



Llywodraeth Cymru
Welsh Government

DRAFT

Operational Standards Rules Wales

Drafting Note:

Secondary legislation is currently being developed. This particularly applies to Dutyholder regulations / Appointment of Persons regulations and restricted functions and activities.

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Introduction

These are the operational standards rules (OSRs). They are explained by section 58Z – 58Z10 of the Building Act 1984 (the act). In accordance with the act, Welsh Ministers or a body delegated by them, (the regulatory body) may revise the OSRs and publish those revisions at any time.

The OSRs adopt the definitions contained in the act.

Any lists contained within the OSRs are illustrative and not exhaustive

OSRs apply to all building control functions exercised in relation to buildings or works. These functions are delivered by building control regulators:

- local authorities, defined by section 126 of the act
- registered building control approvers, defined by section 58N of the act they apply to building control bodies:

Building control bodies must meet the OSRs' standards, clauses, and annexes. The Welsh Ministers can revise these and publish those revisions at any time.

The regulatory body monitors local authority and registered building control approver performance against these OSRs. The regulatory body may take action against those who fail, or potentially fail, to fulfil the requirements of the OSRs.

The regulatory body requires local authorities and registered building control approvers to read the OSRs and annexes. The annexes are an integral part of the OSRs. This will help you understand what the regulatory body requires of you.

The OSRs are summarised by the categories:

- i) systems and controls
- ii) persons involved in the delivery of building control functions
- iii) building control functions
- iv) enforcement and intervention

Systems and controls

- 1.1. You must use the risk-based approach (annex B) to plan and deliver your building control functions. Building control functions are explained by 58Z (3) of Act.
- 1.2. You must keep effective, up to date and relevant systems and controls. This must include keeping persons supporting your building control functions fully informed on, for example:
 - i) local and national policies
 - ii) technical and procedural guidance
 - iii) any other information that may affect the exercise of your building control functions
- 1.3. Your systems and controls must identify, manage, and mitigate risks to your building control functions as well as:
 - i) the delivery of your building control functions
 - ii) the reputation of building control
 - iii) compliance with the act and the building regulations for buildings and any work you oversee.
- 1.4. Your building control functions must support dutyholders and regulators effectively. You can find information about roles and responsibilities in annex B.
- 1.5. Your work instructions on building control functions must be recorded, up to date and reflect current guidance.
- 1.6. You must have an adequate means of identifying, storing, updating, and transferring data. The data must encompass all your building control functions, for example:
 - i) building control approval applications including decision making
 - ii) inspection plans including reasoning for inspection types, inspection reports and supporting evidence
 - iii) any intervention and enforcement action planned and taken against any dutyholder
- 1.7. You must maintain governance and oversight mechanisms that ensure your outsourced service providers always comply with the OSRs and their annexes, reporting requirements and the law. Outsourced service providers include, for example, any trading subsidiary, external contractor, or shared service arrangement.
- 1.8. You must remain responsible for any building control function undertaken on your behalf, regardless of the delegation or agency mechanism used.
- 1.9. You must have a 'speak up' or whistleblowing policy. It must be visibly supported at the top of the organisation and actively promoted to the workforce.
- 1.10. You must use the risk-based approach (annex B) to formally evaluate the performance and effectiveness of your building control functions. Formal evaluation combines internal and external activities, for example:

- i) random spot checks
 - ii) peer review
 - iii) internal audit
 - iv) external audit
 - v) management review
- 1.11. Your performance evaluation (see 1.10) must consider any risks to the effective delivery of building control functions raised by:
- i) complaints
 - ii) appeals
 - iii) requests by the regulatory body.
 - iv) current guidance
- 1.12. You must cooperate fully, within specified timelines, with the regulatory body. This includes, for example:
- i) proactive audit or inspection
 - ii) periodic audit or inspection
 - iii) information requests for data
 - iv) information requests for contextual information
- 1.13. You must ensure there is no conflict of interest affecting persons involved in the delivery of your building control functions.
- 1.14. Your complaint handling arrangements must be published, easily accessible, clear, and up to date. They must include routes for appropriate referrals, appeals and alternative dispute resolution.
- 1.15. Registered building control approvers must meet their registration conditions and professional conduct rules. Registration conditions are provided by section 58O (3) (b) of the act. Information on professional conduct rules is in section 58R of the act.

Persons

- 2.1 You must resource your building control functions appropriately and manage risks to building safety and risks of non-compliance with the act and the Building Regulations effectively. This must include the allocation of competent persons to any given task.
- 2.2 You must ensure persons supporting your building control functions are competent and, where necessary, registered. This applies to all building control functions. Further information on restricted functions is provided in section 46A of the act.
- 2.3 You must immediately remove any person from delivering your building control functions who does not have valid competence, authorisations or registrations.
- 2.4 You must make appropriate continuous professional development available to persons delivering your building control functions. This must include development relevant to technical expertise.
- 2.5 You must ensure persons delivering your building control functions act within their competence, relevant registrations and applicable codes of conduct. This includes acting within:
 - i) the code of conduct for registered building inspectors (section 58F of the act)
 - ii) the professional conduct rules for registered building control approvers (section 58R of the act)
 - iii) any code of conduct provided by the local authority for persons engaged by that local authority
- 2.6 You must keep up-to-date records relevant to the knowledge and expertise of persons delivering your building control functions. These records must be provided to the regulatory body as soon as possible.

Building control functions

- 3.1 You must not give advice on design and construction aspects for specific building projects. Publishing guidance, directing dutyholders to self-service areas such as websites, and published guidance or legal instruments do not constitute advice.
- 3.2 You must record all advice given and advice declined:
 - i) on making, or potentially making, a building control application
 - ii) on any aspect involving a specific building control application
 - iii) for any applicant, potential applicant, or other relevant person
- 3.3 You must communicate information relating to the giving of plans certificates and assessment of plans in writing. This must include:
 - i) non-compliance with the act and any regulations made under it
 - ii) the views and observations of statutory consultees
 - iii) any other conditions, observations or recommendations
- 3.4 You must include the views of statutory consultees in the building control work as soon as possible. Statutory consultees are persons that you are required to consult by law on specific matters
- 3.5 You must include the views of any other consulted non-statutory regulators. You identify these consultees by considering:
 - i) the nature of the project
 - ii) areas of concern involving the project
 - iii) operational responsibilities of local and national regulators
- 3.6 You must aim to achieve consensus with consulted regulators and statutory consultees.
- 3.7 Any decision you take not to accept observations of consulted regulators and statutory consultees must be supported by a registered building inspector. Registered building inspectors are defined by section 58B of the act.
- 3.8 You must record your reason for not achieving consensus or not accepting observations from consulted regulators and statutory consultees. You must send your justification to statutory consultees as soon as possible.
- 3.9 You must communicate with dutyholders about key decisions and their implications at relevant times.
- 3.10 You must provide all building control inspection reports to the building control applicant and the current building owner:
 - i) as soon as possible following inspection
 - ii) in an easily accessible format, and
 - iii) on request

- 3.11 You must apply the risk-based approach (annex B) to set up and keep under review your:
- i) inspection regimes
 - ii) project-specific inspection and intervention plans
 - iii) practical delivery
- 3.12 You must record your building control findings with original evidence. This includes on-site and remote inspection reports. Photographs, film and similar must be date/time stamped and geo-tagged. This includes, for example:
- i) all elevations
 - ii) life and/or safety-critical aspects
 - iii) observations
 - iv) non-conformances
 - v) contraventions
- 3.13 You must take all reasonable steps to receive onsite and remote inspection reports within two working days of the inspection. Your registered building inspector must approve the reports and include appropriate evidence of:
- i) the work inspected
 - ii) any identified non-compliance
 - iii) planned and completed interventions and/or enforcement action
 - iv) observations
- 3.14 You must inform statutory consultees, consulted regulators and other relevant regulators of changes to a project or any other areas of concern. You must do so prior to the potential risk of non-compliance occurring during building work or prior to occupation, whichever may - happen first

Enforcement and intervention

- 4.1 You must use all regulatory intervention and/or enforcement tools at your disposal to full effect. This means you may need to take action against the dutyholder.
- 4.2 You must record each contravention and evidence of suitable resolutions. You must update your records within two working days. Your registered building inspector must confirm the resolution of any contravention in writing to ensure up-to-date project information is available.
- 4.3 You must be satisfied that each contravention is resolved before you issue any completion certificate or final certificate for the relevant works.
- 4.4 Registered building control approvers must revert projects to the relevant local authority where contraventions are not resolved. This enables formal enforcement.
- 4.5 You must send complete and correct data returns to the regulatory body as soon as possible.

Annexes

Annex A – Key performance indicators

Annex B – Strategic context to building control oversight