



Impact Assessment of Longer Time Limits for Prosecution of Breaches of Building Regulations



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Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Summary: Intervention & Options

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Stage: Final	Version: –	Date: 16 March 2008
Related Publications:		

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Contact for enquiries: br@communities-gsi-gov.uk

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

At present local authorities have only six months from the completion of building work to bring a prosecution for non-compliance with building regulations. Evidence received from stakeholders indicates that this period is too short in many cases, for example where latent defects come to light after this period or where remedial work is promised but then does not occur. An extension to the time limit for bringing prosecutions is necessary to provide Local Authorities with a means of dealing with the most serious of such cases and to provide a more effective deterrent to those commissioning breaches. Only legislation can alter the time limits for prosecution so Government action necessary.

What are the policy objectives and the intended effects?

The policy objectives and intended effects are twofold. First to give local authorities a longer period of time in which to bring prosecutions in the most serious cases for breaches of designated provisions of building regulations which have been made to further the conservation of fuel and power or the reduction of greenhouse gas emissions. This will make it more likely that such breaches will be prosecuted effectively. Second, to act as a more effective deterrent to the original commission of such breaches, as the likelihood of detection before the time period is up increases.

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

Two options have been considered:

Option 1: Do nothing

Option 2: Implement longer time limits

Only Option 2 would bring any benefits in relation to the specific problem of inadequate time limits for prosecution. Other action to improve compliance with building regulations is being pursued through other related policy proposals.

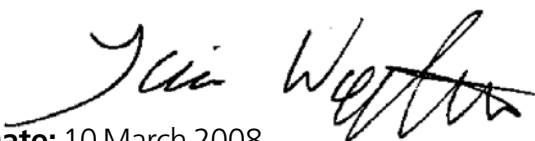
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Eighteen to thirty months after implementation – once sufficient data on the impact of the policy has become available.

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

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:



Date: 10 March 2008

Summary: Analysis & Evidence

Policy Option: 2

Description: **Implement longer time limits for prosecution.**

COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>It is not currently anticipated that there will be any such costs but this will need to be confirmed through the planned post implementation review.</p>
	One-off (Transition)	Yrs	
	£-		
	Average Annual Cost (excluding one-off)		
	£-		Total Cost (PV) £ not estimated
<p>Other key non-monetised costs by 'main affected groups'</p> <p>None.</p>			

BENEFITS	ANNUAL BENEFITS		<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>It is not currently possible to estimate the key monetised benefits associated with this proposal. It is not intended that there will be an increase in the overall number of prosecutions brought as a result of it but significant benefits are expected to accrue from more effective prosecutions and the expected deterrent effect.</p>
	One-off	Yrs	
	£-		
	Average Annual Benefit (excluding one-off)		
	£-		Total Benefit (PV) £ not estimated
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>More effective enforcement of serious breaches of building regulations; a more effective deterrent to non-compliance.</p>			

Key Assumptions/Sensitivities/Risks Longer time limits will allow for more effective prosecution of appropriate cases.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £-	NET BENEFIT (NPV Best estimate) £-
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		6.4.08		
Which organisation(s) will enforce the policy?		Local authorities		
What is the total annual cost of enforcement for these organisations?		Not estimated		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		N/A		
What is the value of changes in greenhouse gas emissions?		Not estimated		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No
Impact on Admin Burdens Baseline (2005 Prices) (Increase – Decrease)				
Increase of £0		Decrease of £0		Net Impact £0
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

Evidence Base (for summary sheets)

1. Title of proposal

Time limits for prosecution for contravention of certain provisions of building regulations. Proposed new regulations in relation to climate change – related provisions (implementing powers created by the insertion of section 35A into the Building Act 1984).

2. Purpose and intended effect

Objectives:

To provide for more effective enforcement and a more effective deterrent to non-compliance in relation to provisions in the Building Regulations relating to the conservation of fuel and power and reduction of emissions of greenhouse gases.

Background:

This proposal would apply the longer time limits provided by section 35A of the Building Act for prosecution of breaches of provisions relating to the conservation of fuel and power and the reduction of greenhouse gas emissions to designated provisions. It is fully 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) has 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;
- (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 current proposal affects (c). It would provide that, in England and Wales, in relation to breaches of designated provisions relating to the conservation of fuel and power and the reduction of greenhouse gas emissions, the time limit for bringing proceedings would be increased. The 6 month time limit beginning on the date of the commission of the offence would be increased to 2 years from the date of the offence. This 2 year limit would be subject to a requirement that proceedings must be commenced within 6 months of the date when local authority prosecutors have sufficient knowledge to justify proceedings (e.g. discovery 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 the frequent 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. The views expressed by Local Authorities in representations to the Department have recently been further supported by a survey of Local Authorities carried out as part of the Review of Building Control. The survey, to which 53% of Local Authorities replied, suggested that of all applications received around 0.07% were subject to formal enforcement procedures but that a further 2% of applications could have been subject to the threat of formal enforcement action if the time limit had been longer.

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. 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 – Apply the provisions in section 35A of the Building Act to provide longer time limits for prosecution of breaches of designated provisions of building regulations relating to the conservation of fuel and power and reduction of greenhouse gas emissions. This would in some part achieve the objective but would leave an anomaly that equally serious or flagrant breaches of other provisions of building regulations would have to be prosecuted within 6 months of the completion of the offending work.

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 would send a negative signal about the importance of the effectiveness of building control system. Inability to pursue the worst non-compliers would risk long term damage to the built infrastructure, and could be seen as a failure to ensure that legislators' intentions (effective regulation and disincentives for non-compliance) are maintained.
- ii. Option 2: Clear benefits in allowing local authorities to deal more effectively with serious breaches of designated provisions of building regulations relating to the conservation of fuel and power or reduction of greenhouse gas emissions, and as a result of the wider deterrent effect that this will have. It is not possible to quantify the benefits of this with any certainty at this time given that this will depend on how the powers are used and what specific breaches are addressed, or discouraged, by their existence.
- iii. No significant identifiable costs. Local authorities have requested the changes which they consider will help remove a barrier to effective and efficient management of building regulations. The change will provide them with a more effective deterrent to non-compliance but will not change any other aspect of the way they work and will therefore have no, or minimal, familiarisation costs. It is not expected, and we do not intend, that there will be more prosecutions as a result of this proposal, but instead that a strengthening of the threat of prosecution will enable local authorities to make better use of other enforcement levers. Local Authorities will retain their discretion on whether to prosecute and will have more time to ensure a successful prosecution where they decide to proceed. Over time this will lead to 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 consider 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. The change will be publicised 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 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 regulations relating to climate change – related breaches will be brought into force on 6 April 2008. A further extension of the approach for all breaches of the regulations is the subject of a clause in the Housing and Regeneration Bill currently being considered by Parliament.

10. Post-Implementation Review

We will discuss with local authority representatives how the outcome and impact of the changes can be assessed and when that assessment should be done. 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. The review will therefore be undertaken by October 2010 at the latest.

11. Summary and Recommendation

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

Specific Impact Tests: Checklist

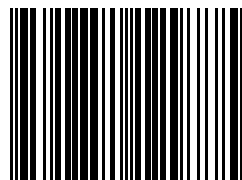
Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

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	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	Yes	No

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