

**BUILDING REGULATIONS ADVISORY COMMITTEE FOR
ENGLAND (BRAC)**

**MINUTES OF THE SECOND MAIN MEETING IN 2013 HELD ON THURSDAY 20 JUNE,
10AM AT DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT (DCLG),
PRESS CONFERENCE MEETING ROOM, GROUND FLOOR, ELAND HOUSE,
BRESSENDEN PLACE, LONDON, SW1E 5DU**

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PRESENT

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

ITEM 1: WELCOME AND INTRODUCTION

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1.1 Members, officials and observers were welcomed to the second main BRAC meeting of 2013. The Chairman welcomed Andrew Newton to his first BRAC meeting as the new secretariat for the committee having recently taken over from Stephen Porter who had moved across to focus entirely on Zero Carbon.

ITEM 2: APOLOGIES FOR ABSENCE

2.1 Apologies for absence were received and noted from Adrian Levett, Alan Crane, Andrew Shipley and the Northern Ireland representative Seamus McCrystal.

ITEM 3: MINUTES OF THE FIRST MAIN COMMITTEE MEETING IN 2013 HELD ON 21 FEBRUARY AND MATTERS ARISING

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3.1 The minutes of the last main Committee meeting were agreed with the following corrections:

- BRAC commented that the words "that BRAC" in paragraph 5.2 of the minutes were duplicated and be taken out
Action BRAC Secretariat.

3.2 Matters arising:

- All actions closed and completed.

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ITEM 4: CONSTRUCTIONS PRODUCTS REGULATION [BRAC (13) P10]

4.1 DCLG updated BRAC members on progress with implementation of the 2013 Construction Products Regulations (CPRs)
The Regulations were made on 4 June 2013, laid before Parliament on 7 June 2013 and will come into force on 1 July 2013 together with the linked Approved Document 7 (Materials and workmanship) 2013 edition that will also take effect then.

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4.2 The main purpose of the revisions to the regulations was to explain and clarify 'failure to comply' by creating a legal offence and a series of penalties for its breach. These ranged from fines through to potential imprisonment with Local Authorities now empowered to take action to ensure compliance. In clarifying the powers available and the enforcement duties the regulation sought to take a risk-based proportionate approach

4.3 The CPR as a European Instrument replaced the 1991 British legislation though other than the above greater focus on clarifying failure to comply, there was no significant difference between the UK and European legislation other than them being presented and written in a slightly different way.

4.4 The main points of the following discussion were:

- General acceptance and agreement that it was helpful to try and explain ambiguity in this area but concern about the considerable transition period necessary for some industries estimated to be up to a year. The consequence of that will be that not all CE-qualifying products would be CE marked from 01/07/13.
- Not all products can be CE marked because it is either impossible in some cases or illegal in others. These difficulties arise particularly in areas where there is no harmonised industry-standard to work from.
- Although the CE marking comes into force from 01/07/13 and applies in relation to any market stock with 'intention of distribution', as set out above it can only apply where there is a harmonised standard for the industry and it was confirmed that even in those cases it won't be applied retrospectively.
- The fact that the regulation wouldn't apply to all markets or to existing stock meant that it could cause some training, application and legal difficulties, particularly over the transitional period.
- Concern was raised that there was insufficient capacity in the bodies responsible for the product testing. As at June 2013 for example, only 10% of notified regulatory bodies had re-registered
- With cuts in local authority funding there was also the potential issue of them having even less and consequently insufficient capacity to carry-out their enforcement role.
- This represents a significant cultural change and potential additional burden for distributors and importers in terms of additional liabilities and duties to provide information where an unintended consequence could be that SME businesses could be particularly impacted.

ITEM 5: BRIEF UPDATE ON A AND C – PROGRESS AND TIMING [ORAL UPDATE]

5.1 DCLG provided a brief update on the current position in relation to the changes required to Approved Documents A and C resulting from the changes to the British Standards Structural Euro Codes. The proposal is to introduce these changes in October 2013 with ministerial approval and clearance is currently being sought for this approach and timeline. The challenging nature of the timeline was noted where for it to be achieved it was felt that there needed to be an announcement before recess.

5.2 Most of the changes to A and C were minor but it included one on Radon maps. As these were already being used some BRAC members expressed surprise that this revision wouldn't formally come into force before October.

- 5.3 BRAC reported that many industry members were still using British Standard 5950 for professional purposes due to the adaptation costs in switching to the use of Euro codes
- 5.4 The Impact assessments for the changes to Approved Documents A and C recognised that there was the potential for inconsistency here with some opting not to use Eurocodes and instead remain adhering to BS 5950. As the IAs have recognised the existence of this, BRAC commented that it could be argued that it was safe for the construction industry to carry on using this approach.

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ITEM 6: BEHAVIORIAL CHANGE REVIEW AND UPDATE

[ORAL UPDATE]

- 6.1 Tracey Aarons Keith Bright and Emma Clancy from the BRAC Behavioural Issues Working Group provided a presentation on Behavioural Change on how to understand
- how the build–environment influences behaviour and vice-versa
 - the starting-points for building a strategy to consider where behavioural-changes lead to modifications in regulation and vice-versa and how to respond effectively to the challenges this leaves.
 - the need to ensure that people and behaviour are reflected in design and building regulation/deregulation –used the example of the NHS National Computer Database where that hadn't happened arguing that ignoring the cultural and behavioural elements was a key factor in its ultimate failure to deliver on the basis that 'people ignore regulations that ignore people'
 - the ways in which regulatory requirements for building and design and performance influence behaviour and well-being in relation to space;
 - how expected changes in demography and population age profiles influence the behaviour of regulators, building providers/the construction industry and users.
- 6.2 A number of Other Government Departments were referenced as having undertaken work in this area including the Behavioural Impacts Unit in the Cabinet Office, and the Department of Health.
- 6.3 The focus of the debate was between the balance of human behaviour and actual social-needs, understanding what drives what and the subsequent impact that then has on building regulations. It was noted that sometimes Government initiatives to change behaviours can either lead to avoiding the need to regulate at all or at the very least reducing it.
- 6.4 A few examples of behaviour affected regulation and statutory guidance were referenced: specifically demographic changes leading to revisions in approved documentation, provision of faith-rooms and those impacted by the Equality Act in terms of provision for protected groups more generally.
- 6.5 The specific case of the impact of obesity on the built environment was discussed in more detail where a few examples were offered in terms of changes potentially necessary to counter this trend such as cubicle sizes in public toilet provision, stair design and safe-loading for lifts.
- 6.6 One of the initial focuses of the working group had been to bring all the existing data together and conduct an initial analysis to identify some high-level trends. Going forward this would be developed into more detailed analysis of where regulations and statutory guidance could be compromised by the changing face of society / human

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behaviour together with initial thoughts on how this could be addressed.

6.7 The key points from the discussion that followed were:

- 10 • With the key influence of obesity in many of these discussions, some members felt that there was a need for more work to be done with the food industry to help address this issue. It was accepted though that this would require a combined departmental approach because education and advertising campaigns or industry-led changes to labelling for example were accepted as only part of the story with tackling this, some legislative changes will probably be necessary alongside all that.
- The impact of obesity on accessibility of the built-environment was discussed in more detail and felt to be closely linked with regulations on fire-safety, door-widths, and floor and lift loadings mentioned as examples.
- 20 • All of this research pointed to a central conflict between levels of accommodation and building design/space in the building regulations and how much it is desirable to utilise them to try and encourage/force behavioural change. Within that there is also often conflict between a wish to change behaviour and unintended impacts.
- A new focus for BRAC within their existing remit could be a more monitoring and reporting type role going forward to increase their input into key issues causing concern in the human-interface the building regulations always have. The specific area mentioned in relation to this was duct-work leakage on mechanical ventilation system units in commercial dwellings and lack of clarity on the effect of regulation due to it never having been fully measured.
- 30 • There was not only an issue with weight-loadings in buildings, there was also an issue with heights given that over time and several generations average heights have increased.
- Although it was accepted that this was a huge area that could not possibly include all potential topics, areas suggested for future study were dementia, and allergies together with the potential impact of assistive technology
- The BRAC Chairman thanked the presenters and agreed that this represented a really informative piece of work on a set of current issues facing society.

40 **Next Steps**

- It was agreed that behavioural change and the impact on regulation should be an agenda item for a BRAC strategy day in September
- It was agreed that the next steps should include
 - 50 (i) a look across existing building regulations to assess which are most impacted by human behaviour and how
 - (ii) a more detailed evaluation of key work carried out by other Departments such as DECC, Department of Health and the Cabinet Office
 - (iii) an interim report to be drafted for and presented at the next BRAC meeting in October

Action Points

(1) To include review and discussion on next steps for this work at the September BRAC Away-Day with Peter Caplehorn to arrange suitable date for this

(2) For a quick sift through building regulations to be completed as part of this to determine where behaviour is a key factor in building regulations and where there is little relationship to provide some sort of risk rating on likely areas where this area is likely to have a significant impact.

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ITEM 7: PART L, ZERO CARBON AND ALLOWABLE SOLUTIONS VERBAL UPDATE AND ROUND-TABLE DISCUSSION [ORAL UPDATE]

Part L

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7.1 DCLG provided an oral update on part L. The part L working group originally proposed for June 2013 had to be postponed as the process of securing Ministerial approval for the changes had taken longer than anticipated. This would be reconvened as soon as this approval has been secured to focus on the development of guidance on new homes and the roll-out/implementation programme. As before any BRAC members would be very welcome to participate.

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7.2 There were a number of views on the viability of implementation to changes in Part L before the end of 2013. There was a lot of background work necessary prior to implementation to make sure revised guidance and standards documentation and new versions of measurement tools such as SAP are in place. Implementation by the end of the year was generally thought to be just about achievable from a standing start today based on a 6 month implementation phase but that assumed all information and supporting data was readily available. Level of coverage is another factor, impact and timetables are lessened or increased depending on whether it is all dwellings or just new builds. Any changes to the other building regulations would also have an impact on part L and the transition timetable as would changes to other standards governed by OGDs that are closely linked to Part L such as the Flood and Water Management Act operated by DEFRA.

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7.3 The suggestion that one option would be to leave 2013 changes and carry forward all the changes to 2016 to avoid the possibility of two sets of changes relatively close together was also discussed in some detail. This was put forward principally in recognition of the burden change imposes on industry and the fast reducing time between now and the next review in 2016. Set against that was the fact that a large proportion of the industry has been working with the direction of travel on Zero Carbon and Part L and any decision to move away from that would represent a significant change in direction on policy. In addition it was pointed out that the time-lag on industry would be the same no matter when changes were introduced and deciding to miss out a step towards 2016 could leave too much for designers to do in one hit particularly for SMEs where it was noted that they tend to be disproportionately disadvantaged by any changes in regulations

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7.4 As a further note on the industry time-lag it was confirmed pointed out that even now only 15% of completions were to 2010 Standard, a much bigger proportion were working to 2006 but a small part of the industry was still working to 2003. This will mean that once the 2013 changes come into force there will be 4 versions being

carried in the industry.

- 7.5 Although April 2014 was technically possible at this point and was favoured by some BRAC members there was some concern that, it would represent a rushed transition so October 2014 was felt to be the most practical proposition overall. Although delaying to 2016 was possible, the jump for industry from the current position was thought to be too much. It was also noted that an October 2014 implementation date would enable the technical change to BR443 to be reflected as part of this. A number of BRAC members suggested that it would be useful to be able to calculate what new build would look like under any uplifted Part L and it was felt that it should be possible to include that in the guidance under the suggested implementation date of October 2014.

Zero Carbon and Allowable Solutions

- 7.6 The process of securing cross-governmental agreement for the Zero Carbon and Allowable Solutions proposals to go out to consultation had taken longer than anticipated but officials confirmed that they remained on track to go out to consultation on these by the end of the Summer
- 7.7 A number of BRAC members suggested that they should quickly establish a sub-group to provide the Department with an early BRAC view on allowable solutions
Action BRAC
- 7.8 The relationship between Zero Carbon and the European equivalent (Nearly-Zero Energy Buildings) via the Energy Performance of Buildings Directive (EPBD) was then discussed. Officials clarified that the EPBD provisions only cover new-build housing and the target for implementation of Nearly-Zero Energy Buildings is 31 December 2020. It was also reported that there is as yet no agreed definition for Nearly-Zero Energy Buildings and that although Zero-Carbon meets the spirit of Nearly-Zero Energy Buildings they are not totally like-for-like.

ITEM 8: HOUSING STANDARDS REVIEW UPDATE

[ORAL UPDATE]

- 8.1 DCLG provided an oral update on the Housing Standards Review. Progress on this had been slower than expected due to having to work through a number of detailed planning implications and transitional issues both internally to DCLG and more widely across Government with our OGD partners. The current position is that the consultation paper has been drafted and has been submitted to Ministers for review and approval. When published this consultation package will also include the impact assessment and a challenge report.
- 8.2 A few specific examples on particular areas to be covered were then put forward on
- (a) water where the current direction-of-travel seemed to be towards use of a voluntary standard sitting above Part G where there was a local need.
 - (b) energy where thinking needed further consideration but the evolving picture was to move towards a building regulations only approach.
 - (c) security, no real changes suggested, largely as before around a minimum required standard and a second one set higher on a voluntary basis where needed.

- (d) access / space – two closely linked areas with no major changes anticipated apart from the possible introduction of higher-standards for wheelchair access and the recommendation of a new space-standards approach based on 3 levels.

8.3 Although officials reaffirmed the commitment to releasing the consultation paper as quickly as possible, July or August 2013 was now looking more likely than the originally anticipated June

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ITEM 9: RED TAPE CHALLENGE: LOCAL AUTHORITIES ACTING AS APPROVED INSPECTORS [BRAC (13) P11]

9.1 DCLG presented paper 11 which updated BRAC on the arrangements for local authorities to apply to become approved inspectors and to then enable them to carry out building control functions in other Local Authority Areas.

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9.2 DCLG informed BRAC that the legal position had not changed since first set out in February 2013, and that in fact other existing provisions had meant that this has been possible for some time. The purpose behind these changes was to make that possibility/opportunity clearer and a Written Ministerial Statement (WMS) to announce them is expected by the end of June 2013. The WMS would be accompanied by a circular letter and guidance to be made available on the DCLG website and to Local Authorities.

9.3 In response to a question from BRAC Officials estimated that between 10 and 20 Local Authorities might express interest in taking this opportunity.

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ITEM 10: BUILDING CONTROL PERFORMANCE STANDARDS ADVISORY GROUP (BCPSAG) FUTURE GOVERNANCE AND STRUCTURE [BRAC (13) P12]

10.1 DCLG presented Paper 12 for BRAC to consider altering the future governance and structure for BCPSAG to try and establish a much closer link between that body and BRAC, and to bring the secretariat function back into DCLG to be covered as part of the BRAC Secretariat function.

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10.2 It was felt that the establishment of a more formal link might make the important work of BCPSAG more visible and provide them a more solid footing from which to operate supported by BRAC in its capacity as a statutory committee.

10.3 BRAC agreed the proposal in principle noting that it would mean BCPSAG becoming accountable to BRAC and need to provide regular progress updates to BRAC meetings as well as giving them the right to direct or steer their work programme on occasion.

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10.4 BRAC agreed the enclosed Terms of Reference for BCPSAG under the new governance arrangements as well but suggested a number of amendments

- (a) to include in the BCPSAG roles and responsibilities reference to supply-side challenge including inconsistency of decisions in the Building Control System and then linked to that to monitor and measure the consistency of application of the BCS.

(b) to strengthen the section on continuous improvement to draw out that it's a never-ending cycle of learning and improvement for BCPSAG and the development/application of performance measures.

(c) to set out briefly the arrangements for how 'checking the checkers' will be carried out.

Action BRAC Secretariat to work with BCPSAG colleagues to produce and circulate a revised Terms of Reference for agreement by correspondence.

- 10 10.5 One of the functions of BCPSAG was to advise on and develop Key Performance Indicators for the Building Control System. The Scottish Devolved Administration advised the meeting that Scotland had recently implemented a system based on 9 Key Performance Outcomes and that the 1st full data-set of performance against them was due back at the end of June. It was agreed that they would provide a verbal update on how this had gone at the next BRAC meeting in October

Action BRAC secretariat to include it on the agenda

20 **ITEM 11: BRAC TRIENNIAL REVIEW**

[BRAC (13) P13]

- 11.1 Officials presented Paper 13 to provide an update on the progress of the Triennial Review of BRAC, part of the requirement to carry out periodic reviews of all of the DCLG Non-Departmental Public Bodies (NDPB). The paper provided a summary of the findings of the Triennial Review of BRAC that had concluded that the function remained necessary, the model as an advisory NDPB remained the most effective and the Committee provided good Value for Money and adhered to the principles of good corporate governance where they applied.
- 11.2 The main recommendation from the Triennial Review was to look at ways for the Department to make the work of the committee more visible. BRAC confirmed that they were very happy to consider that but were cautious about making sure that the apolitical nature and independence of the committee wasn't compromised where Committee representation should come from the Chairman rather than individual members. There was also some concern that attempts to make the Committee more visible could lead to them acting outside their remit.
- 11.3 Specific ideas on improving visibility for BRAC and making more use of expertise available to the Department via this Committee were
- 40 (a) to make a summary of building regulation success stories contributed to by BRAC more public once work on them has been completed.
- (b) to review the annual report to draw out more on the 'successes' and good news narratives and to polish up its presentation.
- (c) move to try and make part of the individual meetings more forward-looking with an emphasis on horizon-scanning to suggest agenda items or possible research projects for instance where the specific example raised in relation to this was Part F and Air-Tightness.
- 50 **Action: It was agreed that as part of the planned informal strategy meeting in September the Group would consider current issues, alongside possible upcoming priority areas**
- (d) increasing links with other Departments such as DEFRA on water regulations

and DECC on Climate Change and Part L. With that in mind an action was suggested to invite a DEFRA representative to a future BRAC meeting to provide an overview of their current and forward-work programme.

Action BRAC Secretariat

10 11.4 The Triennial Review was currently with DCLG Ministers for review and clearance. As this programme itself was operated by Cabinet Office the next stage would be Cabinet Office Colleagues and Francis Maude to clear it for publication. It was hoped that this process could be completed by the end of July 2013

ITEM 12: RESEARCH PROGRAMME UPDATE

[BRAC (13) P14]

20 12.1 DCLG presented paper 14 to provide the background and overall strategy to DCLG's Building Regulations and Standards research and development programme for 2013/14 listing new projects proposed for 13-14 alongside existing contractual commitments. DCLG Officials briefly outlined the proposed new projects which included analysis and research on Competent Person Schemes and on individual building regulations such as Part L, Part F Ventilation and Part J Combustion Appliances and support and research for a couple of non-regulatory priorities such as the Changing Places Project.

12.2 The programme was subject to ministerial approval and every project is then subject to a business case and in most cases the Research Programme Gateway then has to review, approve and sign off the proposal for it to then proceed.

12.3 The main points of the discussion that followed were:

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- An example of successful consortium and joined-up working was provided by the Scottish Government as they'd completed a detailed research project on climate change adaptation and flood resilience
 - It was noted that another key area that could potentially need more understanding was indoor air quality and ventilation where a study-paper from the Zero Carbon Hub's Ventilation and Indoor Air Quality Task Group on these areas (Mechanical Ventilation with Heat Recovery (MVHR) was due to be published on Monday June 24 2013.. **Action** – BRAC Members to provide copy of the report from that project.

40 12.5 As part of thinking about how the work of BRAC could become more visible and their expertise extend into other areas, a number of BRAC members suggested that they could have an input into the selection process for research contractors or provide the 'critical-friend/challenge' function on project steering committees assessing the quality of project deliverables DCLG agreed to consider the viability of progressing with some of the suggested ideas for further BRAC involvement.

ITEM 13: UPDATES FROM NORTHERN IRELAND, SCOTLAND AND WALES ADMINISTRATIONS

[BRAC (13) P15]

50 13.1 Scotland and Wales observers provided an oral update on regulations and standards in their administrations as detailed in Paper 15.

13.2 Wales updated BRAC on its internal restructure following a Cabinet reshuffle that led to Building Regulations now being part of the Planning Division within the Housing & Regeneration Group. On their Welsh-Specific review of Part L, analysis of the

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consultation responses consultation in partnership with BRACW is ongoing with the final proposals to be presented to Ministers by the end of July 2013. Following this a summary of the consultation responses and the Government response will be published in the Autumn. The intention will be then to make amendment to the regulations by the end of 2013.

- 10 13.3 Framework for Independent Living – A review has been commissioned of the value and effectiveness of planning Design and Access Statements. The review will consider the link with Part M of the Building Regulations, the impact of behavioural change, lifetime homes and an ageing population. The expectation is the review will be completed by the end of the Summer.
- 13.4 On domestic sprinklers Wales has held a 12 week consultation which set out proposed changes to the Building Regulations and Approved Documents, to require the installation of fire suppression systems in new and converted residences. The Welsh Government's Domestic Fire Safety Measure Working Group has considered the consultation responses, and final proposals will be presented to the Welsh Cabinet at the end of July.
- 20 13.5 On changes to the Competence Persons Scheme on accreditation, Welsh Ministers have agreed to the same regulations as England. Amendment regulations will be drafted on changes to Schedule 3 of the Building regulation before Summer recess.
- 13.6 Scotland informed BRAC that their 2013 changes to Building Regulations have now been laid before the Scottish Parliament and changes to business impact assessments have now been finalised. It is expected that the regulations and supporting guidance will come into force in October 2013.
- 30 13.7 On sustainability of Non Domestic Buildings and Schools the 2013 edition of section 7 incorporated changes to expand the range of aspects covered in this provision to include temperature and power-levels for thermal comfort and artificial lighting; water efficiency; biodiversity, well being; waste standards and optimising energy performance. A consultation specifically on the energy standards to be applied here closed in April 2013. The intention is to provide a summary of responses to Ministers prior to the Summer recess. It was noted that while any changes to all the other standards will apply from October 2013 revised energy standards are not programmed to come into force until 2014.
- 40 13.8 The specific case of Scottish carbon targets in relation to energy standards was then referenced. The Sullivan Panel had met in May 2013 to begin work on the follow-up from the 2007 Sullivan Report 'Low Carbon Building Standards Strategy for Scotland. The key emerging themes included
- the viability of extending carbon compliance beyond site-related measures and the projected costs of doing that,
 - recognition of the value of continuing development new-build energy standards
 - detailed discussion on what the 2013 eventual standards and % improvement targets should be, and then within that whether there should be any staged standards/improvement targets in striving towards it.
- 50 The Panel will work up their report over the coming months where it is expected the final report from the panel will be available in the Autumn.

ITEM 14: ANY OTHER BUSINESS

14.1 It was reported that since the presentation by GAS Safe colleagues at the last BRAC in February 2013, there had been no follow-up from them on the queries and concerns raised or on the related area of progressing with consideration of the pros and cons of using the GAS Safe or Competence Persons Scheme. It was agreed to make this an agenda item for the next meeting in October 2013 and for BRAC to recirculate the paper on the pros and cons of them being brought into a Competent Persons' Scheme.
Action BRAC Secretariat and BRAC

10 **BRAC Secretariat - Building Regulations and Standards Division June 2013**