

**BUILDING REGULATIONS ADVISORY COMMITTEE (BRAC)**

**MINUTES OF THE THIRD MAIN MEETING IN 2010 HELD ON THURSDAY 30 SEPTEMBER, 10AM AT DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT (DCLG), MEETING ROOMS GA & GB, GROUND FLOOR, ELAND HOUSE, BRESSENDEN PLACE, LONDON SW1E 5DU**

**PRESENT**

A list of those present is at **Annex A**.

**ITEM 1: WELCOME AND INTRODUCTION**

1.1 Members, officials and observers were welcomed to the third main BRAC meeting of 2010. There was a short update on the current public reforms which affected all NDPBs. The Chair welcomed a new official to SBD - Stephen Porter, from Government Office for London - who is the new Sustainable Buildings Programme Manager heading up the team covering BRAC.

**ITEM 2: APOLOGIES FOR ABSENCE**

2.1 Apologies were received from two Members - Alan Crane and Nick Cullen.

**ITEM 3: MINUTES OF THE SECOND 2010 MEETING HELD ON 16 JULY AND MATTERS ARISING**

3.1 The minutes of the last main Committee meeting were agreed.

3.2 There were no actions outstanding from the previous minutes. There were the following matters arising:

- *Item 9.3, 2<sup>nd</sup> bullet*: DCLG confirmed that BIS were contacted re their work on carbon assessments in public procurement.
- *Item 8.3*: A request was made for Annex A to be re-circulated.

**ITEM: 4: MANAGING REGULATORY BURDEN – ONE IN ONE OUT [Oral Discussion]**

4.1 DCLG gave a presentation and led discussions on regulatory burdens including the 'one-in, one-out rule' and sunset clauses on regulations and regulators. Regulation must be a last resort and the cost benefit analysis must stack up. The general presumption was that regulation will not mean new burdens; the real focus was on alternatives to regulation. If regulation reduced burdens it would be given the go ahead. If there was a net burden, existing regulations should be deregulated. It was possible to simplify existing regulation to reduce burden. The focus was on net burden to business and civic society (ie formerly known as "the Third Sector").

4.2 There would be no new regulations unless it complied with the new system. Any new regulation that increased burdens on business or civic society would have a sunset clause with a view to ending after seven years (in practice DCLG would review after 3-5 years to decide the case for regulation). If any one regulation impacted any more than one sector, it is only the disaggregated net burden to business and civic society, which needs to be offset. In relation to new build DCLG mentioned that cost was paid by the developer. Requirements

L1B was not included. L1A and L2 (A and B) – costs were in. This would be developed and refined. The costs to the house builder and benefits to the supplier should be considered.

4.3 BRAC had the following questions and comments in discussions with DCLG:

- Cost benefit – DCLG agreed it may be a cost to business. “CCD” stood for “Commons Commencement Date”.
- 10 • What was in scope/ out of scope? – Regulations on business and civic society were in scope. Part L was being looked at to see what this would mean.
- Was it “cost in, cost out”? – “one” related to a pound; it was not one regulation versus another.
- DCLG mentioned that under the previous administration as long as you justified reasonableness this was ok. Regulation was now seen as a last resort even if justified – you still had to find a deregulation to see it through. Responsibilities lay with the respective Departments in which the regulations lie.
- 20 • Regulation provided safety in a societal agenda – There was no suggestion that regulations were bad but the Government felt it was not always the best way – the focus was on industry-led regulations; if industry came up with the regulation this would not fall under the “one in/ one out” rule. The aim was a cumulative burden on industry; it was possible to offset this across Government departmental lines.
- BRAC asked about the classification of the presentation - it was not classified and BRAC were free to share with interested parties.
- 30 • How planning departments regulated was not simple, this may have implications on such issues, in addition how burdens would be introduced at a local level. We should be careful to unravel the policy approach and focus on the goal. DCLG advised that the Government’s intention was to bring in burdens on citizens. If it was necessary to offset a regulation, a sunset clause must be included.
- We should be careful not to get drawn into the idea of shifting burden and the importance of focusing on requirements in question.
- 40 • What was the definition of “burden”? There were two strands – if there was an increase of policy compliance cost and administrative burden, cost was a burden. It was net burden to business.
- BRAC said the key was to reduce administrative burden and questioned the rationale around seven years? DCLG advised the impact assessment policy was to review within 3-5 years; the following 2 years were to make the case for regulations; BIS was the lead Department on this. It would apply to all new regulations but did not apply to existing Regulations. It was complicated and more work was required. BIS would publish a new programme in the immediate future. The next steps was to find a way to include burdens on the public sector and citizens and giving the public opportunity to nominate the worst regulations.
- 50 • Next steps? DCLG (Better Regulations) will produce new guidance and establish a way to compare public business burden calculations. In addition the possibility for the public to nominate ‘worst regulations’.



ITEM 5: 2013 REVIEW

[BRAC(10)P28]

5.1 DCLG presented P28 which sought BRAC's views on the main themes emerging from the Building Regulations 2013 review. BRAC offered the following views in discussion with DCLG:

- Building regulations and planning should be simplified; the views of owners and occupiers and users of buildings should be sought. DCLG said there were challenges engaging with consumers and they would be looking at how to improve discussions with SMEs and the public. The "Your freedom" website was generating views from the public but there was an acknowledgement that more work needed to be done.
- A number of countries that adopted self certification such as Norway and New Zealand were now reverting back to regulations. Concerns were raised that deregulation at central level may increase burden at local level.
- The question was asked, why regulate? Part P was introduced after deaths due to electrocution - this can go but what will replace it to ensure a minimum standard of safety is achieved? In addition, rooms should be designed to not overheat and people should be made aware of what they should be doing rather than creating additional regulations.
- Lots of improvements can be made between planning and building control with regulations removed if they duplicate. Research into this is available.
- Building regulations might be reduced if a certain level of competence for any builder and the regulating of builders for any work were required. Entry to the market would therefore be restricted; a debate was needed, professional competence may be the answer.
- There might be self certification of designers, ie, engineer, planner, etc . And guides may be the answer for simple jobs/projects. Registration for builders could be supported but there should be greater penalties/fines and this should be considered in context.
- Emphasis was given that compliance is not generally a problem with the top end of the market. The problems lay at the bottom end of industry. DCLG would like evidence on where this happens - are consumers well enough informed? Can we explore a non-regulatory invention?
- There should be discussions with consumers. In Birmingham, there was inner city deprivation, a number of home extensions were carried out by 'cowboy builders'. When they were tracked down and brought to court, magistrates were not supportive and did not see prosecution as favourable. As a result very few convictions against builders were taking place with LAs paying the court costs. This then hindered Building Control departments from tackling the bottom end of the market.
- Lessons should be learnt from the planning system and carried across to the building control system, ie, if planning permission is not granted then work must stop on site. The public did not appear to be aware of the planning portal which has information on building regulations – they should be made aware and consideration should be given to re-naming to reflect what it does, ie, Building Regulations.
- Self-certification had not produced good quality buildings in Europe. If linked to output based verification there may be an alternative to our current system. More evidence was needed to benchmark current practice. DCLG would be looking at the building control system to see how it can be strengthened, it needed to do what was appropriate.



- With changes planned for sewer laws, Part H might be a candidate for review and could possibly be removed from the Regulations.
- There were repeats across the Regulations, e.g. Parts K, N, M – these should be resolved. Suggestions that all of the approved documents could be simplified into three guidance documents 'Structure, Environment and Usability' were made.
- The CEN standards are looking into compliance in other countries. In Germany a building warrant system for builders is in operation. However, no one appeared to check or enforce when problems arose. Enforcement and penalties for non-delivery are essential.
- There could be costs savings holistically in relation to demographics, ageing population, etc. DCLG would look at this.
- This is as much about savings and economic benefits of freeing up carers because their home did not support independent living - buildings should be fit for purpose.
- Building regulations was a victim of its own success - we took it for granted that buildings would be built correctly and they were broadly compliant – e.g. they do not fall down; this should be put into context in the debate.
- Support was given for Part P but it was noted that it references the IEE wiring regulations 17<sup>th</sup> edition, so is there a case for removal? DCLG said there could be intermediate steps, complete removal of regulations is not always necessary, ie, residual current devices (RCD's) used across the board, if not this triggers the need for guidance/control.
- If registered builders were in place then regulatory burden might be reduced. However, people should have a right to do their own work and use the building regulations and building control system for compliance. *[Action: BRAC to send further comments to DCLG and particularly any evidence].*

## ITEM 6: 2013 PART L (CONSERVATION OF FUEL AND POWER) [BRAC(10)P29]

6.1 DCLG presented P29 which provided members with the current thinking driving a further review of Part L (Conservation of fuel and power) and outlined some of the key issues that needed to be considered. Members were invited to contribute their thoughts on scoping. The BRAC Chair reminded Members of the debate held at the second main meeting on 16 July.

6.2 BRAC had the following questions and comments in discussion with DCLG:

- Soft start on construction joint details (linear transmittance) - can you use the highest value for curtain walling? DCLG said if the thermal transmittance of the construction joint had been properly calculated and a construction process justified to the building control authority, then yes.
- There was support for simple guides to increase compliance at the bottom end of market; however, it was noted that these had not had much success in the past. An example of this was given when calculating the energy rating for dwellings; unless there is a 'deemed to satisfy' section within the guidance it will not work as you are still required to follow the standard assessment procedure (SAP). A very simple elemental method is needed for the simple guides to work.



- A Member had spoken to 700 architects over last six months and the question was always about "U" values. What was against prescribed approach? DCLG said the intention of Building Regulations is to set minimum standards rather than to prescribe individual solutions or technologies. Just a simple guide/example on the necessary processes was required. BRAC suggested simple flow charts be included in the front of ADs. Current guidance exists in industry, information of this could be provided to the DCLG.
- 10 • DCLG update on P29 mentioned P36 about zero carbon in new non domestic buildings. Taking forward the Part L 2013 review was separated from the wider review of other Parts of the Building Regulations so that things did not get swamped. The plan is to consult on Part L 2013 changes by the end of next year. BRAC had the following questions and comments:
- 20 • It was noted that the Minister for Building Regulations (Andrew Stunell) was interested in compliance issues. BRAC asked for clarification on paragraph 12 - link with FITS - there will be recompense for solar panels – was there any linkage to improving insulation roofs/elements in existing homes and/or control of what the energy will be used for? The paper was very good – what was missing was the difference between what the model says and what the building actually does. The operation of buildings sensibly needs to be addressed as this was missing from complete picture. In development alongside work on the compliance tool there was liaison with DECC – would this continue?
- Compliance or lack of it should not only be associated to prosecutions.

6.3 In response to BRAC's comments/questions DCLG advised:

- 30 • In relation to models and performance – there are opportunities to regulate more things in buildings, e.g. lifts, which would help to close the gap. We relied on industry and building control. The paper was quiet on ongoing control; DCLG will look at this issue further.
- Regarding the future Governance and funding of development of calculation methodologies this would be explored but was a complex issue with DECC being responsible for SAP and DCLG responsible for SBEM. It was noted that Andrew Stunell has agreed to release the text coding for SBEM.
- 40 • BRAC said there was a good report from the Zero Carbon Hub on compliance. Even if you do build what you say, there were still issues. DECC got into co-development of documents.
- What was on the agenda for the possible round table with the Minister regarding compliance? DCLG advised this would be a wider discussion on compliance as well as a focus on Part L. It was suggested the Minister should attend discussions on compliance in a future BRAC meeting. DCLG would like to tease out evidence – what were the solutions? There had been a lot of work from LABC on compliance.

## ITEM 7: APPROVED DOCUMENT (AD) REVIEW

[Oral Presentation]

50 7.1 A BRAC member gave a presentation on the AD review which aimed to ensure that ADs were clear, consistent and supported compliance,

7.2 The Approved Document review Steering Group looked at how to take the ADs forward and build on existing information - they had presented a variety of views and had met over 6 months. There was agreement that looking at the way the AD provided a message to



industry was crucial. RIBA enterprises carried out background research which provided a detailed analysis of the ADs. This highlighted that in the current documents there was reference to a number of British Standards, of which only half are current. In addition there is a lot of cross referencing. There were questions around how does one publish – electronic, hard copy or a blend of both? The aim was to look at practical measures to go forward and identify some of the more esoteric things on the agenda in future.

7.3 European and Scottish models and others were looked at. There was a detailed review on where to take ideas that fit in the programme, e.g. can you use plain English? Simplified English was helpful but should be written by a technical person who understood the legislation.

7.4 How best to lay out regulations? There was a need to be clear about what the law says/guide says. Clear referencing was important and a need to make illustrations more technically focused and less ambiguous. The new AD will be rolled out with a new style, the corporate image was maintained and the layout aimed to clearly give the message. The essence behind graphics will be used in a style guide. ADs will be much crisper, electronic and paper versions would be available. It was suggested that technologies such as building information model (BIM) would fit really well.

7.5 DCLG thanked BRAC for their participation in this review which was greatly appreciated. The Chair also thanked Adrian Levett and John Tebbit who were also involved. DCLG were producing a report which would be available for the public. Next steps – a meeting with publishers to take forward recommendations and a style guide will be held on 27 October. BRAC had the following comments/observations:

- Had rationalisation been considered? There was discussion about condensing them down and can we go to big/small buildings but the main focus was delivering clear documents that people can comprehend straight away. What about content? This was about how content was expressed. Was it British Information Modelling (BIM)?
- Electronic tagging of documents was discussed a while back; the architecture in the broad sense was looked at. Engineers were looking to access information on smart phones so this can be looked at. In the style guide there were recommendations on how information was rolled out in a clearer fashion, e.g. references. There were still multiple definitions which need resolving.
- Discussions were had regarding the need to rewrite the manual with suggestions that BRAC should be heavily involved in such an exercise to ensure the usability and usefulness of the document.
- Alternative formats were important for disabled people and must not be forgotten. The presenter suggested that when you clicked on a link it will take you to the actual document - this will help ease of use. *[Action: DCLG will feed back to BRAC following a meeting on 27 October].*

## ITEM 8: COMPLIANCE AND BUILDING CONTROL SYSTEM

[BRAC(10)P30]

8.1 DCLG introduced paper P30 which considered options in reviewing the Building Control System as part of the wider 2013 Building Regulations review. BRAC was asked to note the purpose of the review and the possible options to be considered, and provide their comments. DCLG advised how we can better align building regulations and planning was not included in the paper.

8.2 In discussion with DCLG. BRAC had the following questions/comments:



- There were lots of gains if we can simplify the system and this may improve compliance in some sectors. Elements of H&S came to mind.
- DCLG (advised that a lot was being said about reform of the planning system and asked whether BRAC would find it useful to have a presentation on where the planning system was going? *[Action: DCLG to liaise with planning colleagues]*.
- A member said that higher compliance could be achieved if there was greater enforcement. An example given was that if life was at risk then enforcement would take place. However, where 'soft' regulations such as insulation and accessibility were concerned then enforcement was not generally supported by the legal departments of the local authorities.
- BRAC questioned what was a compulsory completion certificate? DCLG advised if someone employed an approved inspector (AI) it had to give a final certificate in all circumstances but a local authority was required to issue a completion certificate only in certain circumstances, i.e. where a full plans application was submitted and a request for a completion certificate made at the time of application. A later search of local authority records would show that work was compliant but building owners and lawyers like to have a completion certificate. For this to be compulsory at least one inspection would be required.
- BRAC mentioned the national planning forum report which recommended improved connections between planning and building regulations. The building control alliance had recently signed up to this.
- A Member suggested the possible extreme options for change should be included as politicians would want to know why they should not abolish the BCS (building control system), therefore it was important to write this down. It was also suggested that under building notices current legislation does not require issuing completion certificates.
- DCLG said in regards to paragraph 7 of P30 on civil sanctions – there were proposals for fines without going to court. However, it was difficult to enforce against a builder or supplier.

## ITEM 9: THE CONSOLIDATION OF BUILDING AND APPROVED INSPECTORS REGULATIONS 2010 AND POTENTIAL REPEAL OF THE PROTECTION PROVISIONS OF LOCAL ACTS [BRAC(10)P31]

9.1 DCLG introduced Paper 31, informing BRAC of the consolidation of the Building Regulations 2010 (SI 2010/2214) and the Building (Approved Inspector etc) Regulations 2010 (SI 2010/2215) which come into force on 1 October 2010.

9.2 New regulations and numbers must be used as from tomorrow (1/10/10). Regulations 4 and 7 had not changed. The only substantive change was the definition of 'room for residential purposes' which had been simplified, which was particularly relevant to Parts B, E and L of the Building Regulations. DCLG hoped users would find the consolidated regulations easier. An electronic amendment slip will be available on the DCLG website from 1 October and manually placed in hard copies. Four new Competent Person schemes would also be authorised from 1 October.

9.3 In terms of the potential repeal of the Fire Safety provisions of a number of Local Acts, DCLG confirmed that a consultation was carried out in August - there had been 44 responses. Most Local Authorities had no objections to the removal of powers, however not unsurprisingly, Fire and Rescue Authorities did not want the provisions removed.

9.4 The Wales observer asked about micro-generation. DCLG will have a wider discussion with Wales on this. Was there a knock on effect on Part B in regards to the local fire Acts? DCLG said yes.

## 10 ITEM 10: UPDATES FROM WALES, SCOTLAND AND NORTHERN IRELAND ADMINISTRATIONS [BRAC(10)P32]

10.1 Paper 32 was presented and updates in the paper from the Northern Ireland, Scotland and Wales Administrations were noted.

10.2 In his oral update, the **Scottish** observer advised that Scotland must have a building warrant before work started or individuals were not able to get a completion certificate. Compliance – there was work towards a national customer charter. In response to BRAC, Scotland said Section 7 would deal with sustainability. *[Action: Scottish observer to email link to DCLG on compliance].*

10.3 The Northern Ireland and Wales observers gave an oral update.

## ITEM 11: ANY OTHER BUSINESS

11.1 The BRAC away-day would be held on 5 November and hosted by a BRAC member in London. The BRAC think tank meeting and Christmas lunch will be held on Thursday 9 December. The Deputy Chair would circulate ideas previously discussed to members. The Chair would like a steer when he speaks to the Minister. BRAC mentioned including the continuing life of buildings. *[Action: BRAC Deputy Chair]*

11.2 A member asked what was the Green Deal? DCLG said this was a flagship policy on how we can stimulate the market place and assist financially in terms of providing greater levels of energy efficiency, especially existing domestic premises. Chris Hulme had mentioned this at a recent conference. Information could be accessed from the DECC website.

11.3 The next main BRAC meeting will be held in February 2011. DCLG will advise Members of next year's dates shortly. *[Action: DCLG]*

**BRAC Secretariat**  
**Sustainable Buildings Division, DCLG**



**PRESENT (for all or part of the meeting)*****BRAC Members***

Michael Finn	Chair
Neil Cooper	Deputy Chair
Tracy Aarons	Member
Keith Bright	"
Peter Caplehorn	"
Neil Cooper	"
Trevor Haynes	"
Adrian Levett	"
David Mitchell	"
Andrew Shipley	"
Alastair Soane	"
Lynne Sullivan	"
John Tebbit	"
Thiru Moolan	"
Peter Warburton	"
Stephen Wielebski	"

***DCLG Officials***

Anthony Burd	Head of Technical Policy, SBD
Guy Bampton	SBD
Ian Drummond	"
Tracey Cull	"
Paul Decort	"
Kavian Thompson	Better Regulations Unit, DCLG
Steve Kelly	BRAC technical support, SBD
Evonne Hopwood	BRAC Secretary, SBD
Robbie Allen	Assistant BRAC Secretary, SBD

***Observers***

Bill Dodds	Building Standards Division (BSD), Scottish Government (SG)
Seamus McCrystal	Department of Finance and Personnel (DFP), Northern Ireland (NI)
Francois Samuel	Welsh Assembly Government (WAG)