

Number: WG18587



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Welsh Government

Consultation Document

Changes to the Building Control system and the Approved Document supporting Regulation 7

Section 1 – The consultation proposals

Date of issue: 29 April 2013

Responses by: 21 June 2013

Overview

This is a consultation on changes to the Building (Approved Inspector etc) Regulations 2010, amendments to the Approved Document supporting regulation 7 and the removal of the Warranty Link Rule in Wales.

Section 14(7) of the Building Act 1984 requires the Welsh Ministers to consult the Building Regulations Advisory Committee for Wales (BRACW) and such other such bodies as appear to them to be representative of the interests concerned before making building regulations that contain substantive requirements.

How to respond

Consultees are invited to email responses to: enquiries.brconstruction@wales.gsi.gov.uk

Those who prefer to submit a paper copy of their response should send these to:

Changes to the Building Control system and Approved Document supporting regulation 7 Consultation
Construction Unit
Housing and Regeneration Directorate
Welsh Government
Rhyd y Car Offices
Merthyr Tydfil
CF48 1UZ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact Details

For further information:

Construction Unit
Welsh Government
Rhyd y Car Offices
Merthyr Tydfil
CF48 1UZ

Telephone: 0300 062 8141

E-mail: enquiries.brconstruction@wales.gsi.gov.uk

Data Protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Contents

Section	Page
1. Introduction – The Building Regulations 2010	1
2. Proposal to remove the Warranty Link Rule	1-2
3. Changes to the Building (Approved Inspectors etc) Regulations 2010	3
4. Amendments to the Approved Document supporting Regulation 7	4-7
5. Regulatory Impact Assessment	7
6. Consultation Response Sheet	8-10

Section 1

Introduction

The Building Regulations 2010

1. The Building Regulations 2010 (“the building regulations”) control certain types of building work, principally the erection and extension of buildings and provision or extension of certain services or fittings, chiefly to ensure that buildings meet certain standards of health, safety, welfare, convenience and sustainability.
2. Compliance with the building regulations is the responsibility of the person carrying out the work and the building control system helps to ensure that the required level of performance has been met. The role of a building control body, either the local authority or a private sector Approved Inspector, is to act as an independent third-party check to help achieve compliance.
3. The building regulations greatly influence how our buildings are constructed and used. As such, they help to deliver significant benefits to society. Regulation can also impose costs on both businesses and individuals. The “functional” nature of the building regulations, by having regulations setting out the broad requirement rather than prescribing how it must be achieved, seeks to minimise this cost and also ensure innovation is not hindered. Guidance in the Approved Documents, that accompany the regulations, then sets out some of the ways that these requirements can be met although it does not have to be followed if the required level of performance can be shown to be achieved in a different way. This approach provides clarity for building control bodies and industry alike.
4. To avoid the risk of unnecessarily onerous and costly standards being imposed on industry it is important that a proper cost/benefit assessment and consultation with industry has been undertaken by Government to assess what reasonable minimum standards are appropriate.

Section 2

Proposal – To removal of the Warranty Link Rule in Wales

5. The Warranty Link Rule (“the Rule”) was introduced to England and Wales in 2005 at the time that the new home building control market was opened up to approved inspectors other than the National Home Building Council (who had been operating in the sector since 1985) to alleviate concerns that approved inspectors did not have sufficient experience of supervising work on new homes. The Office of the Deputy Prime Minister Circular Letter dated 31 October 2005 set out the introduction of the Rule which requires that, when an Approved Inspector is carrying out the building control function in respect of new dwellings for private sale or renting in England and Wales, those new dwellings are registered under a designated warranty scheme.

6. In January 2012 the Department for Communities & Local Government (“DCLG”) consulted on the proposal to remove the Rule as it applies in England. The majority of those who proffered an opinion on the proposal were in favour of removing the Rule.

7. From 6 April 2013 in England Approved Inspectors will no longer be required to check if new dwellings are registered with a designated warranty scheme provider before undertaking the building control function on building work involving the creation by new build or conversion of any new dwellings for private sale or renting.

8. Research commissioned by the DCLG found that the original fear that there would be more complaints and that it would be more difficult financially for homeowners to rectify defects where an Approved Inspector carried out the building control was unfounded.

9. The research found that the Rule has not encouraged Approved Inspectors to carry out the building control function on new homes and that there is evidence of the opposite outcome in some situations. The Rule therefore appears to be an unnecessary burden in the overall aim of opening up the domestic sector to Approved Inspectors.

10. The report also identified certain deficiencies in the Rule’s contaminated land criterion.

11. A copy of DCLG’s report on the Rule is attached at Annex A. An executive summary is placed at pages 3 and 4 and the background to the Rule is placed at page 5 of the report.

12. For the reasons set out in paragraphs 8, 9 and 10 above our preference is to remove the Rule as it applies in Wales.

13. This would have little adverse impact on the market for warranty providers. This is because the vast majority of new homes will continue to require warranties for other reasons, such as the Council of Mortgage Lenders’ requirements. It would increase consumer choice by removing the requirement to use a designated warranty provider.

14. There does not appear to be an obvious benefit to the Rule continuing to apply in Wales and not in England. On the contrary, it has the potential to cause confusion within industry. As such, the preference of the Welsh Government is for the withdrawal of the Rule.

Question 1: Do you support the proposal to withdraw the Warranty Link Rule in Wales?

Section 3

Proposal – Changes to the Approved Inspectors regulations

15. The Building (Approved Inspectors etc) Regulations 2010 (“the Approved Inspectors regulations”) supplement the building regulations and expand upon many of the procedural requirements for Approved Inspectors covered by the Building Act 1984. They largely govern the relationship between Approved Inspectors and local authorities (the relationship between an Approved Inspector and their client is covered by their contractual arrangements). The Approved Inspectors Regulations also set out the functions of Approved Inspectors i.e. to take all reasonable steps to satisfy themselves within the limits of professional skill and care that the requirements of specified provisions of the building regulations have been complied with.

16. The Welsh Ministers propose to make changes to the Approved Inspectors regulations to reduce the burdens associated with them and have identified the following changes that would assist both Approved Inspectors and local authorities:

- i. Remove the need for Approved Inspectors to send a copy of their approval certificate and certificate of insurance to the local authority with every Initial Notice. Instead the approval body (the Construction Industry Council) will hold this information on an existing publicly-accessible register
- ii. Ensure all the definitions are up-to-date and make a few clarifications for ease of interpretation

17. If an Approved Inspector is engaged to provide the building control function, the client and the Approved Inspector must give the local authority an Initial Notice. Once this notice has been accepted (within five days) or deemed to be accepted by the passing of five days without notice of rejection, the Approved Inspector is responsible for supervising the building work and certificating its compliance with the requirements of the building regulations.

18. In place of sending their approval certificate and certificate of insurance with each Initial Notice, which is an unnecessary burden, the Construction Industry Council, which approves Approved Inspectors on behalf of the Welsh Ministers (and also the Secretary of State in England), would maintain a public website with this information for each of the Approved Inspectors. This website could be consulted by local authorities where they needed to make sure of approval and insurance arrangements. It would also be available to members of the public wishing to see this information.

<p>Question 2: Do you support the proposed changes to the Approved Inspectors regulations indicated in paragraph 16 above?</p>

Section 4

Proposal - Amendments to the Approved Document supporting regulation 7 (Materials and Workmanship)

19. The EU Construction Products Regulation (Regulation 305/2011) (“the EU Regulation”) came into force in April 2011 with most of its provisions applying from 1 July 2013. From that date, most construction products will have to be tested against harmonised EU standards and CE marked before they can be placed on the market in the UK.

20. We therefore propose to amend Approved Document 7 to clarify that the declarations of performance and CE marking required under the EU Regulation will become the main source of information on the performance characteristics of construction products from July 2013. We have also taken this opportunity to change the format of the document and propose other minor changes to the Approved Document. No changes are proposed to Regulation 7 itself.

21. The EU Regulation enters directly into UK law, without the need for transposing domestic regulations. However, the current UK Construction Products Regulations (SI 1991/1620 & SI 1994/3051) will need to be revoked and replaced by regulations providing for enforcement of the EU Regulation in the UK.

22. The Approved Document has been updated to reflect the full implementation of the EU Regulation. For consistency it mirrors recent changes introduced in England.

23. We will also propose to take the opportunity to make other minor changes such as removing the guidance on resistance to moisture and substances in the subsoil as this is now included in Approved Document C and also examples of materials susceptible to changes in their properties as durability testing is now an established element of testing such products.

24. We propose to change the format and revise the Approved Document supporting Regulation 7 for Wales to come into force on the * July 2013.

25. The newly formatted and amended Approved Document 7 is at Annex B. The changes are explained below.

Introductory sections

26. *Use of guidance:* This section is common to all the Approved Documents and the proposed amendments are to:

- Delete reference to England, as the power to make building regulations in relation to Wales was transferred to Welsh Ministers on 31 December 2011
- Refer to amendments to guidance on meeting Regulation 7 contained in other Approved Documents
- Delete references to European Technical Approvals and harmonised European standards, as they are out-of-date and/or discussed more fully in section 1

27. *The Requirement and Guidance:* The changes we propose in these sections are to:

- Confirm that Regulation 7 applies across all Parts of the building regulations
- Clarify the distinction between materials and products
- Delete the text on the environmental impact of building work

28. We have deleted the paragraph on the environmental impact of building work because developments since the Approved Document was published mean that this issue now goes much wider than Regulation 7. So, for example, domestic water efficiency is now covered in Part G, and Part L changes are made in the context of the move towards zero carbon standards for new buildings. As such, we do not consider that this reference to recycled/recyclable materials adds anything, and propose to remove it.

Section 1: Materials

29. We propose to re-order and update the text to give due prominence to the consequences of the EU Regulation. We see this as the most significant change that we are making to the Approved Document. The EU Regulation was adopted in March 2011 and published in the Official Journal of the EU on 4 April 2011. Whilst it came into force on 24 April most of the provisions apply from 1 July 2013. It replaces and simplifies the Construction Products Directive 1988 (which will cease to be effective in 2013). The EU Regulation applies directly in UK law.

30. The Construction Products Directive is an internal market Directive which aims to overcome the technical barriers to trade created where different countries in Europe have different standards, testing and labelling approaches for the same products. The Directive introduced the concept of CE marking for construction products as a “passport” enabling products to be placed legally on the market in any Member State. Most EU Member States have made CE marking mandatory for all

products within the scope of the Directive which are placed on their markets. In the UK, this is voluntary. The new Regulation seeks to clarify, simplify and improve the credibility of the CE marking provisions.

31. Neither the Directive nor the EU Regulation affect the rights of Member States to set performance requirements for products used in building or civil engineering works. But they do prohibit authorities from imposing additional testing requirements for those products, because the CE marking should contain all the information needed to assess whether or not the product meets any regulatory requirements for use. The building regulations do not prescribe which products can be used in works, simply (via Regulation 7) that these are fit for their intended purpose. Guidance in the Approved Documents to other Parts of the building regulations may refer to performance values for materials and products as part of suggested design solutions, but these do not prohibit designers from demonstrating that the works meet the regulatory requirements in other ways.

32. Many UK manufacturers already CE mark their products on a voluntary basis under the Directive, whether for export or sale/use in the UK, and harmonised European standards are progressively becoming the norm for testing and declaring performance, as national standards are withdrawn. However, under the new Regulation, from 1 July 2013 manufacturers of construction products covered by harmonised European product standards will be required to make a declaration of performance and to CE mark products in accordance with the relevant harmonised technical specification in order to place the products on the market. As the majority of construction products are covered by harmonised European product standards, these declarations of performance and CE markings will become the main source of information on the performance characteristics of construction products.

33. The EU Regulation concerns the conditions which apply when placing a product on the market. As such, we do not intend to amend Regulation 7 itself, and CE marking will not be mandatory for the use of products in controlled building works. Other methods of showing fitness for purpose will continue to be allowed, and examples are/will be described in the Approved Document. However, in practice, most products will carry the CE marking, as this will have been affixed when the products were put on the market.

34. We have also taken the opportunity to make minor amendments, updating and clarifying other parts of this section.

35. We have deleted paragraph 1.8 on resistance to moisture and 1.9 on resistance to substances in the sub-soil, on the basis that they are covered, and in more detail, in Approved Document C.

Section 2: Workmanship

36. We have updated, but not made any substantial changes to, Section 2 on workmanship.

Appendices

37. *Appendix A:* Lists where other Approved Documents give guidance on the application of Regulation 7 that is to be replaced by amended text.
38. *Appendix B:* We have changed this from a list of abbreviations and glossary to a list of sources of further information.
39. *Appendix C:* We have updated the list of relevant standards in the BS 8000 and 9000 series.

Question 3: Do you have any comments on the proposed changes to Approved Document 7?

Section 5

Regulatory Impact Assessment

40. The RIA's analyse the costs and benefits for the changes in relation to the Warranty Link Rule and the Building (Approved Inspector etc) Regulations and they are included in the consultation package. An RIA considers the impacts and the monetised and non-monetised costs and benefits that would arise if the changes were implemented.

- Question 4: Do you agree with the costs and benefits outlined in the RIA's for:**
- i **Warranty Link Rule and changes to the Building (Approved Inspector etc) Regulations?**
 - ii **Amendments to Approved Document supporting regulation 7**

Section 6

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Consultation on changes to the Building Control system and amendments to the Approved Document supporting Regulation 7 (Materials and Workmanship)

Question 1

Do you support the proposal to withdraw the Warranty Link Rule in Wales?

Yes

No

Comments:

Question 2

Do you support the proposed changes to the Approved Inspectors regulations indicated in paragraph 16?

Yes

No

Comments:

Question 3

Do you have any comments on the proposed changes to Approved Document 7?

Yes

No

Comments:

Question 4

Do you agree with the costs and benefits outlined in the RIA for:

i Warranty Link Rule and changes to the Building (Approved Inspector etc) Regulations?

Yes

No

Comments:

ii Amendments to Approved Document supporting regulation 7

Yes

No

Comments:

Question 5

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed or if you wish to make other comments, please use this space to report them:

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here: