



Llywodraeth Cymru  
Welsh Government

**DRAFT**

**Annex B**

**Building Control Oversight  
- Setting the strategic context -**

**Wales**

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# Introduction

1. This is the strategic context for the oversight function of Welsh Ministers, or a delegated authority (the regulatory body). It supports the Operational Standards Rules (OSRs). The OSRs are explained by 58Z of the Building Act 1984 (the act).
2. This document adopts the definitions contained in the act.
3. This framework shows the connection between the competence of the unified building control profession and the oversight of building control. It explains the approach regulators should adopt for both in scope and out-of-scope buildings. These regulators, jointly known as building control bodies (BCBs), are:
  - i) local authorities
  - ii) registered building control approvers, defined by section 58N of the act.
4. It reinforces that it is the responsibility of those carrying out building work to comply with the Building Regulations 2010, as amended (building regulations). Dutyholders include clients, principal designers, principal contractors, designers and contractors. Risks include the breach of building regulations including those relating to building safety.
5. Any lists contained within this document are illustrative and not exhaustive.
6. This framework guides regulatory prioritisation for the effective delivery of building control functions by setting out with sensible, risk-based and proportionate steps. This will ensure:
  - i) risk ownership by those responsible for compliance with building regulations
  - ii) the safety of people in and around buildings
  - iii) the improvement of building standards
  - iv) building work is appropriately checked for compliance with building regulations consistent planning and delivery of building control
  - v) intervention and/or enforcement action is carried out consistently
  - vi) consistent and effective use of resource

# Scope

7. This document is annexed to the OSRs. It focusses on these four objectives:

Objective 1 - clarifying the **roles and responsibilities** of:

- i) dutyholders
- ii) registered building control approvers
- iii) local authorities
- iv) the regulatory body

Objective 2 - outlining the **risk-based approach** that BCBs should adopt. This includes, for example, the need to target relevant and effective interventions focused on:

- i) influencing dutyholder behaviours
- ii) improving compliance with the Building Regulations
- iii) mitigating risks in the built environment as relevant to building control functions
- iv) an informed and intelligence-led understanding of emerging risks to building safety

Objective 3 - integrating **competence** requirements that BCBs should adhere to.

Objective 4 -**monitoring** and assessing the performance of BCBs by using, for example:

- i) operational standards rules
- ii) monitoring arrangements – reportable data and key performance indicators (annex A of the OSRs)
- iii) guidance for the collection and publication of building control and built environment data. This will be in annex C of the OSRs. We will publish annex C after the consultation.

## Roles and Responsibilities

8. The regulatory body establishes oversight with a robust approach to building safety and standards. The regulatory body oversees the competence and performance of BCBs and the unified building control profession. Registered building inspectors (section 58B of the act) are jointly known as the “unified building control profession”.

### Dutyholders

9. Dutyholders are responsible for complying with the act. Where a building safety risk arises, the person that creates it – or is in control of it – is responsible for it. Those persons are known as dutyholders and include those identified by the Construction (Design and Management) Regulations 2015. They are:
  - i) client
  - ii) principal designer
  - iii) designer
  - iv) principal contractor
  - v) contractor
10. Building regulations are provided for by Part I of the act, as amended.
11. BCBs should expect dutyholders to proactively demonstrate their project will comply with building regulations. They should include an explanation of how the functional requirements of those regulations aim to be met from design into occupation. This means dutyholders will provide BCBs with:
  - i) identified risks and their management arrangements
  - ii) explanations on what guidance has been used to inform design and construction
  - iii) explanations on how they have assessed the appropriateness of the guidance used for the specific element of compliance.
12. We anticipate that holding dutyholders to account will ensure they are preventing, managing, and controlling their risks from design to demolition.
13. Dutyholders should engage with occupiers. This will help dutyholders check, improve and maintain the standard of their buildings in compliance with the act and building regulations.

## Regulators

14. There are three types of regulators in the regulatory system. They are (1) the regulatory body, (2) local authorities and registered building control approvers, and (3) organisations that certify competent person schemes.
  - a) The regulatory body is the regulator for:
    - i) BCBs
    - ii) the unified building control profession
  - b) local authorities and registered building control approvers are the regulators for works outside of the higher-risk buildings regime
  - c) local authorities are the regulators for higher-risk buildings regime work
  - d) specified building work as detailed in Schedule 3 of the building regulations can be carried out under competent person schemes. Competent person scheme operators are responsible for building work carried out under their self-certification schemes
15. The role of BCBs is to assess compliance with the act and building regulations. Evidence could be collected by the BCB, provided by dutyholders, and include views of relevant consultees.
16. BCBs will use their findings and professional judgement to support, encourage, and, where appropriate, hold dutyholders to account.
17. BCBs must make best use of their resources and work proactively with consultees. This helps to ensure compliance with the act and building regulations including building safety. BCBs should target their interventions and enforcement at dutyholders and at activities posing the most serious risks to compliance with the act and building regulations.
18. BCBs should consider the primacy of other regulatory bodies and support them appropriately.

## A risk-based approach

19. BCBs will use the full range of their regulatory toolbox to ensure dutyholders manage risks effectively and comply with building regulations. Example measures could include (but are not limited to):
  - i. behavioural nudges
  - ii. published guidance
  - iii. inspections
  - iv. formal advice
  - v. cancellation/reversions of initial notices
  - vi. regularisation of building work
  - vii. testing of building work
  - viii. contravention notices
  - ix. reversions
  - x. notices
  - xi. publicising enforcement activity against dutyholders
20. Dutyholders are responsible for compliance with the building regulations and managing risks posed by their buildings. This applies to all dutyholders, no matter their size or set up.
21. BCBs will take a risk-based approach to deliver their building control functions. They will do this by applying regulatory principles to their building control functions.
22. BCBs should apply the enforcement principles to their building control functions.

The enforcement principles are:

- i) targeting
- ii) proportionality
- iii) transparency
- iv) consistency
- v) accountability

### Targeting

23. BCB interventions should target those dutyholders, buildings or activities that cause most concern. These should be persons or situations:
  - i. That cause the most serious risks of non-compliance with building regulations
  - ii. where risks of non-compliance with building regulations are least well controlled

24. BCBs should use local and national intelligence to develop intervention plans. The intelligence they should use includes, for example:
  - i. emerging issues
  - ii. past performance of dutyholders
  - iii. analysis of higher-risk activities
25. BCBs will work closely with fellow regulators such as the Fire and Rescue Services to help target resource proportionately.

### Proportionality

26. BCBs should expect dutyholders to adopt a sensible and balanced approach to managing safety. Dutyholders should ensure building works complies with the Building Regulations.
27. Interventions and enforcement should be proportionate to the level of risk posed by non-compliance with the act and building regulations. They must consider the potential and actual harm those risks could bring about, and the seriousness of any breach of the law.
28. BCB interventions and enforcement activities should align with their own policies. These policies should be guided by good practice. BCBs policies should differentiate between different levels of risk. Additionally, they will help BCBs assess what dutyholders have done to achieve compliance with the Building Regulations, reduce risks and guide judgements on how far below an expected standard a dutyholder has fallen.
29. BCBs should balance the risk of non-compliance against the time, cost, and physical difficulty to avert that risk. They should also consider the impact of any action – or lack of non-action – on dutyholders, residents and the public.
30. BCBs should target their activities on the improvement of safety, compliance, and performance of buildings. This should focus on high risks of actual or potential harm arising from any breach.
31. BCBs should act as a deterrent against those who do not ensure that buildings and building work comply with the act and building regulations. BCBs can achieve this with fair and consistent interventions.

### Consistency

32. BCBs can achieve consistency by:
  - i. ensuring nationally published guidance applies to local and national priorities
  - ii. promoting a consistent approach to regulatory competence
  - iii. setting clear expectations for delivery



- iv. allowing proper comparison and transparency, for example, via peer review (for example), of publishing of intervention and enforcement data.
33. Maintaining a consistent approach to all building control functions ensures best use of resources. It also assures dutyholders that they are being treated consistently to achieve compliance with the law.

### **Transparency**

34. Transparency ensures dutyholders and BCBs know what they can and cannot expect from each other. It also ensures BCBs are clear on what is and what is not expected of them from the regulatory body.
35. Published guidance for building control functions and activities will help reassure dutyholders that they are being treated consistently.
36. Building control records should be kept digitally and updated regularly. This will help with business continuity and transparent decision-making.

### **Accountability**

37. BCBs should be open about their activities and processes by:
- i. publishing their enforcement procedures, principles and standards
  - ii. sharing relevant and permissible information
  - iii. inviting statutory and non-statutory consultation
  - iv. benchmarking
  - v. peer review
  - vi. good practice

## Competence

38. Compliance with building regulations can be managed effectively using a risk-based approach. To do this, persons delivering building control functions must be competent to recognise the difference between significant risk of breaching the building regulations and trivial matters.
39. BCBs should plan for relevant training and professional development of all persons involved in the delivery of their building control functions.
40. BCBs should ensure their registered building inspectors meet their registration conditions and code of conduct.
41. BCBs should ensure persons delivering their building control functions are up to date with:
  - i. technological advances
  - ii. modern methods of construction
  - iii. shifting dutyholder obligations
  - iv. changes in legislative requirements (and their practical application)
42. BCBs should implement advice and guidance provided by the regulatory body and its committees.

# Monitoring

43. The regulatory body will use a proportionate, risk-based, and intelligence-led approach to assess the performance of BCBs. This approach includes:
  - i. targeted monitoring activities
  - ii. regular and ad-hoc data and information returns
  - iii. inspection
  - iv. auditing
  - v. investigation
  - vi. collaboration with partner regulators
  - vii. voluntary reporting of relevant occurrences
  - viii. sector-led intelligence
  - ix. enforcement action
  - x. sanctions
44. The regulatory body expects BCBs to support and engage with the monitoring, analysis and evaluation of the effectiveness of their performance.
45. BCBs must monitor the effectiveness of their building control functions regularly. The frequency and subject matter of any monitoring process should be informed by a risk-based approach to prioritisation. Monitoring should incorporate internal and external activities, for example:
  - i. verification of decisions reached by the BCB
  - ii. audits
  - iii. management system certification
  - iv. leadership scrutiny
  - v. peer review
46. BCBs should improve poor or inadequate performance within clear timescales.
47. BCBs may appeal against specific enforcement action taken by the regulatory body that they consider unreasonable or disproportionate.
48. The regulatory body will publish its findings on the performance of BCBs. This transparency should drive:
  - i. BCB performance improvements
  - ii. building safety improvements
  - iii. improvements in compliance with building regulations including requirements relating to building safety