



Llywodraeth Cymru
Welsh Government

GUIDANCE

New criteria for Approved Inspector insurance (WGC 006/2021)

Information on the new criteria for approval of insurance for Approved Inspectors pursuant to S. 47(6) Building Act 1984.

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Information on the new criteria for approval of insurance for Approved Inspectors pursuant to S. 47(6) Building Act 1984.

Building regulations circular

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Issued by: Francois Samuel: Head of Building Regulations

Addressed to:

Local Authority Chief Executives (Please forward to: Local Authority Building Control Officers)

Welsh Local Government Association (Please forward to: Members of the Senedd)

Association of Corporate Approved Inspectors

CICAIR Limited

Summary

This circular letter provides information relating to the new criteria for approval of schemes of insurance for Approved Inspectors pursuant to section 47(6) of the Building Act 1984.

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Website: <http://gov.wales/topics/planning/buildingregs/>

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Introduction

I am writing to inform you about changes we are making to Approved Inspector oversight arrangements, the Criteria for Approval of Schemes of Insurance for Approved Inspectors pursuant to Section 47(6) of the Building Act 1984, and new Guidelines for the Schemes of Insurance.

Scope

This circular letter applies to Approved Inspectors (AI's) carrying out building control functions in Wales.

Changes to the Criteria for Schemes of Insurance for approved inspectors

Following engagement with Approved Inspectors and the insurance sector, we are issuing new criteria for approval of schemes of insurance for approved inspectors which will preserve the historic consumer protections, better align with requirements on other professions and to provide for greater commercial flexibility.

The new criteria allow:

- a banded excess cap, proportionate to each firm's turnover
- six years automatic run off cover, aligning the requirements for Approved Inspectors with other regulated professions
- specific restrictions to insurance cover, supported by a 2-tier structure of approved inspector oversight

The level of protection offered under existing approved schemes will be preserved for building control projects that already have a valid Initial Notice.

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The new criteria for approval of schemes of insurance for Approved Inspectors are at Annex A.

Flexible cover for Approved Inspectors

To support greater transparency of Approved Inspector approved schemes of insurance, we are introducing a two-tier structure for Approved Inspectors. This will allow insurers and Approved Inspectors to tailor their schemes to suit the risk profile of Approved Inspectors working in different tiers. It will also assist the local authorities make the correct judgement when receiving notices from Approved Inspectors.

Guidelines for schemes of insurance

Prior to being considered an approved scheme of insurance, schemes must be approved as providing adequate insurance cover by Welsh Ministers.

Existing schemes wishing to make any changes to any of their terms, including to reflect the amended criteria, must be re-approved by Welsh Ministers.

New or revised terms should be provided in full to:

enquiries.brconstruction@gov.wales

We continue to welcome discussions with brokers, insurers, or other parties able to propose schemes that would meet the Criteria for Schemes of Insurance.

Guidelines for Schemes of Insurance are available at Annex B.

We are asking CICAIR to strengthen their audit process to support the insurance requirements in the legislation and Code of Conduct.

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Enquiries

For telephone enquiries relating to this circular contact:

Colin Blick on 03000 628144.

E mail: enquiries.brconstruction@gov.wales

Annex A

New criteria for approval of schemes of insurance for approved inspectors pursuant to section 47(6) of the Building Act 1984 - 2021

a. Public liability and professional indemnity insurance cover

Schemes of insurance for approved inspectors must provide for public liability and professional indemnity insurance covering the inspector for losses arising from claims in respect of the performance of duties as an approved inspector (AI)

The following minimum levels of cover apply:

- i) for claims against the approved inspector in respect of personal injury (including illness, disease and death) a minimum limit of not less than £5m per claim (all claims attributable to one occurrence shall be treated as one claim)
- ii) for other claims against the approved inspector, a minimum limit of not less than £1m per claim (all claims attributable to one occurrence shall be treated as one claim)
- (iii) the minimums in subparagraphs (i) and (ii) are subject to an overall minimum cover of £15m for all claims against the approved inspector in respect

of work carried out by the inspector in any one period of 12 months.

Restrictions – Tall Buildings, External cladding systems

Where an Approved inspector operates exclusively in a “Tier 2” of AI work (and informs CICAIR, customers and Local Authorities of this fact), restrictions to cover (which have been agreed by Welsh Ministers) may be applied to exclude specific types of buildings that can be worked on by Approved Inspectors in Tier 1.

Historic work undertaken on excluded buildings types must have levels of protections provided by previous insurance policies preserved.

b. Defence costs

Cover is to extend to the approved inspector's defence costs, which are to be treated on a "costs in addition basis", i.e. such costs will not be taken into account for the per claim minimums, though they will count towards the overall minimum of £15m.

c. Automatic run off cover

In relation to:

- (i) any personal injury claims as set out in subparagraph a.(i); and
- (ii) non-injury claims as set out in subparagraph a.(ii) other than where under the law of contract

cover must be provided in respect of claims notified to the insurer within:

- (a) 10 years of the date of completion of the approved inspector's work in respect of the relevant building project, whether that date is that of giving of a final certificate, which is not subsequently rejected by a local authority, relating to the project, or of some other event marking the practical termination of the AI's

involvement in the project in relation to an Initial Notice dated prior to date of the new insurance, or

(b) 6 years of the date of completion of the approved inspector's work in respect of the relevant building project, whether that date is that of giving of a final certificate, which is not subsequently rejected by a local authority, relating to the project, or of some other event marking the practical termination of the AI's involvement in the project in relation to an Initial Notice dated on or after the new insurance.

The minimum per claim limits set out in a.(i) and (ii) above apply in respect of this cover, as does the minimum aggregate limit of £15m.

d. Excess

Turnover £s in the preceding year:

100,000 or less (Excess Cap: £10,000)

100,001 – 200,000 (Excess Cap: £12,500)

200,001 and above (Excess Cap: 2.5% sum insured, in accordance with criteria a.(ii) - the full sum to be paid by the insurer, with excess recovered from the AI.)

e. Voiding of Cover

In line with commercial practice, reasonable provisions for voiding of cover will be allowed for example: for failure to disclose material information, failure to adhere to the terms and conditions of the policy, or failure to pay the premium.

f. Transition to the 2021 Insurance Criteria

Before implementing the 2021 Insurance Criteria within schemes of insurance, new or amended schemes must be approved as adequate by Welsh Ministers. Schemes may be submitted to the Welsh Government and must include full

terms and conditions. Guidelines for Schemes of Insurance are provided at:
<https://gov.wales/building-regulations>

The insurance terms and conditions must include clauses that preserve existing consumer protection for work that received an Initial Notice prior to transition to the new scheme, including for run-off and restrictions to cover.

Annex B

Approved Inspectors – Guidelines for Approval of Schemes of Insurance

Purpose

1. This document provides guidelines on approval and operational processes for approval of schemes of insurance for Approved Inspectors pursuant to section 47(6) of the Building Act 1984.
2. The guidance outlined here applies to insurance of Approved Inspectors carrying out building control functions in Wales.
3. From time to time Welsh Ministers publish a document ‘Schemes of Insurance for Approved Inspectors Pursuant to Section 47(6) of the Building Act 1984’ setting out criteria (“the Criteria”) to which Welsh Ministers will have regard when considering the adequacy of schemes of insurance.
4. Both these Guidelines and the Criteria are for guidance and do not fetter the discretion of Welsh Ministers in relation to approval of schemes of insurance.

Schemes of Insurance

5. A scheme comprises the full terms and conditions of insurance offered, details of how company-specific terms will be applied, and the arrangements and/or

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names of insurers and underwriter, self-insurer or other person funding or financially guaranteeing insurance written under the scheme. A scheme may provide insurance cover to one or a number of Approved Inspectors.

Approval

6. Schemes of insurance seeking approval by Welsh Ministers must submit their full scheme details to the Building Regulations Policy Team.

7. Early engagement with the Building Regulations Policy Team during scheme development is encouraged.

8. Any changes to an approved scheme of insurance, including proposed changes to any terms or conditions of insurance offered under the scheme, and changes to the person providing, underwriting, funding or guaranteeing the insurance, must be sent for approval by Welsh Ministers in advance of changes being applied.

9. In addition to obtaining approval from Welsh Ministers, schemes must inform the body designated to maintain and publish records of new insurance, changes to insurance and decisions on insurance in a timely manner.

10. If a scheme provider wishes to withdraw its scheme it should write to the Building Regulations Policy Team at the contact details below.

Approval process

11. Under the Building Act 1984, Welsh Ministers may approve any scheme that appears to them to secure the provision of adequate insurance cover, and the criteria will be considered as part of the assessment of adequacy.

12. Those persons submitting schemes for approval will be expected to provide comprehensive scheme details, including the full terms and conditions, how the scheme will operate and details of insurers and re-insurance.

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13. The Building Regulations Policy Team may request information it deems necessary in assessing the scheme's adequacy. They may also seek specialist advice specific for the assessment of the requirements for any scheme.

How to submit schemes for approval

14. Requests for approval, re-approval and notices of cancellation must be submitted to the Building Regulations Policy Team at the following addresses:

Building Regulations Policy,
Welsh Government,
Rhydycar,
Merthyr Tydfil,
CF48 1UZ

or

E mail: enquiries.brconstruction@gov.wales

Telephone enquiries: 03000 628144

Annual return by scheme operator

15. Approved schemes of insurance should submit an annual return to the Building Regulations Policy Team, and a pro-forma is attached at Annex 1 of this document. The reporting period for annual returns will run from January to December. The returns should be submitted to the Building Regulations Policy Team by the end of each January, reporting on the previous calendar year. The annual returns should be addressed to: enquiries.brconstruction@gov.wales

Timelines

16. The time taken to approve an application for an approved scheme will vary depending on the complexity of the scheme proposed, the evidence supporting

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adequacy, and the volume of other requests received. A decision on a full application which closely conforms to the Criteria may typically take 6-8 weeks from the time of the initial proposal submission.

Annex 1

Welsh Government Building Regulations Policy Annual reporting

Schemes of Insurance for Approved Inspectors

Reporting year: January – December 20--

Number of Approved Inspectors covered by the scheme, including those with a variation of type of cover

Confirmation of scheme terms

(Please submit full approved scheme terms to the Building Regulations Policy Team)

Confirmation that there have been no changes to the approved scheme of insurance since last report

About this document

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