system will transform from the current position over time and deliver the vision.

8.2.2 Short-term (next few months)

Initiate projects to deliver quick wins:

- using the stakeholder group to develop the Simplification Plan and generate further admin burden savings
- implementing transitional process improvements to provide consistency and control to policy development
- develop a compliance and enforcement strategy
- initiate project based guidance using the Interactive House on the Planning Portal.

8.2.3 Medium-term (9-18 months)

Initiate the programme design elements required for transformation:

- Build transformation programme infrastructure including development of:
  - Vision
  - Blueprint
  - Business Case
  - Organisation structure and governance
  - Project Portfolio
  - Benefits Management Strategy & Benefits Realisation Plan
  - Stakeholder Management Strategy & Communications Plan (programme)
  - Risk Management & Issue Resolution Strategy
  - Quality Management Strategy
  - Resource Management Strategy
  - Programme Plan

- Commence organisational design project
- Start development of a risk based compliance and enforcement system
- Design and start to develop a performance management system
- Rationalise and refocus guidance
- Execute SBD stakeholder management and communications strategy.

8.2.4 Longer-term (18 months plus)

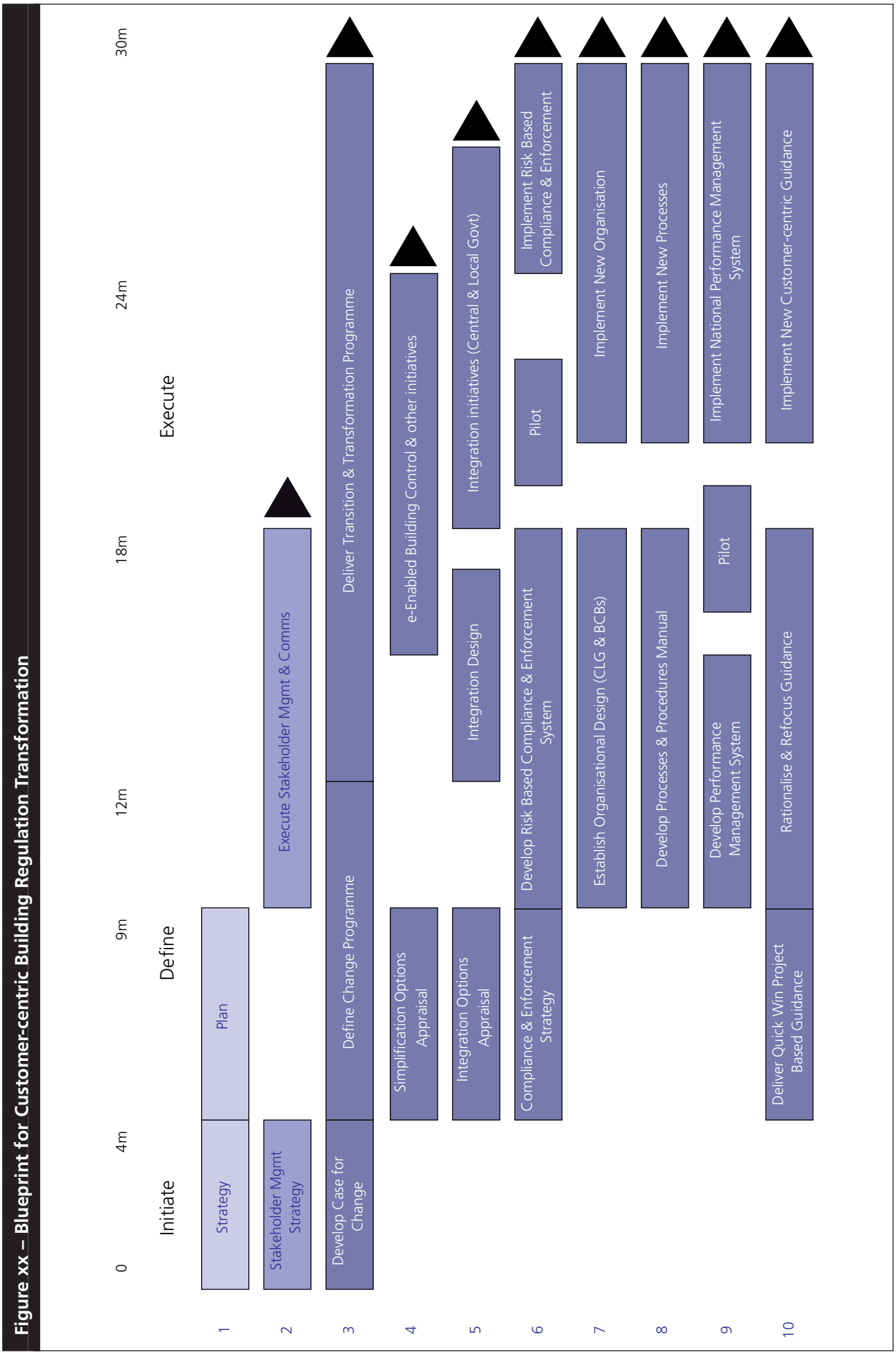
Start to deliver the transformation programme, changing the organisation, and begin to pilot and implement initiatives/projects within the programme, including:

- E-enabled Building Control and other simplification intiatives
- Integration initiatives
- Compliance education and information and risk-based enforcement
- Performance management system
- New customer-centric guidance.

8.2.5 Outline Schedule

A very simplified schedule of activities has been provided below. This indicates the main areas of work and their potential sequence. A timeline has been used to provide a rough guide to the duration of some of the activities. The arrows signify that activity will continue over time. Gaps in the timeline for an activity indicate time for review and approval (decision making) as well as preparation activities prior to implementation. Activities in the Initiate stage represent the key initial tasks that should be undertaken immediately. Activities within the Define and Execute stages indicate potential work streams and sequences within a co-ordinated change programme. These timescales have been adapted to reflect the current resource availability within Communities and Local Government and should ideally be accelerated where possible.

Figure xx – Blueprint for Customer-centric Building Regulation Transformation



A1 Appendix 1 – Evaluation Criteria

To ensure that regulations are necessary, fair, effective, affordable and enjoy a broad degree of public confidence, any policy intervention, and its enforcement, should meet the five principles which the Better Regulation Task Force first introduced in 1997. These represent internationally recognised regulatory best practice which the Cabinet Office recommends that Government Departments should use when evaluating existing regulations. To ensure that the evaluation criteria for Building Regulations provide an appropriate balance between policymaking and its delivery these Principles of Good Regulation have been supplemented with the recently published Hampton principles of inspection and enforcement as follows:

Proportionality – Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

- Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – don't use a sledgehammer to crack a nut.
- All the options for achieving policy objectives must be considered – not just prescriptive regulation.
- Alternatives may be more effective and cheaper to apply.
- "Think small first". Regulation can have a disproportionate impact on small businesses, which account for 99.8% of UK businesses.
- EC Directives should be transposed without gold plating.
- Enforcement regimes should be proportionate to the risk posed.
- Enforcers should consider an educational, rather than a punitive approach where possible.

Accountability – *Regulators must be able to justify decisions, and be subject to public scrutiny.*

- Proposals should be published and all those affected consulted before decisions are taken.
- Regulators should clearly explain how and why final decisions have been reached.
- Regulators and enforcers should establish clear standards and criteria against which they can be judged.
- There should be well-publicised, accessible, fair and effective complaints and appeals procedures.
- Regulators and enforcers should have clear lines of accountability to Ministers; Parliaments and assemblies; and the public.

Consistency – *Government rules and standards must be joined up and implemented fairly.*

- Regulators should be consistent with each other, and work together in a joined-up way.
- New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin.
- Regulation should be predictable in order to give stability and certainty to those being regulated.
- Enforcement agencies should apply regulations consistently across the country.

Transparency – *Regulators should be open, and keep regulations simple and user-friendly.*

- Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties.
- Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken into account.
- Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents.
- Regulations should be clear and simple, and guidance, in plain language, should be issued 12 weeks before the regulations take effect.
- Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished.
- Those being regulated should be given the time and support to comply. It may be helpful to supply examples of methods of compliance.
- The consequences of non-compliance should be made clear.

Targeting – *Regulation should be focused on the problem, and minimise side effects.*

- Regulations should focus on the problem, and avoid a scattergun approach.
- Where appropriate, regulators should adopt a "goals-based" approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets.
- Guidance and support should be adapted to the needs of different groups.
- Enforcers should focus primarily on those whose activities give rise to the most serious risks.
- Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.

Enforceable – *To be effective regulation must be practical to enforce.*

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;

- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;

- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted;

- No inspection should take place without a reason;

- Businesses should not have to give unnecessary information, nor give the same piece of information twice;

- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions;

- Regulators should provide authoritative, accessible advice easily and cheaply;

- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed;

- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and

- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

A2 Appendix 2 – Desk Research

Title	Author/ Publisher	Date
Deliberations of the Building Regulations Advisory Committee	The Department for Communities and Local Government	2001 – 2006
Various articles in Building Magazine Including, for example, articles within the Reform of the Building Regulations Campaign	Thomas Lane et al	2005 – 2006
Building Regulations Research Programme Plus various related/associated reports, including, for example: – Guidance for New Home Occupiers – Final Report: Building Research Technical Report 5/2006 – Innovative Products and Building Regulations – Building Research Technical Report 6/2006 – Collection of Data on New Build Dwellings – Building Research Technical Report 5/2005	The Department for Communities and Local Government	Sep 2006
Energy for sustainable communities – tomorrow's aspirations becoming today's reality	Local Government Association	Feb 2004
Improving the Building Regulations – RIBA Practice Policy Paper	Royal Institute of British Architects	Aug 2006
Assessment of Energy Efficiency Impact on Building Regulations Compliance	BRE (for Energy Savings Trust & Efficiency Partnership for Homes)	Nov 2004
Survey of the 1991 Building Regulations and Approved Documents	The Camden Consultancy (for the Department of Environment)	Sep 1995
Rethinking control of buildings (Final Report)	RICS Building Control Forum	2000
Buildings Division Awayday – Building Sustainable Communities	Office of the Deputy Prime Minister	May 2005
Successful interventions with hard to reach groups	Health & Safety Executive	Apr 2004
Workplace Strategy: Moving to Delivery	Health & Safety Commission	Mar 2005
Factors influencing Local Authority Health and Safety interventions and enforcement activity	Michael Howard & Alastair Galbraith; King's College London	Aug 2004
User Friendly Building Regulations Scoping Study	SAIC (for ODPM)	2005
Learning Exercise on the Building Regulations	Better Regulation Executive	Jul 2006
Code for Sustainable Homes – A step-change in sustainable home building practice	Communities and Local Government	Dec 2006

Title	Author/ Publisher	Date
Review of regulatory and compliance requirements for RSLs	Sir Les Elton (for the Housing Corporation)	Apr 2006
The Impact of the AD B 2000: Backward Look Report	Ove Arup and Partners Ltd (for ODPM)	Feb 2004
Appointed Persons	BSRIA (for The Department for Communities and Local Government)	Aug 2006
The Model Building: A Scoping Study	BSRIA (for The Department for Communities and Local Government)	Nov 2005
Usability of Performance Based Regulations	BSRIA (for The Department for Communities and Local Government)	Nov 2006
Building Regulations: Levels of Compliance	Prof Ray Ogden at Oxford Brookes University (for DTI)	2005
The impact of part M on the design of new Housing	Rob Imrie at Royal Holloway University of London (for the Joseph Rowntree Foundation)	Aug 2003
Launch arrangements for CDM 2007 (Benefits Realisation)	HSE	May 2006
Health and Safety Risk Drivers for Policy (Draft)	BRE (for The Department for Communities and Local Government)	Jul 2006
Fire Safety Framework: Forwards Look	BRE (for ODPM)	Dec 2004
Compliance with Part L1 of the 2002 Building Regulations: (An investigation on the reasons for poor compliance)	Future Energy Solutions (for the Energy Saving Partnership for Homes)	May 2006
Note of the Roundtable discussion held by the Department of Communities and Local Government to discuss the Building Regulations with industry representatives	The Department for Communities and Local Government	June 2006
An evidence based evaluation of how best to secure compliance with health and safety law	Greenstreet Berman Ltd (for the Health and Safety Executive)	2005
Building Control Performance Standards	Building Control Performance Standards Advisory Group for The Department for Communities and Local Government	Jun 2006
Comments on the Building (Approved Inspectors) Regulations 2000	Construction Industry Council	Oct 2004

Title	Author/ Publisher	Date
Regulation for Buildings: Harmonisation of Legislation – Report and Recommendations of the Regulations Review Working Group	Construction Industry Council	Jan 2003
Letter regarding Regulation for Building: Harmonisation of legislation from Graham Watts – Chief Executive		Jan 2006
Response from Peter Housden – Permanent Secretary ODPM		Feb 2006
Performance testing of Buildings (Draft)	BRE (for The Department for Communities and Local Government)	Nov 2006
Better Buildings – New European legislation to save energy	European Commission	Sep 2003
Towards Energy Efficient Buildings in Europe	EuroACE (the European Alliance of Companies for Energy Efficiency in Buildings)	Jul 2005
The Building Act 1984	HMSO	1984
The Building Regulations 2000 (as amended)	HMSO	2000
Approved Documents A-P and to support regulation 7	Communities and Local Government	Various
Legislative and Regulatory Reform Act 2006	HMSO	2006
Sustainable and Secure Buildings Act 2004	HMSO	2004
Climate Change and Sustainable Energy Act 2006	HMSO	2006
The Regulatory Reform (Fire Safety) Order 2005	HMSO	2005
Building (Scotland) Act 2003	HMSO	2003
Proposed Construction (Design and Management) Regulations 2007 and related Approved Code of Practice	HSE	Oct 2006
Building Regulations – Explanatory Booklet	Office of the Deputy Prime Minister	2005
Reducing administrative burdens: effective inspection and enforcement	Philip Hampton (for HM Treasury)	Mar 2005
Risk, Responsibility and Regulation – Whose risk is it anyway	Better Regulation Commission	Oct 2006
Guide to Building Regulation Compliance for simple, Single Storey Domestic Extensions	London District Surveyors Association	2002
Specialist Engineering Contractors Group Briefing: Building Regulations	Specialist Engineering Alliance	Aug 2006
Building Regulations: Competence (Letter to SAIC)	Specialist Engineering Contractors Group	Nov 2006
Approved Document – Basements for dwellings (The Building Regulations 2000)	The Basement Information Centre	2004
The effect of Building Regulations Part L1 (2006) on existing dwellings – Information for installers and builders in Wales and England	Energy saving trust	2006
Part L1 of the Building Regulations 2006 –briefing note (England and Wales)	Energy saving trust	2006

Title	Author/ Publisher	Date
Small Buildings Guide – For Compliance with Part C of the Technical Standards (The Building Standards (Scotland) Regulations 1990) – Second Edition	The Scottish Office	1990
Review of the Sustainability of Existing Buildings: The Energy Efficiency of Dwellings – Initial Analysis	The Department for Communities and Local Government	Nov 2006
The Design Quality Indicator	Construction Industry Council	Oct 2003
Accelerating Change	Sir John Egan, Strategic Forum For Construction	Sep 2002
Various articles from the Association for the Conservation of Energy including, for example: Carbon savings should be met in practice, not just theory: Time to put a stop to the disdain for regulations	Andrew Warren, Director of the Association for the Conservation of Energy	2006
Building in ignorance – Demolishing complacency: improving the energy performance of 21st century homes	David Olivier	Oct 2001
Flying Blind – Everything you wanted to know about energy in commercial buildings but were afraid to ask	William Bordass	Oct 2001
Improving Building Standards: Proposals – A Consultation Paper	Scottish Executive Building Standards Division	Mar 2002
Review of Housing Supply – Delivering Stability: Securing our Future Housing Needs	Kate Barker (for HM Treasury & The Office of the Deputy Prime Minister)	Mar 2004
The Government's Response to Kate Barker's Review of Housing Supply	HM Treasury & The Office of the Deputy Prime Minister	Dec 2005
Strong and prosperous communities – The Local Government White Paper	Communities and Local Government	Oct 2006
Build to Last – Reviewing Sustainable Construction	MRM Solutions (for CITB-Construction Skills)	2004
The Economics of Climate Change (Stern Review)	Sir Nicholas Stern (for HM Treasury)	2006
Building Control Report: Building Control Systems in Europe	Consortium of European Building Control	Jun 2006
Construction Skills Network – Blueprint for UK Construction Skills 2006-2010	CITB Construction Skills	Jun 2006
Construction (Design and Management) Regulations 2003	HSE	2003
Report on Designer Compliance with the Construction (Design & Management) Regulations and Health and Safety Guidance for Designers	David Watson of the WSP Group plc (for Health and Safety Executive)	Apr 2006
Enforcement policy statement	Health & Safety Commission	May 2004
Building Regulations and energy management	Katy Brown for the Workplace Law Network	Sep 2006

Title	Author/ Publisher	Date
Be valuable – a guide to creating value in the built environment	Richard Saxon (for Constructing excellence)	2005
Rethinking Standards In Construction: Can Standards support industry performance improvement? – Report of strategic workshop to initiate a new approach to UK standardisation	Constructing excellence	May 2006
Principles of Good Regulation	Better Regulation Task Force	2003
Regulatory Justice: Making Sanctions Effective	Professor Richard Macrory (for the Better Regulation Executive)	Nov 2006
The Construction (Design and Management) Regulations 2006 – Small Business and One-off/occasional Clients Responsibilities	Tim Kind (for HSE)	Apr 2006
Enforcement	Better Regulation Task Force	Apr 1999
Regulations – The Way Forward	Home Builders Federation	Nov 2006
Communities and Local Government Simplification Plan – The Route to Better Regulation	Communities and Local Government	Dec 2006
Administrative Burdens of Regulation – Communities and Local Government	Better Regulation Executive	Dec 2006
Building a Greener Future: Towards Zero Carbon Development	Communities and Local Government	Dec 2006

A3 Appendix 3 – Consultation

Organisation	Name	Postion
Internal Stakeholder Consultation		
Policy General (Communities and Local Government in shaded area)	Tony Lord	Head of branch in Built Environment
Building Regulations Policy	Phill Phillipou	Head of Building Control Policy & Systems
Building Regulations Review Programme & Simplification Plan	Guy Bampton	Quality Policy Manager
Regulatory Update /Risk/Research Project	David Petherick	Technical Policy Officer
Code for Sustainable Homes	Stephen Phillips	Code Project Manager
Review of Existing Building Stock	Alan Brown	Project Manager
Climate Change	Christine Ogden	Climate Change Strategy Coordinator
Part A & C	Richard Shipman	Technical Policy Officer
Part B	Anthony Burd	Technical Policy Officer
Parts E, F, K, N & P plus Security	Les Fothergill	Technical Policy Officer
Parts G & H	Mike Johnson	Technical Policy Officer
Part L	Ted King	Technical Policy Officer
Part M	Ian Lawrence	Technical Policy Officer
External Stakeholder Consultation		
British Property Foundation (BPF)	Matt Smith	Policy Officer
Royal Institute of British Architects (RIBA)	Richard Brindley	Director of Practice
	Peter Caplehorn	Special Advisor
Institution of Structural Engineers (ISTructE)	Dr. Susan M. Doran	Technical Director
Chartered Institute of Building Services Engineers (CIBSE)	Samantha McDonough	Director of Policy and Groups
	Andy Ford	Energy Performance Group
Federation of Master Builders (FMB)	Tom Dibaja	External Affairs Manager
Construction Confederation (CC) – National Federation of Builders	Roger Humber	Policy Consultant
Home Builders Federation (HBF)	Dave Mitchell	Technical Director
Specialist Engineering Contractors' (SEC) Group	Rudi Klein	Chief Executive
	John Nelson	Executive Secretary
	Giuliano Digilio	Head of Technical Services (ECA)
	Bob Towse	Head of Technical & Safety (HVCA)
Chartered Institute of Building (CIOB)	Saleem Akram	Director, Professional & Technical Development
	Veronica Dunn	Manager, Faculty of Architecture and Surveying
Construction Industry Council (CIC)	Richard Biggs	Operations Director and Registrar

Organisation	Name	Postion
Internal Stakeholder Consultation		
Royal Institute of Chartered Surveyors (RICS) – Building Surveying Faculty	David Smith	(member of BRAC)
	David McCullogh	
	Kieron Higgs	
British Institute of Facilities Management (BIFM)	Mick Dalton	Immediate Past President
Construction Products Association (CPA)	John Tebbit	Industry Affairs Director
Builders Merchant Federation (BMF)	Carole Green	Manager – Product Support
	Peter Matthews	Federation Secretary
Constructing Excellence	Peter Cunningham	Director
Construction Industry Training Board (CITB) – Construction Skills	Pat Bowen	Training Policy
National House-Building Council (NHBC)	Neil Cooper	Group Head of Building Control
British Standards Institute (BSI)	Mike Low	Director, British Standards
	Shirley Bailey-Wood	Operations Director, British Standards
	Carolyn White	Head of Construction Market Development
Building Regulations Advisory Committee (BRAC)	Michael Finn	Chairman
Health and Safety Executive (HSE)	Andrew East	HM Principal Specialist Inspector
	Simon Pilling	Construction Policy
Department for Environment, Food and Rural Affairs (DEFRA)	Alan Christie	Sustainable Energy Policy
Council for Registered Gas Installers (CORGI)	Mark Rolfe	Technical Services Manager
	John Byrne	Director of Technical Development & Stakeholder Relations
	Peter Martin	Registration Development Manager
	Nicole Perry	PR Manager
	Natalie Minter	Project development Manager
Robust Detail Ltd	Phil Rogers	Technical & Business Development Manager
Local Authority Building Control (LABC)	Paul Everall	Chief Executive
Association of Consultant Approved	Paul Timmins	Chairman Inspectors (ACAI)
Building Control – London Borough (Camden)	Nick Lennox	Senior BCO
Building Control – Major City (Sheffield)	Andrew Taylor	Chief BCO
	Cathal Wright	BCO
Building Control – Small Town (Mansfield)	David Pratt	BCO

Organisation	Name	Postion
Internal Stakeholder Consultation		
Royal Borough of Windsor & Maidenhead –	Roger Paine	Building Control Consultancy Manager Building Control Consultancy
Building Control – Rural District (Bolsover UDC)	Shane Stone	BCO
Salus Approved Inspectors (Building Control & Fire Safety Consultants)	Peter Meadows	Director
	Paul Morris	Director

A4 Appendix 4 – Discussion Forum

A4.1 Introduction

The Communities and Local Government Discussion Forum was utilised to provide a useful supplement to the direct consultation within the Achieving Building Standards Scoping Study.

This forum had been created by Communities and Local Government to allow everyone with an interest in Communities and Local Government areas of responsibility to contribute their views on current policy and emerging issues.

This pilot forum, to explore the potential of information and communication technology to support central government communications and consultations, was supported and evaluated by the independent Hansard Society.

A discussion topic entitled 'Achieving Building Standards' was created which sought responses to the following questions:

- Are building standards regulating for the right things in the right way?
- Are these standards being achieved?
- What helps people to comply with them?
- What stops people from complying with them?
- How could we improve compliance and why will this work?

The topic was promoted via a link on the Communities and Local Government web site, on the Building Regulations main page, and also on the Planning Portal, where the Building Regulations Approved Documents and related publications are published. Other promotional activity was undertaken by SAIC to raise awareness of the forum within various stakeholder bodies, which spread the word through communications to their members.

The online software allowed stakeholders to comment on their experiences and perspectives, raise a point for discussion by others or respond to the views of other participants. They were required to follow standard web discussion rules that are designed to ensure participants feel safe, keen to take part and the discussion meets its objectives. The forum topic ran for eight weeks from October to December 2006 and was moderated by SAIC to ensure that the discussion rules were applied.

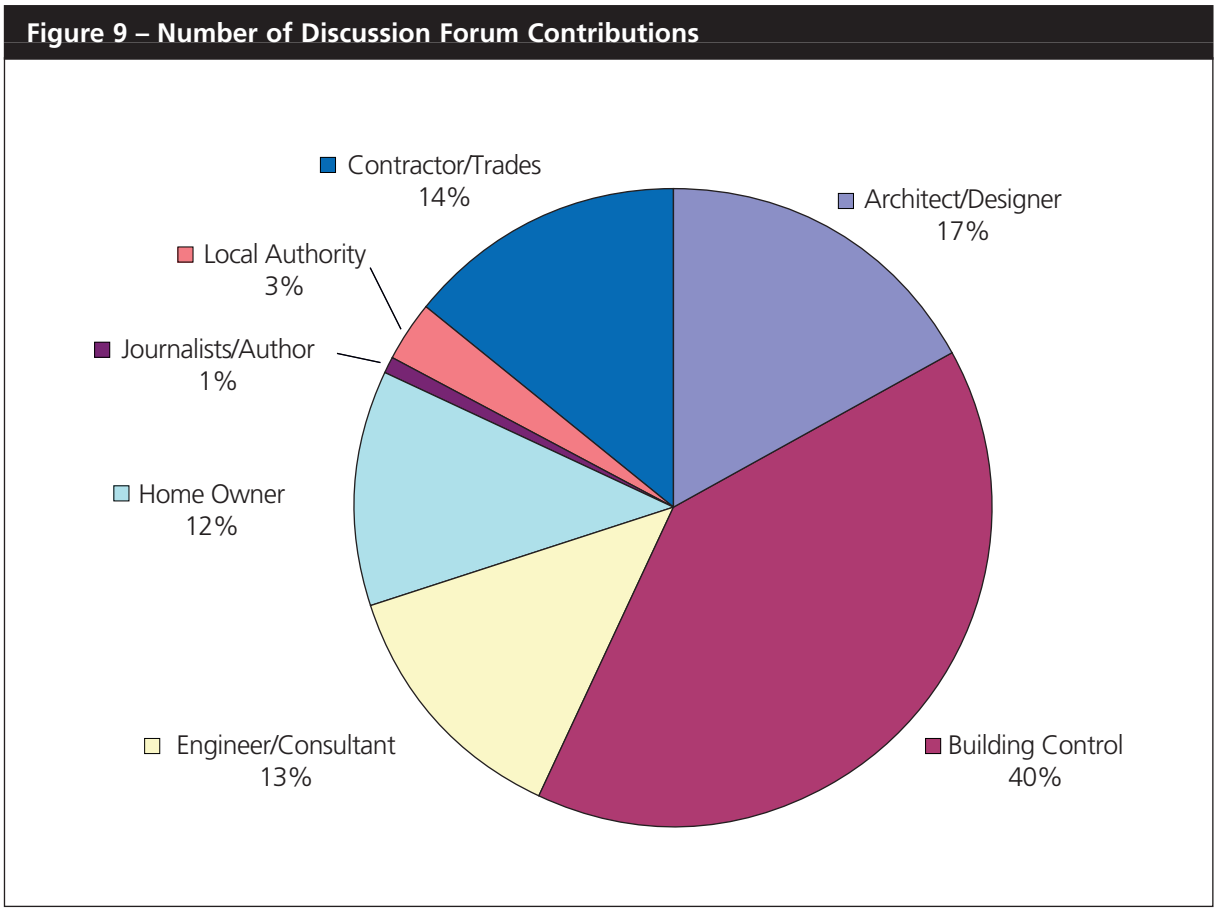
The forum proved to be very popular, with approximately 100 individuals posting 175 comments. This provided an excellent source of additional stakeholder input and produced a substantial body of genuinely useful feedback and ideas for improvement. The forum was an extremely effective communication medium and was accessed and read by thousands, averaging approximately 200 individuals per day.

Full details of the discussion forum, including an archive of the 'Achieving Building Standards' topic, can be found at:

http://forum.communities.gov.uk/

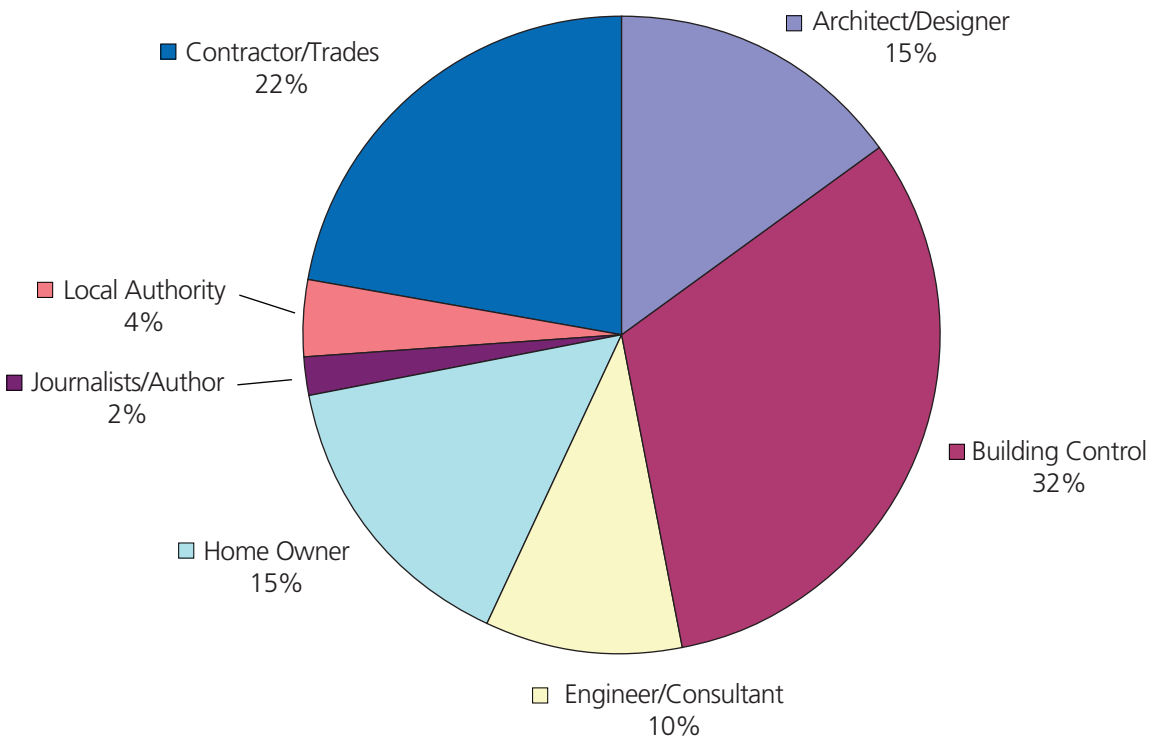
This Appendix outlines some of the main statistics collected from the online discussion forum. The following analysis excludes any moderator comments as well as comments on the forum itself (e.g. regarding its functionality). The total number of contributory 'posts' (comments) examined is thus 154 with 97 different individuals posting. The posts and numbers of individuals can be broken down as follows:

Figure 9 – Number of Discussion Forum Contributions



It can be seen that the most active group of users were Building Control, with 60 posts. Contributions from other stakeholder groups were fairly evenly split between Architects/Designers (26 posts), Contractor/Trades (22 posts), Engineer/Consultant (20 posts) and Home Owner (19 posts).

Figure 10 – Number of Individuals Contributing to Discussion Forum



On average each individual made two contributions. The largest group of respondents was Building Control with 30 individuals. The most diverse group was Contractor/Trades with 21 individuals accounting for 22 posts. The Home Owner group (15 individuals) had a similar ratio of posts per individual. The Architect/Designer group (15 individuals) and the Engineer/Consultant group (10 individuals), like the Building Control group, averaged two comments per individual.

The table below provides an alternative view of the information portrayed in the pie-charts:

Discussion Forum Contributions

Stakeholder Group	Number of Contributions	%	Number of Individuals	%
Architect/Designer	26	17	15	15
Building Control	61	40	30	31
Engineer/Consultant	20	13	10	10
Home Owner	19	12	15	19
Journalist/Author	2	1	2	2
Local Authotity	4	3	4	4
Contractor/Trades	22	14	21	18
Total	**154**	**100%**	**97**	**100%**

A4.2 Key themes

The main themes that emerged in the course of the discussion were:

Compliance / Non-compliance

72 posts referred to the problems with the current situation:

- To help people comply the most crucial thing is to keep things simple. Simplicity will enable and encourage more compliance. It is thus crucial to make enforcement against non-compliance of the Building Regulations simpler and far more cost effective for Local Authorities to implement

- Work often starts before approval; this leads to non-compliance on site. Better compliance is unlikely to be achieved without a realistic timetable

- At the moment responsibility for compliance rests with the home owner. However, this appears to offer a loophole as some builders employ a number of tactics to encourage homeowners to steer clear of building control applications

- People don't comply with regulations purely and simply because of cost. In order to facilitate compliance, buyers must be armed with the right tools. There must also be an incentive for the homeowner to bother about compliance

- People will comply if they can't sell their property (residential or commercial) when they can't show they have achieved building regulation approval. At present people don't comply because there are often no consequences for non-compliance.

Enforcement

27 comments saw enforcement as a particular problem. The overall view was that enforcement is largely neglected:

- Modern/effective enforcement powers are urgently needed

- At present, in certain areas, a real incentive for proper enforcement is clearly missing

- Enforcement powers for LAs have to be improved to allow them to act faster

- The government needs to do more to ensure that Building Regulations are enforced

- More responsibility has to lie with the home owner/consumer to assure they use accredited contractors

- Consent of the general public is needed for enforcement to be successful

- For enforcement to be successful it has to be targeted to penalise those who fail to comply. The use of pre-notification and inspection should be increased.

Guidance

32 comments were made on guidance, outlining the over complex nature of guidance and unenforceable legislation:

- Changes in guidance and legislation could improve and ease effectiveness of Building Regulations

- There is too much complexity in the technical material contained in the Approved Document's. This requires interpretation for implementation and hence has become the regulation's own enemy and a potential obstacle for compliance

- For small projects, an accessible set of simple targets is needed. For large projects, the complex inter-related issues have to be recognised and be dealt with properly

- The lack of clear guidance leads to a lack of awareness and consequently to a lack of enforcement

- The complexity of the regulations leads to a tendency for quite a lot of smaller work slipping through the inspection/compliance net

- The cost of compliance is going up (because of the increasing complexity of the regulations). It costs to get a competent advisor (e.g. architect or surveyor): it costs to get a competent tradesman; it costs to make a Building Regulation submission, etc.

- As the complexity is ever increases, there is too much for Building Control to handle adequately with the manpower and funding available.

Specific Parts of the Building Regulations

Parts L, M and P of the Building Regulations were repeatedly addressed throughout the discusion:

- **Part L** – Part L has been identified as an area of major concern. 33 respondents directly addressed the difficulties encountered in this context:

  – Recent changes regarding enforcement only affected the time limits and not the process

  – High level of non compliance with Part L; currently the regulations are neither understood nor enforced. The difficulty to meet standards/compliance puts the safety of people at risk

  – The public still needs to be convinced of the immediate cost benefit of implementing it

  – At present a vast number of breaches exist, but no prosecutions are undertaken. It is perceived to be too easy not to comply with Part L

  – Confusion exists on the timing of what is checked by who (Planning/Building Control) and at what stage. It was suggested that Part L requirements should be considered and determined at the planning stage of the construction cycle

  - Guidance is considered too complex and aspects of the AD's have become unintelligible. Clear guidance from the government / Communities and Local Government is needed

  - Despite all the fairly negative comments Part L is regarded as a first step in the right direction.

- **Part P** – 28 individuals expressed particular concern regarding Part P. The main problems relate to:

  - Lack of enforcement

  - The complexity and lack of clear guidance

  - An apparent focus on making money from the self-certification schemes and not improving safety

  - The perceived advantage being for the non-compliant and not those willing to comply

  - The fact that it does not stop DIYers.

- **Part M** – 9 comments were made on Part M. The general perception of Part M was:

  - It is out of date in comparison to planning requirements and is thus not regulating for the right things

  - It should be made an offence to start building work before approval; that is at least before the key areas have been satisfied such as Part L, Part M, Part B and Part A

  - Overall a more rigorous testing against the guidance in the Approved Documents is needed.

Sustainability

Although the forum comprised of relatively few comments on sustainability and environmental issues it was clear that sustainability has become a new area of concern. The following issues were outlined:

- It is critically important for sustainability (both in terms of environment and social inclusion) that buildings comply with the building regulations

- The sustainability agenda and the reduction of energy consumption of building should be addressed as early as possible in the process (planning stage)

- Regarding compliance it might be an idea to separate offences that can result in serious injury/death and environmental issues.

A4.3 Summary

The discussion forum focused on a list of points to support the general analysis of the current performance of Building Regulations, how they are managed and maintained, and what might have to be done to improve them. The analysis of the online forum comments supports the 'list of recommendations' given in this report.

The main issues raised in the discussion forum were:

- Insufficient enforcement; too much is done outside the system: clear time frames for prosecution have to be set. Local Authorities are swamped with the task
- There is no effective compliance regime
- Building regulations are too complex for the end-user
- The need to allow for more innovation for designers; flexibility and guidance need to be weighed against the needs of small constructors for tailored guidance
- Money talks: regulation has to take into account the financial interest of the client
- There has been a negative impact on householders and small builders
- The main concern, in relation to specific areas of regulation, centred on Part L.

It is thus crucial to:

- Develop and implement an effective compliance and enforcement regime
- Implement regulatory simplification plans
- Develop clear and simple customer-centric guidance and processes.