

## Agenda Item 14

Executive Board

10 May 2006

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### **Implementation policy document: Introduction of revised Building Regulations April 2006**

#### **Summary**

The Building and Approved Inspectors (Amendment) Regulations 2006 introduced a revised Part L (Conservation of Fuel and Power) into Schedule 1 of the Building Regulations and revoked the current Parts L1 and L2. Four new Approved Documents containing practical guidance were approved to support the revised Part L requirements. It also introduced new regulations and requirements to implement Articles 3 to 6 of the Energy Performance of Buildings Directive (2002/91/EC).

The changes to Parts L and F have been expected for some time, with implementation originally planned for September 2005, then delayed to January 2006 and finally introduced from 6 April 2006.

The changes to Part P were not expected however and no forewarning had been given prior to the release of the new Approved Document on March 15. It would appear that no public consultation has been carried out on these changes, despite the fact that they replace a mandatory requirement specified in schedule 1.

The final version of the Approved Documents and the Statutory Instrument itself were not made available until 15 March and then only on the Office of the Deputy Prime Minister (ODPM) web site. The final versions of the Approved Documents were revised again on the 31 March and early print versions from the Stationary Office have had to be recalled and re-printed as a result. To date these are still awaited.

The report examines the implications of such a short lead-in and a suggested practical approach.

The changes to Part P require Building Control Bodies to assume responsibility for testing electrical installations where the work is not carried out by a suitably qualified electrician. The report concludes that the Council should as a matter of urgency engage the services of a suitably qualified electrician to act as a consultant to the Council in such cases.

#### **Recommendation**

**That Members note the content of the report and in particular Paragraph 4 which sets out how the Building Control Manager will implement the amendments to the Building Regulations.**

**a) Reasons for Recommendation**

The Council must implement the new legislation. In the absence of relevant documentation, software and guidance from the ODPM, the Building Control Manager must determine the exact level of compliance sought.

If the policy is over-zealous, there is a substantial risk that clients will use an alternative Building Control provider, from the public or private sector, who may choose to adopt a more lenient approach to the new requirements and not make the same attempts to ensure compliance.

If, however, the approach adopted is too lenient, the Council is at risk from challenge by other providers and indeed from the ODPM. An additional risk is that of criticism from future tenants of new or adapted buildings who would expect the building to fully meet all new standards and would justifiably criticise the use of relaxed criteria.

**b) Alternative Options**

The Council could choose to do nothing and await the documentation, software and guidance before starting to implement the new requirements. This position is untenable due to the risk of challenge for not fulfilling our responsibilities as a Building Control provider.

**c) Risk Considerations**

- Economic - Risk of loss of market share to competitors.
- Legal – Risk of legal challenge for leniency.

**d) Policy and Budgetary Considerations**

Discussions with colleagues in other offices reveal a likely annual cost of approximately £10,000 for this service. This requirement is outside of our current budget provision. EDDC Building Control charges are already being increased by 5% in May 2006. Any further increase would be likely to lead to a further loss in market share.

Action will be taken through the Planning and Countryside Service budget over the next 12 months to address this expenditure.

**e) Date for Review of Decision**

October 2006

**Main Body of the Report**

**1. Overview**

The three changes to the Building Regulations introduced on 6 April 2006 relate to the following parts of the Building Regulations –

**1.1 Part F – Ventilation**

The changes to Part F do not involve any change to the mandatory requirement specified in Schedule 1. The changes therefore take the form of additional guidance in the Approved Document, which greatly expands on the range of ventilation types covered for dwellings and expands on the concept of performance based ventilation for other buildings.

## **1.2 Part L – Conservation of fuel and power**

The changes to Part L involve major changes to the mandatory requirement, specified in Schedule 1, to the means of demonstrating compliance in the Approved Documents and to the range and complexity of the secondary documents referred to. These changes considerably expand the range of buildings covered by the mandatory requirements and for the first time require the upgrading of existing buildings in specified circumstances. For all new buildings, compliance must be demonstrated by calculation and some degree of pre-completion pressure testing is now a mandatory requirement.

Where an element of an existing domestic building is to be renovated (e.g. re-roofing, re-plastering, re-flooring) involving work to more than 25% of that element, if the existing construction u-value is greater than a given threshold, the whole element must be upgraded thermally. (There is currently a discrepancy between the Approved Document and the Building Regulations, whereby the Regulations do not recognise the >25% limit, i.e. a patch repair to the render of a dwelling, irrespective of size, would be notifiable work, requiring thermal upgrading of the whole wall.)

L2b, which applies to works to existing non-domestic buildings, has huge implications for consequential works when erecting extensions. Where an existing building larger than 1000m<sup>2</sup> is extended, a minimum of 10% of the principal contract sum must be spent on thermal upgrades to the existing building. Replacement services, such as heating and lighting can also trigger some degree of upgrade work.

E.g. A £1m extension to a warehouse would incur an additional cost of £100,000 for the owner in upgrading the existing building. It is widely believed that this will render many projects commercially uneconomic, which will inevitably lead to a downturn in the construction industry and/or an increase in unreported and unregulated work.

## **1.3 Part P – Electrical Safety (in dwellings)**

The changes to Part P involve a major change to the mandatory requirement specified in Schedule 1 which significantly impacts on service delivery. This will require Building Control Bodies to assume responsibility for testing electrical installations where the work is not carried out by a suitably qualified electrician. The current fees regulations mean that the costs involved cannot specifically be recovered from only those works where the Council incur testing costs and must therefore be met from general Building Control income. This may mean that charges to all applicants may have to rise above the 5% already proposed to cover the additional expenditure incurred by only a few.

## **2. Implementation**

**2.1** In what is becoming increasingly common practice, information relating to several key areas of the requirements have been taken out of the Approved Documents and moved to “secondary documents”. These documents are therefore essential for the implementation of the new Regulations as an assessment of compliance cannot be made without them. Unfortunately, many of these key documents have not been made available (even in draft form) and on the date of implementation the final versions had still not been published.

**2.2** The new software required to produce the calculations required by Part L for new dwellings was also unavailable on the date of implementation and the changes are likely to involve significant training of users before they can be used effectively. Despite the promise of a six-month lead-in period from the ODPM, along with a planned and intensive training program, in reality neither has been delivered. Indeed planned training courses organised by the ODPM had to be cancelled as a result of the Approved Documents being unavailable and an e-learning package for the training of building control bodies, is now unlikely to be available until the end of May. Our surveyors attended workshops in Plymouth on 25/26 April, in the absence of the relevant supporting documents.

**2.3** It is perhaps unsurprising therefore that despite real commitment in the construction professions to reduce the impact of buildings on climate change, the means by which the new regulations have been introduced has been almost universally condemned. Nationally, Local Authority Building Control (LABC) of which EDDC Building Control are members, has issued the following statement, *“The consensus of opinion of this organisation is that we will not be in a position to enforce the requirements of the new Parts F and L until 1 October 2006”*.

Similarly, the Royal Institution of Chartered Surveyors (RICS) has issued a statement saying, *“RICS also has concerns regarding the timescale for implementation in relation to the information available.....RICS’s suggestion that the transition provision should allow for an application to be made but enforcement only to occur from April 2007 has not been adopted as it would be regarded a deferment of enactment by Europe. The inadequate time available to prepare for implementation will potentially create serious challenges for Industry.*

*The RICS also hold a second concern relating to the transition provision in relation to a discrepancy between the transition provision and the Building Act. While the law allows for primary legislation to amend secondary legislation it does not allow the reverse. Subsequently, the statement....“that even if full Building Approval has been granted the project must commence within a year” conflicts with the Building Act (primary legislation) that stipulates a three-year leeway for commencement. This discrepancy has potentially serious implications for Industry and the government should act immediately to resolve this issue.”*

Even publications widely read and respected within the construction professions have voiced concern as the following quote from “Building” magazine illustrate –  
*March 2006 - from a firm given early access to trial the software, “The ODPM model is a black hole...all we can do are the most basic calculations....The government should have got its software up to scratch before releasing Part L”.*

### **3. The way forward**

- 3.1** Gaining the level of understanding necessary to implement Part L will be an ongoing learning process and our ability to deliver the required changes will accelerate as our knowledge and understanding increases. This must however be part of a controlled process rather than a haphazard one and each step towards full implementation must be agreed and properly communicated to both staff and clients. As a result of the delays, the Council’s Building Control Surveyors have been unable to properly learn about the changes, or to receive adequate training, let alone be in a position to implement and advise upon them. Similarly, this lack of information means that the Council’s customers are simply unable to design in accordance with the new requirements.
- 3.2** All of the Council’s Building Control Surveyors have attended at least a basic seminar giving an overview of the new Regulations. All appropriate staff will be attending the ODPM workshops.
- 3.3** Through professional groups, such as the RICS SW Panel, the Devon Building Control Group, the Devon Technical Panel and LABC South West, key staff are now working with colleagues in other Councils to arrive at consistent interpretations of the new regulations, and to agree a common approach wherever possible to avoid confusion. It is essential that this process is successful to ensure our clients do not face differing requirements when working with other Local Authorities.

We must keep clients informed of our position, and of the steps taken towards full implementation. This will be most important in the future, should any queries arise about the requirements in place at the time a building was approved or constructed, particularly if those requirements differ from the published legislation. This will also give some confidence to our customers, many of whom have projects for which funding has been agreed and project details confirmed. It is intended that

customers will be invited to attend cost-neutral technical seminars, to be held in the Council Chamber, which will help reinforce the positive stance being adopted by EDDC.

#### **4. Recommendations**

- 4.1** All Building Regulations are covered by an overriding constraint that nothing should be required under the Regulations unless the requirement itself is reasonable. It clearly would not be “reasonable” to demand compliance with requirements which are not yet fully published and which lack much in terms of supporting documentation and software. It is further considered that it would not be “reasonable” to totally ignore the ODPM’s oft-stated necessity to allow a six-month lead-in period for assimilation and training in order to gain a full and proper understanding of the new requirements prior to implementation.
- 4.2** It is further considered that our insurers and Council as a whole, would be similarly uncomfortable with implementation of complex requirements for which staff had not received appropriate training. This is in line with Building Controls quality assurance approach, in which it is stated that staff will only be given tasks or responsibilities for which they have been adequately trained.
- 4.3** The intention is that every effort is made to get up-to-speed with the new requirements as rapidly as possible, and the position will be reviewed on a regular basis. We will also undertake to keep our customers fully up-to-date with our approach.

#### **4.4 Part L**

In view of the current situation outlined above, a reasonable plan for implementing the new requirements would be as follows –

- 4.4.1.** All projects where works started on site before 6 April 2006 will be allowed to continue under the regulations in force on the date works commenced.
- 4.4.2.** All applications for which a full plans approval (with or without conditions) was given before 6 April 2006 will be allowed to continue under the regulations in force on the date they were approved, providing works start on site before 1 April 2007. (This however is currently under dispute as it may be ultra vires and contradicts the 3 year time period given in the primary legislation.)
- 4.4.3.** All applications deposited with the Council before 6 April 2006 will be checked and decided on the basis of the 2002 version of Part L. A condition will be placed on all such approvals to the effect that unless the work is commenced on site prior to 1st October 2006, further details must be provided prior to works commencing to demonstrate compliance with the 2006 version of Part L (subject to the outcome of 6.4.2 above.)
- 4.4.4.** All applications deposited after 6 April 2006 will be allowed to continue on site under the 2002 version of Part L, provided the works start before 1 October 2006 and the applicant can demonstrate that a contract for the work was in place prior to 6 April 2006. Note that this could include a verbal contract.
- 4.4.5** All Building Regulation files will include a Part L transitional position statement clearly identifying the deposit date, start date, evidence of any written contract and confirmation of any verbal contract exchanged prior to 6 April 2006. This will clarify which standards are to be applied.
- 4.4.6.** Where the Council is acting as Inspecting Authority under the LABC partnership scheme, the Council will honour any agreement made between the Partner Authority dealing with the application and the client.

## **4.5 Part F**

The risk assessment suggests that the implementation of Part F is considerably simpler than is the case with Part L, principally because the mandatory requirements have not changed. There is no reason therefore why the changed guidance in the revised Approved Document should not be brought into effect immediately.

## **4.6 Part P**

The key change to Part P relates to works which are not carried out by a suitably qualified electrician and the need in these cases for an assessment to be made of the appropriate level of inspection and testing required. This duty rests with the Council, and the Council must then arrange for this inspection and testing to be carried out at no additional charge to the applicant.

Building Control surveyors do not have the specialist skills to carry out this function, and it would not be an appropriate use of a qualified officer's time to do so even if training were provided. In the circumstances it is recommended:

- 4.6.1.** That the Council should as a matter of urgency engage the services of a suitably qualified electrician to act as a consultant to the Council in such cases.
- 4.6.2.** That the Council undertakes a tendering exercise to procure the services required. Ideally, more than one consultant will be retained to ensure continuity and availability of the service.
- 4.6.3.** That meetings be arranged with several suitable providers to discuss levels of service and costs. Discussions with colleagues in other offices reveal a likely annual cost of approximately £10,000 for this service. This requirement is outside of our current budget provision.
- 4.6.4.** That the revised provisions of Part P in this respect be brought into effect as soon as a consultant has been appointed.
- 4.6.5.** That the current level of charges be reviewed to ensure the level of income generated will fully fund the additional costs incurred in providing the service.

## **5. Conclusion**

- 5.1** This Council strongly supports the introduction of new legislation to control Co2 emissions and would wish to play its full part in implementing the legislation as quickly as is possible. However, given the current situation outlined above, this Council is placed in a situation where it is simply unable to do so due to matters entirely outside of its control.
- 5.2** In adopting the above recommendations, this Council accepts the reality of this situation and seeks to establish a reasonable, practicable and pragmatic means of bringing this new legislation into effect, in a way which can be delivered by its Building Control surveyors, and implemented by its customers. This will inevitably take time to achieve, but every effort will be made to do so as quickly as possible.

It is considered that the above working arrangements will provide clarity both for our own staff and our clients during the transition stage to full compliance. Where clients are willing and able to comply with the new requirements more quickly than is proposed above, every effort will be made to encourage them to do so.

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### **Legal Implications**

Despite the gaps in information needed from the government in order to fully implement the new statutory duties, it is advisable and in the public interest to do so as far as possible now.

### **Financial Implications**

Additional budget requested in 2006/07 of £10,000.

### **Consultation on Reports to the Executive**

Due to the urgency of addressing this matter, a report will be presented to the Overview Committee following Executive Board to explain to Members the implications for the wider sustainable construction agenda.

### **Background Papers**

- None

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**Anna Thompson**  
**Building Control Manager**

Executive Board  
10 May 2006

### 15. **Exclusion of the Public**

The Vice – Chairman of the Committee to move the following:-

“that under Section 100(A)(4) of the Local Government Act 1972, the public (including the press) be excluded from the meeting as exempt information, of the description(s) set out on the agenda is likely to be disclosed”.