



Llywodraeth Cymru
Welsh Government

Building Regulations Wales

Circular

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Approved Inspectors' Final Certificates and Regulation 17 of the Building (Approved Inspectors etc.) Regulations 2010

This circular provides guidance in relation to the situation when a local authority rejects approved inspectors' final certificates when the initial notice has lapsed. The guidance provides the Welsh Government's view on the effect of regulation 17 on the giving of final certificates by approved inspectors.

Scope

This Circular Letter applies to all building work carried out in Wales except building work on excepted energy buildings in Wales.

Rejection of a final certificate when initial notice in force

Regulation 17(1) of the Approved Inspectors Regulations deals with a situation where a local authority rejects a final certificate while an initial notice is still in force. In this case the initial notice will continue to be in force for a period of four weeks from the date of the rejection of the final certificate. This allows a reasonable period for the approved inspector to remedy the reason why the final certificate was rejected.

Rejection of a final certificate where an initial notice has lapsed

Regulations 17(3), (4) and (5) describe the circumstances where an initial notice will automatically cease to be in force after a prescribed period from the occupation of a building, a material change of use takes place or the completion of work. Where an initial notice has lapsed a local authority must reject a final certificate as there is no initial notice in force (Regulation 16(1) of and paragraph 3 of Schedule 4 to the Approved Inspectors Regulations).

Extension of the prescribed time periods in regulation 17

Regulation 17(7) allows a local authority to extend any of the prescribed time periods in regulation 17, either before or after the expiry of the period.

Effect of an initial notice ceasing to be in force or lapsing

Where an initial notice ceases to be in force or lapses and no final certificate has been given the building control function for the work specified in the initial notice automatically reverts to the relevant local authority and the provisions of regulation 19 of the Approved Inspectors Regulations would apply. No regularisation application is needed from the building owner for this to occur. A local authority may make a reversion charge when this occurs (see regulation 5(1)(d)) of the Building (Local Authority Charges) Regulations 2010).

Approved inspector action if an initial notice ceases to be in force or lapses

There are two measures that an approved inspector can take where this occurs. In both cases the Welsh Government's view is that an approved inspector should take whichever measure seems appropriate as soon as reasonably practicable after the approved inspector is aware that the initial notice will cease or has ceased to be in force or lapsed.

i. As mentioned above regulation 17(7) allows a local authority to extend any of the prescribed periods in regulation 17, either before or after the expiry of the prescribed period. Approved inspectors should not assume that a local authority will automatically extend the relevant period. The Welsh Government would advise that where an approved inspector wishes to have an extension the local authority should be asked in writing (an e-mail would satisfy this) to grant an extension. Although there is no requirement to do so, giving the reasons for the request and the length of extension needed may help the local authority in deciding whether to grant the request. There is no right to an extension; it is a matter for a local authority to decide on a case by case basis.

ii. Section 53(7) of the Building Act allows an approved inspector where an initial notice has ceased to be in force to give a new initial notice relating to any of the work to which the initial notice related and where no final certificate has been given and accepted. A local authority must accept a new initial notice unless one of the reasons for rejection in Schedule 2 of the Approved Inspectors Regulations applies. In particular, if a local authority has taken positive steps to supervise work that has reverted to it the local authority will reject the new initial notice. Approved inspectors will wish to note that the time limits (four or eight weeks) in regulation 17 would apply equally to a new initial notice as to the original one where the building was occupied or the work completed.

Local authority action if an approved inspector takes the above measures

Request for an extension

A local authority is not required to grant an extension. However, if an approved inspector asks for an extension under regulation 17(7) it would in the Welsh Government's view be reasonable for the local authority to grant an appropriate extension of time taking account of the following factors:

- the request was made within a reasonable time after the initial notice had ceased to be in force or lapsed;
- the reasons for the request were given, including whether the reason was non-receipt of an expected competent person scheme compliance certificate;
- the request included the length of the extension requested;
- the local authority had not itself taken positive steps to supervise the work on reversion in respect of work in the initial notice;
- the possible effect on the approved inspector's client if an extension was not granted; and
- the approved inspector's client agreed that the approved inspector should make a request for an extension.

In the Welsh Government's view, it would be good practice for a local authority to respond to a request for an extension within 10 working days. If no response was received within that time the approved inspector would likely consider that the request was granted.

New initial notice

If an approved inspector submits a new initial notice under section 53(7) the initial notice form at Form 1 in Schedule 1 to the Approved Inspectors Regulations requires the approved inspector's client to also sign so the client will be aware that a new initial notice is being given. However, if a local authority has taken positive steps to supervise the work that has reverted to it, the local authority shall reject the new initial notice (regulation 10(3) of and para 12(2)(a) of Schedule 2 to the Approved Inspectors Regulations).

Effect of competent person self-certification scheme certificates

One of the reasons put forth for the lapse of initial notices under regulation 17 is that the approved inspector was awaiting receipt of one or more competent person scheme compliance certificates for work included on the initial notice. Under regulation 20 of the Building Regulations 2010 such certificates should be received within 30 days of the completion of the work covered by such certificates. If this deadline was adhered to the certificates would in almost all cases be received before the prescribed periods in regulation 17 had elapsed. However, the Welsh Government recognises that some installers do not meet the 30 day deadline and that some fail to notify their scheme operator of the work at all. Competent person scheme operators have been reminded of the importance of certificates being given within this deadline.

The following possible actions in respect of competent person schemes may help reduce the chance that an initial notice lapses because the prescribed periods in regulation 17 have not been met:

- Where an installer registered with a competent person scheme has carried out work that installer notifies the scheme operator of the work carried out. The scheme operator then sends a certificate to the owner/occupier at the address where the work was carried out and a notice to the local authority of the work. If an approved inspector needs a copy of the certificate the approved inspector should first ask the owner/occupier if they have received a certificate. Only if this is unsuccessful should the approved inspector ask the local authority if it has received a competent person scheme notice for the work. If neither route provides the information required the approved inspector should ask its client to remind the person who carried out the work to notify it to the scheme operator.
- If the work or part of the work concerned is gas work carried out under the Gas Safety (Installation and Use) Regulations 1998 the approved inspector should specifically exclude the gas work from the initial notice as approved inspectors are not responsible for the compliance of gas work.
- If the approved inspector knows definitely at the time of giving an initial notice that an aspect of the work will be carried out by an installer registered with a competent person scheme (for example, for electrical work in dwellings or mechanical ventilation work) that work may be specifically excluded from the initial notice as it will be separately certificated to the local authority. If it becomes apparent after the giving of the initial notice that this will be the case it is possible to give an amendment notice to exclude the work that will be self-certified by a registered installer.

Note: Approved inspectors owe a common law duty of care to their clients. Where an approved inspector has excluded from the initial notice work to be carried out by an

installer registered with a competent person scheme, they should explain this clearly to their clients and advise the clients that if a competent person scheme self-certificated compliance certificate is not received within 30 days the clients should contact the installer who should have self-certified the work.

Enquiries

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Francois Samuel'. The signature is written in a cursive style with a large initial 'F'.

Francois Samuel
Head of Building Regulations