

Number: WG28357



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of response

Consultation on changes to the Building Regulations

Part R of the Building Regulations: Physical Infrastructure for High-Speed Electronic Communications Networks

March 2016

Contents	Page
Introduction	3
Chapter 1 - Consultation responses -Overview	4
Chapter 2 – Consultation/Government responses	5
Implementation through the Building Regulations.....	5
Approved Document.....	6
Exemptions from the regulations.....	9
Impact Assessment	10
Additional Comments.....	11
Chapter 3 – Next steps	12

Introduction

The Welsh Government's Programme for Government has a commitment to seek to ensure that all premises in Wales should have access to next generation broadband by 2015. Super-fast is defined by the Welsh Government as speeds in excess of 30 Mbit/s.

The European Commission is also committed to extending superfast broadband targets for Europe¹. The ambition is that by 2020 all Europeans have access to much higher internet speeds of 30 Mbps and 50 % or more of households subscribe to internet connections above 100 Mbps. The 2014 Broadband Cost Reduction Directive² sets specific infrastructure requirements with the aim of reducing the cost of extending superfast broadband provision across the European Union.³

Article 8 of this Directive requires that all new buildings, and major renovations, have the necessary in-building physical infrastructure to enable connections to superfast broadband. This high-speed-ready in-building physical infrastructure must also be technologically neutral to maintain effective competition. The requirements of Article 8 aim to support a reduction of the costs and obstacles to the quick and extensive deployment of high-speed electronic communications networks.

The Welsh Government has proposed that Building Regulations are used in Wales to meet the requirements of Article 8 of the Broadband Cost Reduction Directive and to issue technical guidance in a new statutory Approved Document.

This report provides a summary of the responses to the consultation *Part R of the Building Regulations: Physical Infrastructure for High Speed Electronic Communication Networks* (Opened on 1 December 2015 and closed on 12 January 2016) and is structured around the questions set out in the consultation. We have carefully considered the responses to the consultation in finalising this policy.

The views reported in this summary are those expressed by the respondents to the consultation and do not necessarily reflect those of the Welsh Government.

¹ Digital Agenda for Europe: <https://ec.europa.eu/digital-agenda/en>

² Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0061>

³ The Commission defines a 'high-speed' network as being capable of delivering access speeds of at least 30 Mbps.

Chapter 1 - Consultation responses - Overview

The consultation

The Welsh Government issued a consultation paper entitled “Part R of the Building Regulations - (Broadband) 2015 consultation on changes to the Building Regulations in Wales” on 1 December 2015. The consultation closed on 12 January 2016.

The scope of the consultation was to seek views and gather further evidence on proposals to use the Building Regulations to set new requirements for in-building physical infrastructure to support superfast broadband.

A draft Approved Document was published with the consultation to set out the proposed functional requirements and guidance for a new Part R to the Regulations. The consultation stage Impact Assessment was also published and further evidence was sought to inform a final stage Impact Assessment.

The respondents

Overall there were 11 responses to the consultation. Respondents who completed the consultation response form were asked to assign their organisation to one of nine types identified on the form (with ‘other’ as an additional option). Table 1 shows the number of response forms received from each sector.

Table 1:

Building Control Bodies	9
House Builder	0
Designer / Engineer / Surveyor	0
Builder / Contractor	0
Commercial Developer	0
Individual respondent	0
Communications Sector	1
Property Management	0
Manufacturer / supply chain	0
Other: (Trade body)	1
TOTAL	11

Of the 7 questions asked (excluding Q8 – Additional comments) the respondents’ reply is summarised in Table 2:

Table 2:

Question		YES %	NO %
Q1	Do you agree with the Welsh Government's view that the Building Regulations are the most appropriate mechanism for delivering European requirements for providing in-building physical infrastructure for broadband?	91	9
Q2	Is the proposed guidance in the Approved Document clear and fit for purpose?	45	55
Q3	The diagrams in the draft Approved Document are illustrative only. Are they accurate and do they provide sufficient detail?	64	36
Q4	Some of the definitions of key terms in Appendix A of the draft Approved Document – for example of 'major renovation works' – are abridged versions of those in the Directive. Are the definitions accurate and clear?	45	55
Q5	Do you agree with the proposed exemptions to the requirement for providing in-building physical infrastructure for broadband in paragraph 1.1 of the Approved Document?	45	55
Q6	Are there additional exemptions that you feel should be considered?	9	91
Q7	Do you agree with the assumptions, costs and impacts set out in the Impact Assessment?	45	55

CHAPTER 2 – Consultation/Government Response

Implementation through the Building Regulations

The consultation explained that the Welsh Government proposes to implement European requirements for broadband in-building physical infrastructure through the Building Regulations. The Regulations offer an established route for setting requirements for buildings. The intention is to transpose European requirements into the Building Regulations as closely as possible.

Question 1 asked:

“do you agree with the Welsh Government's view that the Building Regulations are the most appropriate mechanism for delivering European requirements for providing in-building physical infrastructure for broadband?”

The majority (91%) of respondents agreed that the Building regulations were the most appropriate means by which to transpose the requirements of the Directive. 1 respondent (9%) disagreed.

The respondent that disagreed suggested another approach to be by market forces and/or the telecommunications industry/installers. The concern raised was that the cost will ultimately be passed on to the building owner who may not want a broadband service, and

that as the requirements of this proposed regulation are already achieved on the majority of buildings, this is making regulation over bureaucratic and disproportionate to the need.

Government Response

The Welsh Government has considered the responses and will continue to implement requirements for in-building physical infrastructure through the Building Regulations. The European Directive states that requirements have to be implemented by “laws, regulations and administrative provisions”. Non-regulatory approaches are considered unlikely to satisfy the European Commission of suitable transposition. The primary powers in the Building Act 1984 enable technical requirements relating to infrastructure provided as part of the design and construction of buildings to accommodate superfast broadband to be included in the Building Regulations.

The requirement of Article 8 specifically focuses on requirements relating to the building and its internal infrastructure, and does not impose requirements on broadband service providers.

Approved Document

The Welsh Government published a draft version of Approved Document (AD) R alongside the consultation paper. The guidance in the AD is aimed at giving developers, particularly smaller developers, advice in demonstrating compliance with regulatory requirements for in-building physical infrastructure.

Consultation questions 2, 3 and 4 sought views on the quality of guidance, accuracy of diagrams and clarity of definitions within the draft Approved Document. The Approved Document offers statutory guidance and advice on demonstrating compliance with the regulatory requirements for in-building physical infrastructure.

Question 2 asked:

“is the proposed guidance in the Approved Document clear and fit for purpose?”

Just over half (55%) of respondents answered no to this question. A number of the comments made by respondents relate to specific aspects of the Approved Document, for example, the diagrams or definitions. Therefore these comments have been considered where appropriate in the analysis of the following two questions.

A summary of the other comments/suggestions regarding the draft guidance document included:

- Ducting from the edge of the site / plot should be a standard requirement as part of the guidance.
- Additional guidance regarding size and location of Network Termination Point and reference to the DCLG document “Data Ducting Infrastructure for New Homes”.
- A reference to the possible impact on other parts of the regulations (i.e. Part B, E and L).
- Considering the Welsh Ministers view on meeting the requirement, why does there have to be an ‘in-building physical infrastructure’.
- A wireless connection may be the most convenient future method of providing broadband, and therefore making properties with in building physical infrastructure non-compliant.
- With regard to the Welsh Ministers view of meeting the requirement, how do you measure/evidence ‘minimum inconvenience’ in the future? Inconvenience of a retrofit is to

the installer rather than the owner/occupier, therefore the installers should provide high speed electronic communications to all new buildings up to the network termination point.

Question 3 asked:

“the diagrams in the draft Approved Document are illustrative only. Are they accurate and do they provide sufficient detail?”

The majority of respondents (64%) answered yes to this question, and one response commented that there are material benefits associated with diagram 1a as opposed to 1b.

A summary of the suggested improvements to the draft diagrams included:

- The diagrams need to include multi occupancy buildings (other than dwellings) for completeness.

- Fire stopping, water ingress and sound resistance need to be considered.

A summary of the comments/concerns expressed regarding the diagrams were:

- Diagram 1(a) and 1(b) shows different positions for the access points, who will decide the position of the access point, and if this is combined with the terminal chamber?

- Why is there no option to put an external common access point In Diagram 2?

- Can a single (common) access point be used to serve multiple single buildings?

- Ducts through the floor are very contentious. There is a potential problem of the ingress of gas, water or vermin if the duct through the floor is not sealed properly and should be avoided or clearly indicated what is required.

Question 4 asked:

“some of the definitions of key terms in Appendix A of the draft Approved Document – for example of ‘major renovation works’ – are abridged versions of those in the Directive. Are the definitions accurate and clear?”

Just over half (55%) of the respondents answered no to this question. A summary of comments/ suggestions for improving the definitions were:

- Clearer definition/clarity needed for definition of ‘Major renovation works’ and that inclusion of the word ‘structural’ is misleading. Some respondents also noted that the explanation in the Impact Assessment is clearer and should be incorporated into the definition.

- In-building infrastructure is a misleading term as it applies to a ‘duct’ that connects the network termination point with the access point which may be outside the building or even outside the curtilage of the site.

- Specification / product description needed for ‘Network Termination point’ and ‘Access point’.

- The definition of ‘access point’ does not include the fact that it might be outside the curtilage of the site.

Government Response

Comments from one respondent suggested that ducts through the floor are contentious, and there is a potential for issues relating to the ingress of water, gas, or vermin if the duct through the floor is not sealed appropriately. Another respondent considered that there was material benefits to diagram 1a. Therefore in considering the feedback from the consultation, we have decided to remove Diagram 1b from the Approved Document.

Additional guidance was mentioned in the responses, therefore we propose to include the reference to further information from the following document: *The connected home: Designing and building technology into today's new homes*. NHBC Foundation guide NF67, January 2016.

A few respondents identified that no explicit references had been made to other relevant parts of the Building Regulations (i.e. Part B, E and L) within the draft Approved Document. However, as with other approved documents, our current approach to drafting guidance is to reduce the amount of cross referencing to other requirements. In meeting this new requirement it is expected that there will be compliance with all relevant parts of the Building Regulations.

One respondent asked why does there have to be an 'In building physical infrastructure', as a wireless connection may be the most convenient future method of providing broadband. We consider that the Directive requires the physical infrastructure (i.e. ducting for copper or fibre optic cables) to be installed to ensure a choice of provision for the end user and technological neutrality. We propose to amend the Approved Document to make this clearer.

Two respondents requested that the infrastructure requirements be extended to the edge of the site/plot, however we consider that this is outside of the scope of Article 8 in the Directive. In addition, any site-wide infrastructure that may be required should be undertaken by the developer in conjunction with their preferred telecoms provider.

One respondent commented on the Welsh Ministers view on performance with regard to how the term 'minimum inconvenience' is measured, as they consider the inconvenience of a retrofit would be to the installer rather than the occupier. Therefore we propose to revise the Welsh Ministers view on meeting the requirement and remove the term 'minimum inconvenience'.

Some comments questioned why other alternative arrangements had not been included, and suggested there should be further specification/product details in the Approved Document for the Network Termination Point and Access Point. We intend to add a note to the Network Termination Point, however there are a number of technologies suitable for providing superfast broadband, for example, fibre, copper, coaxial cable or wireless provision, and Building Regulations are not intended to favour specific technologies and therefore the guidance provided is intended to assist only with the explanation of the functional requirement. As referenced in the Approved Document, developers and service providers should be consulted for guidance on any specific duct dimensions, bending radii, etc. that may be required.

There were a number of comments regarding the definition of major renovation works and the circumstances in which the requirement would apply. The definition has been taken from the Broadband Cost Reduction Directive. Further signposting to the appendix of key terms will be added into the guidance to make it clearer that Part R requirements only apply where the existing in-building physical infrastructure is being renovated, either wholly or across a significant part.

One respondent commented that a diagram needs to be included for Multi Occupancy Buildings (other than dwellings). We believe that this guidance would equally apply to multi-unit, mixed-use buildings containing some dwellings, therefore we propose to include additional guidance in the approved document to indicate this. However we consider that the Directive only requires that multi dwelling buildings are equipped with a common access point.

Exemptions to the Regulations

The European Directive allows for exemptions from the requirement to provide in-building physical infrastructure for superfast broadband.

Question 5 asked:

“do you agree with the proposed exemptions to the requirement for providing in-building physical infrastructure for broadband in paragraph 1.1 of the Approved Document?”

Six respondents (55%) answered no to this question. A summary of some of the reasons for not agreeing were:

- (1.1b) Listed buildings etc. – cosmetic camouflage could be an alternative.
- (1.1d) Why exclude remote dwellings, why not cater for the future, as in years to come costs may not be prohibitive.
- (1.1d) Is it feasible to develop a metric to define the level of isolation needed?
- (1.1e) Clarity on major renovations is required and current definition could be open to abuse. Also difficulty in justifying “disproportionate cost” due to minimal cost involved, and the occupation and premises will change therefore needs and usage will change. Clarity on what is ‘disproportionate costs’, and is it feasible to develop a metric to define the minimum level of isolation that would still meet the criteria to be included within the exemption?
- (1.1e) All ages / groups will benefit through improvements in technology.

Question 6 asked:

“are there additional exemptions that you feel should be considered?”

Only one respondent (11%) answered yes to this question. One respondent noted there was a note that the European Directive also indicates that an exemption for Holiday homes could be considered.

The only other suggestion was an exemption for premises involving a change to residential use. In such cases it would not be as simple to install the necessary enabling infrastructure.

Government Response

Two respondents disagreed with the exemption for listed buildings, suggesting a cosmetic camouflage could be an alternative. However, we envisage that this exemption will only apply in a limited number of cases, and it is expected that in-building physical infrastructure can be introduced with no significant effects on the character or appearance of, for example, a listed building already undergoing major renovation works.

We acknowledge the concern of a number of respondents who disagreed with the exemption for single dwellings in isolated areas (1.1d). The intent of exemption 1.1d was to make allowance for a limited number of cases in isolated areas where there is no duty placed on the communications provider to meet the costs of installing a telephone line under the Universal Service Obligation, and therefore no means for even the most basic broadband to be provided to the dwelling. The intention is that all other eligible buildings are made ready to receive a superfast broadband connection.

The guiding principle of the Directive is to consider the future landscape for high speed electronic communications networks and to contribute to a reduction of the costs and obstacles to deploy superfast broadband. Therefore, in most instances buildings should be provided with the necessary in-building physical infrastructure, even if superfast connectivity is not immediately available, to reduce any future connection costs.

There was a proposed exemption for holiday homes suggested. However, we do not propose to include these in the list of exemptions, as holiday homes have the potential to be converted into a residence in the future and one of the main aims of the Directive is to ensure that all buildings are made ready to connect to superfast broadband.

We recognise the concerns with the potential for exemption 1.1e (regarding major renovation works) to be applied inappropriately or for there to be uncertainty about when disproportionate cost would trigger the exemption. However, it is anticipated that there would be very few instances where this exemption would be acceptable. Building Control Bodies should make a case by case assessment as to whether costs in meeting the requirement are disproportionate to the benefits of enabling superfast access to broadband. There was also a concern regarding occupants in a building may change, therefore we propose to remove the example given below the exemption.

Impact Assessment

The Government sought views on the assumptions, costs and impacts set out in the consultation stage Impact Assessment. Views and further evidence were welcomed to inform the final Impact Assessment.

Question 7 asked:

“do you agree with the assumptions, costs and impacts set out in the Impact Assessment?”

Just over half (55%) the respondents disagreed with the impact assessment. A summary of the reasons given were:

- Unrealistic time frame for familiarisation (5 minutes).
- No allowance has been made for the time which will be required for Building Control Bodies to effectively and efficiently enforce the new regulations through:
 - Internal training and familiarisation of staff
 - Dissemination of requirements to industry
 - External training to industry
 - Additional time required by Building Control Surveyors for plan checking and inspection on site to ensure new requirements are observed.

One respondent also commented that the wider costs to developers of ensuring a high speed broadband connection (such as network reinforcement) should be considered.

Government Response

We agree with views put forward suggesting that the amount of familiarisation time used for modelling purposes could be increased. The initial allocation in the impact assessment was deemed an appropriate length of time for Building Control officers to review Approved Document R and to become familiar with the requirements; given that in-building physical infrastructure is increasingly becoming an industry norm. However we have now revised the familiarisation time in the final impact assessment to 30 minutes per Building Control Officer.

With regard to the costs for Building Control Bodies to check plans and carry out site inspections relating to the requirements of Part R, we have also included some time for plan checking and site inspections relating to the requirements of Part R.

With regard to the suggestion of wider costs to developers of connecting new buildings to superfast broadband be factored into the impact assessment. The financial impact for developers in the impact assessment is limited to the cost of providing in-building physical infrastructure. The impact assessment could not capture the wider costs of ensuring a superfast broadband connection as this is not a requirement within the scope of the new regulation.

Additional comments

Question 8 asked the respondents to set out any additional comments they may have. A number of comments and queries were made in this section from respondents.

A few queried if there were going to be changes to the Building Regulations 2010 (as amended) and why this could not be included within existing Approved Documents/ technical parts of Building Regulations such as Part P/Approved Document P. Another response questioned if it was intended to amend regulation 3(3) of the Building Regulations 2010, to include in-building physical infrastructure as a relevant requirement. This would negate the need for specific requirements within the Approved Document for Major Renovation.

Government Response

The Welsh Government intends to proceed with amending the Building Regulations 2010, however we are not proposing to amend regulation 3(3), as we consider this would be outside of the scope of Article 8 in the Directive. The intention for existing buildings is to require the installation of the in-building physical infrastructure when modifications of the entire in-building physical infrastructure or a significant part of it is taking place during other building work (i.e. work requiring a building regulations application).

We will continue to produce a new Part R/ Approved Document (R), as opposed to amending Part P/ Approved Document P (Electrical Safety). We consider that the two requirements are not closely related.

Chapter 3 - Next Steps

The Welsh Government would like to thank all those who responded to the consultation and contributed to the evidence collected.

The regulations are due to be made by the Welsh Ministers in March 2016, which will apply to Building Regulation applications made/submitted after 31 December 2016.

The publication of the Approved Document is proposed for April 2016.