



INSTITUTE OF HISTORIC BUILDING CONSERVATION

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Dear Madam

The Building Act 1984 The Building Regulations 2000 Proposals for Amending Part M

I refer to the consultation on amending Part M of the Building Regulations.

The Institute of Historic Building Conservation is the professional institute, representing conservation professionals in the public and private sectors in the United Kingdom and the Republic of Ireland. It has around fourteen hundred members divided between fourteen branches. The Institute exists to establish the highest standards of conservation practice and to support the effective protection and enhancement of the historic environment.

The IHBC appreciates the difficulties involved in balancing the two objectives of conserving the historic environment and improving access. It feels that the draft Part M provides a very good *starting point* for this process, but that there are very significant flaws which need to be addressed before a new Approved Document is finalised and issued.

1 The IHBC is concerned that the Disability Discrimination Act and its Code of Practice overlooked the interactions with the historic environment, and as a result those involved with providing improved access have been very poorly prepared for the possibility of conflicts (sometimes irreconcilable) between different goals

Paras. 6.26, 6.27, and 6.28 of the Code of Practice begin to address these issues, but give no realistic idea of situations in practice. To suggest (para. 6.26 of the Code of Practice) that when providing for access within listed buildings, an interim solution may be needed while a listed building consent application is considered is totally inadequate preparation for the possibility that such an application might be *refused* – and indeed that the interim solution itself might require listed building consent. The statement of legislative fact in para 6.27 of the Code of Practice recognises that the DDA does not have primacy over the Planning (Listed Buildings and Conservation Areas) Act 1990, but gives no help to those considering how to meet the requirements, or indication of the likely need for compromises. Para 6.28's suggestion that in the event of consent being refused "Whether or not the service provider's duty to take such steps as it is reasonable to take includes pursuing an appeal will depend on the circumstances of the case" is of no practical use to those who should surely be advised on

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ways of finding a compromise solution which might obtain consent. None of the quoted examples in the Code of Practice, or the Disability Rights Commission's Publications on "Bringing the DDA to life for small shops" deal in any meaningful way with the potential listed building issues.

This is a most unsatisfactory situation, not only in relation to Part M, but also given the need for service providers to make reasonable alterations to their premises by 1 October 2004 in order to comply with the DDA - and the many such providers who occupy historic buildings and will need more comprehensive guidance than they have so far been given. The IHBC suggests that ODPM, the Department of Work and Pensions, and the Disability Rights Commission need to give urgent consideration to producing such guidance, in consultation with English Heritage and other heritage agencies.

[Note: The Study for the Part M Review (included as Appendix 2 of the Regulatory Impact Assessment) did not appear to take any account of the potential conflicts between access aims and the historic environment, and the need to find balances between competing goals - the study seems to have considered only what might be described as the "demand" side of the equation. The IHBC is surprised that such interactions were not considered, noting that the Camden Consultancy, who carried out the study, had previously carried out the 1996 "Reconciling Legislation" study for the DOE and DNH which attempted to address such issues - albeit omitting the DDA and its implications.

2) The IHBC is concerned that, as a result of the failures cited in (1) above, the very reasonable basis for balancing different objectives evolved for Part L, and repeated in the draft Part M, may seem far from reasonable to those unused to the balancing of different factors which is an everyday part of conservation work (and for which an excellent basis is provided in BS7913:1998: *A guide to the principles of the conservation of historic buildings*).

3) The IHBC is extremely disappointed in this context that neither the draft Part M nor BS8300:2001 include any cross-referencing to BS7913:1998. This seems inexplicable when the Approved Part L includes cross-referencing to BS7913:1998; the IHBC cannot understand why similar cross-references have not been provided in the draft Part M.

4) This failure to cross-reference to BS7913:1998 is made even more significant because it could have been extremely helpful as a basis for shared understanding, and for the "reasonable" approach to decision-making which will be essential in implementing the Part M, DDA, BS8300 and SENDA (Special Educational Needs and Disability Act) requirements when they impact on the historic environment. The Building Regulations provide for alternative approaches (Approved Documents are advisory, not prescriptive). Guidance is needed on ways in which applicants and all relevant regulators can and should work together in trying to find "reasonable" solutions which are appropriate in a historic environment context.

5) The IHBC appreciates that the meaning of "reasonable" access under the DDA may eventually be tested in the Courts. This would have implications for Part M.

6) A fundamental principle in dealing with historic buildings (and the wider historic environment) is the need to find an individual solution which best meets the circumstances, challenges and opportunities presented by the particular building or site - rather than impose a prescriptive or standard solution which would be more damaging. In this context, the IHBC strongly supports the use of Access Statements, and hopes that they will be encouraged as part of an integrated approach to managing historic buildings (including Building Log Books, Conservation and Management Plans, and other developing best practice) - again, such an approach could usefully be supported by reference to BS7913:1998.

7) Although the section on Access Statements in paras. 0.9-0.12 is helpful, it does not give guidance on "compensatory" measures or address situations in which a compromise solution cannot be achieved. It can be extremely difficult to meet, in a historic setting; the design challenges involved in providing for different types of impairment, particularly since the needs of the sight impaired and the mobility impaired sometimes require contradictory solutions. It will be rare if not impossible for access needs to be met *fully* within a historic environment context; in almost every case, some form of compromise will be required. *Guidance on the issues, best practice, and potential management and design solutions is URGENTLY needed - not only in relation to Part M but also to inform service providers preparing to meet the DDA requirement for "reasonable" alterations by 1 October 2004.*

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[Note: the Part L interim Guidance Note (and forthcoming full Guidance Note and Advice to Building Control) prepared by English Heritage provide a precedent for the Guidance we are suggesting. However the IHBC is extremely concerned that English Heritage had to seek special funding for the Part L guidance which in our view should have been funded by DTLR from the outset; we suggest that such guidance in relation to Part M and the DDA should be fully funded as part of the Government's Access initiatives, rather than by English Heritage, and promoted as an integral part of guidance to service providers].

8) The IHBC is concerned that Part M does not address key issues relating to the use of historic buildings, in particular:

a) proposed *changes of use* affecting the historic environment: particularly changes which may trigger the Part L requirements for Building Regulations, but for which planning permission may not be required (particularly if the proposed changes to the Use Classes Order are confirmed, and permission is no longer needed to change, from A1 to A3).

b) the need to *manage* the use of historic buildings (and hence the access needs and potential impacts of Part M and the DDA) so as to minimise the requirements for physical intervention. *There will need to be coordination between the DDA Codes of Practice, Part M, and the forthcoming Planning Policy Statement on the Historic Environment on matters relating to changes of use.*

c) the scope for resolving potential problems by means of *alternative service provision under the DDA* which might render the application of Part M unnecessary in specific instances.

9) Moving on to the detail of the draft Part M, the IHBC notes the inconsistencies between the exceptions as set out in para 18 of the Regulatory Impact Statement and the wider definition of "historic buildings" in para 0.16 of the main document, which matches that established in Part L. The IHBC strongly supports the latter approach.

10) While welcoming the special consideration for historic buildings in paras. 0.17 and 0.18, the IHBC is concerned that these paragraphs have been taken almost verbatim from Part L, and that some of the wording which relates to the structural performance of buildings (notably 0.18 a and c) is not relevant to Part M. These paragraphs need redrafting to cover relevant key issues, include questions of use, reversibility of alterations, and guidance on the extent to which, for example, contrasting materials should be required where these would damage the architectural or contextual character of a historic environment.

11) It is noted that the draft Part M *permits* applicants to submit an Access Statement to explain why they cannot overcome specific barriers in a historic building. However it does not note that specific consent (listed building consent or scheduled ancient monument consent) is required for many proposals to improve access in most historic buildings. The situation where an applicant receives building regulations permission for access works and implements the alterations without receiving, or being informed of the requirement for, listed building consent must be avoided.

I trust that these comments are helpful.

Yours faithfully

Dave Chetwyn
Consultations Secretary