

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

BUILDING REGULATIONS REVIEW 2015

**PROPOSED INTRODUCTION OF A BUILDING STANDARD AND ASSOCIATED
GUIDANCE WITHIN THE BUILDING STANDARDS TECHNICAL HANDBOOKS
TO IMPLEMENT ARTICLE 8 OF EUROPEAN DIRECTIVE 2014/61/EU**

FEBRUARY 2016

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1.0 TITLE OF PROPOSAL

PROPOSED INTRODUCTION OF A BUILDING STANDARD AND ASSOCIATED GUIDANCE WITHIN THE BUILDING STANDARDS TECHNICAL HANDBOOKS TO IMPLEMENT ARTICLE 8 OF EUROPEAN DIRECTIVE 2014/61/EU

2.0 PURPOSE AND INTENDED EFFECT

2.1 Background

Scottish building regulations set national mandatory building standards for the health, safety, welfare and convenience of persons in and around buildings, furthering the conservation of fuel and power and furthering the achievement of sustainable development. These building standards are supported by guidance contained in the building standards Technical Handbooks. The building regulations apply to new buildings and to buildings being converted, altered or extended. Scottish building regulations are devolved to the Scottish Parliament, therefore there is no alternative framework in place which deals with Scottish building regulations and mandatory building standards.

Building standards are expressed in functional terms and do not dictate the methods that should be used to achieve the requirements. The choice of how to comply with the standards lies with building owners and for this purpose Scottish Ministers issue Technical Handbooks containing practical guidance on how the requirements of the building standards may be met. The guidance may be relied upon in any proceedings as tending to negative liability for an alleged contravention of the building regulations. This does not however preclude the use of alternative approaches provided the designer can satisfy the local authority verifier that the aim of the building regulations is being fulfilled.

2.2 Objective

Buildings have significant implications for sustainable development and our communities. Through the appropriate application of minimum building standards, set by regulations, the design and construction of Scotland's built environment can benefit all owners, users and people in and around our buildings. The availability of high speed broadband has both sustainable economic and social benefits, underpinning virtually all sectors of a modern and innovative economy.

This business and regulatory impact assessment (BRIA) forms part of a Building (Scotland) Regulations 2004 review on proposals to introduce a new building standard covering broadband infrastructure within new buildings and existing buildings undergoing major refurbishment. The principle aims and objectives of the proposed standard and supporting guidance within the building standards Technical Handbooks meet the terms of Article 8 of Directive 2014/61/EU and indirectly it also supports the government's strategic objectives of a wealthier and fairer; safer and stronger; smarter; greener and healthier Scotland.

2.3 Rationale for government intervention

Article 8 of European Union Directive 2014/61/EU requires Member States to ensure that all newly constructed buildings are equipped, as part of the building warrant process, with a "high-speed-ready in-building physical infrastructure" to facilitate the cost-effective installation of cabling providing a minimum broadband speed of 30 Mbps. Article 13, among other things, requires Member States to adopt and publish regulations, so it is essential government intervenes.

As building regulations are a devolved matter this part of the Directive will be transposed by Scottish Government, with similar transpositions being carried out under the English, Welsh and Northern Irish building regulations. The remaining aspects of the Directive are being transposed at UK level.

To make the requirement for broadband infrastructure within buildings mandatory and thus meet the requirements of Articles 8 and 13, a new standard is required within building regulations.

As identified in 2.1 (Background), building standards are framed by guidance. As following the guidance tends towards negative liability, this is the commonest way of meeting the standards.

3.0 CONSULTATION

3.1 Government consultation

From early 2015 the Building Standards Division (BSD) has been involved in discussions with the two Whitehall Departments responsible for the implementation of Directive 2014/61/EU, the Department for Culture, Media and Sport (DCMS) and the Department for Communities and Local Government (DCLG). The main transposition of the Directive (all Articles except Article 8) is being dealt with at a UK level by DCMS and was the subject of a separate consultation.

Article 8 of the Directive is being transposed independently by the UK government and devolved administrations into each of the four national sets of building regulations. So that parity is achieved where practical, the BSD has been in discussion with DCLG as well as representatives from the Northern Irish and Welsh governments.

3.2 Public consultation

The BSD has an extensive database of names of individuals and organisations that have expressed a specific interest in building standards and regulations. Stakeholders on the BSD list are directly alerted to any forthcoming consultation in areas that they have expressed an interest in. As well as directly contacting stakeholders with a known interest, forthcoming consultation exercises are also promoted on the BSD homepage of the Scottish Government website and in the BSD electronic newsletter/newsflash issued to approximately 1800 stakeholders.

The full consultation package was published in different formats on the Scottish Government website (<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubconsult>). The consultation period, which ran for 6 weeks, commenced on 30 September 2015 and closed on 11 November 2015. Printed copies of the consultation papers were available, without charge, on request to the BSD. The majority of respondents were content with the proposals.

Proposals to introduce new mandatory building standards and associated guidance issued under the Building (Scotland) Regulations 2004 require to be notified to the European Commission under the provisions of Technical Standards & Regulations Directive 98/34/EC. This Directive seeks to prevent technical barriers to trade and lays down a procedure for the provision of information in the field of technical standards and regulations. The standstill period on further technical development imposed by the Directive ended on 1 January 2016. No barriers in this regard were identified.

3.3 Business consultation

The development of the standard, the guidance and what it means for industry was previously discussed with the umbrella body representing the construction industry in Scotland.

In addition to the general consultation identified in 3.2, a consultation exercise in support of the Scottish Firms Impact Test was undertaken. In January 2016 face to face and telephone discussions took place with between 6 construction sector businesses who might be affected by the proposals including:-

- 2 House builders
- 2 Non-domestic building developers
- 2 Non-domestic letting agencies

4.0 OPTIONS

4.1 Options proposed

Article 13 of the Directive is quite clear that legislation is needed to implement it effectively. So in considering how to address the objectives identified in 2.2, only two possible options were identified:

- Option 1 – do nothing;
- Option 2 – introduce a new mandatory standard, together with new supporting guidance within the Technical Handbooks.

4.2 Sectors and groups affected

Sectors and groups affected include:

- a) Building users – People living in or using buildings would benefit from easier broadband connectivity. Additionally, there will be some cost benefit to future occupants/users in relation to a reduced installation cost;

- b) Building designers/constructors - All those involved with building design and construction would have to familiarise themselves with the new/amended standards and guidance through training, etc;
- c) Building procurement - Persons or companies procuring new buildings or building work would be required to bear any extra cost of the work;
- d) Verification - Local authority verifiers would have to train staff in respect of the new building standard and associated guidance.

5.0 BENEFITS

The proposals contained within this BRIA form part of the overall transposition of European Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks. As part of the overall transposition of the Directive, the proposals will reduce the cost and ease the installation of broadband cabling into new buildings and those that have undergone a major renovation.

When assessing the effectiveness of the two options to achieve the desired outcome indicated in paragraph 2.3, the following observations were made:

5.1 Option 1 - do nothing

As explained in 2.3, the Scottish Government has an obligation under Article 8 of Directive 2014/61/EU to ensure that all newly constructed buildings and those undergoing major renovation are provided with an infrastructure to facilitate the future installation of broadband cabling to the end-user's location.

This option does not address the requirements of Article 8 and, as well as creating a dis-connect between UK and Scottish legislation, it leaves the Scottish Government open to infraction proceedings being initiated by the European Commission.

5.2 Option 2 - introduce a new mandatory standard, together with new supporting guidance within the Technical Handbooks

The principal benefit of option 2 is that a new or revised standard will ensure that the proposals will be applied through an existing monitoring and enforcement system. Mandatory building standards and the supporting guidance has proved in the past to be a robust method of achieving health, safety, welfare and sustainability objectives. Purpose built ducts / routes into and throughout buildings will assist with maintaining air tightness and fire protection, amongst other things.

This option removes the risk of potential infraction proceedings.

6.0 COSTS

6.1 Option 1 - do nothing

This option imposes no implementation costs on developers, however, there would be no reduction in costs to individuals and companies when providing broadband connectivity into new or renovated buildings. However, should

infraction occur, fines up to £237,864 per day would arise, with the cost being borne by Scottish Government.

6.2 Option 2 - introduce a new mandatory standard, together with new supporting guidance within the Technical Handbooks

The proposed mandatory standard and Technical Handbook guidance applies to all new domestic and non-domestic buildings and those subject to major renovation. The costs associated with the implementation of Article 8 are extremely low as there will be very limited occasions where the necessary in-building infrastructure to enable connections to super-fast broadband is not already being provided in new buildings and major renovations.

To provide guidance to Member States in the preparation of impact assessments, the European Commission published a report providing industry estimates. The report provides figures of €250 per flat for ductwork and cabling, which converts to a figure of approximately £181. The Spanish worked example in the report estimated that ducting costs are about 77% of the total cost of broadband installation (i.e. ducting and wiring). Applying this cost-split to Scottish installations equates to a cost of around £139 per flat to install ductwork. Due to the much reduced ductwork, it is estimated that in a single house installation the figure would be around half of that for a flatted property at £67.90.

The total number of dwellings built in Scotland in 2014 (latest available figures) has been assessed as 16,486. The division between flats and houses has been assessed as a flat to house ratio of approximately 1:2, therefore this figure is made up of approximately 5,496 flats and maisonettes and 10,990 houses. Based on these figures the cost of implementing Article 8 to the house building industry would be £1,510,165. However, it is known that the vast majority of house builders routinely install provisions to allow the future easy-installation of broadband cabling. Taking a fairly conservative figure of 80% of current new dwellings being provided with ductwork suitable for broadband cabling equates to a cost to industry of £302,033 per annum.

When considering non-domestic buildings, installation costs for ductwork will be broadly in line with that for dwellings. However, it is considered that nearly all new non-domestic buildings currently have provision for the future installation of broadband cabling. It is therefore considered that the cost to industry from implementing Article 8 is negligible.

6.3 Cost of new standard and guidance and subsequent familiarisation

The new standard will be included in an amendment to the Building (Scotland) Regulations 2004, with the associated guidance forming part of the Scottish Building Standards Technical Handbooks. The Technical Handbooks give guidance on compliance with the mandatory building standards set by the Building (Scotland) Regulations 2004 (as amended). BSD produce the Technical Handbooks in-house in all required formats. Therefore, the only cost for producing new guidance is BSD staff costs, which is absorbed into the running costs of this area of Scottish Government.

There are approximately 560 building standards professionals in Scotland. The time impact per person should be no more than 1 hour on training and familiarisation. Therefore, based on average hourly rates plus overhead costs, the total one off cost for building standards professionals would be around £12,000. However, this can be off-set against continued professional development requirements. For example, building standards professionals, architects and architectural technologists may incur no additional costs as professional institutions often demand between 20 and 40 hours continued professional development as part of their professional membership criteria.

According to the Scottish Corporate Sector Statistics 2015, there are an estimated 361,345 private sector enterprises in Scotland, including the self-employed. Of these, an estimated 48,135 are directly involved in the construction sector. There are also around 45,000 voluntary organisations in Scotland.

Due to the specific nature of the proposals it is believed that only those enterprises involved in the construction sector will feel a need to familiarise themselves with the guidance. Assuming one person from every construction sector enterprise in Scotland spends 15 minutes familiarising themselves with the guidance, the total cost of familiarisation would be in the region of £180,500. However, it is estimated that only 25% of enterprises will need to have specific knowledge of the guidance, with the remainder using construction professionals to advise them when carrying out building work. Therefore the total cost of familiarisation for private sector enterprises would be around £45,000.

7.0 SCOTTISH FIRMS IMPACT TEST

The Scottish firms' impact test regards all firms with fewer than 50 full time employees as being small businesses. The majority of small firms have fewer than 10 employees and guidelines state that a concerted effort should be made to consult them over policy proposals.

The consultation with micro, small and medium sized Scottish businesses referred to in clause 3.3 above was carried out with all of the businesses considering that the requirements would apply equitably. No businesses thought that the proposals would result in additional costs for training or awareness raising.

7.1 Competition assessment

As the proposals will form part of national building regulations they will be implemented uniformly throughout the country. It is not envisaged that the means of complying with the Directive, as identified in 2.3 of this assessment, will impact on competition between companies.

The four competition filter questions provided within the Office of Fair Trading guidelines for policy makers on competition assessment and it is considered

that the proposed changes to the building standards and guidance will not impact on competition within the market place.

7.2 Test run of business forms

There will be no need to amend the existing forms or develop new forms forming part of the building warrant process as a result of these proposals.

8.0 LEGAL AID IMPACT TEST

It is not envisaged that there will be any additional demands placed on the legal system by this proposal. Accordingly, it is not considered that there will be any effect on individuals' right of access to justice through availability of legal aid or on possible expenditure from the legal aid fund.

The Legal Aid team have been consulted in respect of this assessment and are content that this should not have an impact on legal aid.

9.0 ENFORCEMENT, SANCTIONS AND MONITORING

9.1 Background

The proposed changes will form part of the Scottish Building Standards Technical Handbooks. These documents give guidance on compliance with the Building (Scotland) Regulations 2004.

All matters relating to enforcement, sanctions and monitoring will be carried out under the existing processes, which form the building standards system in Scotland, as set out under the Building (Scotland) Act 2003. Parties responsible for operation of this system are the 32 Scottish local authorities, appointed as verifiers under the Act, and the BSD.

9.2 Enforcement and sanctions

Work subject to the Building (Scotland) Regulations 2004 requires an applicant to obtain a building warrant before work commences and to have a completion certificate accepted once works are finished.

Where a building warrant is required, proposals are subject to the scrutiny of verifiers (local authority building standards departments) who have enforcement powers under the Act to ensure compliance with the Regulations.

9.3 Monitoring

The BSD will review the implementation of any changes made to building standards legislation to monitor the effectiveness of said changes so that subsequent reviews can be made on an informed basis.

Any implemented changes will be subject to a review within a 10-year period.

10.0 IMPLEMENTATION AND DELIVERY PLAN

As required by Article 13 of Directive 2014/61/EU, the new building standard will come into force on 1 July 2016, however, it will only apply to building warrants submitted after 31 December 2016. Revised Technical Handbooks incorporating the new standard and associated guidance will be published by July 2016, allowing designers, contractors and verifiers at least 5 months to familiarise themselves with the changes.

The Building Standards Division will raise awareness of the new requirement during this 5 month period, for example, inclusion in the Division's electronic newsletter.

11.0 SUMMARY AND RECOMMENDATION

Summary Benefits and Costs Table

Options	Benefits	Costs
1 – Do nothing	None. The intent of Article 8 of Directive 2014/61/EU of lowered costs for broadband deployment would not be achieved.	Slight cost savings for the construction industry. The cost of broadband deployment in completed buildings would not be reduced. There is a significant risk of infraction proceedings against the Scottish Government if Article 8 is not transposed into Scottish legislation.
2 – Introduce new standard and associated Technical Handbook guidance	The intent of Article 8 of Directive 2014/61/EU of lowered costs for broadband deployment would be achieved. The cost of any broadband deployment in completed buildings would be reduced.	The costs of providing in-building physical infrastructure is c. £67.90 per house and c. £139 per flat (similar costs apply to non-domestic buildings). However, it is believed that very few non-domestic buildings and less than 20% of dwellings are constructed without such a provision, therefore, the total cost to industry is c. £302,033. These will be balanced by cost savings in excess of this amount for consumers.

The recommended approach is to implement the changes outlined in **option 2 – Introduce a new standard and relevant guidance within the Technical Handbooks.**

12.0 DECLARATION AND PUBLICATION

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that the business impact has been assessed with the support of businesses in Scotland.



Signed by the accountable Minister
Marco Biagi MSP, The Minister for Local Government and Community
Empowerment.

Date:- 2/2/2016

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