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Welsh Government

GUIDANCE, DOCUMENT

New regulations supporting the Building Safety Act 2022: Restricted activities and functions and amendments to the Building (Approved Inspectors etc.) Regulations 2010 (WGC 003/2024)

This is a circular letter that notifies the Building Control sector of implementation of regulations made under the Building Safety Act 2022 for Wales.

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Contents

Building regulations circular

Introduction

Scope of this Circular Letter

New secondary legislation

Enquiries

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Building regulations circular

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Issued by: Kevin Davies, Building Control Competence and Standards Officer

Addressed to:

Local Authority Chief Executives
Welsh Local Government Association
Association of Corporate Approved Inspectors

Please forward to:

Local Authority Building Control Officers
Members of the Senedd
The Building Safety Regulator

Summary:

This is a circular letter that notifies the Building Control sector of implementation of regulations made under the Building Safety Act 2022 for Wales in relation to restricted activities & functions and amendments to the Building (Approved Inspectors etc.) Regulations 2010 which modify existing forms, omits some

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forms and introduces new forms.

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Introduction

1. I am directed by the Welsh Ministers to draw your attention to the changes introduced by the following Regulations which come into force on 6 April 2024:

- The Building (Restricted Activities and Functions) (Wales) Regulations 2024
- The Building (Approved Inspector etc.) (Amendment) (Wales) Regulations 2024

The purpose of this Circular is to draw attention to the new secondary legislation and explain the changes they introduce.

Scope of this Circular Letter

2. This Circular letter applies to buildings and building work in Wales, as well as

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building control professionals operating in Wales.

New secondary legislation

The Building (Restricted Activities and Functions) (Wales) Regulations 2024

3. These Regulations have been brought in to support the Building Safety Act 2022 and prescribe certain activities and functions that are restricted.
4. Regulation 3 lists the restricted activities and functions that apply to building control authorities. In Wales, building control authorities are local authorities.
5. Regulation 3 provides two activities which are restricted to local authorities under section 46A of the Building Act 1984 (“the 1984 Act”). These are:
 - the checking of plans submitted to a local authority for compliance with building regulations.
 - the inspection of building work by local authorities.
6. Regulation 3 also lists a number of functions which are restricted to local authorities (in their capacity as building control authorities), including:
 - a. determining an application for a direction under section 8 of the 1984 Act (relaxation of building regulations).
 - b. passing or rejecting plans under section 16 of the 1984 Act (passing or rejection of plans) including exercising, in relation to such plans, a power in—
 - i. section 19(1) of the 1984 Act (use of short-lived materials),
 - ii. section 21(4) of the 1984 Act (provision of drainage), or
 - iii. section 25(1) of the 1984 Act (provision of water supply).

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- c. fixing a period on the expiration of which a building or work must be removed, extending such a period, imposing conditions in relation to a building or varying such conditions, under section 19(2) or (3) of the 1984 Act (use of short-lived materials).
- d. requiring a building to be drained in combination with section 22 of the 1984 Act (drainage of buildings in combination).
- e. giving consent under section 23 of the 1984 Act (provision of facilities for refuse).
- f. giving a notice or granting a certificate under section 25(3) of the 1984 Act (provision of water supply).
- g. exercising any power under section 33 of the 1984 Act (tests for conformity with building regulations).
- h. deciding, for the purposes of section 35 of the 1984 Act (penalty for contravening building regulations), whether there is a contravention of a provision contained in building regulations.
- i. giving a section 36 notice or deciding to pull down or remove work or effect alterations in it as deemed necessary under section 36(3) of the 1984 Act (removal or alteration of offending work).
- j. deciding whether to withdraw a section 36 notice following the giving of a written report under section 37(1)(a) of the 1984 Act (obtaining of report where section 36 notice given);
- k. giving a cancellation notice under section 52A(4) of the 1984 Act (cancellation of initial notice when work become higher-risk building work).
- l. giving a certificate under regulation 17 of the Building Regulations 2010 (“the 2010 Regulations”) (completion certificates).
- m. giving a certificate under regulation 17A of the 2010 Regulations (certificate for building occupied before work is completed).
- n. deciding, where regulation 18 of the 2010 Regulations (unauthorised building work) applies, whether—
 - i. a regularisation certificate under regulation 18 of the 2010 Regulations may be given.

- ii. any reasonable steps are required under regulation 18(3) of the 2010 Regulations.
 - o. deciding, where regulation 19(1) of the Approved Inspectors Regulations (partly completed work) applies, whether—
 - i. plans given under regulation 19(2)(a) of the Approved Inspectors Regulations are sufficient to show that the intended work would not contravene any requirement of the 2010 Regulations.
 - ii. an owner should be required to cut into, lay open or pull down any of the work under regulation 19(2)(b) of the Approved Inspectors Regulations.
- 7. As these restrictions are made under Section 46A of the 1984 Act, that means that the restricted activities and functions described above may only be carried out by a Registered Building Inspector (“RBI”) acting on the local authority’s behalf, and only when the RBI is acting within their competence as described in their registration.
- 8. Regulation 4 lists the restricted activities and functions that apply to Registered Building Control Approvers (“RBCAs”).
- 9. Regulation 4 provides two activities which are restricted to RBCAs under Section 54B of the Building Act 1984. These are:
 - a. where an initial notice, amendment notice or plans certificate is to be given in relation to any building work, the checking of plans to which the notice or certificate relates for compliance with any requirement of the building regulations which is applicable to the work;
 - b. where an inspection of building work is to be carried out by the registered building control approver for the purpose of checking compliance with any applicable requirement of the building regulations which is applicable to the work, the carrying out of that inspection (including scheduling the stages or points for inspection).

10. Regulation 4 also describes six activities restricted to RBCAs under Section 54B of the 1984 Act:
 - a. giving an initial notice to a local authority under section 47 of the 1984 Act (initial notices) including an initial notice combined with a plans certificate or a new initial notice under section 53(7) of the 1984 Act (new initial notices).
 - b. giving a plans certificate to a local authority under section 50 of the 1984 Act (plans certificates).
 - c. giving a final certificate to a local authority under section 51 of the 1984 Act (final certificates).
 - d. giving an amendment notice to a local authority under section 51A of the 1984 (variation of work to which initial notice relates).
 - e. giving a notice to a local authority under section 52(1)(c) or 52A(1) of the 1984 Act (cancellation of initial notice).
 - f. giving a transfer certificate and transfer report to a local authority under section 53B(3) of the 1984 Act (new initial notice: change of registered building control approver).
11. As these restrictions are made under Section 54B of the Building Act 1984, that means that the restricted activities and functions described above may only be carried out by an RBI acting on behalf of a RBCA, and only when the RBI is acting within their competence as described in their registration.

The Building (Approved Inspector etc.) (Amendment) (Wales) Regulations 2024

12. These regulations define and prescribe the forms that will be used as part of the building control regime from 6 April 2024. They are inserted as amendments to the Building (Approved Inspector etc.) Regulations 2010

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(hereafter “the 2010 Regulations”) for Wales.

13. Broadly speaking, these regulations serve to differentiate forms for Wales from those to be used in England; set out the forms to be used; introduce new forms; amend existing forms and include transitional provisions to cover situations where forms were submitted before 6 April 2024 but processed after that date.
14. Regulation 3 of these regulations updates the names of existing forms and appends “(W)” to each form title in the 2010 Regulations for clarity. Some forms have been renumbered to ensure consistency between English and Welsh forms where new forms have been created. We have also created a new numbering system for Public Body forms ranging from PB1(W) to PB4(W) as there will not be a comparable form in the shared numbering system used in England on 6 April 2024.
15. Regulation 5 of these regulations introduces a new regulation 16A to the 2010 Regulations which covers the types of forms to be used when a local authority rejects an initial notice, amendment notice, plans certificate, or final certificate.
16. Regulation 6 of these regulations amends regulation 18 of the 2010 Regulations, introducing new forms. Regulation 18, as amended, will now provide methods for:
 - a. A RBCA to cancel an initial notice using form 9(W)
 - b. The person carrying out work to cancel an initial notice using form 10(W)
 - c. The local authority to cancel an initial notice using form 11(W)
 - d. The local authority to notify a RBCA of the local authority’s intention to cancel an initial notice using form 12(W)
 - e. A RBCA to cancel an initial notice where work has become higher-risk building work using form 13(W)

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- f. The person carrying out work to cancel an initial notice where work has become higher-risk building work using form 14(W)
 - g. The local authority to cancel an initial notice where work has become higher-risk building work using form 15(W)
 - h. The local authority to cancel an initial notice if a transfer certificate is rejected, or no transfer certificate and transfer report has been submitted using form 16(W)
 - i. The person carrying out work to cancel an initial notice where the RBCA supervising work has changed using form 17(W)
17. Regulation 7 of these regulations inserts new regulation 18A into the 2010 Regulations which sets out the process for a RBCA to notify the person carrying out work of a contravention of building regulations and prescribes a period of three months for any defects to be rectified, after which the RBCA will cancel the initial notice if the contravention has not been remedied.
18. Regulation 8 of these regulations inserts new regulation 19A into the 2010 Regulations. Part of this regulation relates to situations where a local authority requests additional information for initial notices. A period of 21 days (extendable by mutual agreement between the RBCA and the local authority) is prescribed for the RBCA to provide any information required. If the RBCA must give information to the person carrying out work, then a prescribed period of 21 days now exists for this information to be given. This period may not be extended.
19. Regulation 9 of these regulations inserts new Part 3A into the 2010 Regulations and adds regulations 19B, 19C, 19D, 19E and 19F. Overall these cover the transfer of projects from one RBCA to another. The specific regulations cover the following:
- a. 19B prescribes an RBCA becoming unable to complete their functions as a reason why a new initial notice may be issued.

- b. 19C prescribes the information that must be included in a transfer certificate.
 - c. 19D prescribes a period of 28 days for a local authority to consider and approve or reject a transfer certificate and report.
 - d. 19E prescribes the grounds upon which a local authority may reject a transfer certificate and report, by reference to Schedule 2 to these regulations, which will be inserted as a new Schedule 3A to the 2010 Regulations.
 - e. 19F prescribes cases where a further initial notice may be given after cancellation of an existing initial notice.
20. Regulation 10 of these regulations amends forms in Schedule 1 to the 2010 Regulations. It does this by adding a statement confirming that the notice to which the work relates to does not include higher-risk building work. This amendment applies to forms 1(W) through to 5(W). Regulation 10 also removes forms 6, 7 and 8 as they have been replaced by forms 9(W), 10(W) and 11(W). Finally, regulation 10 inserts into Schedule 1 to the 2010 Regulations, the new forms (including those described in regulation 6) from Schedule 1 to these regulations.
21. There is no Form 6(W) at this time. In England's SI titled The Building (Registered Building Control Approvers etc.) (England) Regulations 2024 a form 6 is listed for the purposes of alerting RBCAs to invalid submissions. In Wales, this situation is currently dealt with informally by letter from the local authority. While we intend to review this process in the future, we are not prescribing a process or form formalising the system currently.
22. Regulation 11 of these regulations inserts Schedule 3A into the 2010 Regulations. This comes from Schedule 2 to these regulations and is the detailed list of reasons why a local authority may reject a transfer certificate and report.

23. Regulation 12 makes transitional provisions. It provides that forms which would have been valid when submitted before 6 April 2024 are processed despite the change of regime on 6 April 2024. Regulation 12 also provides that the amendments made to forms 2, 3 and 5 by these regulations, do not apply to particular notices and certificates given on or after 6 April 2024, where the initial notice was given before 6 April 2024.

Enquiries

Any enquiries on this Circular Letter should be addressed to:

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Yours faithfully

Mark Tambini
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