

## Summary: Intervention & Options

|   |   |                                |
|---|---|--------------------------------|
| <b>Department /Agency:</b><br><b>Communities &amp; Local Government</b> | <b>Title:</b><br><b>Impact Assessment of Longer Time Limits for the Prosecution of Breaches of Building Regulations</b> |                                |
| <b>Stage:</b> Introduction  | <b>Version:</b> 1   | <b>Date:</b> 31st October 2007 |
| <b>Related Publications:</b>  |   |                                |

### Available to view or download at:

<http://www.communities.gov.uk>

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### What is the problem under consideration? Why is government intervention necessary?

Concerns at the effectiveness of the building control system and its ability to ensure compliance; need for consistency in enforcement across building regulations; Government undertaking to Parliament (during passage of the Climate Change & Sustainable Energy Act 2006) to take powers to extend the longer prosecution time limits, secured in relation to climate change, to all breaches of building regulations as soon as possible.

### What are the policy objectives and the intended effects?

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- i. To provide a more effective deterrent to non-compliance in relation to provisions relating to the conservation of fuel and power and reduction of emissions of greenhouse gases; and
- ii. to ensure that the deterrent applies equally to non-compliance with the provisions relating to the health, safety, welfare and convenience of persons in and about buildings

### What policy options have been considered? Please justify any preferred option.

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Option 1 – do nothing.

Option 2 – preferred; extend longer time limits across all the regulations.

This would fulfil the undertaking ministers gave to Parliament; and achieve the policy objective by removing the anomaly between the climate change – related regulations and the rest.

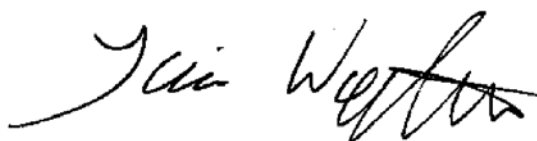
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

To be discussed with local authority representatives – but current estimates suggest it will take some 18 – 30 months for the necessary data to be available in sufficient quantities.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the 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.***

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Jacqui Weir', written in a cursive style.

**Date:** 9 November 2007

## Summary: Analysis & Evidence

|   |  |  |  |
|---|--|--|--|
| <b>Policy Option:</b><br><b>A</b>   |  | <b>Description: Do nothing</b>         |  |
| <b>COSTS</b>  | <b>ANNUAL COSTS</b>                                  |  | Description and scale of <b>key monetised costs</b> by 'main affected groups' £0 No costs or burdens on normally compliant and efficient businesses and business owners. |
|   | <b>One-off</b> (Transition)                          | <b>Yrs</b>                             |  |
|   | £0   |  |  |
|   | <b>Average Annual Cost</b><br>(excluding one-off)    |  |  |
|   | £0   |  |  |
|   |  | <b>Total Cost (PV)</b>                 | <b>£0</b>  |
| Other <b>key non-monetised costs</b> by 'main affected groups' Marginal familiarisation costs for local authorities will be outweighed by a more effective deterrent to non – compliance (which they have requested). No increase in prosecutions envisaged so costs should remain constant.  |  |  |  |
| <b>BENEFITS</b>   | <b>ANNUAL BENEFITS</b>                               |  | Description and scale of <b>key monetised benefits</b> by 'main affected groups'   |
|   | <b>One-off</b>                                       | <b>Yrs</b>                             |  |
|   | £0   |  |  |
|   | <b>Average Annual Benefit</b><br>(excluding one-off) |  |  |
|   | £0   |  |  |
|   |  | <b>Total Benefit (PV)</b>              | <b>£0</b>  |
| Other <b>key non-monetised benefits</b> by 'main affected groups' Should enable LAs to plan and resource casework more effectively. Stronger deterrent should reduce non-compliance over time. That should bring fewer injuries, deaths and less ill health for persons in and around buildings. I that can be quantified, in terms of days work lost, it might be possible to quantify potential gains to the economy. |  |  |  |
| <b>Key Assumptions/Sensitivities/Risks</b> Effective advance publicity for the proposed changes – to ensure duty holders understand need for improved compliance and minimise the risk of prosecution for inadvertent breaches; clear messages to local authorities about continued need for prioritised and balanced enforcement.  |  |  |  |
| <b>Price Base</b><br><b>Year 0</b>  | <b>Time Period</b><br><b>Years</b>                   | <b>Net Benefit Range</b><br>(NPV)<br>£ | <b>NET BENEFIT</b><br>(NPV Best estimate)<br>£   |

|   |   |                    |                            |                      |
|---|---|--------------------|----------------------------|----------------------|
| What is the geographic coverage of the policy/option?                       |   | England and Wales  |                            |                      |
| On what date will the policy be implemented?                                |   | 2008               |                            |                      |
| Which organisation(s) will enforce the policy?                              |   | Local authorities  |                            |                      |
| What is the total annual cost of enforcement for these organisations?       |   | £                  |                            |                      |
| Does enforcement comply with Hampton principles?                            |   | Yes                |                            |                      |
| Will implementation go beyond minimum EU requirements?                      |   | No                 |                            |                      |
| What is the value of the proposed offsetting measure per year?              |   | £                  |                            |                      |
| What is the value of changes in greenhouse gas emissions?                   |   | £                  |                            |                      |
| Will the proposal have a significant impact on competition?                 |   | No                 |                            |                      |
| Annual cost (£-£) per organisation (excluding one-off)                      | Micro<br><b>£0</b>                                | Small<br><b>£0</b> | Medium<br><b>£0</b>        | Large<br><b>£0</b>   |
| Are any of these organisations exempt?                                      | No  | No                 | N/A                        | N/A                  |
| <b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase – Decrease) |   |                    |                            |                      |
| Increase of £ No  |   | Decrease of £      |                            | <b>Net Impact £0</b> |
| Key:  | <b>Annual costs and benefits: Constant Prices</b> |                    | <b>(Net) Present Value</b> |                      |

## Evidence Base (for summary sheets)

### 1. Proposal

Proposal to extend across all building regulations the longer time limits for prosecution for contravention of certain climate-change related provisions of the regulations secured in the Climate Change and Sustainable Energy Act 2006 Act (by inserting section 35A into the Building Act 1984).

### 2. Purpose and intended effect

#### Objectives:

- i. To provide a more effective deterrent to non-compliance in relation to provisions relating to the health, safety, welfare and convenience of persons in and about buildings;
- ii. and by doing so to achieve consistency of enforcement across the regulations..

#### Background:

The proposal would extend longer time limits for prosecution of offences across all building regulations – thus fulfilling an undertaking given to Parliament by Government Ministers during the passage of the Climate Change & Sustainable Energy Act 2006, which provided (by inserting section 35A into the Building Act) for such longer time limits to be designated in relation to contraventions of the climate change provisions of building regulations. It is supported by the representatives of local authorities who have the statutory function of enforcement. It applies to England and Wales.

**The current legislation** (the Building Act 1984) enables a four-tier approach to enforcement:

- (a) (often used) Building control bodies (local authorities and private sector approved inspectors) in their examination of plans and proposals for new works will have a close dialogue, on and off site, with clients to ensure they understand the requirements of the law and will typically give information and informal advice;
- (b) (sometimes used) Section 36 is a civil administrative procedure which allows local authorities (who alone have enforcement powers), in cases of non-compliance, to serve notices on building owners to require the removal or alteration of the non-compliant work;
- (c) (used for flagrant breaches) Section 35 allows local authorities to prosecute contraventions via summary proceedings at magistrates' courts. Currently such prosecutions must be brought within 6 months of the commission of the breach (but breaches may not be discovered immediately);

- (d) (rarely used, backstop for imminent threat to health or safety) Section 36(6) procedure allowing an injunction to be applied for to require removal or alteration of work done in contravention of building regulations.

**The proposal affects** (c); it would provide that, in England and Wales, in relation to prosecution of breaches of designated provisions relating to the health, safety welfare and convenience of persons in and around buildings, the 6 month time limit for bringing proceedings would start from when local authority prosecutors have sufficient knowledge to justify proceedings (e.g. discovery of the offence) rather than the date of the commission of the offence. This 6 month time limit would be subject to an overriding time limit, such that no prosecution could be brought more than 2 years after the date of commission of the offence

Organisations representing local authorities have made repeated representations in recent years about the effect that the current time limits have on their ability to pursue non-compliance. With the 6 month time limit for starting proceedings at magistrates' courts running from the date of the offence, i.e. the completion of the offending works, and late emergence of (what may not be obvious) building defects, this can easily eat into the time that local authority prosecutors need to prepare an effective case. As a result, cases of non compliance can escape prosecution.

At meetings with Departmental officials, local authority representatives have highlighted the different, more generous provisions in other legislation and sought change along the lines of the current proposal that would assist them to deliver more effectively their existing statutory functions.

#### **Rationale for Government intervention**

- i. The initial impetus for longer time limits for energy related breaches stemmed, inter alia, from a DTI Energy White Paper – “Our energy future – creating a low carbon economy” Cm 5761 published in February 2003. In signalling the need to bring forward the revision and tightening of building regulations to achieve carbon savings the Government committed itself to working “with local authorities and their building inspectors to see whether and how enforcement of the regulations can be cost – effectively improved to achieve better correlation between design and built performance” (para 3.20). Defra’s implementation plan (Energy Efficiency: the Government’s Plan for Action – Cm 6168 April 2004) also identified enforcement (Annex 8 Table A6) as a key risk for delivery of the White Paper energy efficiency goals “Regulatory measures do not deliver expected savings due to poor enforcement – particularly relevant to Building Standards.”
- ii. Similar messages have emerged elsewhere, including from a major survey of stakeholder views on the building control system carried out in 2006 – Achieving Building Standards (by Science Applications International Corporation for the Department). This reported that stakeholders 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". And it quoted the views of representatives of local authority building control (LABC) to a Cabinet Office study on enforcement that "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.)"

- iii. Recent years have seen increasing concerns expressed at the extent to which building regulations are complied with on the ground but much of this is anecdotal. Of the extant research, a 2004 study by Oxford Brookes University ("Building Regulations, levels of compliance") found that generally "levels of compliance were not always sufficient, though there was no evidence of systematic and purposeful non compliance".
- iv. The Department is undertaking a more general review of building control which will look at a full range of options for improving compliance and enforcement. This IA deals with only one aspect of this.

### 3. Consultation

The original proposal in the Climate Change & Sustainable Energy Bill (in relation to climate change – related offences) received collective agreement on the basis of an undertaking to the Law Officers that longer time limits would be extended across the regulations as soon as possible: this would put prosecutions for contraventions of all regulations on the same footing. On the extension now proposed, we have consulted the Criminal Justice Delivery Unit at HM Courts Service and the Better Trials Unit at the Office for Criminal Justice Reform, the Welsh Assembly Government and LABC, which represents local authorities. We have also sought the advice of the statutory Building Regulations Advisory Committee.

### 4. Options

- (a) Option 1 – Do nothing. Would not achieve the objective of providing a more effective deterrent.
- (b) Option 2 – extend longer prosecution time limits across building regulations. This would achieve, respectively, the policy objective and remove the anomaly between the climate change – related regulations and the rest; and should enable local authorities more effectively to pursue non-compliance. This approach would mean that the 6 month time limit would start from when local authority prosecutors had sufficient evidence to justify proceedings – so minimising the scope for non-compliers to escape the consequences of their actions. Sufficient evidence would be signalled by their issuing a certificate to that effect. The new arrangement is subject to an overall 2 year time limit

from commission of the offence, to ensure that proceedings are not launched years after the offences to which they relate, which would be oppressive.

**The Government's strongly preferred option is Option 2.**

## 5. Costs and benefits

- i. Option 1: No benefits but potential disbenefits and costs to the wider community. Not responding to informed local authority representations on enforcement risks sending a negative signal about the importance of the effectiveness of building control system. Inability to pursue worst non compliers risks long term damage to built infrastructure, failure to ensure that legislators' intentions (effective regulation and disincentives for non compliance) are maintained.
- ii. Option 2: Longer time limits for prosecution for all breaches of the provisions of building regulations will enable local authorities to deal with those who fail to comply and minimise the number who escape their responsibilities because of the constraints of the present time limits. It also sends a timely reminder to those doing building works of the importance the Government attaches to safe and well built homes, and of ensuring that the provisions of building regulations are fully complied with. If this is done then the consequential benefits will be fewer injuries, deaths and less ill health for persons in and around buildings. This option is also consistent with the approach recently signalled in Department's document "The Future of Building Control".
- iv. Local authorities have requested the changes which they consider will help remove a barrier to effective and efficient management of the Building Regulations. The change should provide them with a more effective deterrent to non-compliance. This outweighs any familiarisation costs for each local authority in England and Wales. There are no statistics available on the number of cases which local authorities may wish to have prosecuted but were time-barred in doing so. Therefore it is not possible to estimate how many prosecutions there might be taking advantage of the extended time limits but local authorities will retain their discretion on whether to prosecute and have more time to ensure a successful prosecution. Overall, it is not expected, and we do not intend, that there will be more prosecutions as a result of the proposals but strengthening the threat of prosecution will enable local authorities to make better use of other enforcement levers. Over time there ought to be less non-compliance.
- v. We have also looked at costs on other bodies:
  - (a) Central government. The only costs would be publicity for the changes. These are very small and likely to be incorporated with the publicity for changes made as a result of the wider Future of Building Control review. Any publicity costs would be borne from current budgetary allocation.



- (b) Approved inspectors. No costs as they are not involved in prosecutions under Section 35 of the Building Act.
- (c) Building owners and those carrying out building work. There will be no new burdens on normally compliant and efficient businesses or building owners and thus no costs on them.

## 6. Small firms impact test

We do not believe that this clause will have a significant or disproportionate effect on small businesses as it merely increases the time available to local authorities in which they can take enforcement action. We are consulting the Enterprise Directorate of the Department of Business, Enterprise and Regulatory Reform as part of the formal consultation exercise now underway. A specific small firms impact test is in preparation. Before introducing the change, which will be done by separate building regulations, we would ensure that there was adequate general publicity and advance warning to businesses including small businesses via representative organisations, trade publications, etc.

## 7. Competition assessment

In so far as this measure will improve compliance by the small minority of non compliers who merit it, it should contribute to a more level playing field for reputable companies and so assist fair competition and counteract what is in effect a market failure. As such it is consistent with wider government policies on fair trading.

## 8. Enforcement, sanctions and monitoring

The use of this new arrangement will be by local authorities at their discretion, as now – but they operate within the principles of the Enforcement Concordat and its focus on proportionality. We intend to signal that, while the change is an indication of how seriously Government takes the need for increased energy efficiency and proper health and safety etc in buildings, we are looking not to increase the incidence of prosecutions but for increased compliance by all concerned.

## 9. Implementation and Delivery Plan

The extension of longer time limits across the regulations should take effect as soon as there is a legislative opportunity. Current expectations are that this may be during 2008, but this cannot be predicted with any certainty (we are awaiting the views of consultees on this). The change will not be retrospective.

## 10. Post-Implementation Review

We will discuss with local authority representatives how the outcome and impact of the changes can be assessed (likely to include the number of cases brought within the extended period and their outcome) and discuss with them when that assessment should be made. Current initial estimates suggest it will take some 18 – 30 months for the necessary data to be available in sufficient quantities to be a useful source of information.

## 11. Other assessments

More effective compliance with the health, safety, welfare and convenience aspects of the building regulations (which include structural and fire safety, resistance to moisture, sound resistance, ventilation, protection from falling etc) should, by promoting safe and well constructed buildings that keep out the elements, assist the health and well being of their occupants. More effective compliance with the access requirements of the regulations should assist those with disabilities. Building regulations, as technical requirements for the building fabric, are gender and race neutral – and apply equally in rural as well as urban contexts with no detriment to either. There is no conflict with human rights legislation: the new time limits are reasonable, apply to and do not change existing legal processes or the entitlement to or use of legal aid; and will not be retrospective.

## 12. Summary and Recommendation

In conclusion, the proposed legislative changes are expected to bring real benefits in terms of consistency and encouraging compliance with important building regulations, at negligible cost and we recommend that we proceed with it.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

| Type of testing undertaken | Results in Evidence Base? | Results annexed? |
|----------------------------|---------------------------|------------------|
| Competition Assessment     | Yes                       | No               |
| Small Firms Impact Test    | Yes                       | No               |
| Legal Aid                  | Yes                       | Yes              |
| Sustainable Development    | Yes                       | No               |
| Carbon Assessment          | Yes                       | No               |
| Other Environment          | Yes                       | No               |
| Health Impact Assessment   | Yes                       | Yes              |
| Race Equality              | Yes                       | Yes              |
| Disability Equality        | Yes                       | Yes              |
| Gender Equality            | Yes                       | Yes              |
| Human Rights               | Yes                       | No               |
| Rural Proofing             | Yes                       | No               |