



Consultation report

Operational standards rules

for building control bodies in

England

March 2023

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Introduction

The Building Safety Regulator (BSR) will operate as part of the Health and Safety Executive.

This report summarises the outcome of HSE’s public consultation on the introduction of proposed operational standards rules (OSRs) we are developing for building control bodies. The OSRs will apply to building control functions for buildings or works in England.

These functions will be delivered by:

- Local authorities
- Registered building control approvers

In consulting, HSE sought views on:

- draft operational standards rules
- annex A – draft monitoring arrangements including reportable data and key performance indicators (KPIs)
- annex B – draft strategic context

The development of the OSRs is an iterative process. We will use the consultation responses to shape and refine our proposals.

We will publish the draft OSRs in spring 2023. The OSRs are expected to come into force in April 2024.

Background

The public consultation ran from 30 August until 25 October 2022.

Before consultation, HSE engaged with representative groups for building control on earlier drafts of the OSRs. We also engaged with a sample of building control professionals who participated in HSE’s insight research and Delphi study to gain understanding of this sector.

The consultation was published online and promoted via HSE’s building safety e-bulletin and through representative groups.

Respondents were encouraged to reply using the online questionnaire, with general responses received separately also included in our analysis. Not all respondents answered every question, and not all gave comments to support their response. A proportion of the consultation was left unanswered by some respondents.

This report includes a summary of responses to the multiple-choice questions and free text fields, which were analysed to find common themes.

The summary reflects the views offered, although it is not possible to describe all responses in detail. Every response has been read and considered as we further develop the OSRs. Thank you to all respondents for taking the time and effort to provide this valuable feedback.

Responses

65 responses to the consultation were received, including 51 from building control professionals, 2 from building control representative bodies and 12 from 'other' respondents.

Section 1 – Operational standards rules (OSRs)

Breakdown of responses

Question 1: How confident are you, that you/your building control body can fulfil the rules outlined in systems and controls?

Of the 65 respondents:

- 48% were very confident that they could fulfil the rules
- 31% were somewhat confident
- 20% reported being not at all confident
- 2% did not answer

Summary of responses to Q1 – if not at all confident, please tell us which rule(s) you are concerned about and why:

21 respondents provided comments to this question. Of these:

- 29% requested more information about the OSRs
- 19% of responses cited lack of resources as an issue, including investment in management systems, professional skills and staff levels
- 19% felt the level of change and some of the requirements were too onerous
- 10% noted that current information technology (IT) systems were not equipped to support some of the proposed requirements

Further responses raised:

- concerns about the difficulties in engaging with other regulators
- requests for clarification of some terms
- concerns about the timeframes for new systems, and requests for help in developing connected IT systems between partner regulators

Question 2: Thinking about rule 1.13, are there types of conflicts of interest unique to the building control industry?

Of the 65 respondents:

- 65% answered yes

- 26% answered no
- 3% noted it was not applicable to them
- 6% did not answer

Examples of conflicts of interest

45 respondents provided comments. Of these:

- 20% referred to the competitiveness between local authority building control and private sector building control
- 20% note that Approved Inspector Regulation 9(1) permits approved inspectors to have conflicts of interest on minor works
- 18% stated that building control bodies provide a service and are considered part of the client's project management team
- 16% highlighted the issue of building control bodies undertaking building control approval work on their own buildings or contracts
- 13% cited the acceptance of reduced compliance standards to benefit a business relationship
- 7% noted that building control bodies who are part of larger construction organisations many face conflicts when overseeing compliance

Question 3: How confident are you, that you/your building control body can fulfil the rules outlined in persons?

Of the 65 respondents:

- 28% were very confident that they could fulfil the rules
- 43% were somewhat confident
- 26% reported being not at all confident
- 3% did not answer

Summary of responses to Q3 – if not at all confident, please tell us which rule(s) you are concerned with and why:

37 respondents provided comments to this question. Of these:

- 43% noted that the competence validation process and registration for building inspectors and building control approvers was not clear
- 24% noted the national shortage of building control professionals and felt that competence validation and registration requirements may result in experienced professionals leaving the industry
- 8% had concerns over trainees' ability to gain experience under the new regime

- 8% referred to the lack of funded training
- 5% noted a lack of qualified staff

Further responses raised:

- a lack of resourcing, auditing and controls impact the competence of the building control industry
- the difficulty of measuring competence, and the concern that exams cannot fully capture competence gained by many years of experience
- the requirement to demonstrate competence could lead to a reduction in building inspector numbers, adding further stress and workload to an already under-resourced sector
- the rigidity that competency bands bring limits the flexibility currently in place
- limited resources affect building control bodies' ability to recruit and continue to develop building control professionals, particularly at specialist levels

Question 4: How confident are you, that you/your building control body can fulfil the rules outlined in building control functions?

Of the 65 respondents:

- 20% were very confident that they could fulfil the rules
- 42% were somewhat confident
- 37% reported being not at all confident
- 2% did not answer

Summary of responses to Q4 – if not at all confident, please tell us which rule(s) you are concerned about and why:

40 respondents provided comments to this question. Of these:

- 30% expressed concerns about rule 3.1 – views indicated this rule to be problematic or impractical, and respondents requested for design and construction advice to be clearly defined and permitted
- 20% raised concerns about rule 3.2 as recording all advice would result in additional work and cost to homeowners
- 25% noted difficulties in meeting the rules due to resource constraints
- 13% raised concerns about rule 3.10, as providing a report after every inspection would increase workload

- 10% requested clarification on who non-statutory regulators are, what was expected in consultations and for Building Regulations to be included in rule 3.3
- 8% had concerns about rule 3.12 and the use of photographic evidence and geotagging
- 5% noted concern about rule 3.9 impracticality

Further responses raised:

- that rule 3.2 was not practical given the broad scope of advice provided by local authorities, for example via telephone. The term 'formal advice' was suggested instead
- concerns were raised about current systems and resources in general and particularly with recording advice, geotagging evidence and creating a record system to retrieve data. The requirement for cultural change was also raised. It was noted that sufficient time would be needed to plan, develop and implement changes to systems following publication of the OSRs
- it was felt that rule 3.10 was onerous and time consuming, and that this should be restricted to the end of a project or where contraventions have occurred
- with respect to rule 3.13, it was noted that site issues might delay the production of inspection reports and that resource issues can affect the quality of those reports

Question 5: Thinking about rule 3.13, how confident are you/your building control body that inspection reports are received within two working days?

Of the 65 respondents:

- 29% were very confident that they could fulfil the rules
- 38% were somewhat confident
- 29% reported being not confident at all
- 3% did not answer

Responses to Q5 – if not all confident please tell us what an achievable time frame would be?

Of the 65 respondents:

- 12% selected three working days
- 4% selected four working days
- 29% selected five working days
- 53% did not answer

Question 6: Thinking about rule 3.14, how confident are you that you/your building control body can inform other regulators of changes or concerns prior to occupation or the risk occurring?

Of the 65 respondents:

- 22% were very confident that they could fulfil the rules
- 54% were somewhat confident
- 22% reported being not at all confident
- 3% did not answer

Summary of responses to Q6 – if not at all confident please tell us why this information could not be provided:

26 respondents provided comments to this question. Of these:

- 19% noted this was dependent on the capacity of consultees and other regulators
- 12% were concerned about fluctuation in performance caused by resourcing constraints
- 12% requested clarity on some terms and how this would work in practice
- 8% considered that resources needed to comply would be unreasonable
- 8% noted this was reliant on dutyholders providing the necessary notification
- 8% suggested other regulators and consultees should only be informed of changes where it relates to their regulatory role
- 8% suggested consultees should only be advised if the building is occupied without the non-compliance being resolved

Further responses raised that:

- although other regulators can be informed, if matters are only evident at the time of completion it is unlikely that others will have sufficient time to respond prior to occupation
- buildings can be occupied without a final inspection
- changes that were compliant with Building Regulations should not require notification
- building design and construction can change quickly and consultation bodies are often slow to react to consultations – this will make the process slower, more complex and lead to unnecessary consultations being carried out
- it was felt that rule 3.14 is not practical to implement and a full audit trail would be required to ensure the building control body has discharged this responsibility correctly

Question 7: How confident are you that you/your building control body can fulfil the rules outlined in enforcement and intervention?

Of the 65 respondents:

- 28% were very confident that they could fulfil the rules
- 43% were somewhat confident
- 18% reported being not at all confident
- 2% did not answer

Summary of responses to Q7 – if not at all confident, please tell us which rule(s) you are concerned about and why:

30 respondents provided comments to this question. Of these:

- 30% expressed concerns about resource issues, focused on staffing and enforcement – investment in building control was thought to overcome those challenges
- 10% felt building control should not be responsible for policing the competency of dutyholders
- 7% suggested the proposed requirements would prompt an increase in reversions to local authorities resulting in resource challenges
- 7% requested definitions on some terms, for example ‘suitable evidence’
- 7% requested annex C to help preparation

Further responses raised that:

- enforcement requires extensive preparation and specialist teams who deal solely with enforcement – some councils may decide not to proceed, and some legal departments may refuse to proceed with enforcement
- rule 4.2 was considered to be too short and unrealistic, especially on small domestic projects
- concerning rule 4.4, it was observed that when projects are cancelled by a building control approver, it is often done at too late a stage to be able to carry out any effective enforcement as building work will often be complete
- it was felt that the requirement to formally record all contraventions, not provide any form of design advice, and actively enforce may lead to more reversions to local authorities

Question 8: Thinking about rule 4.2, how confident are you/your building control body in being able to update records within two working days?

Of the 65 respondents:

- 28% were very confident that they could fulfil the rules
- 37% were somewhat confident
- 37% reported being not at all confident
- 2% did not answer

Responses to Q8 – if not at all confident please tell us what an achievable time frame would be:

Of the 65 respondents:

- 8% selected three working days
- 8% selected four working days
- 32% selected five working days
- 3% did not answer

Health and Safety Executive response

Health and Safety Executive have considered the views of consultees. We respond to those views by making the following observations on the draft operational standards rules.

1. Rule 2.2 will be expanded to include building control professionals under appropriate supervision. This will assist building control bodies with the development of their team members.
2. We will not introduce design advice focused rules 3.1 and 3.2 at this time.
3. Rules on consultations will be revised to focus on statutory consultees and for building control to evidence their decision making. Building control will record, retain and communicate their decisions and reasons why.
4. The completion of inspections are regulatory activities that all building control bodies carry out. These inspections result in regulatory decisions on compliance with – or contravention of – the Building Act 1984 and Building Regulations.
5. Records of those regulatory interventions enable building control bodies to demonstrate how well they deliver their building control functions. They also support building control in holding dutyholders to account. We will revise rules on inspection reports to clarify those aims.

6. We will revise rule 3.13 by extending the requirement to record inspection reports to five working days.
7. Geo-tagging (or geo-stamping) is an existing feature for GPS enabled digital devices, such as mobile phones. Geo-tags can be added automatically and reduce the need for additional resources.
8. We will clarify that building control should take a risk-based approach to intervention and enforcement activities. This will focus on the gravity and seriousness of any breach of the law. We will explain this further in annex B to the operational standards rules.
9. We will revise rule 4.2 by extending the requirement to update records to five working days.

Section 2 – annex A: Building Safety Regulator (BSR) monitoring arrangements, including reportable data and key performance indicators (KPIs)

Breakdown of responses

Question 10: Thinking about KPI 1 competence (knowledge and skills), how much of the data proposed are you already collecting?

Of the 65 respondents:

- 45% responded that they collected most or all the data proposed
- 20% confirmed they collected some of the data
- 18% responded they collected few or none of the data
- 6% did not provide an answer

Summary of responses to Q10 – if few, none or some, please tell us which elements are not collected and why:

21 respondents provided comments to this question. Of which:

- 24% noted that there is no system in place yet for registration, so they did not currently record information on registered building inspectors
- 19% did not record any data under KPI 1 as there had been no previous requirement to do so or it was not considered a priority
- 14% noted that some building control bodies do not have dedicated support staff – some staff are not managed by building control and may work across divisions so it may not be possible to assess their competence
- 10% confirmed that they did not provide continuous professional development internally
- 10% referred to information technology (IT) systems – they either do not have an electronic system for this data or it is held across multiple (sometimes corporate) systems
- 10% suggested that the data was relatively easy for a small team to gather
- 10% requested further clarification, for example, what would be defined as ‘extensive experience’

Question 11: thinking about KPI 1 competence (knowledge and skills), are there any KPIs you recommend we consider further? If any, please provide details and reasons why:

22 respondents provided comments to this question. Of these:

- 14% suggested inclusion of numbers of apprentices and graduates actively working towards competence

Further responses raised that:

- it was easier to see how the KPIs might work with a large organisation, but not easy to see how they would work with a sole trader
- competency requirements of support staff such as administration members and consultants such as structural checking engineers should also be included
- the local authority does not currently provide a set number of days/hours for continuous professional development (CPD) – officers who are registered with professional organisations and required to complete minimum CPD as part of their registration carry out most CPD within their own time

Question 12: Thinking about KPI 2 systems and controls, how much of the data proposed are you already collecting?

Of the 65 respondents:

- 62% responded that they collected most or all the data proposed
- 17% confirmed they collected some of the data
- 17% responded they collected few or none of the data
- 5% did not provide an answer

Summary of responses to Q12 – if few, none or some, please tell us which elements are not collected and why:

18 respondents provided comments to this question. Of these:

- 39% reported no resources to fund or perform audits – one respondent noted that there was no legal requirement to do so
- 33% referred to being part of the Local Authority Building Control (LABC) quality management system
- 11% mentioned registration to ISO9001 for most approved inspectors

Further responses raised that:

- the wording, '90% of verification activities have passed their annual review', was considered confusing when compared with KPI data in 2.1 and 2.2
- other than competitors, there is a shortage of organisations with sufficient knowledge of the industry or role to offer meaningful audit assessment
- further clarity was requested around BSR's expectations regarding the number of audits building control bodies are expected to undertake

Question 13: Thinking about KPI 2 systems and controls, are there any KPIs you recommend we consider further? If any please provide details and reasons why:

8 respondents provided comments, but there were no common themes identified. In a sample of comments, the following points were raised:

- a respondent noted that they were generally supportive of this KPI and it was good to see reference to external scrutiny in 2.1 but noted that the yes/no option would suggest that this is optional questioning if an 'external body' is not involved, what evidence/verification would be required
- annual external verification was considered onerous – it was suggested that three years would be sufficient
- further clarity was requested on what 'verification activity' means and how would it be measured? It was pointed out that under quality assurance (QA) schemes there is no pass/fail criteria, only non-conformances with the QA system

Question 14: Thinking about KPI 3 complaints handling and appeals, how much of the data proposed are you already collecting?

Of the 65 respondents:

- 72% responded that they collected most or all the data proposed
- 9% confirmed they collected some of the data
- 12% responded they collected few or none of the data
- 6% did not provide an answer

Summary of response to Q14 – if few, none or some, please tell us which elements are not collected and why:

10 respondents provided comments to this question. Of these:

- 50% of respondents noted that they did not currently report on complaints as they are captured corporately/centrally by local authorities – records are not held by building control
- 20% commented that they had a process for complaints but rarely receive any

Further responses raised that:

- some complaints might take longer than 12 months to resolve especially if there is court action involved
- it was considered more important that the measure should be to understand the outcomes from complaints and if services have had to be modified to address a complaint about service delivery
- one respondent noted that they had the raw data for KPI 3 but some of the statistics would be difficult to extract
- in relation to 3.1 it was noted that complaints are specific to the building, so the number of units/plots is not required

Question 15: Thinking about KPI 3 complaints handling and appeals, are there any KPIs you recommend we consider further? If any, please provide details and reason why:

5 respondents provided comments to this question. Of these:

- 40% requested definitive advice on what is considered as a valid complaint

Further responses suggested:

- including timescales in dealing with complaints
- that all building control body complaint mechanisms should be transparent and independent, for example an ombudsman
- the consideration of complaints that relate to historic applications

Question 16: Thinking about KPI 4 building control functions, how much of the data proposed are you already collecting?

Of the 65 respondents:

- 45% responded that they collected most or all the data proposed

- 31% confirmed they collected some of the data
- 18% responded they collected few or none of the data
- 6% did not provide an answer

Summary of responses to Q16 - if few, none or some, please tell us which elements are not collected and why:

23 respondents provided comments to this question. Of these:

- 35% reported that data on projects requiring external advice is not captured
- 26% stated that data is not recorded either because there has been no requirement, it is not deemed a priority, or due to lack of resources
- 26% noted that whilst records are kept, they were not in easily retrievable formats
- 26% did not have the suitable software to gather the data
- 22% expressed concerns about the impact on resources in recording/reporting on this data, particularly with budget restrictions in place
- 17% noted that this was not possible to record the number of projects which H4 applies to as sewerage undertakers do not give access to their records

Further responses raised that:

- whilst some data would be simple to collect, other elements would require the software supplier to modify and upgrade their systems – a long lead time was requested for future data collection
- whilst it is possible to collate numbers in relation to initial notices rejected, the reasons or additional information required is more difficult to collect

Question 17: Thinking about KPI 4 building control functions, are there any KPIs you recommend we consider further? If so, please provide details and reasons why:

19 respondents provided comments to this question, but no common themes were identified. In a sample of comments, the following points were raised:

- it was suggested that the KPI requirement be introduced in a gradual phased process
- it was noted that although consultations are undertaken, responses can often be inconclusive or take an excessive period to receive – this impacts the timescales required to deal with applications

- it was suggested the number of inspections per project could be broken down into project types to allow a more accurate comparison
- it was proposed that 4.13 be amended to the ‘number of on-site inspections made per application’ as the wording could be interpreted such that an emailed photo could be classed as an inspection – this would ensure all building control bodies are being assessed correctly

Question 18: Thinking about KPI 5 enforcement and interventions, how much of the data proposed are you already collecting?

Of the 65 respondents:

- 34% responded that they collected most or all of the data
- 29% confirmed they collected some of the data
- 29% responded they collected few or none of the data
- 8% did not provide an answer

Summary of responses to Q18 – if few, none or some, please tell us which elements are not collected and why:

26 respondents provided comments to this question. Of these:

- 35% reported they do not have the systems in place to collect/extract this data – it would require scoping with software providers at cost
- 27% were concerned about items 5.9-5.11. Currently data is not collected – it would be difficult and onerous to do so
- 23% noted that the data is not currently recorded – either because there has been no previous requirement, its not considered a priority, or due to lack of resource
- 15% mentioned that data is recorded but it is not in an easily retrievable format

Further responses raised that:

- preventative and corrective interventions are only noted in inspection records and then only if significant enough to warrant following up - preventative interventions occur daily through answering correspondence, phone calls, emails or face to face on site, but they are not all recorded so reporting a number would be impossible
- enforcement should be targeted and appropriate – it was felt that having a % target (i.e., the proposed 90%) would not allow for proportionality to be applied – this target could result in enforcement action/potential criminal action without justifiable cause

- reports from systems would have to be developed and that numbers and targets could overly formalise communications where not warranted – matters raised in normal inspections would have to be flagged up somehow to be counted

Question 19: Thinking about KPI 5 enforcement and interventions, are there any KPIs you recommend we consider further? If any, please provide details and reasons why:

15 respondents provided comments to this question. Of these:

- 13% suggested that KPI data pertaining to successful interventions would provide a more valuable measure of effectiveness of the role of building control
- 13% noted that in a few examples of reversions, evidence passed to the local authority can be too little or too late to assist and investigation – it may be useful to capture reversions that are unable to be pursued by local authorities and the reason

Further responses raised:

- a concern that the KPI was only assessing risk, whereas there are other regulations not linked to risk that are as important as fire safety
- the difficulty in quantifying the number of issues raised in a major project
- a suggestion for an additional KPI for the percentage of initial notice applications where plans certificates were issued

Question 20: Thinking about KPI 6 risk management, how much of the data proposed are you already collecting?

Of the 65 respondents:

- 22% responded that they collected most or all of the data proposed
- 18% confirmed they collected some of the data
- 54% responded they collected few or none of the data
- 6% did not provide an answer

Summary of responses to Q20 – if few, none or some, please tell us which elements are not collected and why:

35 respondents provided comments to this question. Of these:

- 26% requested clear definition of terms such as ‘non-standard’ as there is a risk that it could be open to interpretation (a common theme in question 21 also)

- 20% commented that current IT systems will require updating and financial investment to record the proposed data, when budgets are already constrained
- 14% noted that data is not currently recorded – either because there has been no previous requirement, it is not considered a priority, or due to lack of resource
- 2% voiced concerns about burden on resources in recording/reporting on this data (aside from the 20% mentioning IT systems)

Further responses raised the following:

- no records are held for non-standard construction – they are done solely on application type
- information is placed within site notes, so it would be difficult to extract specific types of notes – new codes would need to be created within the inspection process to extract reportable data of this kind, and this is a cultural change which can take a while to establish
- obtaining information from DIY applicants is not always possible – some system changes would be needed to be able to count them

Question 21: Thinking about KPI 6 risk management, are there any KPIs you would recommend we consider further? If any, please provide details and reasons why:

7 respondents provided comments to this question. Of these:

- 57% requested clear definition on terms such as ‘non-standard’ and ‘serious non-compliance’ as there is a risk that it could be open to interpretation – this should drive consistency across building control bodies

Question 22: Do you have any views on the reporting frequency of KPIs 1-6?

Of the 65 respondents:

- 52% answered yes
- 18% answered no
- 12% answered do not know/no opinion
- 17% did not provide an answer

Summary of responses to Q22 – if yes please provide details and reasons:

There were 36 responses to this question. In the free text box, some respondents suggested multiple options for reporting frequency (for example ‘annual or bi-annual’) – these suggestions have been counted under each category as follows:

- 26% suggested annual data collection
- 11% suggested quarterly collection
- 8% suggested bi-annual collection
- 3% suggested collection on two-yearly basis
- 11% made no suggestion but expressed concerns about the level of resources involved in complying with the KPI requirements when resources are stretched – one respondent added that consideration needs to be given to who would pay for any system upgrades to enable data reporting
- 39% did not provide an answer or answered do not know

Further responses suggested that:

- time is required for all building control bodies to modify databases to capture the required KPI information
- building control services across the country are busy, and any new KPI reporting should not impact on the service provision
- KPIs should be implemented gradually, initially on a yearly basis
- quarterly returns may be unworkable for a sole trader – a tiered system was suggested as a solution, with returns every six months for organisations with five staff or under, and every three months for others

Heath and Safety Executive response

Considering the view of consultees, we have taken the following decisions in respect of the draft monitoring arrangements and the data capture requirements:

1. We will remove reference to competence of building control support and administrative staff. Instead, we will clarify that data required will relate to registered building inspectors and building control professionals.
2. Data covering the use of ‘specialist knowledge’ professionals outside of building control bodies will be removed.
3. We will remove the requirement to provide data on the suspension or termination of registered building inspectors/registered building control approvers, as we recognise this data can be accessed via the registration process.

4. We recognise that building control bodies operate to different quality management schemes (QMS) that they conform (or not) to and will amend the requirement for data to a pass or fail verification of the QMS.
5. We accept comments received in relation to QMS verification activities and will amend the requirement for data auditing activities.
6. The section covering complaints and appeals will be amended to clarify the data required relates only to compliance with Building Regulation 2010 complaints.
7. We understand concerns with setting targets for statutory consultations (fire and rescue authorities and sewerage undertakers) and intend to revise the data requirements.
8. In relation to feedback on building control functions and actions taken relating to dangerous structures, we will remove this data requirement.
9. We understand the concerns of consultees and will not at this time introduce the KPI target relating to the serving of compliance or stop notices and magistrate court enforcement.
10. We intend to merge the data covering preventative/corrective interventions and findings of non-conformance and request this is captured over a short set reporting period. This will provide BSR with a snapshot of activities.
11. We will define some of the terminology used. We intend to provide definitions and guidance on how building control bodies will submit data to BSR.
12. We will continue to work with stakeholders to determine the frequency of the proposed KPIs and reportable data. We are considering a mix of options such as recording data for certain elements during a specific time period only.

Section 3 – annex B: strategic context to building control oversight

Breakdown of responses

Question 23: Thinking about annex B, do you/your building control body understand what is required of you?

Of the 65 respondents:

- 58% answered yes to this question
- 9% answered no
- 26% responded that they were not sure
- 6% did not answer

Question 24: Thinking about annex B, how confident are you that you/your building control body can meet the requirements outlined in it?

Of the 65 respondents:

- 22% were very confident that they could fulfil the rules
- 45% were somewhat confident
- 26% reported not being at all confident
- 8% did not answer

Summary of responses to Q24 – If not at all confident, please tell us which paragraphs concern you and why:

23 respondents provided comments to this questions. Of these:

- 39% expressed concerns about the lack of resource available
- 26% requested further information on registration of building inspectors, competence requirements, annex C of the operational standards rules and Building Safety Regulator's expectations
- 13% noted that the proposed requirements may be beyond the capability of some building control bodies (particularly smaller ones)

Further responses raised the following:

- it was observed that building control bodies may be reluctant to share commercially sensitive information
- some respondents indicated that it is difficult for them to retain staff. Meeting the requirements was seen as possible as long as resources and investment in systems were provided. Ring-fenced funding was suggested to help achieve this
- it was emphasised that this is a culture change for building control which will take time to achieve – clear guidance and expectations from BSR will be required to embed this culture change
- in relation to paragraph 15 of the strategic context, it was indicated that building control approvers are not considered regulators as they do not have formal enforcement powers
- paragraph 20ix was considered problematic from a disclosure perspective. It was felt that it could highlight incompatibility of dutyholder choice and contract law

Health and Safety Executive response

HSE have considered the views of consultees. We respond to those views by making the following observations on the draft strategic context to building control oversight:

1. We will remove reference to HSE's enforcement policy statement and provide further detail on principles of good regulation.
2. Paragraphs about consultations will be revised to focus on statutory consultees, collaborative working and information sharing.

Section 4 – general comments

Breakdown of responses

Question 25: If you have any additional comments on the draft operational standards rules (OSRs), strategic context, reportable data or key performance indicators (KPIs), please tell us in the box provided

23 respondents provided comments to this question. Of these:

- 39% noted that much will depend on clarity of guidance to prevent misinterpretation and requested further guidance, for example, registration of building inspectors/approvers and competence requirements, annex C to the OSRs and Health and Safety Executive’s enforcement policy statement. One respondent requested an example submission with explanatory notes
- 9% mentioned resource concerns involved in complying with the OSRs and its annexes
- 9% felt that the KPIs were requesting a lot of information and are not all indicators of performance

Further responses raised the following:

- this is a major cultural change for building control which will take time to embed – many authorities do not know if they will have enough staff to carry out the function once the competency register has been closed
- it was felt that many questions cannot be fully answered until clearer guidance on the competency framework is available
- there were reservations noted over the short period from publication of the confirmed standards/requirements and a request that sufficient implementation is provided
- it was observed that BSR will need equivalent or greater competence standards to scrutinise building control bodies’ technical responses – it was also noted that there is no commentary on the competence of BSR staff overseeing building control bodies within the OSRs

- it was felt that consideration should be given, and justification provided as to why certain information is required and what its use is – it was noted that there are issues with software, and suggested that it would be useful for HSE to engage with the building control bodies' software providers to see what is possible in terms of data reporting

Health and Safety Executive response

We have taken all matters into consideration as we continue to draft the OSRs and its annexes.

1. We note the requests for guidance relating to competence and registration requirements. At the time of the OSRs consultation, the proposed requirements had not yet been released. All competence and registration related comments within the OSRs consultation have been passed to the relevant HSE teams for consideration.
2. We also note resource concerns involved in updating information technology (IT) systems to enable KPI reporting. It is anticipated that a new burdens assessment will be undertaken in due course. HSE will be working with an IT discovery partner to explore potential options for reporting. This will also feed into the development of annex C guidance on data returns.
3. In response to the point raised regarding BSR's competence to scrutinise technical decisions of building control bodies, it is not the intention for BSR to assess individual decisions. Instead, oversight of building control bodies will focus on the effective delivery of building control functions, as well as ensuring competence of individuals employed.

The way forward

HSE has considered all the consultation responses that were received, and these have been fed into the development of the OSRs. Further development includes:

- a data collection trial with volunteer local authorities and approved inspectors
- continued stakeholder engagement with representative groups on the monitoring arrangements and guidance on data collection
- engagement with IT providers
- a new burdens assessment

The OSRs will be published in draft in spring 2023. It is intended that data collection will commence at later date to be confirmed.

The introduction of OSRs, including KPIs and reportable data, is a new requirement and one that HSE understands will take time to establish for all parties involved. We appreciate the collaboration that stakeholders have demonstrated so far and hope to continue our productive engagement. Once implemented, BSR will periodically revise and re-publish the OSRs and annexes.

