14TH EDITION

THE BUILDING REGULATIONS

EXPLAINED AND ILLUSTRATED

M. J. Billington • S. P. Barnshaw • K. T. Bright • A. Crooks

WILEY Blackwell

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Preface to the fourteenth edition

The thirteenth edition of this book was published in 2007. Since then the Building Regulations have been consolidated and recast and published as the Building Regulations 2010. They came into force on 1 October 2010 and subsequently have been amended no fewer than 10 times. At the same time the Approved Inspector Regulations were also revised and consolidated, coming into force on 1 October 2010 and like the Principal Regulations, these have also been amended several times. To complicate matters further from, 31 December 2011 the responsibility for Building Regulations in Wales was transferred to the Welsh Government. From this date the Welsh Government has been able to amend the Building Regulations specifically for Wales.

At the same time as these changes to the Principal Regulations, many amendments have been made to the Approved Document guidance including the removal of Part N and Approved Document N (except in Wales!) and the inclusion of a new Part Q Security – Dwellings.

For this edition, we are delighted to welcome two new authors to the editorial team - Andy Crooks and Stephen Barnshaw, both of jhai Ltd. With the Regulations becoming ever more complicated it was thought necessary to enlist the expertise of practising professionals in the field of building control and we are grateful for all the hard work they have put in. Specifically, Andy has completely re-written Chapter 7 (Part B - Fire) and Stephen has revised and updated Chapter 10 (Sound Insulation – Part E), Chapter 11 (Ventilation – Part F), Chapter 12 (Sanitation, hot water safety and water efficiency – Part G), Chapter 14 (Combustion Appliances and Fuel Storage Systems – Part J) and Chapter 16 (Conservation of Fuel and Power – Part L).

In detail the following chapters have been completely re-written:

Chapter 5: Work under the supervision of a competent person – revised to take account of the expansion of the types of work now covered by competent person schemes, the consequent increase in their number and complexity and the revisions to the Government terms and conditions that control such schemes.

Chapter 6: Structural Stability – revised to reflect the increased reference to European codes and standards. In order to assist our readers by providing, where possible, as complete a guide to the regulations and Approved Documents as we can in one place, in the previous editions of this book we reproduced the original timber sizing tables from the 1992 edition of AD A. For copyright reasons we are unable to reproduce the Tables from the TRADA document that replaced those earlier AD A Tables and unfortunately, the tables from the 1992 edition no longer comply with Eurocode 5. For these reasons we have decided, reluctantly, not to reproduce the old Approved Document Tables.

Chapter 7: Fire. Fire safety legislation throughout England and Wales was consolidated between 2005 and 2013 with amendments to both the Building Regulations and a

great deal of other fire legislation. Reliance solely on Approved Document B (Volumes 1 and 2) can produce solutions that are unnecessarily complicated and/or expensive, therefore this chapter, whilst concentrating on the Approved Document B guidance, where applicable draws parallels with British Standard 9999 to illustrate the different approaches to design that exist. In December 2011, responsibility for building regulations was transferred to the Welsh Government. Therefore as discussed in some other chapters, the legislation, supporting guidance and enforcement standards in Wales will start to change in the next few years.

In respect of fire safety, this process has already started. The Domestic Fire Safety (Wales) Measure 2011, after being passed by the National Assembly for Wales, received Royal Assent on 7 April 2011. This Measure provides the Welsh Government with the ability to require that new homes are fitted with 'an effectively operating fire suppression system'.

Chapter 8: Materials, workmanship, site preparation and moisture exclusion – for materials and workmanship this chapter has been revised to reflect full implementation of European Regulation 305/2011/EU-CPR covering construction products, referred to as the Construction Products Regulations 2011.

Chapter 12: Sanitation, hot water safety and water efficiency. This chapter covering Part G and Approved Document G, came into force on 6 April 2010 and contained many significant changes from its predecessor to both the legal requirements and the technical guidance. These changes were reflected in a new format, in which AD G now consists of an introduction, six parts and three appendices. Part G now includes guidance on cold water supply and water efficiency in addition to the updated recommendations for hot water supply and systems and sanitary conveniences and washing facilities.

Chapter 14: Combustion appliances and fuel storage systems – revised to reflect the expansion of Part J in 2010 to seven parts with a new requirement covering the provision of carbon monoxide alarms in dwellings where solid fuel appliances are installed. To incorporate this requirement adjacent to the existing requirement for the discharge of products of combustion involved a reordering of the numbering in respect of the various parts.

Chapter 15: Protection from falling, collision and impact. This chapter now incorporates the changes to the Building Regulations in 2013 which extended the Approved Document to Part K (AD K) to incorporate some of the provisions for stairs and ramps previously included in the 2004 edition of Approved Document to Part M (AD M 2004). The new 2013 edition of AD K was also extended to include all of the requirements for manifestation that had previously been shared by AD M and the Approved Document to Part N (AD N). These changes to AD K and AD M in 2013 and a rationalisation of the overlapping guidance covered within them, allowed the withdrawal of AD N.

The changes to AD M in 2013 have subsequently been subsumed into the 2015 edition of Part M and the 2015 edition of Approved Document M. However, caution should be exercised since the changes made in 2013 to Parts K and M and the withdrawal of Part N and the introduction of Part M 2014 and its Approved Document (AD M 2015) apply only to England. They do not apply to Wales. Whilst Wales is in the process of reviewing these and other Regulations, the versions of Parts K, M and N that are relevant in Wales at the time of publication of this book are those that were in force in England and Wales prior to April 2013.

Chapter 16: Conservation of fuel and power. This chapter has been revised to describe the continuing trend towards higher standards of energy conservation thereby ensuring compatibility with the European Energy performance of Buildings Directive (EPBD) and the national government's stated objective to achieve a zero carbon standard for new dwellings by 2016 and in new non-domestic buildings by 2019.

Chapter 17: Access to and use of buildings. See the paragraph on chapter 15 above to see the main changes brought about in Part M and chapter 17. All the substantive changes made in AD M relate to the guidance for 'Buildings other than dwellings' (Regulations M1, M2 and M3). The guidance relating to 'dwellings' (Regulation M4) has been amended to reflect the baseline mandatory requirements only and does not address the optional enhanced requirements.

Chapter 18: Electrical safety – renumbered from the former chapter 19 to reflect the deletion of Part N and its inclusion in chapter 15. The latest 2013 revision of Approved Document P came into force on 6 April 2013. The main changes brought about by the 2013 amendment include changes in the legal requirements as follows:

- The range of electrical installation work that is notifiable (where there is a requirement to certify compliance with the Building Regulations) has been reduced.
- An installer who is not a registered competent person may use a registered third party to certify notifiable electrical installation work as an alternative to using a building control body.
- Approved Document P now refers to BS 7871:2008 incorporating Amendment No. 1:2011.

Chapter 19: Security – this chapter covers the new Part Q of Schedule 1 to the 2010 Regulations (as amended) and is concerned with the prevention of unauthorised access to new dwellings. It was introduced in the Building Regulations &c. (Amendment) Regulations 2015 (SI 2015 No. 767). The amendment regulations came into force generally on 18 April 2015; however, Part Q did not come into force until 1 October 2015. It follows the lead of the Scottish Executive where security provisions have been part of the Scottish Building Regulations and Standards for a number of years.

Appendix: Local Acts of Parliament- this appendix has been omitted from the 14th edition of this book as all of the former local act provisions have now been incorporated into the building regulations or have been repealed.

As always, the aim of this book is to provide a convenient and straightforward guide and reference to a complex and constantly evolving subject. It must be stressed that this book is a guide to the Regulations and approved and other documents, and is not a substitute for them. We hope that it may shed light on some of the more obscure and difficult to understand parts of the source documents. It should also be stressed that the guidance in the Approved Documents is not mandatory and differences of opinion can quite legitimately exist between controllers and developers or designers as to whether a particular detail in a building design does actually satisfy the mandatory functional requirements of the Building Regulations.

The intended readers of this book are all those concerned with building work – architects and other designers, building control surveyors, members of competent person schemes, building surveyors, clerks of works, services engineers and contractors etc. – as well as

their potential successors, the current generation of students on built environment and architectural courses. This book is designed to be of use to both students and teachers and it is gratifying that successive editions are widely adopted by various academic institutions and professional bodies.

We are grateful to Tim Burgin at jhai Ltd for his invaluable help with the diagrams for Chapter 7. As always, we are especially grateful to Paul Sayer, Publisher (Civil Engineering and Construction) at John Wiley & Sons Ltd and his editorial team, for their help, patience and interest during the production of this edition.

The law is stated on the basis of cases reported and other material available to us on 1 October 2016.

M.J. Billington
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A. Crooks

Stop press

As often happens, as we were about to go to press a new Part R – *Physical infrastructure for high-speed electronic communications networks* came into force on 1 January 2017. It applies in England and to building work carried out on excepted energy building in Wales as defined in the Welsh Ministers (Transfer of Functions) (No.2) Order 2009.

It contains one regulation R1 entitled '*In-building physical infrastructure*'

R1 states:

(1) Building work must be carried out so as to ensure that the building is equipped with a high-speed-ready in-building physical infrastructure, up to a network termination point for high-speed electronic communications networks.
(2) Where the work concerns a building containing more than one dwelling, the work must be carried out so as to ensure that the building is equipped in addition with a common access point for high-speed electronic communications networks.

The requirement applies to building work that consists of:

(a) The erection of a building; or
(b) Major renovation works to a building.

The practical effect of R1 is that a duct must be provided from the service provider's access point in the building to where the occupier's network termination point is sited. Where a standard copper telephone cable is installed and connected to the service provider's fibre network this will satisfy the requirement.

Acknowledgements

Legal and administrative

1 Building control: An overview

1.1 Introduction

The building control system in England and Wales was radically revised in 1985. After a long period of gestation, Building Regulations were laid before Parliament and came into general operation on 11 November 1985. They applied to Inner London from 6 January 1986. Subject to specified exemptions, all building work (as defined in the regulations) in England and Wales is governed by Building Regulations.

Wales has its own regulations, and from 31 December 2011, the responsibility for Building Regulations in Wales was transferred to the Welsh Government. From this date the Welsh Government is able to amend them specifically for Wales.

The current regulations are the Building Regulations 2010 which came into force on 1 October 2010. The 2010 Regulations have been amended ten times since then, the latest being the Building Regulations &c. (Amendment) Regulations 2015 (SI 2015/767) which came into force at various times between 18 April 2015 and 31 December 2015, and the provisions of all these amendments are reflected in this book. It should be noted that SI 2015/767 does not apply in relation to any building in Wales other than an 'excepted energy building' as defined in the Schedule to the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009.

A separate system of building control applies in Scotland and in Northern Ireland.

The power to make Building Regulations is vested in the Secretary of State by section 1 of the Building Act 1984 which sets out the basic framework. Building Regulations may be made for the following broad purposes:

- Securing the health, safety, welfare and convenience of people in or about buildings and of others who may be affected by buildings or matters connected with buildings.
- Furthering the conservation of fuel and power.
- Preventing waste, undue consumption, misuse or contamination of water.

The 2010 Regulations are relatively short and contain no technical detail. That is found in a series of Approved Documents and certain other non-statutory guidance, all of which refer to other non-statutory documents such as National Standards, European Standards, European Technical Approvals or Technical Specifications (e.g. British Standards, Agrément Certificates), with the objective of making the system more flexible and easier to use.

The Building Regulations: Explained and Illustrated, Fourteenth Edition. M.J. Billington, S.P. Barnshaw, K.T. Bright and A. Crooks.

The 2010 Regulations implement the final conclusions of a major review of both the technical and procedural requirements.

A significant feature of the system is that there are alternative systems of building control – one by local authorities and the other a private system of certification which relies on 'approved inspectors' operating under a separate set of regulations called The Building (Approved Inspectors, etc.) Regulations 2010. These regulations have also been amended since 2010. These set out the detailed procedures for operating the system of private certification and came into effect at the same time as the main regulations. Since April 2002 a further system of approval has been added whereby certain competent persons can self-certify their work as complying with the Building Regulations. This system is fully discussed in Chapter 5.

1.2 The Building Act 1984

The Building Act 1984 received the Royal Assent on 31 October 1984 and the majority of its provisions came into force on 1 December 1984. It consolidated most, but not all, of the primary legislation relating to building which was formerly scattered in numerous other Acts of Parliament. Since 1984 the Act has been amended on numerous occasions by a variety of other statutory provisions. The comments in this section reflect the state of the Act at the date of this publication.

Part I of the Building Act 1984 is concerned with Building Regulations and related matters, whilst Part II deals with the system of private certification discussed in Chapter 4. Other provisions about buildings are contained in Part III which, amongst other things, covers drainage and the local authority's powers in relation to dangerous buildings, defective premises, etc.

The provisions of the 1984 Act are of the greatest importance in practice, and many of them are referred to in this and the subsequent chapters.

'Building' is defined in the 1984 Act in very wide terms. A building is 'any permanent or temporary building, and, unless the context otherwise requires, it includes any other structure or erection of whatever kind or nature (whether permanent or temporary)'. 'Structure or erection' includes a vehicle, vessel, hovercraft, aircraft or other movable object of any kind in such circumstances as may be prescribed by the Secretary of State. The Secretary of State's opinion is, however, qualified. The circumstances must be those which 'in [his] opinion … justify treating it … as a building'.

The result of this definition is that many things which would not otherwise be thought of as a building may fall under the Act – fences, radio towers, silos, air-supported structures and the like.

In the past, doubt has been cast over the status of structures such as residential park homes and marquees. Provided that a residential park home conforms to the definition given in the Caravan Sites and Control of Development Act 1960 (as augmented by the Caravan Sites Act 1968), it is exempt from the definition of 'building' contained in the regulations, and according to the *Manual to the Building Regulations*, a marquee is not regarded as a building.

Happily, as will be seen, there is a more restrictive definition of 'building' for the purposes of the 2010 Regulations, but a comprehensive definition is essential for general

purposes, e.g. in connection with the local authority's powers to deal with dangerous structures. Hence the statutory definition is necessarily couched in the widest possible terms. In general usage (and at common law) the word 'building' ordinarily means 'a structure of considerable size intended to be permanent or at least to last for a considerable time' (*Stevens* v. *Gourely* (1859) 7 CBNS 99), and considerable practical difficulties arose as to the scope of earlier Building Regulations which the 1984 definition has removed.

In *Seabrink Residents Association* v. *Robert Walpole Campion and Partners* (1988) (6-CLD-08–13; 6-CLD-08–10; 6-CLD-06–32), for example, the High Court held that walls and bridges on a residential development were not subject to the then Building Regulations 1972 because they were not part of 'a building'. The development was not to be considered as a homogenous whole. The then regulations, said Judge Esyr Lewis QC, were 'concerned with structures which have walls and roofs into which people can go and in which goods can be stored'. Each structure in the development must be looked at separately to see whether the regulations applied. 'Obviously a wall may be part of a building and so, in my view, may be a bridge.'

1.3 The linked powers

Local authorities exercise a number of statutory public health functions in conjunction with the process of building control, although these have been reduced in recent years, for example, controls on construction of drains and sewers. These provisions are commonly called 'the linked powers' because their operation is linked with the local authority's building control functions, both in checking deposited plans or considering a building notice, and under the approved inspector system of control. Many of the former linked powers have been brought under the Building Regulations, but local authorities are responsible for certain functions now found in the 1984 Act. In those cases, the local authority must reject the plans (or building notice) or the approved inspector's initial notice if relevant compliance is not achieved or else must impose suitable safeguards. The relevant provisions are:

(a) Section 21 – Provision of drainage. Although subsections (1) and (2) of this section have been replaced by requirement H1 of Schedule 1 to the Building Regulations 2010 (see Chapter 13, section 13.3), a local authority (or on appeal a magistrates' court) may still require a proposed drain to connect with a sewer where that sewer is within 100 feet of the site of the building. In cases where the sewer is located more than 100 feet from the site of the building, the local authority may still require connection to that sewer if they undertake to bear the additional cost (i.e. for the length of drain in excess of 100 feet) of construction, maintenance and repair. Disputes regarding the cost of the additional work may be referred to the magistrates' court. Additionally, the local authority can insist that the drainage connects to a nearby public sewer. Disputes under section 21 are dealt with by a magistrates' court. A related provision is section 98 of the Water Industry Act 1991 under which owners or occupiers of premises can require the water authority to provide a public sewer for domestic purposes in their area, subject to various conditions which can include in an appropriate case the making of a financial contribution.

(b) Section 22 – Drainage of building in combination. The powers of a local authority under section 21 are extended by this section so that, where two or more buildings are involved, the local authority may require them to be drained in combination (instead of each making a separate connection) into an existing sewer. As for section 21, the drain may be constructed by the owners (or by the local authority on their behalf) and the expenses of construction, maintenance and repair may be proportioned between each owner and the local authority as appropriate. Disputes regarding the cost of the apportionment may be referred to the magistrates' court.

(c) Section 25 – Provision of water supply. This section requires the local authority to reject plans of a house submitted under the Building Regulations unless they are satisfied with the proposals for providing the occupants with a sufficient supply of wholesome water for domestic purposes, by pipes or otherwise. The water supply can be provided in any of the following ways:
- by connecting the house to a water supply provided by a water undertaker (i.e. a mains supply);
- where it is not reasonable to connect to a mains supply (in remote country districts there may be no mains supply) by taking the water into the house by means of a pipe (e.g. from a well or spring);
- where circumstances exist which make either of the foregoing solutions unreasonable, the supply of water may be located within a reasonable distance of the house.

This last solution is interesting when considered against the requirements of paragraph G5 of Schedule 1 to the Building Regulations. G5 demands that in a dwelling a '*bathroom must be provided containing a wash basin and either a fixed bath or shower bath*'. It is difficult to see how this could be achieved if a water supply is not provided in the dwelling.

The wholesomeness of water is judged by reference to section 67 of the Water Industry Act 1991 (standards of wholesomeness of water) as read with regulations made under that Act (i.e. the Water Supply (Water Quality) Regulations 2001). Disputes are determined by the magistrates' court. A related provision is section 37 of the Water Industry Act 1991, which enables a landowner who proposes to erect buildings to require the water authority to lay necessary mains for the supply of water for domestic purposes to a point which will enable the buildings to be connected to the mains at a reasonable cost, a provision which is of considerable use to developers.

1.4 Building Regulations

The Secretary of State is given power to make comprehensive regulations about the provision of services, fittings and equipment in or in connection with buildings, as well as about the design and construction of buildings. A very comprehensive list of the subject matter of Building Regulations is contained in Schedule 1 of the 1984 Act. The Regulations are supported by Approved Documents, giving 'practical guidance' (see section 2.3).

Building Regulations may include provision as to the deposit of plans of executed, as well as the proposed work, for example, where work has been done without the deposit of plans or there has been a departure from the approved plans. Broad powers are given to make Building Regulations about the inspection and testing of work and the taking of samples.

Prescribed classes of buildings, services, etc. may be wholly or partially exempted from regulation requirements. Similarly, the Secretary of State may, by direction, exempt any particular building or buildings at a particular location.

Schedule 1 of the 1984 Act is a flexible provision and covers the application of the regulations to existing buildings. It enables regulations to be made regarding not only alterations and extensions but also the provision, alteration or extension of services, fittings and equipment in or in connection with existing buildings. It also enables the regulations to be applied on a *material change of use* as defined in the regulations and, very importantly, makes it possible for the regulations to apply where reconstruction is taking place, so that the regulations can deal with the whole of the building concerned and not merely with the new work.

The 1984 Act contains enabling powers for the making of regulations on a number of procedural matters (Fig. 1.1).

The regulations made and currently in force are:

- The Building Regulations 2010 (as amended)
- The Building (Approved Inspectors, etc.) Regulations 2010 (as amended)
- The Building (Local Authority Charges) Regulations 2010
- The Building (Inner London) Regulations 1985

Most of these regulations have been amended, in some cases several times, and care should be taken to ensure that the most recent amendments are being used.

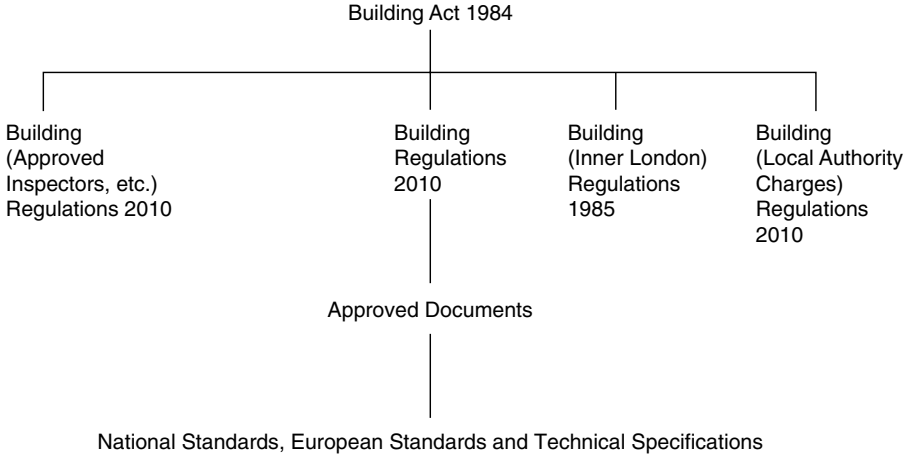


Fig. 1.1 Building control: the legislative scheme.

1.5 Building Regulations: Exemptions

1.5.1 Crown immunity

The Building Regulations do not apply to premises which are occupied by the Crown. It is an established rule of statutory interpretation that the Crown is not bound by an Act of Parliament except by express provision or necessary implication. Therefore, an Act of Parliament must specifically state that the Crown is covered by the provisions in order that it be bound by them, and, in fact, there is a provision in section 44 of the Building Act 1984 to apply the substantive requirements of the regulations to Crown buildings but this has never been activated.

In practice, it is normal for government department building work to be designed and constructed in accordance with the Building Regulations. In some areas the plans and particulars may even be submitted to the local authority for comment, although it is more usual for these to be scrutinised by specialist companies (replacing the service which was formally given by the Property Services Agency) who will also carry out on-site inspections of the works in progress. Even so, such companies have no legal control over the work and cannot take enforcement action in the event of a breach of the Regulations.

Interestingly, Crown premises are not exempt from control under the Regulatory Reform (Fire Safety) Order 2005, which replaced the former fire certification system under the Fire Precautions Act 1971. However, where independent inspection is needed of such premises, they are inspected *not* by the relevant fire and rescue authority but by the Crown Premises Inspection Group within the Home Office Fire Service Inspectorate, a bureaucratic anomaly, which has attracted much criticism. Unfortunately, the powers of entry to premises contained in the former 1971 Act (and now contained in the Regulatory Reform (Fire Safety) Order 2005) do not apply to premises occupied by the Crown.

According to the Building Act 1984, a Crown building is defined as '*a building in which there is a Crown interest or a Duchy interest*'. This definition necessitates the following additional definitions:

Crown interest means – '*an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department*'

Duchy interest means – '*an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall*'.

Examples of Crown buildings include not only the Royal Palaces, the Houses of Parliament, 10 Downing Street, etc. but also all government offices (such as local Job Centres) across England and Wales.

Over the years a number of bodies have lost Crown immunity. These include:

- Health Service Premises – under the provisions of section 60 of the National Health Service and Community Care Act 1990, health service bodies are no longer regarded as the servant or agent of the Crown in respect of land over which they have powers of disposal or management or which is otherwise used or occupied by them. Subsection

(7) of section 60 defines *Health Service Bodies* in relation to England and Wales as a Family Health Services Authority, the Dental Practice Board and the Public Health Laboratory Service Board. In practice, this covers regional, district and special health authorities and means that health service buildings are now subject to the full substantive and procedural provisions of building, planning and fire precautions legislation enforceable by local authorities.

- The Metropolitan Police – although no longer regarded as servants or agents of the Crown, the Metropolitan Police Authority has been exempted from having to comply with the procedural requirements of the Building Regulations, using the powers available under section 5 of the Building Act 1984 (exemption of public bodies from the procedural requirements and enforcement of Building Regulations). However, it is still required to comply with the substantive or technical requirements of the Regulations. As an exempt body the Metropolitan Police Authority is also exempt from enforcement procedures by local authorities. Instead, the Metropolitan Police Authority as a '*Public Body*' is bound by the provisions of the Building Act 1984, section 54 (Supervision of their own work by public bodies) and by Part VII (Public Bodies) of the Building (Approved Inspectors, etc.) Regulations 2010 (as amended).

Finally, the reorganisation of the Post Office has meant that, whilst the Royal Mail was regarded as Crown property after privatisation in 2013 this is no longer the case. Post Office Counters is not regarded as Crown property.

1.5.2 Building Act exemptions

Taken together, the Building Act 1984 and the Building Regulations 2010 (as amended) exempt certain uses of buildings and many categories of work from control as is illustrated by the following examples.

- As a result of the repeal of regulation 8 of the Education (Schools and Further and Higher Education) Regulations 1989, maintained schools in England ceased to have exemption from the Building Regulations from 1 April 2000. A similar situation has existed in Wales since 1 January 2002 following the passing of the Education (Schools and Higher and Further Education) (Amendment) (Wales) Regulations 2001. As a result, building works at schools are now treated in the same way as in other user groups and are subject to normal building control procedures. This is a change in the approval process, meaning that building regulation submissions in respect of work to maintained schools now have to be made to the appropriate building control body (local authority or Approved Inspector) but does not affect the standards applicable to schools. The change does not affect in any way the status of the Education (School Premises) Regulations 1999, which continues to apply to all schools. These regulations cover general standards of provision of facilities, such as:
  - in day schools, accommodation for washrooms, medical purposes, staff, cloakrooms, canteens, etc.;
  - in boarding schools, accommodation for sleeping, washing (including bathrooms), living (for study outside school hours and for social purposes), preparing and consuming meals, medical purposes, staff and storage.

They also cover general constructional requirements such as:

- structural stability;
- weather protection;
- means of escape in case of fire and other health, safety and welfare issues;
- acoustics, lighting, heating and ventilation;
- water supplies and drainage.

For many years, constructional standards for schools were set by the former Department for Education and Science (DfES) in England (now the Department for Education (DfE)) and the National Assembly for Wales in Wales, the most recent ones being the School Premises Regulations 2012 which came into force on 31 October 2102. Virtually all of the requirements of these standards for school buildings have now been incorporated into the building regulation Approved Documents, which sometimes refer to DfE *Building Bulletins* as alternatives to the normal Approved Document guidance. For example:

- Ventilation provisions in schools can be made in accordance with the guidance in DfE Building Bulletin 101, *Ventilation of school buildings* (http://www.nfan.co.uk/pdfs/building_bulletin_school_buildings.pdf), and in The Education (School Premises) Regulations 1999. In spaces where noxious fumes may be generated, additional provision for ventilation should be made and may require the use of fume cupboards. Fume cupboards in schools should comply with DfE Building Bulletin 88, *Fume cupboards in schools*, 1998.
- For acoustics, Approved Document E (*Resistance to the passage of sound*) refers the reader to Building Bulletin 93 (*The acoustic design of schools*) for guidance on acoustic conditions and disturbance by noise (see Chapter 10, section 10.11).

Care should be taken to use the most recent edition of these alternative sources of guidance since they are regularly updated by DfE.

Further information on alternative sources of guidance can be obtained from the Schools Assets Team, Education Funding Agency, Area D, Ground Floor, Mowden Hall, Staindrop Road, Darlington, Co Durham DL3 9BG. Tel (01325) 735791. E-mail: schoolsassets.EFAcapital@education.gsi.gov.uk.

- *Statutory undertakers and other public bodies* – Under section 4 of the Building Act 1984, a building belonging to a statutory undertaker, the United Kingdom Atomic Energy Authority, or the Civil Aviation Authority is exempt from the application of Building Regulations, provided that the building in question is held or used by them for the purposes of their undertaking.

  'Statutory undertaker' as defined in section 126 of the Building Act 1984 (as amended) means '*persons authorised by an enactment or statutory order to construct, work or carry on a railway, canal, inland navigation, dock harbour, tramway or other public undertaking*'.

  From this definition it is clear that Post Offices (i.e. the actual high street 'shops' where the public resort for postal services) are no longer regarded as statutory undertakers within the meaning of section 126; consequently they are now required to comply with the Building Regulations, including submissions of work to the appropriate building control body. Interestingly, Royal Mail (which deals with the collection, sorting and delivery of mail) was still regarded as a Crown body until privatisation in 2013 and is therefore no longer exempt from compliance with the Building Regulations.

The status of statutory undertakers has been complicated by the fact that a number of former public bodies are now in private hands. This has meant that it has been necessary to pass additional legislation in order to clarify the status of some of these bodies. As a consequence, the following bodies are deemed to be statutory undertakers:

- public gas suppliers (see sections 67(3) and 67(4) of the Gas Act 1986);
- electricity suppliers (see section 112(4) of the Electricity Act 1989);
- the National Rivers Authority (see section 190(1) of the Water Act 1989);
- water and sewerage undertakers (see section 190(1) of the Water Act 1989).

The building of the statutory undertaker must be one which is held or used by them for the purposes of the undertaking; therefore the exemption from the application of Building Regulations granted by virtue of section 4 of the Building Act 1984 is subject to the following exceptions, in respect of which Building Regulations do apply:

(1) a house
(2) a building used as offices or showrooms unless:
    it forms part of a railway station, or
    in the case of the Civil Aviation Authority, it is on an aerodrome owned by the Authority.

A further class which enjoys an exemption under section 4 is a building belonging to a person who holds a license under Chapter I of Part I of the Transport Act 2000 (air traffic services) and held or used by the person for the purpose of carrying out activities authorised by the license. Section 4 applies in relation to a relevant body as it applies to a statutory undertaker, subject to the following variations:

(1) houses are not exempt from compliance with the regulations;
(2) offices and showrooms are not exempt from compliance with the regulations.

It should be noted that local authority buildings are *not* exempt from either the procedural or substantive requirements of the Building Regulations.

1.5.3 Miscellaneous

Under section 16 of the Building Act 1984, there is power to approve the plans of a proposed building by stages. Usually, the initiative will rest with the applicant as to whether to seek approval by stages – subject to the local authority's agreement.

However, local authorities may – of their own initiative – give approval by stages; they might, for example, await further information. In giving stage approval, local authorities will be able to impose a condition that certain work will not start until the relevant information has been produced.

Plans may also be approved subject to agreed modifications, e.g. where there is a minor defect in the plans.

Section 19 of the Building Act 1984 deals with the use of short-lived materials. The provision applies where plans, although conforming to the regulations, include the use of items listed in the regulations for the purpose of section 19. In such circumstances the local authority has discretion:

- to pass the plans;
- to reject the plans; or
- to pass them subject to the imposition of a time limit, whether conditionally or otherwise.

Interestingly, the Building Regulations 2010 (as amended) contain no specific references to any particular materials; however, as will be seen, regulation 7 of the 2010 Regulations requires that building work which must comply with the Schedule 1 requirements must be carried out 'with proper materials which are appropriate for the circumstances in which they are used …', and the supporting approved document deals with the use of short-lived materials.

The local authority may impose a time limit either on the whole of a building or on particular work. Additionally, they may impose conditions as to the use of a building or the particular items concerned. Appeal against the local authority's decision lies to the Secretary of State.

Eventually, section 19 will cease to have effect when section 20, which is wider in scope, is brought into force by the Secretary of State.

Under section 2, Building Regulations may impose continuing requirements on the owners and occupiers of buildings, including buildings which were not, at the time of their erection, subject to Building Regulations. These requirements are of two kinds.

Continuing requirements may be imposed, *first,* in respect of designated provisions of the regulations to ensure that their purpose is not frustrated, e.g. the keeping clear of fire escapes and, *second,* in respect of services, fittings and equipment, e.g. a requirement for the periodical maintenance and inspection of lifts in flats.

Type relaxations are dealt with in section 11. They may be granted by the Secretary of State whereby he may dispense with or relax some regulation requirement generally. A type relaxation can be made subject to conditions or for a limited period only. It should be noted that before granting a type relaxation the Secretary of State must consult such bodies as appear to him to be representative of the interests concerned and he has to publish notice of any relaxations issued.

The Building Act 1984, sections 39 to 43, contains the appeal provisions. The principal appeals to the Secretary of State are:

- appeals against rejection of plans by a local authority; and
- appeals against a local authority's refusal to give a direction dispensing with or relaxing a requirement of the regulations or against a condition attached by them to such a direction.

Interestingly, section 38 of the Building Act 1984 is concerned with civil liability but has yet to be activated. Under this section, breach of duty imposed by the regulations will be actionable at civil law, where damage is caused, except where the regulations otherwise provide. 'Damage' is defined as including the death of, or injury to, any person (including any disease or any impairment of a person's physical or mental condition). The regulations themselves may provide for defences to such a civil action, and section 38 will not, when operative, prejudice any right which exists at common law.

1.6 Dangerous structures, etc.

Local authorities have power to deal with a building or structure which is in a dangerous condition or is overloaded. The procedure is for the local authority to apply to the magistrates' court for an order requiring the owner to carry out remedial works or, at his

option, to demolish the building or structure and remove the resultant rubbish. The court may restrict the use of the building if the danger arises from overloading. If the owner fails to comply with the order within the time limit specified by the court, the local authority may execute the works themselves and recover the expenses incurred from the owner, who is also liable to a fine (Building Act 1984, section 77).

Under section 78 of the Building Act 1984, the local authority may take immediate action in an emergency so as to remove the danger, e.g. if a wall is in danger of imminent collapse. Where it is practicable to do so, they must give notice of the proposed action to the owner and occupier. The local authority may recover expenses which they have reasonably incurred in taking emergency action, unless the magistrates' court considers that they might reasonably have proceeded under section 77. An owner or occupier who suffers damage as a result of action taken under section 78 may in some circumstances be entitled to recover compensation from the local authority.

Section 79 of the 1984 Act empowers local authorities to deal with ruinous and dilapidated buildings or structures and neglected sites 'in the interests of amenity', which is a term of wider significance than 'health and safety': *Re Ellis and Ruislip* v. *Northwood UDC* [1920] 1 KB 343. (Section 76 of the Act enables them to deal with defective premises which are 'prejudicial to health or a nuisance'.)

Under section 79, where a building or structure is in such a ruinous or dilapidated condition as to be seriously detrimental to the amenities of the neighbourhood, the local authority may serve notice on the owner requiring him to repair or restore it or, at his option, demolish the building or structure and clear the site.

Demolition is itself subject to control. Section 80 requires a person who intends to demolish the whole or part of a building to notify the local authority, the occupier of any adjacent building and the gas and electricity authorities of his intention to demolish. He must also comply with any requirements which the local authority may impose by notice under section 82.

The demolition notice procedure does not apply to the demolition of:

- an internal part of an occupied building where it is intended that the building should continue to be occupied;
- a building with a cubic content (ascertained by external measurement) of not more than 1750 cubic feet (50 m^3) or a greenhouse, conservatory, shed or prefabricated garage which forms part of a larger building;
- an agricultural building unless it is contiguous to a non-agricultural building or falls within the preceding paragraph.

The local authority may by notice require a person undertaking demolition to carry out certain works:

- To shore up any adjacent building.
- To weatherproof any surfaces of an adjacent building exposed by the demolition.
- To repair and make good any damage to any adjacent building caused by the demolition.
- To remove material and rubbish resulting from the demolition and clearance of the site.
- To disconnect and seal and/or remove any sewers or drains in or under the building.
- To make good the ground surface.

- To make arrangements with the gas, electricity and water authorities for the disconnection of supplies.
- To make suitable arrangements with the fire authority (and Health and Safety Executive, if appropriate) with regard to burning of structures or materials on site.
- To take such steps in connection with the demolition as are necessary for the protection of the public and the preservation of public amenity.

1.7 Other legislation

Although the Building Act 1984 attempted to rationalise the main controls over buildings, there are in fact a great many pieces of legislation, in addition to the Building Act and the Building Regulations, which affect the building, its site and environment and the safety of working practices on and within the building. Reference to some of this additional legislation is made throughout this book in subsequent chapters.

2 The Building Regulations and Approved Documents

2.1 Introduction

Although the statutory framework of building control is found in the Building Act 1984, the 2010 Regulations, as amended, contain the detailed rules and procedures. The regulations are comparatively short because the technical requirements have mostly been cast in a functional form.

Each technical requirement is supported by a document approved by the Secretary of State intended to give practical guidance on how to comply with the requirements. The Approved Documents refer to British Standards and other guidance material such as BRE publications and thus give designers and builders a great degree of flexibility.

The 2010 Regulations became effective on 1 October 2010 and have since been amended ten times, the latest being the Building Regulations &c. (Amendment) Regulations 2015 (SI 2015/767) which came into force at various times between 18 April 2015 and 31 December 2015, and the provisions of all these amendments are reflected in this book. It should be noted that SI 2015/767 does not apply in relation to any building in Wales other than an 'excepted energy building' as defined in the Schedule to the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009.

2.2 Division of the Regulations

There are 54 regulations, arranged logically in ten parts. The division is as follows:

PART 1: GENERAL

Reg. 1. Citation and commencement.
Reg. 2. Interpretation.

The Building Regulations: Explained and Illustrated, Fourteenth Edition. M.J. Billington, S.P. Barnshaw, K.T. Bright and A. Crooks.

PART 2: CONTROL OF BUILDING WORK

PART 3: NOTICES, PLANS AND CERTIFICATES

PART 4: SUPERVISION OF BUILDING WORK OTHERWISE THAN BY LOCAL AUTHORITIES

PART 5: SELF-CERTIFICATION SCHEMES

PART 6: ENERGY EFFICIENCY REQUIREMENTS

PART 7: WATER EFFICIENCY

PART 8: INFORMATION TO BE PROVIDED BY THE PERSON CARRYING OUT WORK

PART 9: TESTING AND COMMISSIONING

PART 10: MISCELLANEOUS

Reg. 51. Transitional provisions: work for which notification is not required.
Reg. 52. Transitional provisions: notice given or plans deposited before 1 October 2010.
Reg. 53. Transitional and saving provisions: earlier Building Regulations.
Reg. 54. Revocations and consequential amendments.

There are also six schedules:

SCHEDULE 1 – REQUIREMENTS

This contains technical requirements which are almost all expressed in functional terms and grouped in 15 parts set out in tabular form:

PART A: STRUCTURE – Covers loading, ground movement and disproportionate collapse.

PART B: FIRE SAFETY – Covers means of warning and escape, internal and external fire spread and access and facilities for the fire service.

PART C: SITE PREPARATION AND RESISTANCE TO CONTAMINANTS AND MOISTURE – Covers preparation of site and resistance to contaminants, subsoil drainage and resistance to weather, interstitial and surface condensation and ground moisture.

PART D: TOXIC SUBSTANCES – Deals with cavity insulation.

PART E: RESISTANCE TO THE PASSAGE OF SOUND – Protection against sound from other parts of a building and adjoining buildings, protection against sound emanating within relevant buildings, reverberation in the common internal parts of relevant buildings and acoustic conditions in schools.

PART F: VENTILATION – Covers means of ventilation in dwellings and buildings other than dwellings.

PART G: SANITATION, HOT WATER SAFETY AND WATER EFFICIENCY – Deals with cold water supply, water efficiency, hot water supply and systems, sanitary conveniences and washing facilities, bathrooms, kitchens and food preparation areas.

PART H: DRAINAGE AND WASTE DISPOSAL – Deals with foul water drainage, wastewater treatment systems and cesspools, rainwater drainage, building over sewers, separate systems of drainage and solid waste storage.

PART J: COMBUSTION APPLIANCES AND FUEL STORAGE SYSTEMS – Covers air supply, discharge of products of combustion, warning of release of carbon monoxide, protection of the building, provision of information, protection of liquid fuel storage systems and protection against pollution.

PART K: PROTECTION FROM FALLING, COLLISION AND IMPACT – Covers stairs, ladders and ramps, protection from falling, vehicle barriers and loading bays, protection against impact with glazing, protection from collision with open windows, manifestation of glazing, safe opening and closing of windows, safe access for cleaning windows and protection against impact from trapping by doors.

PART L: CONSERVATION OF FUEL AND POWER – Now divided into four separate documents dealing with conservation of fuel and power in new dwellings, existing dwellings, new buildings other than dwellings and existing buildings other than dwellings.

PART M: ACCESS TO AND USE OF BUILDINGS – Requires that buildings and the facilities provided within them are reasonably accessible. Specifically mentioned are sanitary conveniences in dwellings and means to ensure that extensions to buildings do not reduce the level of access and use. Dwellings are now divided into three categories: Category 1, visitable dwellings; Category 2, accessible and adaptable dwellings; and Category 3, wheelchair user dwellings. It should be noted that Category 2 and 3 requirements come under the definition of optional requirement (see definition in the succeeding text).

It should be noted that the provisions in the former PART N: GLAZING – SAFETY IN RELATION TO IMPACT, OPENING AND CLEANING have now been transferred to PART K, and PART N has been withdrawn although it is still in force in Wales.

PART P: ELECTRICAL SAFETY – Covers design, installation and inspection of electrical installations.

PART Q: SECURITY – Requires that reasonable provision must be made to resist unauthorised access to any dwelling and any part of a building from which access can be gained to a flat within the building. Part Q only applies to new dwellings.

SCHEDULE 2 – EXEMPT BUILDINGS AND WORK

This lists exempt buildings and work in seven classes, and one of its effects is significantly to reduce the extent of control by giving complete exemptions for certain buildings and extensions.

SCHEDULE 3 – SELF-CERTIFICATION SCHEMES AND EXEMPTIONS FROM REQUIREMENT TO GIVE BUILDING NOTICE OR DEPOSIT FULL PLANS

This schedule lists certain types of work (for example, the installation of various kinds of combustion appliances or the installation of replacement windows, doors and roof lights) and gives details of certain classes of people who can carry out the work without giving a building notice or depositing full plans with the local authority. Such individuals will

need to be registered under various industry schemes appropriate to the work in order to benefit from the exemption. This is fully covered in Chapter 5.

SCHEDULE 4 – DESCRIPTIONS OF WORK WHERE NO BUILDING NOTICE OR DEPOSIT OF FULL PLANS REQUIRED

This lists types of work which can be carried out without notifying the local authority. This is mainly concerned with minor electrical work but also includes some work on heating or cooling systems, the replacement of an external door which is not substantially glazed and the replacement of sanitary fittings under certain defined conditions. The schedule is fully described in Chapter 5.

SCHEDULE 4A – GREEN DEAL INFORMATION

Part 1 of this schedule lists the green deal information to be included in energy performance certificates. Part 2, interpretation, gives definitions which apply to green deal work.

SCHEDULES 5 AND 6

The former schedules 5 and 6 have been revoked.

2.3 Approved Documents

There are 19 Approved Documents issued by the Department for Communities and Local Government (DCLG) (20 in Wales, where Approved Document N is still current) intended to give practical guidance on how the technical requirements of Schedule 1 may be complied with. They are written in straightforward technical terms with accompanying diagrams and the intention is that they will be quickly updated as necessary.

Additionally, there are two other privately published guidance documents covering, respectively, *Eurocode 5 Span tables for solid timber members in floors, ceilings and roofs (excluding trussed rafter roofs) for dwellings*, 4th edition, published by TRADA available from Chiltern House, Stocking Lane, Hughenden Valley, High Wycombe, Bucks, HP14 4ND, and *The Building Regulations 2010 – Basements for Dwellings – Guidance Document, Practical guidance on helping to meet the relevant requirements in Schedule 1 to the Building Regulations* published by the Basement Information Centre (www.tbic.org.uk or www.basements.org.uk).

The status and use of Approved Documents are prescribed in sections 6 and 7 of the Building Act 1984. Section 6 provides for documents giving 'practical guidance with respect to the requirements of any provision of Building Regulations' to be

approved by the Secretary of State or somebody designated by him. The documents so far issued have been approved by the Secretary of State, although they refer to other non-statutory material.

The legal effect of 'Approved Documents' is specified in section 7. Their use is not mandatory, and failure to comply with their recommendations does not involve any civil or criminal liability, but they can be relied upon by either party in any proceedings about an alleged contravention of the requirements of the regulations. If the designer or contractor proves that he has complied with the requirements of an Approved Document, in any proceedings which are brought against him, he can rely upon this 'as tending to negative liability'. Conversely, failure to comply with an Approved Document may be relied on by the local authority 'as tending to establish liability'. In other words, the onus will be upon the designer or contractor to establish that he has met the functional requirements in some other way.

The position is illustrated by *Richards* v. *Kerrier District Council* (1987) CILL 345, 4-CLD-04–26 where it was held that if the local authority proved that the works did not comply with the Approved Document, it was then for the appellant to show compliance with the regulations. If the designer fails to follow an Approved Document, it is for him to prove (if prosecuted) that he used an equally effective method or practice.

All the Approved Documents are in a common format, and their provisions are considered in subsequent chapters. They may be summarised as follows:

A: STRUCTURE – This supports Schedule 1, A1, A2 and A3. Section 1 gives details of codes and standards that can be used for all building types and emphasises certain basic principles which must be taken into account if other approaches are adopted. Section 2, which deals with houses and other small buildings, contains guidance on the sizing of timber members, wall thicknesses, masonry chimneys and concrete foundations. Sections 3 and 4 cover wall claddings and roof coverings, respectively, and section 5 deals with disproportionate collapse and is relevant to all types of building.

B: FIRE SAFETY – This supports Schedule 1, B1, B2, B3, B4 and B5 and is probably the most complex part of the regulations. Part B has been spread over two Approved Documents. Volume 1 covers fire safety in dwelling houses and Volume 2 deals with fire safety in buildings other than dwelling houses. Both volumes are structured in the same way as follows:

- B1 deals with means of warning and escape (fire alarm systems and the design of buildings to permit rapid evacuation in the event of fire).
- B2 and B3 cover the ability of the building to resist fire spread over the surfaces of internal walls and ceilings, the ability of a building to stand up to the effects of a fire so that it will not collapse before people have had a chance to escape and the way a building can be designed so that fire is prevented from spreading through its internal structure (in floor, ceiling and wall voids and past party walls).
- B4 deals with the prevention of external fire spread across an open space where it might affect a neighbouring building.
- B5 covers ways of making buildings accessible for firefighters when they need to save lives.

C: SITE PREPARATION AND RESISTANCE TO CONTAMINANTS AND MOISTURE – Read in conjunction with Schedule 1, Part C, it deals with the necessary basic requirements. Section 1 covers clearance or treatment of unsuitable materials. Section 2 deals with contaminants, including the erection of buildings on sites affected by radon gas or the landfill gases, methane and carbon dioxide. Additionally, it covers any substances in the ground which might cause a danger to health, and its provisions effectively replace those of the repealed section 29 of the Building Act 1984. Section 3 deals with subsoil drainage and sections 4 to 6 describe the measures necessary in order to prevent the passage of moisture to the inside of the building including resistance to damage from the effects of interstitial and surface condensation.

D: TOXIC SUBSTANCES – This supports Schedule 1, Part D, and is very short. It gives advice on guarding against fumes from urea formaldehyde foam.

E: RESISTANCE TO THE PASSAGE OF SOUND – This supports Schedule 1, Part E, and deals with the ability of a building to prevent the passage of unwanted sound from internal sources (sound penetration through external walls is covered by planning legislation, not Building Regulations). The details apply to dwellings and to rooms in other buildings which are used for residential purposes (like hotel bedrooms and similar rooms in hostels and residential homes for the elderly). This means, for example, that it is now necessary to insulate walls between hotel bedrooms and also to apply lining materials to wall surfaces of common access stairs and corridors in such buildings. E4 gives guidance on how to improve acoustic conditions in schools.

F: VENTILATION – Supporting Part F of Schedule 1, this covers means of ventilation and applies to all building types. Some guidance is also given on work to existing buildings caused by the addition of extensions.

G: SANITATION, HOT WATER SAFETY AND WATER EFFICIENCY – Supporting Part G of Schedule 1, it includes the requirements of certain repealed sections (sections 26 to 28) of the Building Act 1984 dealing with water closets and bathrooms. Additionally, it deals with hot and cold water supply and systems, the design and scale of provision for sanitary conveniences and washing facilities and food preparation areas.

H: DRAINAGE AND WASTE DISPOSAL – This supports Part H of Schedule 1 and covers above- and belowground drainage, wastewater treatment systems and cesspools. Other sections deal with building over sewers and separate systems of drainage, thereby replacing the repealed section 18 and some subsections of section 21 of the Building Act 1984, and solid waste storage.

J: COMBUSTION APPLIANCES AND FUEL STORAGE SYSTEMS – Supporting Part J of Schedule 1, this deals with gas appliances up to 70 kW, solid fuel appliances up to 50 kW and oil fuel appliances up to 45 kW, as well as protection of liquid fuel storage systems and protection against pollution caused by heating oil leakage.

K: PROTECTION FROM FALLING, COLLISION AND IMPACT – This supports Part K of Schedule 1 and covers the design and construction of stairs, ramps and guarding. It was extended in the 1998 edition to cover vehicle loading bays; protection from collision with open windows, skylights and ventilators; and protection against impact from and trapping by doors. In the 2010 edition of Approved Document K, the provisions of Approved Document N covering safe operation and access for cleaning windows, in addition to measures designed to reduce the risks of accidents caused by contact with glazing, were amalgamated into Approved Document K in England, although Approved Document N is still valid in Wales.

L: CONSERVATION OF FUEL AND POWER – Supporting Part L, Approved Document L is now divided into four separate documents dealing with conservation of fuel and power in new dwellings, existing dwellings, new buildings other than dwellings and existing buildings other than dwellings. This is mainly concerned with making sure that buildings are reasonably efficient in their use of energy and that carbon dioxide emissions are kept to a minimum.

M: ACCESS TO AND USE OF BUILDINGS – Supporting Part M of Schedule 1, this gives practical guidance on means of access, use of buildings, sanitary conveniences, passenger lifts and common stairs and accessible switches and socket outlets. Additionally, for simplification general guidance for stairs and ramps (that do not form part of the external principal entrances and alternative accessible entrances), guarding and handrails and manifestation for glass doors and glazed screens has been updated and moved to Approved Document K.

Dwellings are now divided into three categories: Category 1, visitable dwellings; Category 2, accessible and adaptable dwellings; and Category 3, wheelchair user dwellings. Category 2 and 3 requirements are classed as optional and only apply where planning permission for the development makes it a condition that these requirements must be complied with.

N: GLAZING – SAFETY IN RELATION TO IMPACT, OPENING AND CLEANING – Supporting Part N, this covers safe operation and access for cleaning windows, in addition to measures designed to reduce the risks of accidents caused by contact with glazing. This document has been amalgamated into Approved Document K in England but is still valid in Wales.

P: ELECTRICAL SAFETY – Supporting Part P, this Approved Document gives guidance on design, installation, certification, inspection and testing of electrical installations.

PART Q: SECURITY – Supporting Part Q of Schedule 1, this Approved Document gives guidance on the provisions that must be made to resist unauthorised access to any dwelling and any part of a building from which access can be gained to a flat within the building. Part Q only applies to new dwellings.

There is a further Approved Document – MATERIALS AND WORKMANSHIP to support regulation 7 – and it is phrased in very general terms. It deals with ways of

establishing the fitness of materials to be incorporated into the permanent parts of buildings and ways of establishing adequacy of workmanship.

Relaxations of the mandatory requirements may be given only by local authorities in appropriate cases, with the possibility of an appeal against refusal to the Secretary of State. A relaxation can only be granted for a Building Regulation requirement and not an Approved Document provision, since, as has been explained, the latter provisions are not mandatory. An approved inspector cannot grant a relaxation.

2.4 Definitions in the Regulations

Regulation 2 provides a number of general definitions, but not all of them are equally important or helpful. In this section full definitions are given for purposes of ease of reference, although the various special definitions will be referred to again in later chapters. The definitions are as follows:

THE ACT – This means the Building Act 1984.

AMENDMENT NOTICE – This is a notice given by an approved inspector under section 51A of the Building Act 1984 where the scope of the work has changed to such an extent that the original initial notice no longer truly reflects the work actually being carried out.

BUILDING – The regulations apply only to buildings as defined. There is a narrow definition of 'building' for the purposes of the regulations:

- A building is 'any permanent or temporary building but not any other kind of structure or erection'. When 'a building' is referred to in the regulations, this includes a part of a building.

The effect of this definition is to exclude from control under the regulations such things as garden walls, fences, silos, air-supported structures and so forth.

BUILDING NOTICE – A notice in prescribed form given to the local authority under regulations 12(2)(a) and 13 informing the authority of proposed works.

BUILDING WORK – The regulations apply only to building work as defined in regulation 3(1); any work not coming within the definition is not controlled. Building work means:

- the erection or extension of a building;
- the provision, extension or material alteration of services or fittings required by Schedule 1, Parts G, H, J, L or P (and called 'controlled services or fittings');
- the material alteration of a building;

- work required by regulation 6 – which sets out the requirements relating to 'material change of use' (see below);
- the insertion of insulating material into the cavity wall of a building;
- work involving the underpinning of a building;
- work required by regulation 22 (requirements relating to a change of energy status);
- work required by regulation 23 (requirements relating to thermal elements);
- work required by regulation 28 (consequential improvements to energy performance).

CHANGE TO A BUILDING'S ENERGY STATUS – Any change which results in a building becoming a building to which the energy efficiency requirements of the regulations apply, where previously it was not.

CONTROLLED SERVICE OR FITTING – This means services or fittings required by Parts G, H, J, L or P, i.e. bathrooms, hot water storage systems, sanitary conveniences, drainage and waste disposal, heat-producing appliances, replacement doors, windows and roof lights, space heating and hot water boilers, hot water vessels and electrical installations.

DAY – Any period of 24 hours commencing at midnight. It does not include weekends, bank holidays or public holidays.

DWELLING – This includes a dwelling house and a flat.

DWELLING HOUSE excludes a flat or building containing a flat.

ELECTRICAL INSTALLATION – This means fixed electrical cables or fixed electrical equipment located on the consumer's side of the electricity supply meter.

ENERGY EFFICIENCY REQUIREMENTS – This means the requirements of regulations 23, 25A, 25B, 26, 26A, 28, 29 and 40 and Part L of Schedule 1.

ENERGY PERFORMANCE CERTIFICATE means a certificate which complies with the requirements of regulation 29.

EXCEPTED ENERGY BUILDING has the meaning given in the Schedule to the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009.

EXTRA-LOW VOLTAGE – Voltage which is less than or equal to:

- 50 volts between conductors and earth for alternating current or
- 120 volts between conductors for direct current.

FINAL CERTIFICATE – A certificate given by an approved inspector to a local authority under section 51 of the Building Act 1984 to indicate that a project has been successfully completed.

FIXED BUILDING SERVICES – Any part of or any controls associated with:

- fixed internal or external lighting systems (but not including emergency escape lighting or specialist process lighting) or
- fixed systems for heating, hot water service, air conditioning or mechanical ventilation or
- any combination of systems of the kinds referred to in paragraph (a) or (b).

FLAT – Separate and self-contained premises (including a maisonette) constructed or adapted for residential purposes and forming part of a building divided horizontally from some other part (see Fig. 2.1).

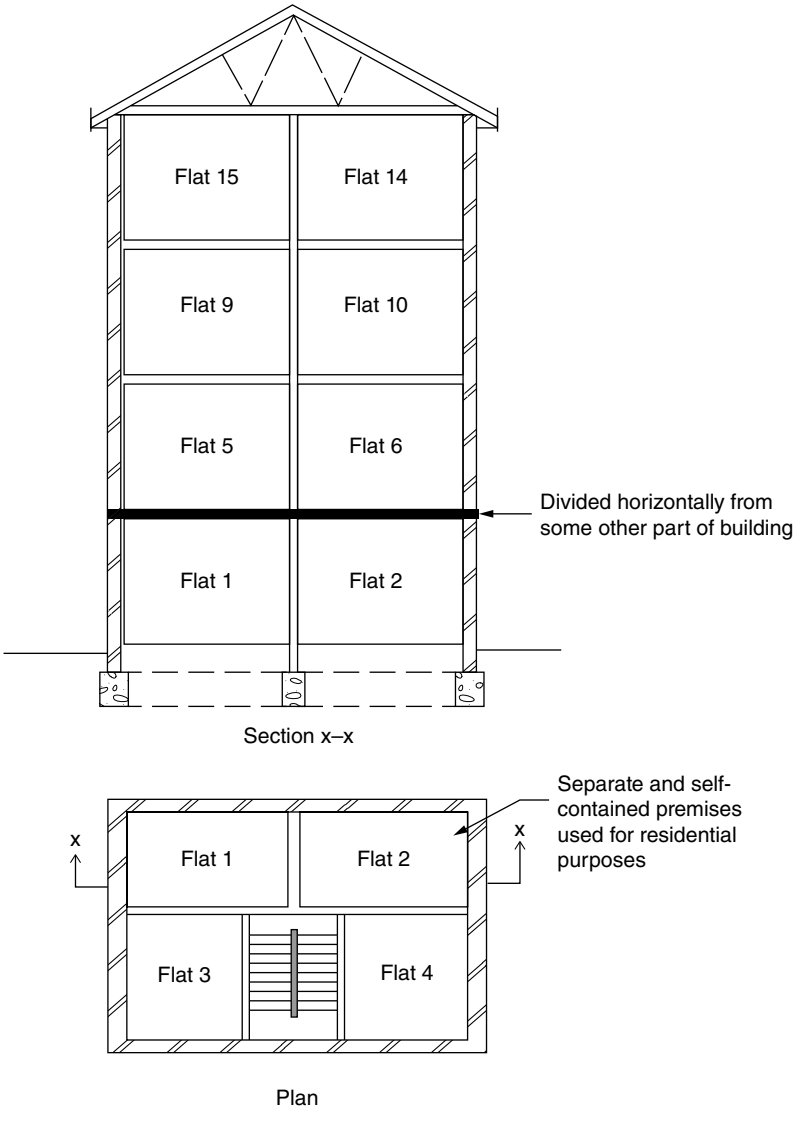


Fig. 2.1 Flat – regulation 2.

FLOOR AREA – This means the aggregate area of every floor in a building or extension. The area is to be calculated by reference to the finished internal faces of the enclosed walls or, where there is no enclosing wall, to the outermost edge of the floor (see Fig. 2.2).

FULL PLANS – Plans deposited with a local authority in accordance with regulations 12(2)(b) and 14. The Building Act 1984, section 126, gives a definition of 'plans' as including drawings of any description and specifications or other information in any form.

GREEN DEAL DISCLOSURE OBLIGATIONS means the obligations to provide an energy performance certificate in section 12 of the Energy Act(b) and Part 7 of the Green Deal Framework Regulations.

GREEN DEAL PROPERTY has the meaning given in section 12(5)(b) of the Energy Act 2011 which states that a property is a green deal property if there is a green deal plan in respect of the property and payments are still to be made under that plan.

HEIGHT – This means the height of a building measured from the mean level of the ground adjoining the outside external walls to a level of half the vertical height of the roof or to the top of any walls or parapet, whichever is higher (see Fig. 2.2).

INDEPENDENT ACCESS to an extension or part of a building means access to that part which does not pass through the rest of the building.

INITIAL NOTICE – A notice given by an approved inspector to a local authority under section 47 of the Building Act 1984.

INSTITUTION – This means a hospital, home, school and so on used as living accommodation for, or for the treatment, care or maintenance of, people suffering from disabilities due to illness or old age or other physical or mental disability or who are under five years old. Those concerned must sleep on the premises and so daycare centres are not included.

LOW VOLTAGE – Voltage which is less than or equal to:

- 1000 volts between conductors or 600 volts between conductors and earth for alternating current or
- 1500 volts between conductors or 900 volts between conductors and earth for direct current.

MATERIAL ALTERATION – This is defined in regulation 3(2) and is described fully in section **2.6**.

MATERIAL CHANGE OF USE – This is defined by reference to regulation 5 and there are ten cases:

- where a building becomes a dwelling when it was not one before;
- where a building will contain a flat for the first time;

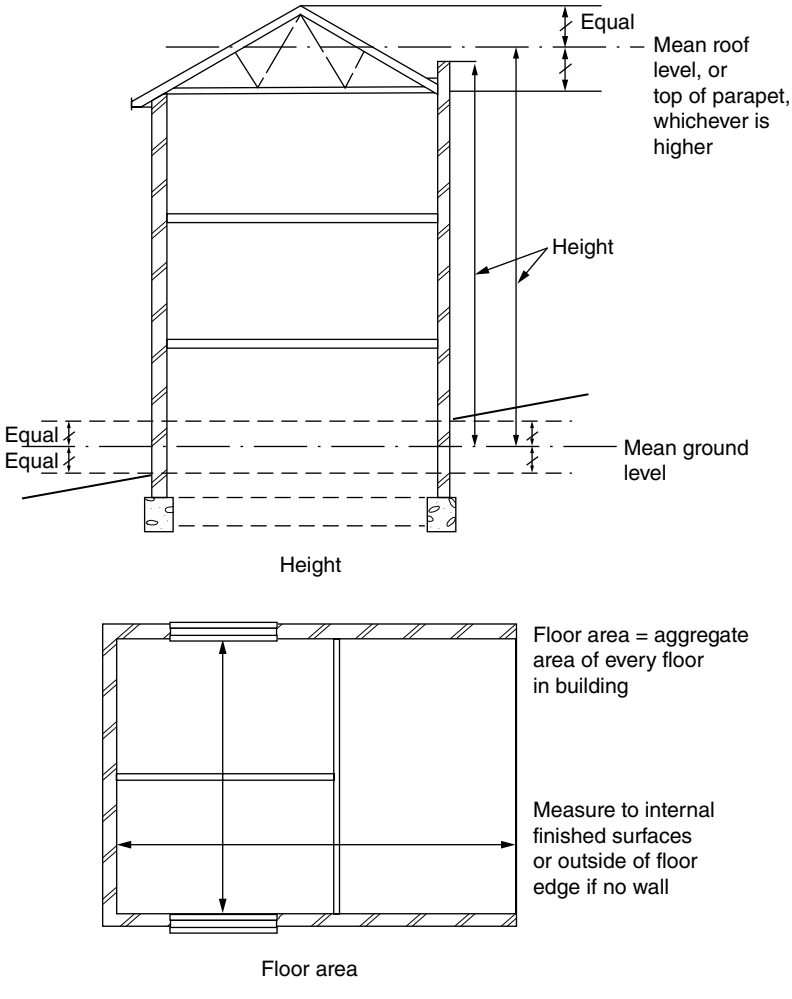


Fig. 2.2 Floor area and height – regulation 2.

- where a building becomes a hotel or boarding house, where it previously was not;
- where a building becomes an institution, where it previously was not;
- where a building becomes a public building and it was not before;
- where a building was previously exempt from control (see Schedule 2, below), but is no longer so exempt;
- where a building containing at least one dwelling is altered so that it provides more or less dwellings than before;
- where the building contains a room for residential purposes, where previously it did not;

- where a building containing at least one room for residential purposes is altered so that it contains more or less of such rooms than it did before;
- where a building becomes a shop where it previously was not.

MICROGENERATION means the use for the generation of electricity or the production of heat or cooling of any plant (which for this purpose includes any equipment, apparatus or appliance) which, in generating electricity or (as the case may be) producing heat or cooling, relies wholly or mainly on a source of energy or a technology mentioned in section 26(2) of the Climate Change and Sustainable Energy Act 2006. Those sources of energy and technologies are:

(a) biomass,
(b) biofuels,
(c) fuel cells,
(d) photovoltaics,
(e) water (including waves and tides),
(f) wind,
(g) solar power,
(h) geothermal sources,
(i) combined heat and power systems.

NEW DWELLING includes, except in Parts 6 and 7, a dwelling that is formed by a material change of use of a building within the meaning of regulation 5(a) (the building is used as a dwelling, where previously it was not), (b) (the building contains a flat, where previously it did not) or (g) (the building, which contains at least one dwelling, contains a greater or lesser number of dwellings than it did previously).

OPTIONAL REQUIREMENT means an optional requirement as described in regulation 4(1A)(b) (requirements relating to building work) or in regulation 36(2)(b) (water efficiency of new dwellings). Certain optional requirements of the regulations (mainly to do with disabled access to dwellings) have been introduced by virtue of SI 2015/767. These mainly come into effect where they have been made a condition of planning permission for the dwelling.

PAYMENT PERIOD has the meaning given in regulation 2(1) of the Green Deal Framework Regulations, i.e. the period for which instalments are to be paid under a green deal plan.

PLANNING PERMISSION has the meaning given in section 336(1) (interpretation) of the Town and Country Planning Act 1990.

PUBLIC BODY'S FINAL CERTIFICATE – This means a certificate given under paragraph 3 of Schedule 4 to the Building Act 1984.

PUBLIC BODY'S NOTICE – This means a notice given under section 54 of the Building Act 1984.

PUBLIC BUILDING – This means a building which consists of or contains:

- a theatre, public library, hall or other place of public resort;
- a school or other educational establishment which is not exempt under the 1984 Act, section 4(1)(a);
- a place of public worship.

The definition is restrictive because occasional visits by the public to shops, stores, warehouses or private houses do not make the building a public building.

RENOVATION – This means the provision of a new layer in a thermal element (but not including a new layer provided solely to repair a flat roof) or the replacement of an existing layer, but excludes decorative finishes.

ROOM FOR RESIDENTIAL PURPOSES – This means a room (or suite of rooms) which is not in a dwelling house or flat and which is used by people to live and sleep in. It includes a room in a hotel, hostel, boarding house, hall of residence or a residential home, but does not include a room in a hospital, or other similar establishment, used for patient accommodation.

SHOP – This includes premises used by members of the public:

- for sales of food or drink for consumption on or off the premises,
- for retail sales by auction,
- as a barber's or hairdresser's business,
- for the hiring of any item,
- for the treatment or repair of goods.

SOFTENED WHOLESOME WATER means water which would be regarded as wholesome for the purposes of regulations made under section 67 of the Water Industry Act 1991(9) (standards of wholesomeness) as they apply for the purposes of Part G of Schedule 1 in accordance with paragraph (5) but for the presence of sodium in excess of the level specified in those regulations if it is caused by a water softener or water softening process which reduces the concentrations of calcium and magnesium.

THERMAL ELEMENT – This means a wall, floor or roof (but not windows, doors, roof windows or roof lights) which separates a thermally conditioned part of the building (referred to as the 'conditioned space' in the regulations) from:

- the external environment (including the ground) or
- in the case of floors and walls, another part of the building which is:
  - unconditioned,
  - an extension falling within Class VII in Schedule 2 (i.e. conservatories, porches, covered yards or ways or a carport open on at least two sides),
  - conditioned to a different temperature.

The term covers all parts of the thermal element between the surface bounding the conditioned space and the external environment or other part of the building as appropriate.

2.5 Exempt buildings and work

With the exception of the work listed at the end of this section, certain buildings and extensions are granted complete exemption from control. The exempt buildings and work fall into seven classes listed in Schedule 2:

CLASS I – BUILDINGS CONTROLLED UNDER OTHER LEGISLATION

- Any building in which explosives are manufactured or stored under a licence granted under the Manufacture and Storage of Explosives Regulations 2005.
- Buildings (other than dwellings, offices or canteens) on a site licensed under the Nuclear Installations Act 1965.
- Buildings scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979.

CLASS II – BUILDINGS NOT FREQUENTED BY PEOPLE

- Detached buildings into which people do not normally go.
- Detached buildings housing fixed plant or machinery, normally visited only intermittently for the purpose of inspecting or maintaining the plant. Such buildings are only exempt where they are at least one and a half times their own height from the boundary of the site or any other building frequented by people.

CLASS III – GREENHOUSES AND AGRICULTURAL BUILDINGS

- A building used as a greenhouse.
  A greenhouse is not exempted if the main purpose for which it is used is retailing, packing or exhibiting, e.g. one at a garden centre.
- A building used for agriculture or principally for the keeping of animals which is:
  - sited at a distance not less than one and a half times its own height from any building containing sleeping accommodation,
  - provided with a fire exit not more than 30 m from any point within the building.

The definition of 'agriculture' includes horticulture, fruit growing, seed growing and fish farming. Agricultural buildings are not exempted if the main purpose for which they are used is retailing, packing or exhibiting.

CLASS IV – TEMPORARY BUILDINGS

- A building intended to remain where it is erected for 28 days or less, e.g. exhibition stands.

CLASS V – ANCILLARY BUILDINGS

- Buildings on a site intended to be used only in connection with the disposal of buildings or building plots on that site.
- Site buildings on all construction and civil engineering sites, provided they contain no sleeping accommodation.

- Buildings, except those containing a dwelling or used as an office or showroom, erected in connection with a mine or quarry.

CLASS VI – SMALL DETACHED BUILDINGS

- Detached single storey buildings of up to 30 m^2 floor area, with no sleeping accommodation.

  For the exemption to apply, such buildings must either be:
  - situated more than 1 m from the boundary of their curtilage *or*
  - constructed substantially of non-combustible material.

- Detached buildings of up to 30 m^2 intended to shelter people from the effects of nuclear, chemical or conventional weapons and not used for any other purpose. The excavation for the building must be no closer to any exposed part of another building or structure than a distance equal to the depth of the excavation plus 1 m.
- Detached buildings with a floor area not exceeding 15 m^2 and which do not contain sleeping accommodation, e.g. garden sheds.

CLASS VII – EXTENSIONS

- Ground-level extensions of up to 30 m^2 floor area which are conservatories, porches, covered yards or ways or a carport open on at least two sides, provided that in the case of a conservatory or porch, which is wholly or partly glazed, the glazing satisfies the requirements of Part K4, K5.1, K5.2, K5.3 and K5.4 of Schedule 1.

The regulations do not apply to the erection of any building set out in Classes I to VI or to extension work in Class VII. Furthermore, they have no application at all to *any* work done to or in connection with buildings in Classes I to VII provided, of course, that the work does not involve a change of use which takes the building out of exemption, e.g. a barn conversion.

Exceptions to the general exemption granted by Schedule 2

The following work carried out to certain buildings falling within Schedule 2 must comply with the requirements indicated:

(1) A conservatory or porch which is wholly or partly glazed must satisfy the following requirements of Part K (protection from falling, collision and impact): K4, K5.1, K5.2, K5.3 and K5.4.
(2) Any greenhouse, any small detached building falling within Class VI and any extension falling within Class VII must satisfy the requirements of Part P (electrical safety) where such buildings receive their electricity from a source shared with or located inside a dwelling.
(3) In general, and taking account of the exceptions listed below, the energy efficiency requirements of the regulations (Part L) apply to:
    (a) the erection of any building falling within Schedule 2;
    (b) the extension of any such building, other than an extension falling within Class VII in Schedule 2. However, in the case of a conservatory, it depends

on the space separation and when the conservatory was built. For example the conservatory or porch will be exempt from the requirements of Part L unless:

- any wall, door or window separating the conservatory or porch from a building has been removed and not replaced with a wall, door or window,
- the building's heating system has been extended into the conservatory (see Chapter 16 for full details);

(c) the carrying out of any work to or in connection with any such building or extension.

It should be noted that the term 'building' means the building as a whole or parts of it that have been designed or altered to be used separately.

In order for these requirements to be applied, the building must be of roofed construction having walls and must use energy to condition the indoor climate. Even with these conditions certain categories of building which might come under Schedule 2 do not have to comply with the energy efficiency requirements of the regulations. These are:

- buildings where compliance with the energy efficiency requirements would unacceptably alter their character or appearance, such as:
  - buildings listed in accordance with section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990,
  - buildings in a conservation area designated in accordance with section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990,
  - buildings included in the schedule of monuments maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979;
- buildings which are used primarily or solely as places of worship;
- temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand;
- stand-alone buildings other than dwellings with a total useful floor area of less than 50 m^2.

It should be noted that the terms 'industrial sites', 'low energy demand', 'non-residential agricultural buildings', 'places of worship', 'stand-alone', 'total useful floor area' and 'workshops' have the same meaning as in European Parliament and Council Directive 2002/91/EC on the energy performance of buildings.

2.6 Application of the Regulations

The 2010 Regulations apply only to 'building work' or to a 'material change of use', i.e. use for a different purpose. Work or a change of use not coming under these headings is not controlled.

Meaning of 'building work'

The definition of 'building work' means that the regulations apply in nine cases:

ERECTION OR EXTENSION OF A BUILDING

Subject to the exemptions set out in the preceding section, the regulations apply to the erection or extension of all buildings. No attempt is made to define what is meant by 'erection of a building', nor is any definition really necessary. There is a good deal of obscure case law under other legislation as to what amounts to 'erection of a building', but none of it is particularly helpful in the light of section 123 of the Building Act 1984.

This gives a relevant statutory definition. For the purposes of Part II of the Act and for building regulation purposes, erection will include related operations 'whether for the reconstruction of a building, [and] the roofing over of an open space between walls or buildings'.

For the purposes of Part III of the 1984 Act (other provisions about buildings) which is also relevant to building control, *certain* building operations are 'deemed to be the erection of a building'. These are as follows:

(1) Re-erection of any building or part of a building when an outer wall has been pulled or burnt down to within ten feet (3 m) of the surface of the ground adjoining the lowest storey of the building.
    It follows that the outer wall must have been demolished throughout its length to within ten feet (3 m) of ground level to constitute re-erection.
(2) The re-erection of any frame building when it has been so far pulled or burnt down that only the framework of the lowest storey remains.
(3) Roofing over any space between walls or buildings. Clearly other operations could be 'the erection of a building'.

PROVISION OR EXTENSION OF CONTROLLED SERVICES AND FITTINGS – Controlled services and fittings are those required by specified parts of Schedule 1:

- G1 – Cold water supply
- G2 – Water efficiency
- G3 – Hot water supply and systems
- G4 – Sanitary conveniences and washing facilities
- G5 – Bathrooms
- G6 – Kitchens and food preparation areas
- H – Drainage and waste disposal systems including above- and belowground drainage, wastewater treatment systems and cesspools
- J – Fixed heat-producing appliances burning solid or oil fuel or gas or incinerators. Liquid fuel storage systems
- L – In non-domestic buildings, heating and hot water systems, lighting, air-conditioning and mechanical ventilation systems. In dwellings, replacement windows, doors and roof lights, space heating or hot water service boilers and hot water vessels
- P – Electrical safety, design installation, inspection and testing

MATERIAL ALTERATION OF A BUILDING OR OF A CONTROLLED SERVICE OR FITTING

The material alteration of an existing building falls within the definition of building work and is subject to the regulation requirements. Other alterations are not controlled.

There are two cases where an alteration is material, namely, an alteration to a building or controlled service or fitting, or part of the work involved, which would at any stage result *either*:

- in the building or controlled service or fitting not complying with the relevant requirements of Schedule 1 where it previously did comply or
- in the building or controlled service or fitting, which did not comply with such requirements before work started, being made worse in relation to the requirement after the alteration.

The specified requirements (called 'relevant requirements' in the regulations) are:

- Part A (structure),
- B1 (means of warning and escape),
- B3 (internal fire spread – structure),
- B4 (external fire spread),
- B5 (access and facilities for the fire service),
- Part M (access to and use of buildings).

The work done must, of course, comply with all the requirements of Schedule 1. In general, it is not necessary to bring the existing building up to regulation standards. However, it should not be made worse when measured against the standards of the relevant requirements in Schedule 1.

WORK IN CONSEQUENCE OF A MATERIAL CHANGE OF USE

When there is a material change of use, as defined in regulation 5 (see section 2.4), work must be done to make the building comply with some of the regulations, as explained below. Such work is, of course, then subject to control, just as the material change of use is itself controlled. In practical terms, change of use is only subject to control if the change involves the provision of sleeping accommodation or use as a public building or where the building was previously exempt.

'*Material change of use' requirements*

Material change of use has already been defined (see section 2.4), and in the ten cases falling within that definition, specific technical requirements from Schedule 1 are made to apply in the interests of health and safety, which is the philosophy behind building control. Interestingly, there is no requirement applicable in respect of surface water drainage or stairs, nor is there any definition of 'part' of a building. The parts of the regulations applicable are set out in Table 2.1.

INSERTION OF INSULATING MATERIAL INTO A CAVITY WALL

When there is the insertion of cavity fill in an existing wall in a building, the work done must comply with certain specific regulation requirements, namely, C2 and D1 (toxic substances).

Table 2.1 Requirements applicable according to material change of use.

Case	Schedule 1 requirements
[1A]	
All cases (dwellings including conversion of single dwelling to provide greater number, flats, hotels, shops, boarding houses, institutions and public buildings, no longer exempt, rooms for residential purposes) where there is a change of use to the whole of the building	B1 (means of warning and escape) B2 and B3 (internal fire spread) B4(2) (external fire spread – roofs) B5 (access for fire services) C2(c) (interstitial and surface condensation) F1 (ventilation) G1 (cold water supply) G3(1) to (3) (hot water supply and systems) G4 (sanitary conveniences and washing facilities) G5 (bathrooms) G6 (kitchen and food preparation areas) H1 (foul water drainage) H6 (solid waste storage) J1 to J4 (combustion appliances) L1 (conservation of fuel and power) P1 (electrical safety)
[1B]	
Exempt building to non-exempt, hotel, boarding house, institution, public building	As in [A] plus A1 to A3 (structure)
[1C]	
Building more than 15 m in height	As in [**A**] plus B4(1) (external fire spread – walls)
[**1D**]	
Building used as a dwelling, hotel, boarding house or institution or containing a flat where it did not before; where more or less dwellings are provided than was originally the case; where the building contains a room for residential purposes, where previously it did not; where a building containing at least one room for residential purposes is altered so that it contains more or less of such rooms than it did before; building no longer exempt under Schedule 2, Classes I to VI, where previously it was, where the material alteration provides new residential accommodation	As in [**A**] plus C1(2) resistance to contaminants
[**1E**]	
Building used as a dwelling, where previously it was not	As in [**A**] plus C2 (resistance to moisture)

Table 2.1 (*Continued*)

Case	Schedule 1 requirements
[**1F**]	
Building used as a dwelling, hotel, boarding house or containing a flat where it did not before; where more or less dwellings are provided than was originally the case; where the building contains a room for residential purposes, where previously it did not; where a building containing at least one room for residential purposes is altered so that it contains more or less of such rooms than it did before	As in [**A**] plus E1 to E3 (resistance to passage of sound)
[**1G**]	
Change of use to public building consisting of or containing a school	As in [**A**] plus E4 (acoustic conditions in schools)
[**1H**]	
Change of use to dwelling or flat	G2 (water efficiency) and G3(4) (hot water supply and systems: hot water supply to fixed baths)
[**1I**]	
Change of use to hotel, boarding house, shop, institution or public building	As in [**A**] plus M1 (access to and use of buildings other than dwellings)
[1J]	
Change of use to dwelling or flat or increase in the number of dwellings in the building	Q1 security
[**2A**]	
Change of use of part only of a building in cases [**1A**]	The part itself must comply with the relevant requirements as [**1A**]
[**2B**] and [**2C**]	
Change of use of part only of a building in cases [**1B**], [**1E**], [**1F**], [**1G**] or [1**H**]	The part itself must comply with the relevant requirements as [**1B**], [**1E**], [**1F**], [**1G**] and [**1H**]. In [**1C**] the whole building must comply with B4(1)
[**2D**]	
Change of use of part only of a building in case [**1I**]	M1 (access to and use of buildings) applied to the part being changed and to any sanitary conveniences provided in or in connection with the part being changed Whole building complies with requirement M1(a) of Schedule 1 to the extent that reasonable provision is made to provide either suitable independent access to the part being changed or suitable access through the building to that part
[2E]	
Change of use of part only of a building in case [1J]	Where the change of use applies to the extent that a flat is provided or there is an increase in the number of dwellings in the building, only the part of the building altered has to comply with Part Q

UNDERPINNING OF A BUILDING
Work involving the underpinning of an existing building is 'building work' for the purposes of the regulations and so comes under control.

WORK REQUIRED BY REGULATION 22 (REQUIREMENTS RELATING TO A CHANGE OF ENERGY STATUS)
When a building is changed so that it becomes a building to which the energy efficiency requirements of the regulations apply, where previously it was not, such work, if any, must be carried out so as to ensure that the building complies with the applicable requirements of Part L of Schedule 1. In this case 'building' means the building as a whole or parts of it that have been designed or altered so that they can be used separately.

WORK REQUIRED BY REGULATION 23 (REQUIREMENTS RELATING TO THERMAL ELEMENTS)
When renovating a thermal element, sufficient work must be carried out so as to ensure that the whole thermal element complies with the requirements of paragraph L1(a)(i) of Schedule 1 (i.e. to the extent of limiting gains and losses through the thermal elements and other parts of the building fabric). When replacing a thermal element, the new thermal element must also comply with the requirements of paragraph L1(a)(i) of Schedule 1.

WORK REQUIRED BY REGULATION 28 (CONSEQUENTIAL IMPROVEMENTS TO ENERGY PERFORMANCE)
Where an existing building with a total useful floor area over 1000 m^2:

- is extended or
- has fixed building services installed for the first time or
- has an increase to the installed capacity of any fixed building services.

Such work, if any, must be carried out so as to ensure that the building complies with the requirements of Part L of Schedule 1. However, the work only needs to be carried out if it is technically, functionally and economically feasible.

2.7 Regulation requirements

The regulations impose broad general requirements on the builder. Breach of these requirements does not, of itself, involve the builder in any civil liability, although such liability may arise, quite independently, at common law.

Compliance with Schedule 1 is mandatory. All building work (except work carried out to improve energy performance; see below) must be carried out so that it complies with the requirements set out in that schedule. The method adopted for compliance must not result in the contravention of another requirement.

The work must also be carried out so that, after completion,

- an existing building which has been extended or to which a material alteration has been carried out or

- an existing building which has had a controlled service or fitting provided extended or materially altered or
- any controlled service or fitting

to which work has been done continues to comply with the specified requirements if it previously did so comply or, if it did not so comply before in any respect, it must not be more unsatisfactory afterwards.

The special case concerning energy performance referred to above is for work carried out:

- to thermal elements,
- where there is a change in the building's energy status and
- where there are consequential improvements to a building's energy performance.

Provided that the work does not constitute a material alteration, then it only needs to comply with the applicable requirements of Part L of Schedule 1.

2.8 Schedule 1: Technical requirements

Schedule 1 contains the technical requirements, which are discussed in Chapters 6 to 18 and which are almost all expressed functionally, e.g. C1 dealing with site preparation states that 'the ground to be covered by the building shall be reasonably free from any material that might damage the building or affect its stability, including vegetable matter, topsoil and pre-existing foundations'. These requirements cannot be subject to relaxation.

Which requirements apply depends on the type of building being constructed, but the majority of them are of universal application.

Materials and workmanship

Regulation 7(1) provides that any building work which is required to comply with any relevant requirement of Schedule 1:

'shall be carried out:
(a) with adequate and proper materials which
  (i) are appropriate for the circumstances in which they are used,
  (ii) are adequately mixed and prepared,
  (iii) are applied, used or fixed so as adequately to perform the functions for which they are designed
(b) in a workmanlike manner.'

This is a general statutory obligation imposed on the builder. Guidance on how the obligation may be met is contained in Approved Document to support regulation 7 'materials and workmanship', although that guidance is of a very general nature.

This statutory obligation is akin to a building contractor's obligation at common law when, in the absence of a contrary term in the contract, the builder's duty is to do the work in a good and workmanlike manner, to supply good and proper materials and to

provide a building reasonably fit for its intended purpose: *Hancock* v. *B.W. Brazier (Anerley) Ltd* (1966) [1966] 1 WLR 1317; [1966] 2 All ER 901, CA. This threefold obligation would normally be implied in any case where a contractor was employed to both design and build, but the third limb of the duty would not arise, for example, where the client employs his own architect (*Lynch* v. *Thorne* (1956) [1956] 1 WLR 303; [1956] 1 All ER 744, CA), although the other two limbs remain.

The principal object of the regulations is to ensure that buildings meet reasonable standards of health and safety, and this is spelled out in regulation 8:

> 'Parts A to D, F to K, and P (except for paragraphs G2, H2 and J7) of Schedule 1 shall not require anything to be done except for the purpose of securing *reasonable standards of health and safety* for persons in or about buildings (and any others who may be affected by buildings, or matters connected with buildings).'

The obligations imposed by the regulations are not therefore absolute obligations, but rather a duty to use reasonable skill and care to secure reasonable standards of health and safety of people using the building and others who may be affected by failure to comply with the requirements of the regulations.

2.9 Relaxation of regulation requirements

Section 8 of the Building Act 1984 enables the Secretary of State to dispense with or relax any requirement of the regulations 'if he considers that the operation of [that] requirement would be unreasonable in relation to the particular case'. This power has been delegated to the local authority which may grant a relaxation if, because of special circumstances, the terms of a requirement cannot be fully met.

However, the majority of regulation requirements cannot be relaxed because they require something to be provided at an 'adequate' or 'reasonable' level and to grant a relaxation might mean acceptance of something that was 'inadequate' or 'unreasonable'.

It should be noted that a relaxation of the requirements of the Building Regulations cannot be sought in order to thwart:

- reg. 23(1)(a) where the renovation of an individual thermal element constitutes a major renovation or
- reg. 25A where the minimum energy performance requirements must be approved by the Secretary of State, in accordance with the methodology given in regulation 24, for new buildings (including new dwellings), in the form of target CO_2 emission rates or
- reg. 26 where a building's target CO_2 emission rate has been approved pursuant to regulation 25 or
- reg. 29 the provision of energy performance certificates.

The application procedure is laid down in sections 9 and 10 of the 1984 Act. There is no prescribed form. Only the local authority (or the Secretary of State on appeal) can grant a relaxation; approved inspectors have no power to do so.

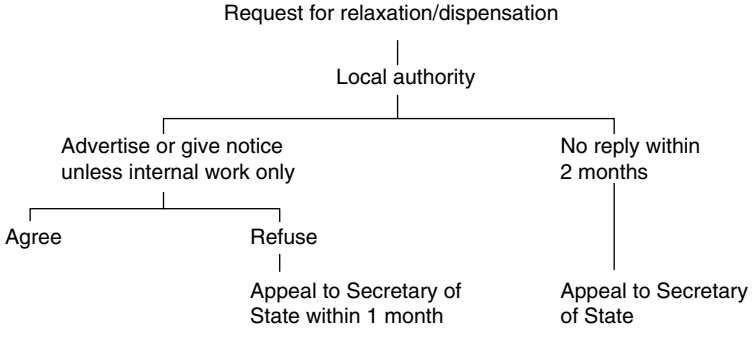
At least 21 days before giving a decision on an application for dispensation or relaxation of any requirement, the local authority must advertise the application in a local newspaper unless the application relates only to internal work. The notice must indicate the situation and nature of the work and the requirement which it is sought to relax or dispense with. Objections may then be made on grounds of public health or safety. No notice need be published if the effect of the proposal is confined to adjoining premises only, but notice must then be given to the owner and occupier of those premises.

Where a local authority refuses an application, it must notify the applicant of his right of appeal to the Secretary of State. This must be exercised within one month of the date of refusal. The grounds of the appeal must be set out in writing, and a copy must be sent to the local authority, who must send it to the Secretary of State with a copy of all relevant documents and any representations it wishes to make. The applicant must be informed of the local authority's representations. There is no time limit prescribed for the Secretary of State's decision on the appeal.

Where a local authority fails to give a decision on an application within two months, it is deemed to be refused and the applicant may appeal forthwith.

Neither the Secretary of State nor the local authority may give a direction for any relaxation of the regulations where, before the application is made, the local authority has become statutorily entitled to demolish, remove or alter any work to which the application relates, i.e. as a result of service of a notice under section 36 of the 1984 Act. The same prohibition applies where a court has issued an injunction requiring the work to be demolished, altered or removed.

The procedure may be summarised as follows:



2.10 Type relaxations

The local authority's power of dispensation and relaxation must be distinguished from that of the Secretary of State to grant a type relaxation, i.e. to dispense with a requirement of the regulations generally under section 2 of the Building Act 1984. A type relaxation can be made subject to conditions and can be for a limited period only. It can be issued on application to the Secretary of State, e.g. from a manufacturer, in which case a fee may be charged. The Secretary of State may also make a type relaxation of his own accord. Before granting a relaxation the Secretary of State must consult such bodies as appear to

him to be representative of the interests concerned and must publish notice of any relaxation issued. No such type relaxations have been granted under the current legislation.

2.11 Continuing requirements

Under section 2 of the Building Act 1984, Building Regulations can impose continuing requirements on owners and occupiers of buildings. These requirements are of two kinds:

- Continuing requirements in respect of designated provisions of the Building Regulations, to ensure that the purpose of the provision is not frustrated.

For example, where an item is required to be provided, there could be a requirement that it should continue to be provided or kept in working order. Examples of the possible use of the power are the operation of mechanical ventilation which is necessary for health reasons or the operation of any lifts required to be provided in blocks of flats.

- Requirements with regard to services, fittings and equipment. This enables requirements to be imposed on buildings whenever they were erected and independently of the normal application of Building Regulations to a building.

A possible use of this power would be to require the maintenance and periodic inspection of lifts in flats if they are to be kept in use. This power of continuing requirements has, as yet, not been used.

2.12 Testing and sampling

Regulations 45 and 46 empower the local authority to test building work to ensure compliance with the requirements of regulation 7 and any applicable parts of Schedule 1 and to take samples of materials *to be used* in the carrying out of building work. The wording does not appear to cover materials which are already incorporated in the building, but this may prove to be of little importance if the provisions of section 33 of the Building Act 1984 are ever activated.

In fact the power of testing is given to 'a duly authorised officer of the local authority'. 'Authorised officer' is defined in section 126 of the Building Act 1984 as:

> '… an officer of the local authority authorised by them in writing, either generally or specially, to act in matters of any special kind, or in any specified matter; or … by virtue of his appointment and for the purpose of matters within his province, a proper officer of the local authority.'

Section 95 of the 1984 Act confers upon an authorised officer appropriate powers of entry, and penalties for obstructing any person acting in the execution of the regulations are provided by section 112.

A duly authorised officer of the local authority must also be permitted to take samples of the materials used in works or fittings, to see whether they comply with the requirements of the regulations. In practice, the authorised officer may ask the builder to have the tests carried out and to submit a report to the local authority. In any event, the builder should be notified of the result of the tests.

It should be noted, however, that regulations 45 and 46 do not apply where the work is supervised by an approved inspector (see Chapter 4) or is done under a public body's notice; however, similar powers exist in the Building (Approved Inspectors, etc.) Regulations 2010 (as amended).

2.13 Testing and Commissioning

Sound insulation testing

In circumstances where paragraph E1 of Schedule 1 applies, regulation 41 of the Building Regulations 2010 (as amended) and regulation 20 of the Building (Approved Inspectors, etc.) Regulations 2010 (as amended) also apply. These additional regulations impose a requirement to pursue one of two courses of action:

(i) To undertake an approved programme of sound insulation testing and provide the appropriate authority with a copy of the test results. In the case of both regulations, there are specific time limits within which the results must be presented to the building control body. It is stated in Approved Document E that the normal way of satisfying regulation 41 or 20 will be to undertake this programme of testing (known as pre-completion testing) in accordance with section 1 of Approved Document E.
(ii) Only in the case of a dwelling house or a building containing flats, to use one or more of the design details approved by Robust Details Limited. This is an alternative to undertaking a programme of testing and is subject to observing specified procedures.

Mechanical ventilation air flow rate testing

Where, in the case of the creation of a new dwelling by building work, paragraph F1(1) of Schedule 1 applies, regulation 42 of the Building Regulations 2010 (as amended) and regulation 20 of the Building (Approved Inspectors, etc.) Regulations 2010 (as amended) also apply.

They require that the person carrying out the work shall:

(a) ensure that testing of the mechanical ventilation air flow rate is carried out in accordance with a procedure approved by the Secretary of State,
(b) give notice of the results of the testing to the local authority.

The notice must record the results and the data upon which they are based in a manner approved by the Secretary of State and be given to the local authority not later than five days after the final test is carried out.

Pressure testing

Where, in the case of the erection of a building, paragraph L1(a)(i) of Schedule 1 applies, regulation 43 of the Building Regulations 2010 (as amended) and regulation 20 of the Building (Approved Inspectors, etc.) Regulations 2010 (as amended) also apply.

They require that the person carrying out the work shall:

(a) ensure that pressure testing is carried out in such circumstances and in accordance with an approved procedure as are approved by the Secretary of State,
(b) give notice of the results of the testing to the local authority.

A local authority is authorised to accept, as evidence that the requirements have been satisfied, a certificate to that effect by a person who is registered by the British Institute of Non-Destructive Testing or the Air Tightness Testing and Measurement Association in respect of pressure testing for the air tightness of buildings.

Commissioning

Regulation 44 of the Building Regulations 2010 (as amended) and regulation 20 of the Building (Approved Inspectors, etc.) Regulations 2010 (as amended) apply to building work involving the installation of mechanical ventilation systems covered by paragraph F1(2) of Schedule 1 and to building work involving the provision of fixed building services covered by paragraph L1(b) of Schedule 1.

Where this regulation applies the person carrying out the work must give to the local authority a notice confirming that the fixed building services have been commissioned in accordance with a procedure approved by the Secretary of State.

The notice must given to the local authority:

(a) not later than five days after the work has been completed if regulation 16(4) applies or
(b) where that regulation does not apply, not more than 30 days after completion of the work.

2.14 Unauthorised building work

Regulation 18 allows local authorities retrospectively to certify unauthorised building work carried out on or after 11 November 1985. The regulation became effective on 1 October 1994 and there are prescribed fees payable. It applies to building work which should have been subject to control, but the person who carried out the work failed to deposit plans with the authority, to give a building notice or to give an initial notice jointly with an approved inspector. The regulation enables the owner of the building (the applicant) to make a written application to the authority for a regularisation certificate.

The applicant's notice should describe the unauthorised work and, if reasonably practicable, include a plan of it as well as a plan showing any additional work needed to ensure compliance with the regulations. It should be noted that the giving of such plans is not deemed to be the deposit of plans under section 16 of the Building Act 1984. On receipt

of the notice and the accompanying plans, the council may require the applicant to take reasonable steps to enable them to inspect the work, e.g. opening up, testing and sampling. The local authority will then notify the applicant of any work required to ensure compliance, with or without relaxation, and when this has been carried out to their satisfaction, they may issue a regularisation certificate. This is stated to be evidence (but not conclusive evidence) that the relevant specified requirements have been complied with.

2.15 Contravening works

Under section 36 of the Building Act 1984 where a building is erected, or work is done contrary to the regulations, the local authority may require its removal or alteration by serving notice on the owner of the building. Where work is required to be removed or altered, and the owner fails to comply with the local authority's notice within a period of 28 days, the local authority may remove the contravening work or execute the necessary work itself so as to ensure compliance with the regulations, recovering its expenses in so doing from the defaulter.

A section 36 notice may not be given after the expiration of 12 months from the date on which the work was completed. A notice cannot be served where the local authority has passed the plans and the work has been carried out in accordance with the deposited plans.

The recipient of a section 36 notice has a right of appeal to the magistrates' court. The burden of proving non-compliance with the regulations lies on the authority, but if it shows that the works do not comply with an Approved Document (under section 7), then the burden shifts. The appellant against the notice must then prove compliance with the regulations: *Richards* v. *Kerrier District Council* (1987) CILL 345, 4-CLD-04–26.

Section 37 provides an alternative to the ordinary appeal procedure. Under that section, the owner may notify the local authority of his intention to obtain from 'a suitably qualified person' a written report about the matter to which the section 36 notice relates. Such notices are served where the local authority considers that the technical requirements of the regulations have been infringed.

The expert's report is then submitted to the local authority. In light of it the local authority may withdraw the section 36 notice and *may* pay the owner the expenses which he has reasonably incurred in consequence of the service of the notice, including his expenses in obtaining the report. Adopting this procedure has the effect of extending the time for compliance with the notice or appeal against it from 28 to 70 days.

If the local authority rejects the report, it can then be used as evidence in any appeal under section 40, and section 40(6) provides that:

> 'if, on appeal … there is produced to the court a report that has been submitted to the local authority … the court, in making an order as to costs, may treat the expenses incurred in obtaining the report as expenses for the purposes of the appeal.'

Thus, in the normal course of events, if the appeal was successful, the owner would recover the cost of obtaining the report as well as his other costs.

The local authority – or anyone else – may also apply to the civil courts for an injunction requiring the removal or alteration of any contravening works. This power

Table 2.2 Current levels of fines for summary offences.

Level on standard scale	Amount of fine
Level 1	£200
Level 2	£500
Level 3	£1000
Level 4	£2500
Level 5	£5000

is exercisable even in respect of work which has been carried out in accordance with deposited plans, e.g. oversight or mistake on the part of the local authority. In such a case the court might well order the local authority to pay compensation to the owner. The 12 months' time limit does not apply to this procedure, which is, however, unusual and rarely invoked in practice. The attorney general, as guardian of public rights, may seek an injunction in similar circumstances and in practice proceedings for an injunction must be taken in his name and with his consent.

Where a person contravenes any provision in the Building Regulations, he renders himself liable to prosecution by the local authority. The case is dealt with in the magistrates' court. Such a person is liable on summary conviction to a fine not exceeding level 5 on the 'standard scale' and to a further fine not exceeding £50 per day for a continuing offence (Building Act 1984, section 35).

The standard scale of fines for summary offences was introduced by section 37 of the Criminal Justice Act 1982 (as amended by section 17 of the Criminal Justice Act 1991). The current levels of fines are as shown in Table 2.2.

In *Torridge District Council* v. *Turner* (1991) 9-CLD-07–21, it was held, for reasons which are not entirely clear, that breach of 'do' provisions such as requirement A1 which requires that a building 'shall be so constructed' as to meet the specified standards does not constitute a continuing offence, which means that the proceedings must be commenced within six months of the commission of the alleged offence. This six-month limitation period is specified by *s 127(1)* of the *Magistrates' Court Act 1980* and obliges local authorities to bring prosecutions for breaches of Building Regulations within six months of the completion of the offending work. However, the introduction of *s 35A* of the *Building Act 1984*, inserted by the *Climate Change and Sustainable Energy Act 2006*, allows for an increase in time limit of two years to apply to the prosecution of breaches of certain Building Regulations. These are if the regulations were made:

- for the purpose of furthering the conservation of fuel and power or otherwise in connection with the use of fuel and power or
- for the purpose of reducing emissions of greenhouse gases (within the meaning of the Climate Change and Sustainable Energy Act 2006).

However, as it only applies to breaches occurring on or after 6 April 2008, it has no retrospective effect.

3 Local authority control

3.1 Introduction

Local authorities have exercised control over buildings in England and Wales since 1189, but it was not until 1965 that uniform national Building Regulations were made applicable throughout the country generally. Inner London retained its own system based on the London Building Acts 1930 to 1978 and the bye-laws made thereunder until 6 January 1986. Building Regulations now apply to Inner London, although many provisions of the London Building Acts continue to apply in modified form. The Building Regulations 1985 introduced a number of substantive changes to the system of local authority control, and there have been several modifications to the system since then, culminating in the Building Regulations 2010, which came into force on 1 October 2010. These in turn have been amended ten times, the latest being the Building Regulations &c. (Amendment) Regulations 2015 (SI 2015/767) which came into force at various times between 18 April 2015 and 31 December 2015.

Part 3 of the Building Regulations 2010, as amended, contains the procedural requirements which must be observed where a person proposes to undertake building work covered by the regulations and opts for local authority control. Although a great deal of building work continues to be under local authority control and supervision, an increasing volume of work is now dealt with under an alternative system – private control and supervision by an approved inspector, as explained in Chapter 4. Until January 1997 the private system was confined to housebuilders under the National House Building Council (NHBC) scheme; however, it is now possible to use an approved inspector for any class of building work.

Two main procedural options are available under the local authority system of control:

- control based on service of a building notice; and
- control based on the deposit of full plans.

There are also a number of cases – where the work relates to the installation of gas, solid fuel or oil-fired combustion appliances, drainage and plumbing works, electrical work, the recovering of roofs and the installation of replacement windows, doors and roof lights – where neither notice nor deposit of plans is required. This relates to work carried

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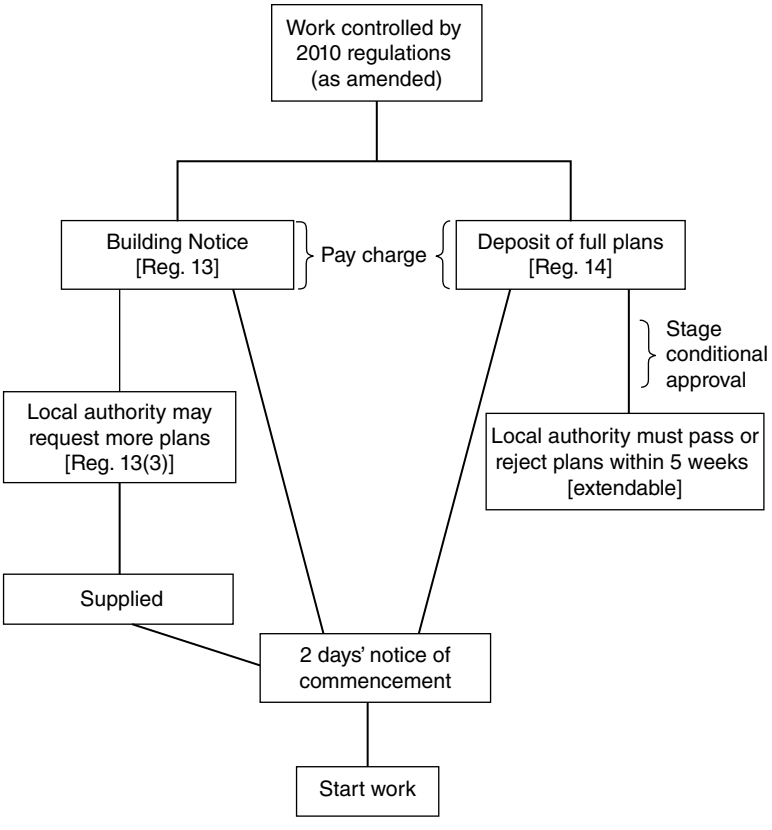

Fig. 3.1 Local authority supervision.

out by 'Competent Persons' under a registered Competent Person Scheme and is covered in detail in Chapter 5. It is also possible to have an intermediate situation where plans may be passed in stages.

3.2 The local authority

The local authority for the purposes of the regulations is the district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Inner Temple and the Council of the Isles of Scilly (Fig. 3.1).

3.3 Building notice procedure

The major procedural innovation introduced in 1985, and now to be found in the 2010 Regulations, is based on service of a building notice. There is no approval of plans. Interestingly, this is copied from the former Inner London system.

A person intending to carry out building work, replace or renovate a thermal element in a building to which the energy efficiency requirements apply, make a change to a building's energy status or make a material change of use of a building, may give a building notice to the local authority except in the following cases:

(1) where it is intended to carry out building work in relation to a building to which the Regulatory Reform (Fire Safety) Order 2005 applies or will apply after the completion of the building work (essentially, all fixed workplaces in England and Wales but excluding locations such as mineshafts, boreholes and open areas outside buildings in forestry and farming);
(2) where it is intended to carry out work which includes the erection of a building fronting onto a private street;
(3) where the work involves the building over of any sewers, disposal mains or drains shown on any map of sewers kept by a sewerage undertaker under section 199 of the Water Industry Act 1991 (i.e. when paragraph H4 of Schedule 1 imposes a requirement).
(4) a person intending to carry out building work in relation to which Part P (Electrical Safety – Dwellings) of Schedule 1 imposes a requirement is required to give a building notice or deposit full plans where the work consists of:
    (a) the installation of a new circuit;
    (b) the replacement of a consumer unit; or
    (c) any addition or alteration to existing circuits in a special location.

Normally, the building notice should be given at least two clear days before commencement of work. However, since there may be occasions when it is necessary to carry out emergency repairs on a building (especially with regard to building services where the work is subject to control), a building notice may be given to the local authority as soon as reasonably practicable after the work has started in these circumstances. This would not, of course, be necessary if the work was being carried out by a competent person (see section 3.4).

There is no prescribed form of building notice. The notice must be signed by the person intending to carry out the work or on his behalf and must contain or be accompanied by the following information:

- The name and address of the person intending to carry out the work.
- A statement that it is given in accordance with regulation 12(2)(a).
- A description of the proposed building work, renovation or replacement of a thermal element, change to the building's energy status or material change of use.
- A description of the location of the building to which the proposal relates and the use or intended use of that building.
- In the case of a new dwelling:
    (i) a statement whether or not any optional requirement applies to the building work, and if so which, or
    (ii) a statement that planning permission has not yet been granted for the work, and that the information required by subparagraph (i) will be supplied before the end of a period of 28 days beginning on the day after that permission is granted.

- If it relates to the erection or extension of a building, it must be supported by a plan to a scale of not less than 1:1250, showing size and position of the building; its own boundaries and its relationship with adjoining boundaries; the size, position and use of every other building within its boundaries; the width and position of any streets on or within its boundaries; the number of storeys and the provisions to be made for its drainage. Where any local legislation applies, the notice must state how it will be complied with.

The local authority is not required to approve or reject the building notice and, indeed, has no power to do so. However, it is entitled to ask for any plans it thinks are necessary to enable it to discharge its building control functions and may specify a time limit for their provision.

The regulations make plain that the building notice and plans shall not be 'treated as having been *deposited* in accordance with the Building Regulations'. In some ways this is an odd provision because the relevant building control sections of many of the local Acts of Parliament – which provide for special local requirements – are triggered off by the 'deposit' of plans. At first sight, therefore, this would render such requirements inoperative, but presumably it is thought that compliance will be ensured through the requirement that the building notice must contain a statement of the steps to be taken to comply with any local enactment.

Once a building notice has been given, work can be commenced, although there is a requirement (see below) that the local authority be notified at least two days before work commences.

A building notice remains in effect for a period of three years from the date on which it was given to the local authority. If the work has not been commenced within that period or the change to the building's energy status has not been made or the material change of use has not been made, the building notice lapses automatically.

3.4 Exemptions from the requirement to give a building notice or deposit full plans

A person who intends to carry out building work consisting only of the work described in the first column of Schedule 3 (see Chapter 5) is not required to give a building notice or deposit full plans if the work is to be carried out by a person described in the corresponding entry in the second column of the Schedule. Additionally, this same exemption exists for work described in Schedule 4 (see Chapter 5).

3.5 Deposit of plans

This is the traditional system of building control by which full plans are deposited with the appropriate local authority in accordance with section 16 of the Building Act 1984, as supplemented by regulation 14. Section 16 imposes a duty on the building control authority to either pass or reject plans deposited for the proposed work.

In *Murphy* v. *Brentwood District Council* (1990) 20 ConLR 1, CA, the Court of Appeal held that the duty is imposed on the local authority itself either to pass or reject the

deposited plans, and it cannot discharge its duty by delegating performance to outside consultants. If the local authority leaves it to outside consultants to decide whether plans are passed or rejected, the local authority is vicariously responsible if the consultants are negligent, subject to proof of recoverable damage.

However, the Court of Appeal proceeded on the basis that *Anns* v. *London Borough of Merton* [1978] AC 728; [1977] 2 All ER 492, HL; 5 BLR 1 was rightly decided, and in light of the fact that *Anns* was subsequently overruled, it is thought that the local authority could only be vicariously liable in these circumstances (if at all) where personal injury was suffered by the occupier or there was damage to other property. Indeed, it is probable that in the current climate of judicial opinion the local authority would be held able to discharge its section 16 duty by reliance on competent outside expertise.

If the plans submitted are not defective, the authority has no alternative but to approve them unless, of course, they contravene the linked powers discussed in Chapter 1.

Where the proposed works are subject to the regulations, and it is proposed to deposit full plans, the provisions of section 16 and regulation 14 must be observed. The local authority must give notice of approval or rejection of plans within five weeks unless the period is extended by written agreement. The extended period cannot be later than two months from the deposit of plans, and any extension must be agreed before the five-week period expires. However, the five-week period does not begin to run unless the applicant submits a 'reasonable estimate' of the cost of the works (where applicable) and pays the plan charge at the same time as the plans are deposited.

The approval lapses if the work is not commenced within a period of three years from the date of the deposit of the plans, provided the local authority gives formal notice to this effect. The local authority must pass the plans of any proposed work deposited with them in accordance with the regulations unless the plans are defective or show that the proposed work would contravene the regulations. The notice of rejection must specify the defects or nonconformity, and the applicant may then ask the Secretary of State to determine the issue. His decision is then final. The Secretary of State may refer questions of law to the High Court and must do so if the High Court so directs.

The local authority may pass plans by stages, and, where it does, it must impose conditions as to the deposit of further plans. It may also impose conditions to ensure that the work does not proceed beyond the authorised stage. It has the power to approve plans subject to agreed modifications, e.g. where the plans are defective in a minor respect or show a minor contravention. However, it should be noted that local authorities are not obliged to pass plans conditionally or in stages, and the applicant must agree in writing to these procedures.

The 'full plans' required under the deposit method are the same as those required under the building notice procedure, together with such other plans as are necessary to show that the work will comply with the Building Regulations.

Regulation 14 specifies that the plans must be deposited in duplicate; the local authority retains one set of plans and returns the other set to the applicant. They must be accompanied by a statement that they are deposited in accordance with regulation 12(2)(b) of the 2010 Regulations and also a statement as to whether the Regulatory Reform (Fire Safety) Order 2005 applies to the building or will apply after the completion of the building work. Two additional copies of the plans must be submitted where Part B (Fire Safety) imposes a requirement in relation to the work and both additional plans may be retained

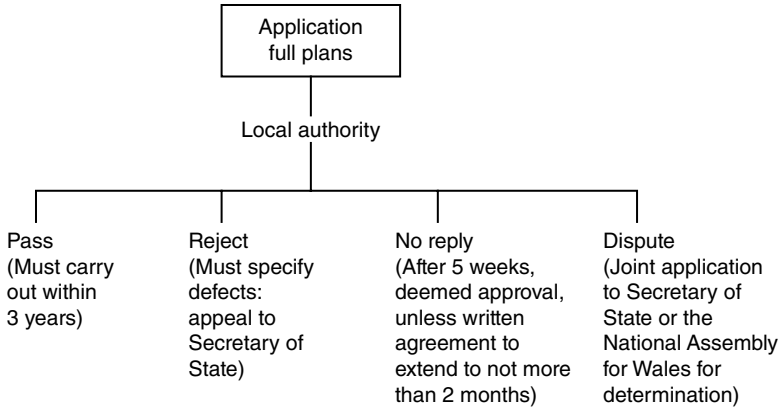

Fig. 3.2 The full plans procedure.

by the local authority, although it is not necessary to provide additional copies of the plans where the proposed work relates to the erection, extension or material alteration of a dwelling house or flat. Where it is proposed to build over a sewer and regulation H4 applies, particulars of the precautions to be taken must be provided.

Work may be commenced as soon as plans have been deposited – although the local authority must be given notice of commencement at least two days before work commences – but it is an unwise practice to commence work before notice of approval is received.

If the applicant wants the authority to issue a completion certificate (see section 3.7) in due course, a request to that effect should accompany the plans.

The advantage of the full deposit of plans method of control is that, if the work is carried out exactly in conformity with the plans as passed by the local authority, they cannot take any action in respect of an alleged contravention under section 36 of the Building Act 1984.

The deposit of full plans procedure and the possible alternative solutions are shown diagrammatically in Fig. 3.2.

3.5.1 Consultation with the sewerage undertakers

Regulation 15 requires that where full plans have been deposited with the local authority and there are proposals to build over a sewer (as covered by paragraph H4 of Schedule 1 to the Building Regulations 2010), the local authority must consult the sewerage undertaker:

- as soon as practicable after the plans have been deposited; and
- before issuing any completion certificate in relation to the building work in accordance with regulation 17 or 17A.

The local authority must give the sewerage undertaker sufficient plans to show whether the work would comply with the requirements of paragraph H4 and have regard to any views it expresses. The local authority must not pass plans or issue a completion

certificate until 15 days have elapsed from the date on which the sewerage undertaker was consulted (unless, of course, the sewerage undertaker has expressed its views to the local authority before the 15 days has expired).

3.6 Notice requirements

Wherever the work is to be supervised by the local authority, in addition to the building notice or deposit of plans, the person undertaking the work must pay an inspection charge and give certain notices to the local authority.

The 2010 regulations regarding the giving of notice to the local authority for the completion of certain stages of work were substantially revised in the Building Regulations &c. (Amendment) Regulations 2012 (*SI 2012/3119*). Amendment regulation 9 amends regulation 16 of the Building Regulations by removing the statutory requirement to notify a local authority at specific stages of building work. Instead, regulation 16 enables a local authority to set out at what stages it requires those undertaking the building work to notify them. The regulation also requires that these stages be based on the intention to inspect and the assessed risk of non-compliance with building regulations.

Although regulation 16 is couched in somewhat complicated legalistic terms, the essentials of it are relatively straightforward and can be stated as follows:

- On receipt of a written notice of commencement from the person carrying out the work (they must give at least two days clear notice to the LA), the LA must carry out a risk assessment and issue a schedule to the applicant stating:
  (a) The specified stages of work at which the LA requires to carry out an inspection, and
  (b) When those stages must be made available for inspection.
- The time periods specified will depend on the type of work being carried out. Therefore they may relate to a period before or after the work has been carried out within which the notification must be made and/or a period during which the work concerned must not be covered up.

In addition to this the LA will in any case require the following periods of notice related to completion of a project:

- not more than five days after the work has been completed and
- at least five days notice before the building or any part of it is occupied where a building is being erected to which the Regulatory Reform (Fire Safety) Order 2005 applies, or will apply after the completion of the work, and that building (or any part of it) is to be occupied before completion.

Interestingly, a local authority may only specify a stage of the building work in accordance with (a) above if at the time they do so they intend to carry out an inspection of that stage.

Failure to give the required notices is a criminal offence, punishable on summary conviction by a substantial fine.

In practice the majority of local authorities do not seek to enforce the penalty but rely on their powers to serve written notice requiring the person concerned within a reasonable time to cut into, lay open or pull down so much of the work as is necessary to enable them to check whether it complies with the regulations.

Where the person carrying out the work is advised in writing by the local authority of contravening works and has rectified these as required by the local authority, he must give the authority written notice within a reasonable time after the completion of the further work.

'Reasonable time' is not defined in either situation; it is a question of fact in each case. The phrase has been judicially defined as being 'reasonable under ordinary circumstances': *Wright* v. *New Zealand Shipping Co*. [1878] AC 23.

There is no definition of the term 'person carrying out building work' in the regulations, but in *Blaenau Gwent Borough Council* v. *Khan* (1993) 35 ConLR 65, the High Court held that the owner of a building who authorises a contractor to carry out building works on his behalf fell within the term. The court took the view that those words should not be confined so as to restrict the meaning of the phrase to the person who physically performs the work 'but includes the owner of the premises on which the works are being performed and who had authorised the work'.

There is now a definition of *day*. It means a period of 24 hours commencing at midnight, i.e. a calendar day, but Saturdays, Sundays and Bank or public holidays are excluded.

The procedure outlined above requires that the local authority's intention to carry out an inspection of a stage of building work must be based on their assessment of the risk of breach of the Regulations if they do not inspect the work. Guidance to local authorities has been issued in a document entitled *Risk assessment decision making tool for building control bodies – Final risk assessment guidance* (January 2012).

The document covers both common projects such as loft conversions and more complex and larger undertakings, such as hospitals. Section 2 of the document provides guidance on the risk assessment of common projects and section 3 provides guidance for more complex projects. The document provides guidance on achieving a site inspection regime of 'appropriate intensity and frequency'.

Risk is defined in the context of identifying construction stages to be notified to Building Control Bodies:

(1) as the likelihood of non-compliance with Building Regulations; and
(2) the potential extent of harm to:
    (a) current and future users of buildings; and
    (b) the environment caused by non-compliance. The risk to the environment includes the aggregate impact on the use of buildings on rates of climate change.

The new risk assessment approach to site inspection mirrors that already carried out by Approved Inspectors (see Chapter 5).

In addition to the notice periods outlined above, there are a number of other notice periods related to thermal calculations and energy performance certificates which are covered in detail in Chapter 16.

3.7 Completion certificate

The local authority must issue a completion certificate within a specified time period when they are satisfied, after having taken all reasonable steps, that the building complies with the relevant provisions of Schedule 1.

The specified time period is eight weeks starting from the date on which the person carrying out the building work notifies the local authority that the work has been completed.

The relevant provisions referred to above are any applicable requirements of the following:

(a) regulation 25A (high energy alternative systems for new buildings),
(b) regulation 26 (target CO_2 emission rates for new buildings),
(c) regulation 29 (energy performance certificates),
(d) regulation 36 (water efficiency of new dwellings),
(e) regulation 38 (fire safety information) and
(f) Schedule 1.

Additionally, a local authority must give a completion certificate within four weeks of being notified by the person carrying out the work in respect of part or all of a building where building work is being carried out and where all of the following circumstances apply:

(a) part or all of the building is to be occupied before the work is completed;
(b) the building is subject to the Regulatory Reform (Fire Safety) Order 2005; and
(c) the authority is satisfied, after taking all reasonable steps, that, regardless of completion of the current building work, those parts of the building which are to be occupied before completion of the work currently comply with regulation 38 (Fire Safety Information) and Part B (Fire Safety) of Schedule 1.

The completion certificate is evidence – but not *conclusive* evidence – that the requirements specified in the certificate have been complied with.

It should be noted that the local authority cannot be held liable for a fine if it contravenes this regulation by failing to give a completion certificate (see regulation 47).

4 Private certification

4.1 Introduction

One of the Government's aims in reforming the previous system of building control was to provide an opportunity for self-regulation by the construction industry through a scheme of private certification. This is not a complete substitute for local authority control, because local authorities will always remain responsible for taking any enforcement action which may be necessary. Indeed, in certain closely defined circumstances, they may resume their control functions.

The developer is given the option of having the work supervised privately rather than relying on the local authority control system described in Chapter 4. Essentially, the private certification scheme is based on the proposals set out in a Government White Paper *The future of building control in England and Wales* published by HMSO in February 1981.

The statutory framework of the alternative system is contained in Part II of the Building Act 1984. In broad terms, this provides that the responsibility for ensuring compliance with Building Regulations may, at the option of the person intending to carry out the work, be given to an approved inspector instead of to the local authority. It also enables approved public bodies to supervise their own work. Various supplementary provisions deal with appeals, offences and registration of certain information.

The detailed rules and procedures relating to private certification are to be found in the Building (Approved Inspectors, etc.) Regulations 2010, as amended, which also contain prescribed forms that must be used.

It has taken some considerable time for the private certification system to become fully operational even though the first approved inspector, the National House Building Council (NHBC), was approved on 11 November 1985. Their original approval related only to dwellings of not more than four storeys, but this was later extended to include residential buildings up to eight storeys, and this was further extended in 1998 to include any buildings.

The approval of further corporate bodies as approved inspectors was held up by a number of factors but was due mainly to the difficulty posed in obtaining the level of insurance cover which was required by the then Department of the Environment. After a period of consultation, new proposals for insurance requirements were agreed and these were implemented on 8 July 1996. At the same time the Construction Industry Council

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(CIC) was designated as the body for approving non-corporate inspectors, although the Secretary of State reserved the right to approve corporate bodies. Furthermore, from 1 March 1999 the CIC became responsible also for the approval of corporate approved inspectors.

Three further corporate bodies were approved by the Secretary of State on 13 January 1997. Others (including a number of non-corporate approved inspectors) have continued to be approved since that date (at the time of writing, 90 Approved Inspectors were entered on the CIC register), but until 31 October 2005, NHBC Building Control Services Ltd remained the only body insured to deal with speculative domestic construction (i.e. self-contained houses, flats and maisonettes built for sale to private individuals).

In this context, the DTLR issued insurance guidelines on 23 October 2001 that allowed approved inspectors to carry out their building control function on a range of different dwelling types, except so-called 'non-exempt' dwellings. This definition excluded speculative dwellings constructed by house-building companies for sale to the public. During 2004 the ODPM consulted on proposals for a 'Warranty Link Rule' whereby Approved Inspectors requiring to perform building control duties on new dwellings built for private sale or renting could carry out this function provided that the dwelling also carried an approved housing warranty from an approved provider. This resulted, on 31 October 2005, in the opening up of the private housing market to Approved Inspectors and ended the NHBC's monopoly of this area of work.

In January 2012 the Department for Communities and Local Government (DCLG) consulted on changes to the Building Regulations in England which included the proposal to remove the Warranty Link Rule. The majority of those who responded were in favour of the proposal. The removal of the Warranty Link Rule took effect on 6 April 2013 in respect of initial notices or combined initial notices and plans certificates given on or after 6 April 2013 and applied to England only. From 6 April 2013 Approved Inspectors are no longer required to check if new dwellings were registered with a designated warranty scheme provider before undertaking the building control function on building work involving the creation by new build or conversion of any new dwellings for sale or private renting. In Wales the Warranty Link Rule was withdrawn on 1 September 2013.

Further information on corporate and non-corporate approved inspectors may be obtained from The Association of Consultant Approved Inspectors, c/o 17 Campbell Mews, Sovereign Harbour North, Eastbourne, East Sussex, BN23 5AH or from their website: http://approvedinspectors.org.uk.

4.2 Insurance requirements

The approval process of the CIC ensures that all Approved Inspectors are well qualified to carry out the building control function. However, Approved Inspectors do not have the financial strength of local authorities as permanent, statutory bodies. For this reason, one of the safeguards provided for in the legislation is that an Approved Inspector must have professional indemnity insurance approved by the Secretary of State.

This indirectly protects clients and others who may be adversely affected by any negligence on the part of the Approved Inspector, by ensuring that, subject to the limits on cover, the Approved Inspector has the financial resources to comply with any award of damages or out of court settlement.

Until 6 April 2013 in England and 1 September 2013 in Wales, Approved Inspectors were obliged to give details of their approved insurance scheme each time they interacted with a local authority. In effect, this statement of approved insurance had to be made whenever they served an initial notice, amendment notice, plans certificate, combined initial notice and plans certificate or a final certificate on the local authority. *The Building Regulations etc (Amendment) Regulations 2012 (SI 2012/3119)* ended this obligation provided that the Approved Inspector had supplied its declaration of insurance to the person that had approved it (i.e. the Secretary of State or the CIC) before the service of the notices referred to above. The insurance cover provided under these schemes indemnifies the approved inspector in respect of claims arising from the conduct of their building control functions.

A 17 September 1997 circular letter to local authorities and Approved Inspectors from the then Department for the Environment, Transport and the Regions reminded addressees that NHBC Building Control Services Ltd is insured by its parent, the NHBC, under two schemes approved in 1985 and 1996, respectively. These two schemes together cover all descriptions of building control work. The approvals of those schemes remain in place.

Since the NHBC deals mainly with dwellings, the insurance cover required is more extensive than that needed for other types of buildings. In fact, the NHBC has to provide two different types of insurance policy:

- *Ten-year no-fault insurance* against breaches of the Building Regulations relating to site preparation and resistance to moisture, structure, fire, drainage and heat-producing appliances. The limit on cover is related to the original cost of the work allowing for inflation during the ten-year period up to a maximum of 12% per annum compound.
- *Insurance against the approved inspector's liabilities in negligence for* 15 years from the issue of the Final Certificate for each dwelling. The limit of cover is twice the cost of the building work (unless there is a simultaneous claim made under the no-fault policy), together with cover against claims made for personal injury (which is normally £100,000 per dwelling). This is also proof against inflation up to 12% compound per annum and is subject to a minimum of £1 million per site.

The Secretary of State has approved, under section 47(6) of the Building Act 1984, the following additional insurance schemes:

- Howden Insurance Brokers Limited t/a Howden Windsor scheme, Howden Insurance Brokers Limited, 71 Fenchurch Street, London EC3M 4BS, tel: 020 7133 1400, email: info@howdengroup.com
- Griffiths & Armour, 145 Leadenhall Street, London EC3V 4QT, tel: 020 790 1100, email: piinsurance@griffithsandarmour.com

These schemes are governed by the following criteria.

Criteria for schemes of insurance for Approved Inspectors pursuant to section 47(6) of the Building Act 1984 – October 2005

(a) **Professional Indemnity cover**
Schemes must provide for professional indemnity insurance covering the AI for losses arising from claims on him/it in respect of negligence, or alleged negligence, in the performance of his/its duties as an AI.

The following minimum limits apply to such cover:

(i) for claims against the AI in respect of personal injury (including illness, disease and death) an aggregate limit of £5m per claim (all claims attributable to one occurrence shall be treated as one claim).

(ii) for other claims against the AI, a limit of £1m per claim (all claims attributable to one occurrence shall be treated as one claim) subject to a minimum aggregate limit of £15m for all claims against the AI in respect of his or its work carried out in any one period of 12 months.

(b) **Defence costs**
Cover is to extend to the AI's defence costs, which are to be treated on a 'costs in addition basis', that is, such costs will not be taken into account for the per claim limits, though they will count towards the aggregate limit of £15m.

(c) **Automatic run-off cover**
In relation to:

(i) any personal injury claims; and

(ii) non-injury claims brought by an owner–occupier in relation to his/her only or main residence, other than under the law of contract,

cover must be provided in respect of claims notified to the insurer within ten years of the date of completion of the AI's work in respect of the relevant building project, whether that date is that of acceptance of a final certificate, or of some other event marking the practical termination of the AI's involvement in the project.

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) **Index linking**
Not required.

(e) **Excess**
Not more than £5000 per claim.

(f) **Voiding of cover**
In line with commercial practice, reasonable provisions for voiding of cover will be allowed.

It should be noted that the schemes operated by PYV Limited and Zurich Building Control Services Ltd have been withdrawn.

4.3 Approval of inspectors

Section 49 of the Building Act 1984 defines an 'approved inspector' as being a person approved by the Secretary of State or a body designated by him for that purpose.

The rules which govern the duties, responsibilities and activities of Approved Inspectors are contained principally in *Part II* of the *Building Act 1984* and the *Building (Approved Inspectors etc.) Regulations 2010 (SI 2010/2215)* (the AI Regulations), as amended.

The Building Act has been amended many times since its inception, and these amendments are incorporated in the text below. The current AI Regulations were made on 6 September 2010 and came into force on 1 October 2010. They revoked and replaced, with amendments, the *Building (Approved Inspectors etc.) Regulations 2000 (SI 2000/2532)* and consolidated all subsequent amendments to those regulations. They have been further amended several times since coming into force, the principal amendments being contained in the *Building Regulations etc (Amendment) Regulations 2012 (SI 2012/3119)* and the *Building regulations &c. (Amendment) Regulations 2015 (SI 2015/767)* and the text below reflects these amendments.

Part 2 of the AI Regulations sets out the detailed arrangements and procedures for the grant and withdrawal of approval.

There are two types of Approved Inspector:

- corporate bodies, such as the NHBC or JHAI Ltd; and
- individuals, not firms.

Approval may limit the description of work in relation to which the person or company concerned is an Approved Inspector.

Approval of an inspector is not automatic. Any individual or corporate body wishing to operate as an Approved Inspector must satisfy several criteria. They must hold suitable professional qualifications, have adequate practical experience and carry suitable indemnity insurance as outlined above. They must also be registered with a body designated for that purpose by the Secretary of State. The CIC established the Construction Industry Council Approved Inspectors Register Ltd (CICAIR Ltd) to maintain and operate the Approved Inspector Register in accordance with the responsibilities entailed by CIC's appointment as a designated body on 8 July 1996. On 13 March 2014 the Secretary of State announced that CICAIR Ltd had become the designated body for the approval of Approved Inspectors.

The CICAIR route to qualification for Approved Inspectors involves the following stages of assessment.

4.3.1 Application

To ensure that professional standards are maintained, Approved Inspectors must undergo a robust application process and repeat this application process every five years to maintain their Approved Inspector status. Applications will be processed within six months of receipt and, to meet the requirements of the EU Services Directive, if an application has not been processed within this six month period, it will be deemed to have been successful.

There are four stages involved in the assessment process to become an Approved Inspector or be reapproved:

(1) **Application**

The applicant completes an application form including a detailed knowledge base. The knowledge base is the heart of the application and requires demonstration of

how the applicant's knowledge and experience equip them for the duties and responsibilities of an Approved Inspector. The knowledge base addresses six key areas:

- Legislation and Building Control
- Business Management and Professional Ethics
- Construction Technology and Sustainability
- Fire Studies
- Structural Design
- Building Services and Environmental Engineering

(2) **Pre-qualification verification**
On receipt of an application, the CICAIR Ltd Registrar will check if all the information requested on the form has been provided and the application is in the required format. Applicants will be asked to provide anything found to be missing or clarify any queries before the application can be progressed further.

(3) **Admissions panel**
On successful completion of the pre-qualification verification, the application is considered by professional Assessors who decide whether the applicant has demonstrated the necessary experience and knowledge to merit a professional interview. Assessors include both qualified Approved Inspectors and experts nominated from across the range of disciplines represented by CIC members.

(4) **Professional interview**
Successful completion of all the application assessment stages will result in the applicant being invited to register, subject to their adoption of the Building Control Performance Standards in their working practices, the Code of Conduct for Approved Inspectors and insurance restrictions for minor works, which are pre-requisites for entry onto the Register. Approved Inspector registration is valid for a period of five years, after which time reapproval is required.

Applicants' attention is drawn to a letter proscribing franchising dated 26 September 2012 and a follow-up letter dated 14 May 2013 whereby persons working for Approved Inspectors must be directly employed by them as defined by HM Revenue and Customs.

Application fee
The fee to cover the approval or reapproval process is £3500 (plus VAT).

Registration fee

(1) **New applicant** – a registration fee of £500 annually prior to the anniversary of registration.
(2) **Reapproval** – the registration fee following reapproval is 0.8% (plus VAT) of the Approved Inspector's average turnover for the five years prior to reapproval.

If the fee is less than £5000, it must be paid in full prior to the registration renewal. If the fee is more than £5000, it may be paid in five equal instalments, with the first instalment to be paid prior to the registration renewal and the subsequent instalments paid annually prior to the anniversary of registration.

The minimum registration fee is £2000 (plus VAT).

Application forms for new applicants
Standard application forms are provided for both corporate (companies) and non-corporate (individuals and sole traders) applicants.

Application forms for reapproval
Forms are also provided for:

- Approved inspector reapproval applications
- Approved inspector turnover declaration (this must be submitted with the reapproval application)

Change of name
There is a charge of £150 (plus VAT), payable to the CIC, to change the registered name of an Approved Inspector. When requesting a change, an Approved Inspector should submit copies of the change of name certificate issued by Companies House and the revised insurance documentation. CICAIR Ltd will issue a new certificate, amend the Register and notify the relevant authorities.

Code of conduct
All Approved Inspectors are required to sign up to the CIC's Code of Conduct for Approved Inspectors.

If an applicant/candidate is unsuccessful at any stage in the assessment, he/she will be given reasons and, on application to the Registrar, any advice CICAIR is able to give. Opportunities for appeals against decisions are provided.

The CIC can withdraw its approval – for example, if the inspector has contravened any relevant rules of conduct or shown that he or she is unfitted for the work.

More seriously, where an approved inspector is convicted of an offence under section 57 of the 1984 Act (which deals with false or misleading notices and certificates), the CIC may withdraw its approval. In this case the convicted person's name would be removed from the list for a period of five years. There is no provision for appeals or reinstatement.

The Secretary of State may withdraw approval of any designated body, thus ensuring that the designated bodies act responsibly in giving approvals. Such action would not necessarily prejudice any approvals given by the designated body, but the Secretary of State can, if so desired, withdraw any approvals given by the designated body.

Provision is made for the Secretary of State to keep lists of designated bodies and inspectors approved by him and for their supply to local authorities. He must also keep the lists up to date (if there are withdrawals or additions to the list) and must notify local authorities of these changes.

In a similar manner, designated bodies are required to maintain a list of inspectors whom they have approved. There is no express provision for these lists to be open to public inspection, although the designated body is bound to inform the appropriate local authority if it withdraws its approval from any inspector.

In approving any inspector, either the Secretary of State or a designated body may limit the description of work in relation to which the person concerned is approved. Any limitations will be noted in the official lists, as will any date of expiry of approval.

4.4 Approved persons and self-certification by competent persons

The following bodies, together with the Chartered Institution of Building Services Engineers, have been designated to approve private individuals who wish to become approved persons who can certify plans to be deposited with the local authority as complying with the energy conservation requirements:

- The Chartered Institute of Constructors
- The Faculty of Architects and Surveyors
- The Association of Building Engineers
- The Institution of Building Control Officers
- The Institution of Civil Engineers
- The Institution of Structural Engineers
- The Royal Institute of British Architects
- The Royal Institution of Chartered Surveyors

Additionally, the Institution of Civil Engineers and the Institution of Structural Engineers have been designated to approve persons to certify plans as complying with the structural requirements. Approved *Persons* under section 16(9) of the Building Act should not be confused with Approved *Inspectors* under sections 47 to 56 or *Competent Persons* operating under self-certification schemes discussed in Chapter 5. As yet however, no approved persons have been designated in England and Wales.

4.5 Self-certification schemes and the Approved Inspector

Since April 2002 a number of self-certification schemes have existed for relatively minor work where the person carrying out the work (known as a Competent Person under the Regulations) has been able to self-certify to the local authority (or other registration body such as CERTASS Ltd) that the work complies with the requirements of the relevant Building Regulations (see Chapter 5).

Until the coming into force of the Building and Approved Inspectors (Amendment) Regulations 2006, this process only involved local authorities and did not apply to Approved Inspectors. A new regulation 11A introduced by the aforementioned regulations has applied this process to Approved Inspectors and has, at the same time, increased the number of such Competent Person Schemes. Approved Inspectors are now authorised to accept, as evidence that the requirements of regulations 4 and 7 of the Building Regulations 2000 have been satisfied, a certificate to that effect by a person carrying out the building work. The person must be registered under the relevant Competent Person Scheme, and the details of these may be found in the Table in Schedule 3 attached to the Building regulations 2010 (as amended) and reproduced in Chapter 5. The certificate must be given to the occupier of the property and the Approved Inspector not more than 30 days after completion of the work.

4.6 Independence of Approved Inspectors

An Approved Inspector cannot supervise work in which he or she has a professional or financial interest, unless it is 'minor work'. In this context, 'minor work' means:

(1) The material alteration or extension of a dwelling house (not including a flat or a building containing a flat) which has two storeys or less before the work is carried out and which afterwards has no more than three storeys. A basement is not regarded as a storey.
(2) The provision, extension or material alteration of controlled services or fittings (see section 2.4 for definition of controlled services or fittings).
(3) Work involving the underpinning of a building.

Independence is not required of an inspector supervising minor work, but the limitation on the number of storeys should be noted.

There is a broad definition of what is meant by having a professional or financial interest in the work, the effect of which is to debar the following:

- anyone who is or has been responsible for the design or construction of the work in any capacity, e.g. the architect;
- anyone who or whose nominee is a member, officer or employee of a company or other body which has a professional or financial interest in the work, e.g. a shareholder in a building company; and
- anyone who is a partner or employee of someone who has a professional or financial interest in the work.

However, involvement in the work as an approved inspector on a fee basis is not a debarring interest!

4.7 Approval of public bodies

Public bodies are able to supervise their own building work by following a special procedure, which is detailed in the regulations. For the purposes of the Building Act, a Public Body is a corporate or unincorporated body that acts under an enactment for public purposes and not for its own profit and is, or is of a description that is, approved by the Secretary of State in accordance with building regulations. It is doubtful if any Public Bodies actually carry out their own building control procedures at present. Formerly, the British Airports Authority acted as a Public Body, but they established their own Approved Inspector Company some years ago as BAA Building Control Services Ltd (now known as LHR Building Control Services Ltd).

Regulation 21 empowers the Secretary of State (or the Welsh Ministers) to approve public bodies for this purpose, although, curiously, no criteria have been laid down as to the qualification and experience of the personnel involved. The regulation confers wide discretionary powers on the Secretary of State or the Welsh Ministers, but clearly approval

will be limited to those bodies which may reasonably be expected to operate responsibly without detailed supervision. The regulations relating to notices, consultation with the fire authority and the sewerage undertaker, plans certificates and final certificates mirror those of Part II of the Building Act 1984 dealing with Approved Inspectors. The grounds on which the local authority may reject a public body's notice, etc. mirror those applicable to the approved inspector system, except that:

- there is no provision for cancellation of a public body's notice;
- there is no requirement that there should be an approved insurance scheme in force; and
- unlike Approved Inspectors, public bodies do not have to be independent of the work they are supervising under the regulations (i.e. they can carry out a building control service on projects which they have designed and are building themselves).

To date, only the Metropolitan Police Authority has been prescribed as a public body under the provisions of the Building Act 1984, section 5, although it is exempt from the procedural requirements, so it does not have to submit notices etc. to the local authority. However, it must still comply with the substantive requirements of the regulations.

4.8 Private certification procedure

The procedures which operate when using an approved inspector are illustrated in Fig. 4.1. The left column shows the steps applicable to the person carrying out the building work (i.e. the client) and the right column indicates the duties and responsibilities of the approved inspector. Joint actions are indicated in the centre column.

4.8.1 Initial notice

If the developer decides to employ an Approved Inspector, whether an individual or a corporate body, the first formal step in the process is for the applicant and the approved inspector jointly to give to the local authority in whose area the work is to be carried out an initial notice in the prescribed form. The purpose of the initial notice is to make the local authority aware that building work in their area is being properly controlled under the regulations and to notify them of certain linked powers that they have under the Building Act 1984 and any local Acts of Parliament.

The initial notice must be signed by the Approved Inspector and the 'person intending to carry out the work'. This is not usually the builder but the person on whose behalf the work is being carried out (i.e. the client).

The initial notice must be in a prescribed form, and it is a contravention of the regulation to start work before the notice has been accepted. Figure 4.2 shows a typical initial notice. It must contain:

- A description of the work.
- A declaration that an approved scheme of insurance applies to the work, which must be signed by the insurer.

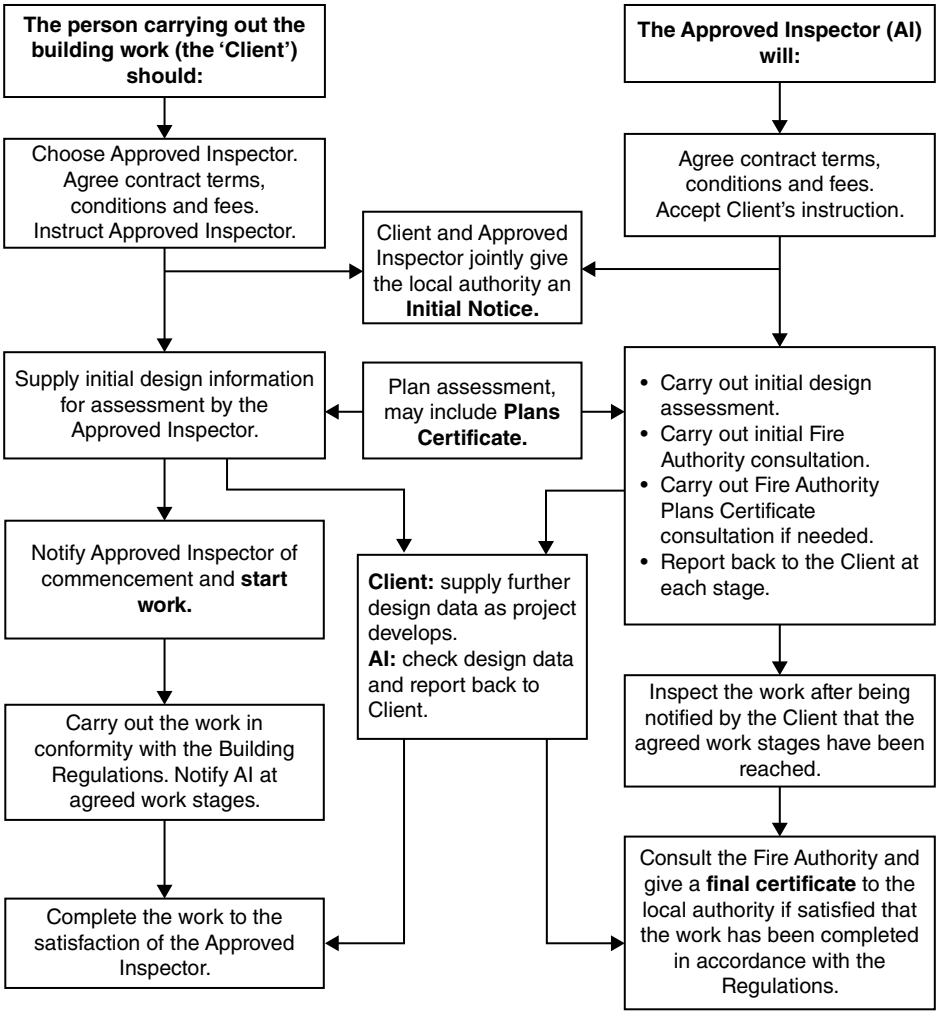

Fig. 4.1 Private certification procedure.

- A copy of the notice of approval.
- In the case of a new building or extension, a site plan to a scale of not less than 1:1250 showing the boundaries and location of the site.
- Where the work includes the construction of a new drain or private sewer, a statement:
  (1) as to the approximate location of the proposed connection that is to be made to the sewer; or
  (2) where no connection is to be made to a sewer, as to the method of discharge of the proposed drain or private sewer. This could include, for example, the location of any septic tank and secondary treatment system or any wastewater treatment system or cesspool.

- A statement of any local legislation relevant to the work and the steps to be taken to comply with it.
- A statement confirming that the work is not minor work.
- A declaration that the Approved Inspector has no financial or professional interest in the work (other than for minor work).

A N APPROVED INSPECTORS LTD
Initial Notice

This notice is issued pursuant to section 47 of the Building Act 1984 ("the Act") and the Building (Approved Inspectors etc.) Regulations 2010 as amended

To:- Building Control Manager
Local Authority:- .....
Address:- .....
.....

Person intending to carry out the work:-	Agent / Architect / Contractor:-
Name	Name .....
Address	Address .....
.....	.....
.....	.....
Telephone	Telephone .....

This notice relates to the following work:-
Description of work .....
.....
Address .....
.....
Use of buildings .....

With this notice are the following documents, which are those relevant to the work described in this Notice:-

(a) In the case of the erection or extension of a building, a plan to scale of not less than 1:1250 showing the boundaries and location of the site and (where the work includes the construction of a new drain or private sewer) a statement – (i) as to the approximate location of any proposed connection to be made to a sewer, or (ii) if no connection is to be made to a sewer, as to the proposals for the discharge of the proposed drain or private sewer including the location of any septic tank and associated secondary treatment system, or any wastewater treatment system or cesspool;

(b) In the case of a new dwelling –

(i) A statement whether or not one or more, and if so which, of the following optional requirements in the Building Regulations 2010 applies to the building work –

- regulation 36(2)(b) (optional water efficiency requirement of 110 litres per person per day),
- Schedule 1 Part M optional requirement M4(2) (category 2 – accessible and adaptable dwellings),
- Schedule 1 Part M optional requirement M4(3) (category 3 – wheelchair user dwellings), or

(ii) a statement that planning permission has not yet been granted for the work, and that the information required by (a) will be supplied as soon as is reasonably practicable after that permission is granted.

If applicable a statement of any local enactment relevant to the work, and of the steps to be taken to comply with it

Fig. 4.2 Typical initial notice.

A N Approved Inspectors Ltd declares that:

(i) The work does/does not concern a new dwelling.
(ii) The work is/is not minor work (regulation 9(5) of the 2010 Regulations).
(iii) It does not and will not while this Notice is in force, have any financial or professional interest in the work described (regulation 9(i) to 9(iv) of the 2010 Regulations).
(iv) It will/will not be obliged to consult the fire and rescue authority by regulation 12 of the 2010 Regulations.
(v) It undertakes that before giving a Plans Certificate in accordance with section 50 of the Act or a Final Certificate in accordance with section 51 of the Act it will consult the fire and rescue authority in respect of any of the work described above.
(vi) It will/will not be obliged by regulation 13 of the 2010 Regulations to consult the sewerage undertaker.
(vii) It undertakes that before giving plans a Plans Certificate in accordance with section 50 of the Act, or a Final Certificate in accordance with section 51 of the Act, it will consult the sewerage undertaker in respect of any of the work described above.
(viii) It is aware of the obligations laid upon it by Part 2 of the Act and by regulation 11 of the 2010 Regulations.

A N Approved Inspectors Ltd is an approved inspector for the purpose of Part 2 of the Act in respect of the work described in this notice.

Copies of the notice of approval and of a declaration of insurance relevant to the work described in this notice are on the register kept by the body designated under regulation 3 of the 2010 regulations.

Signed …….....……..	Name…….....……
For and on behalf of A N Approved Inspectors Ltd	Position……..
	Date……...
Signed ……..	Name……..
For and on behalf of the person intending to carry out the work	Position……..
	Date……..……

Fig. 4.2 (*Continued*)

- An undertaking that the Approved Inspector will consult the Fire and Rescue Authority where obliged to do so.
- An undertaking that the Approved Inspector will consult the sewerage undertaker where obliged to do so (i.e. where the works involve building over or near a sewer).

It is essential that the initial notice is fully completed, because the local authority must reject it unless they are satisfied that the notice contains sufficient information. The local authority has five working days in which to consider the notice and may only reject it on prescribed grounds. These are:

- The notice is not in the prescribed form.
- The notice has been served on the wrong local authority.
- The person who signed the notice as an Approved Inspector is not an Approved Inspector.
- The information supplied is deficient because neither the notice nor plans show the location or contain a description of the work (including the use of any building to which the work relates).
- The notice fails to state whether or not the work concerns a new dwelling.

- Where the notice applies to a new dwelling, it fails to contain a statement:
  (1) whether or not one or more, and if so which, of the following optional requirements applies to the building work:
    (i) regulation 36(2)(b) (optional water efficiency requirement of 110 litres per person per day),
    (ii) Schedule 1 Part M optional requirement M4(2) (category 2 – accessible and adaptable dwellings),
    (iii) Schedule 1 Part M optional requirement M4(3) (category 3 – wheelchair user dwellings), or
  (2) a statement that planning permission has not yet been granted for the work and that the information required by (a) will be supplied as soon as is reasonably practicable after that permission is granted.
- The notice is dated on or after 6 April 2013, and after having taken all reasonable steps, the Local Authority is unable to establish that a named scheme of insurance approved by the Secretary of State is in place.
- The Approved Inspector is obliged to consult the sewerage undertaker before giving a plans certificate or final certificate, and the initial notice does not contain an undertaking to do so.
- Where it is intended to erect or extend a building, the local authority considers that a proposed drain must connect to an existing sewer, but no such arrangement is indicated in the initial notice.
- The notice does not contain an undertaking to consult the fire authority (where this is appropriate).
- The notice does not contain a declaration that the Approved Inspector has no financial or professional interest in the work (this does not apply to minor work).
- Local legislative requirements will not be complied with.
- An earlier initial notice has been given for the work, which is still effective. This ground for rejection does not apply if:
  (1) the earlier notice has ceased to be in force and the local authority have taken no positive steps to supervise the work described in it; or
  (2) the initial notice is accompanied by an undertaking from the Approved Inspector who gave the earlier notice such that the earlier notice will be cancelled when the new notice is accepted.

If the local authority does not reject the initial notice within five working days (beginning on the day the notice is given to the local authority), it is presumed to have accepted it without imposing requirements. Therefore, an initial notice comes into force when it has been accepted by a local authority (or is deemed to have been accepted by the passing of five days). So long as the initial notice remains in force, the function of enforcing the Building Regulations, which is conferred on a local authority under the Building Act 1984, is not exercisable in relation to the work described in the initial notice.

Generally, the initial notice remains in force during the currency of the works. However, in certain circumstances, it may be cancelled or cease to have effect after the lapse of certain defined periods of time where there has been a failure to give a final

certificate to the local authority. The time periods depend on the circumstances, but the position may be summarised as follows:

- If a final certificate is rejected – four weeks from the date of rejection.
- Where there is a failure to give a final certificate:
  (1) Eight weeks from the date of occupation for the erection, extension or material alteration of a building. This period of time is reduced to four weeks where the building is considered to be a 'relevant building' under the terms of the Regulatory Reform (Fire Safety) Order 2005.
  (2) Eight weeks after the change of use takes place where the work relates to a material change of use.

The local authority is given power to extend these time periods.

It is possible to give a final certificate for part of a building or extension if it is needed to be occupied before overall completion of the project. In these circumstances the initial notice is not cancelled but remains in force until final completion of the work.

Sometimes it may be necessary to vary work which is the subject of an initial notice (e.g. it may be decided to change the number of units being erected). In such circumstances the person who is carrying out the work and the approved inspector should give an amendment notice to the local authority.

There is a prescribed form for an amendment notice, and it must contain the information which is required for an initial notice (see above) plus either:

- a statement to the effect that all plans submitted with the original notice remain unchanged; or
- amended plans are submitted with the amendment notice plus a statement that any plans not included remain unchanged.

The local authority has five working days in which to accept or reject the notice, and it may only reject it on prescribed grounds. The procedure is identical to that for acceptance or rejection of an initial notice.

4.8.2 Cancellation of initial notice

In the following cases, the Approved Inspector must cancel the initial notice by issuing to the local authority a cancellation notice in a prescribed form. The grounds on which the initial notice must be cancelled are:

- The Approved Inspector has become or expects to become unable to carry out (or continue to carry out) his functions.
- The Approved Inspector believes that because of the way in which the work is being carried out, he cannot adequately perform his functions.
- The Approved Inspector is of the opinion that the requirements of the regulations are being contravened, and despite giving notice of contravention to the person carrying out the work, that person has not complied with the notice within the three-month period allowed (Approved Inspector Regulations, regulation 18).

It is also possible for the person carrying out the work to cancel the initial notice. This arises if it becomes apparent that the approved inspector is no longer willing or able to carry out his functions (through bankruptcy, death, illness, etc.). This must be done in the prescribed form and must be served on the local authority and (where practicable) on the Approved Inspector.

Alternatively, it is possible for the person carrying out the work to give a new initial notice jointly with a new Approved Inspector, provided that the new notice is accompanied by an undertaking by the original Approved Inspector that he will cancel the earlier notice as soon as the new notice is accepted. Once the initial notice has ceased to have effect, the approved inspector will be unable to give a final certificate, and the local authority's powers to enforce the Building Regulations can revive. In this case the local authority becomes responsible for enforcing the regulations, and it must be provided on request with plans of the building work so far carried out. Additionally, it may require the person carrying out the work to cut into, lay open or pull down work so that it may ascertain whether any work not covered by a final certificate contravenes the regulations.

If it is intended to continue with partially completed work, the local authority must be given sufficient plans to show that the work can be completed without contravention of the Building Regulations. A fee, which is appropriate to that work, will be payable to it.

Where the work covered by the initial notice has not commenced within three years from the date on which the initial notice was accepted, the local authority may (not must) cancel the initial notice.

4.8.3 Functions of approved inspectors

The fees payable to an approved inspector are a matter for negotiation; there is no prescribed scale. The Approved Inspector is under an obligation to '*take such steps (which may include the making of tests of building work and the taking of samples of material) as are reasonable to enable him to be satisfied within the limits of professional care and skill*' that the Building Regulations are complied with.

The approved inspector must be satisfied that the requirements relating to:

- building work (reg. 4),
- material change of use (reg. 6),
- materials and workmanship (reg. 7),
- requirements relating to a change of energy status (reg. 22),
- requirements relating to thermal elements (reg. 23),
- CO_2 emission rates for new buildings (reg. 26),
- consequential improvements to energy performance (reg. 28),
- water efficiency of new dwellings (reg. 36),
- Fire safety information (reg. 38),
- information about ventilation (reg. 39), and
- information about use of fuel and power (reg. 40)

of the Principal Regulations (the Building Regulations 2010 as amended) are complied with.

Additionally, the following requirements of the Principal Regulations apply in relation to building work which is the subject of an initial notice as if references to the local authority were references to the approved inspector:

- Regulation 20 – Provisions applicable to self-certification schemes (see Chapter 5)
- Regulation 27 – CO_2 emission rate calculations. This specifies that various calculations and other information must be given to the Approved Inspector. This is normally before work starts and not later than five days after it is completed, with the proviso that where an initial notice has ceased to be in force, notice of the various calculations must be given at the cessation date
- Regulation 29 – Energy Performance Certificates (EPC). This specifies that an EPC must be given to the Approved Inspector for certain categories of building work within five days of the completion of the work, with the proviso that where an initial notice has ceased to be in force, the EPC must be given at the cessation date
- Regulation 37 – Wholesome water consumption calculation. This specifies that the person carrying out the work must give the Approved Inspector a notice which specifies the potential consumption of wholesome water per person per day calculated in accordance with the methodology referred to in regulation 36 of the Principal Regulations in relation to the completed dwelling with the proviso that where an initial notice has ceased to be in force, the water calculation must be given at the cessation date
- Regulation 41 – Sound insulation testing must be complied with. This means that the person carrying out the building work must supply a copy of the sound insulation testing results (see Chapter 10) to the approved inspector not more than five days after completion of the work to which the initial notice relates.
- Regulation 44 – Commissioning. This specifies that a notice must be provided to the Approved Inspector confirming that the fixed building services (mostly ventilation in Part F and services covered by Part L1(b)) have been commissioned in accordance with a procedure approved by the Secretary of State. The normal period for service of the commissioning certificate is not more than five days after the work has been completed or the date on which a certificate is given by a Competent Person (see Chapter 5). Where an initial notice has ceased to be in force, the commissioning certificate must be given at the cessation date

An approved inspector is liable for negligence, and it is suggested that he *must* inspect the work to ensure compliance, in contrast to local authorities who have discretion as to whether or not to inspect.

In *NHBC Building Control Services Ltd* v. *Sandwell Borough Council* (1990) 50 BLR 101, the Divisional Court emphasised that regulation 11 (of the regulations in force at that time) does not require a system of individual inspection of every detail covered by the substantive requirements of the regulations. In principle, random sampling is sufficient, although in case of dispute, it is for the Approved Inspector to show that adopting a system of random or selective sampling is a satisfactory way of discharging his duties.

The approach of the court to this important matter was indicated by Lord Justice Leggatt:

> 'Any system of inspection that is selective involves consideration not only of the importance of a risk against which the inspection is designed to guard, but of the likelihood of its occurrence. In my judgement the justices' conclusion that the [approved inspector's] system is an inadequate precaution is not one that can properly be based solely upon the fact that the risk was obvious and potentially fatal. That amounts to saying that failure in relation to an individual house to detect the absence of rockwool in the gap between the ceiling and wall of its garage could not have occurred unless the system was inadequate or the inspector had shown want of professional skill and care in operating the system. But the liability imposed is not absolute. The system has been impliedly approved by the Secretary of State. In the light of its experience the [inspector] determines the extent and closeness of the inspections to be conducted in respect of the work of any particular builder. Inherent in any selected system is the risk that some defects may escape detection. Except [for] the fact that the defect … was not spotted, there is no criticism to be made of the system. It follows that the mere fact that an important defect escaped detection in a particular instance cannot … constitute a proper basis for concluding beyond reasonable doubt that there was any failure to undertake the functions of supervision so as to render false the statement that the [inspector] had performed those functions.'

The Approved Inspector may arrange for plans or work to be inspected on his behalf by someone else (although only the Approved Inspector can give plans or final certificates), but delegation does not affect any civil or criminal liability. In particular, the 1984 Act states that:

> '… an approved inspector is liable for negligence on the part of a person carrying out an inspection on his behalf in like manner as if it were negligence by a servant of his acting in the course of his employment.'

Consultation with the fire and rescue authority

Where an initial notice or an amendment notice is to be given (or has been given) in relation to the erection, extension, material alteration or change of use of a building which is or will become a 'relevant building' covered by the terms of the Regulatory Reform (Fire Safety) Order 2005 and the Building Regulations 2010, Schedule 1, Part B (Fire safety) also applies; the Approved Inspector is required, before or as soon as practicable after giving the notice, to consult the fire and rescue authority. He must give them sufficient plans and/or other information to show that the work described in the notice will comply with the applicable parts of the Building Regulations 2010, Schedule 1, Part B and must have regard to any views they express.

Additionally, before giving a plans certificate or final certificate to the local authority, the Approved Inspector must allow the fire and rescue authority 15 working days to comment and have regard to the views they express. Some local Acts of Parliament also impose extensive fire authority consultation requirements. The Approved Inspectors must undertake any consultation required by local legislation.

Consultations with the sewerage undertaker

Where an initial notice or amendment notice is to be given (or has been given) and it is intended to erect, extend or carry out underpinning works to a building which is:

(a) over a drain, sewer or disposal main, which is shown on any map of sewers and to which the Building Regulations 2010, Schedule 1, paragraph H4 applies, or
(b) on any site or in such a manner as may result in interference with the use of, or obstruction of the access of any person to, any drain, sewer or disposal main, which is shown on any map of sewers and to which the Building Regulations 2010, Schedule 1, paragraph H4 applies,

the Approved Inspector must consult the sewerage undertaker. The procedures and time periods involved parallel those described for fire authority consultations above.

4.9 Plans certificates

A plans certificate is a certificate issued by an Approved Inspector certifying that the design has been checked and that the plans comply with the 2010 Regulations. Its issue is entirely at the option of the person carrying out the work and is issued by the Approved Inspector to the local authority and the building owner.

If the approved inspector is asked to issue a plans certificate and declines to do so on the grounds that the plans do not comply with the Building Regulations, the building owner can refer the dispute to the Secretary of State for a determination. A plans certificate can be issued at the same time as the initial notice or at a later stage, provided the work has not been carried out. There are two prescribed forms of plans certificate. There are three preconditions to its issue:

- The Approved Inspector must have inspected the plans specified in the initial notice.
- He must be satisfied that the plans are neither defective nor show any contravention of the regulation requirements.
- He must have complied with any requirements about consultation, etc.

If a plans certificate is issued and accepted and, at a later stage, the initial notice ceases to be effective, the local authority cannot take enforcement action in respect of any work described in the plans certificate if it has been done in accordance with those plans.

The local authority has five working days in which to reject the plans certificate but may only do so on certain specified grounds:

- The plans certificate is not in the prescribed form.
- It does not describe the work to which it relates.
- It does not specify the plans to which it relates.
- Unless it is combined with an initial notice, that no initial notice is in force.
- The certificate is not signed by the approved inspector who gave the initial notice or that he is no longer an Approved Inspector.

- In the case of a certificate dated on or after 6 April 2013, having taken all reasonable steps to establish whether there is a named scheme of insurance approved by the Secretary of State in relation to the work described in the notice, the local authority believe that this is not the case. There is no declaration that the fire authority has been consulted (if appropriate).
- The Approved Inspector was obliged to consult the sewerage undertaker before giving the certificate, but the certificate does not contain a declaration that he has done so.
- There is no declaration of independence (except for minor work).
- The certificate does not contain:
  (a) information whether or not the work concerns a new dwelling; or
  (b) in the case of a new dwelling, information whether or not one or more, and if so which, of the following optional requirements applies to the building work:
    (i) regulation 36(2)(b) (optional water efficiency requirement of 110 litres per person per day),
    (ii) Schedule 1 Part M optional requirement M4(2) (category 2 – accessible and adaptable dwellings),
    (iii) Schedule 1 Part M optional requirement M4(3) (category 3 – wheelchair user dwellings); or
  (c) in the case of a plans certificate relating to a new dwelling, a statement that it relates only to such part of the work to which no requirement under regulation 36 of, or requirements M4(1), (2) or (3) of Schedule 1 to, the Building Regulations 2010 may apply.

When combined with an initial notice, the grounds for rejecting an initial notice specified in Schedule 3 (see section 4.8.1) also apply.

Plans certificates may be rescinded by a local authority if the work has not been commenced within three years from the date on which the certificate was accepted.

4.10 Final certificates

The final certificate should be issued by the Approved Inspector to the relevant local authority by whom the initial notice was accepted when the work is completed, but curiously there are no sanctions against an approved inspector who fails to issue a final certificate. The final certificate need not relate to all the work covered by the initial notice; it can, for example, be given in respect of part of a building which complies with the 2010 Regulations or one or more of the houses on a development covered by an initial notice. Once given and accepted, the initial notice ceases to apply.

It is to be issued, in a prescribed form, where an Approved Inspector is satisfied that any work specified in an initial notice given by him has been completed and certifies that 'the work described … has been completed' and that the inspector has performed the functions assigned to him by the regulations. If the local authority does not reject the final certificate within ten working days, it is deemed to have accepted it. A final certificate can only be rejected on limited grounds. These are:

- The certificate is not in the prescribed form.
- It does not describe the work to which it relates.

- No initial notice relating to the work is in force.
- The certificate is not signed by the Approved Inspector who gave the notice, or he is no longer an approved inspector.
- In the case of a certificate dated on or after 6 April 2013, having taken all reasonable steps to establish whether there is a named scheme of insurance approved by the Secretary of State in relation to the work described in the notice, the local authority believe that this is not the case.
- There is no declaration of independence (except for minor works).
- The certificate does not contain information:
  (a) whether or not the work concerns a new dwelling; or
  (b) in the case of a new dwelling, information on whether or not one or more, and if so which, of the following optional requirements applies to the building work:
    (i) Regulation 36(2)(b) (optional water efficiency requirement of 110 litres per person per day),
    (ii) Schedule 1 Part M optional requirement M4(2) (category 2 – accessible and adaptable dwellings),
    (iii) Schedule 1 Part M optional requirement M4(3) (category 3 – wheelchair user dwellings).

Once the final certificate is accepted by a local authority, its powers to take proceedings against a person for contravention of Building Regulations in relation to the work referred to in the final certificate are cancelled.

4.11 Public body's notices and certificates

Part 5 of the Building (Approved Inspectors, etc.) Regulations 2010 is concerned with public bodies, and, read in conjunction with section 54 of the Building Act 1984, its effect is to enable designated public bodies to self-certify their own work.

Public bodies are approved by the Secretary of State, and the regulations, relating to notices, consultation with the fire authority, plans certificates and final certificates mirror those of Part II dealing with Approved Inspectors. The grounds on which the local authority may reject a public body's notice, etc., mirror those applicable to private certification, except that:

- There is no provision for cancellation of a public body's notice.
- There is no requirement that there should be an approved insurance scheme in force.

4.12 Prescribed forms

Twelve prescribed forms are set out in Schedule 1 of the Building (Approved Inspectors, etc.) Regulations 2010. Regulation 2(2) provides that where the regulations require the use of one of the numbered forms set out in Schedule 2, 'a form substantially to the like effect may be used'. Approved Inspectors, public bodies, local authorities, etc. may therefore have their own forms printed, provided they follow the precedents laid down in Schedule 1.

5 Work under the supervision of a competent person

5.1 Introduction

In October 1997, the then Department of the Environment, Transport and the Regions issued proposals for reducing the administrative burden of the Building Regulations by allowing self-certification of compliance by enterprises and individuals judged as competent.

There followed a lengthy process of consultation including a further consultation document (the 1999 consultation, *Taking forward self-certification under the Building Regulations*) during the course of which the government asked building industry representatives, consumer associations and other interested parties for their opinions of the proposed competent person schemes.

The consultation showed general support for the proposals for schemes in sectors where the health and safety risk to people was low.

In recent years, the Government has been keen to extend control over work that can affect the energy efficiency of buildings. In April 2002, new requirements came into force bringing under control replacement windows, rooflights, roof windows and doors, and hot-water vessels. At the same time, the Government was conscious of the fact that the new requirements would increase the administrative burden on local authorities and Approved Inspectors for what was, in fact, fairly minor work. As a result, it was thought appropriate to introduce new ways of controlling such work by means of 'self-certification' schemes and 'non-notification'.

By establishing such schemes, the government hoped that the move towards self-certification would:

- significantly enhance compliance with the requirements of the Building Regulations,
- reduce costs for firms joining recognised schemes, and
- promote training and competence within the industry.

It was hoped that it would also help tackle the problem of 'cowboy builders' and assist local authorities with enforcement of the Building Regulations.

The Building Regulations: Explained and Illustrated, Fourteenth Edition. M.J. Billington, S.P. Barnshaw, K.T. Bright and A. Crooks.

5.2 Principles of self-certification

The principles of self-certification are based on giving people who are competent in their field the ability to self-certify that their work complies with the Building Regulations, without the need to submit a building notice or deposit full plans and thus incur local authority or Approved Inspector inspections or fees. The essence of such systems is that they are self-policing. The difference between them is that self-certification schemes require the person carrying out the work to notify the local authority on completion (a certificate of compliance has also to be given to the client), whereas for non-notification no such requirement exists. One such non-notification system has been in existence for many years whereby a gas appliance could be installed by a person, or an employee of a person, approved in accordance with regulation 3 of the Gas Safety (Installation and Use) Regulations 1998. This non-notification system has now been extended to a range of building operations covered by the regulations and described more fully below.

The first self-certification scheme, the Fenestration Self-Assessment Scheme (FENSA), came into force on 1 April 2002. Subsequent changes to the regulations have resulted in a wide range of self-certification schemes being licensed by the Government and this trend is continuing. Such schemes are now more commonly referred to as 'competent person schemes' since members are deemed to possess the necessary competences to ensure that their work complies with the relevant regulations. It should be noted that the term 'person' can refer either to an individual or to a company employing individuals. All Competent Person Schemes register the company as being the legal entity and the body responsible for issuing data to local authorities and to clients; however, some schemes also require individuals working for the approved company to be separately assessed under the scheme.

5.3 Benefits of competent person schemes

The rationale behind the schemes is to authorise, on the basis of risk to health and safety, schemes whose members are adjudged sufficiently competent in their work to self-certify that their work has been carried out in compliance with all applicable requirements of the Building Regulations (Table 5.1). The assumed benefits offered by the schemes to consumers are that they result in:

- lower prices, as Building Control fees are not payable;
- reduced delays, as full local authority administrative procedures do not need to be followed; and
- the ability to identify competent firms.

The assumed benefits offered by the schemes to firms are:

- the time and expense of submitting a building notice or full plans is avoided by firms who join, and
- they allow LABC departments to concentrate their resources on the areas of highest risk.

Table 5.1 Schedule 3 – Self-certification schemes and exemptions from requirement to give building notice or deposit full plans.

Column 1	**Column 2**
Type of work	**Person carrying out work**
1. Installation of a heat-producing gas appliance. This paragraph does not apply to the provision of a masonry chimney.	A person, or an employee of a person, who is a member of a class of persons approved in accordance with regulation 3 of the Gas Safety (Installation and Use) Regulations 1998.
2. Installation of: (a) an oil-fired combustion appliance, or (b) oil storage tanks and the pipes connecting them to combustion appliances. This paragraph does not apply to the provision of a masonry chimney.	A person registered in respect of that type of work by Association of Plumbing and Heating Contractors (Certification) Limited, Blue Flame Certification Ltd, Building Engineering Services Competence Assessment Limited, Certsure LLP, HETAS Limited, NAPIT Registration Limited, Oil Firing Technical Association Limited or Stroma Certification Limited.
3. Installation of a solid fuel-burning combustion appliance other than a biomass appliance. This paragraph does not apply to the provision of a masonry chimney.	A person registered in respect of that type of work by Association of Plumbing and Heating Contractors (Certification) Limited, Building Engineering Services Competence Assessment Limited, Certsure LLP, HETAS Limited, NAPIT Registration Limited, Oil Firing Technical Association Limited or Stroma Certification Limited.
4. Installation of a heating or hot-water system, or its associated controls.	A person, or an employee of a person, who is a member of a class of persons approved in accordance with regulation 3 of the Gas Safety (Installation and Use) Regulations 1998, or a person registered in respect of that type of work by Association of Plumbing and Heating Contractors (Certification) Limited, Benchmark Certification Limited, Blue Flame Certification Ltd, Building Engineering Services Competence Assessment Limited, Certsure LLP, HETAS Limited, NAPIT Registration Limited, Oil Firing Technical Association Limited or Stroma Certification Limited.
5. Installation of a mechanical ventilation or air-conditioning system or associated controls, in a building other than a dwelling, that does not involve work on a system shared with parts of the building occupied separately.	A person registered in respect of that type of work by Blue Flame Certification Ltd, Building Engineering Services Competence Assessment Limited, Certsure LLP, NAPIT Registration Limited or Stroma Certification Limited.
6. Installation of an air-conditioning or ventilation system in a dwelling that does not involve work on a system shared with other dwellings.	A person registered in respect of that type of work by Blue Flame Certification Ltd, Building Engineering Services Competence Assessment Limited, Certsure LLP, NAPIT Registration Limited or Stroma Certification Limited.
7. Installation of an energy efficient lighting system or electric heating system, or associated electrical controls, in buildings other than dwellings.	A person registered in respect of that type of work by Blue Flame Certification Ltd, Building Engineering Services Competence Assessment Limited, Certsure LLP, NAPIT Registration Limited or Stroma Certification Limited.

(*Continued*)

Table 5.1 (*Continued*)

Column 1	Column 2
Type of work	**Person carrying out work**
8. Installation of fixed low or extra-low voltage electrical installations in dwellings.	A person registered in respect of that type of work by BSI Assurance UK Limited, Benchmark Certification Limited, Blue Flame Certification Ltd, Building Engineering Services Competence Assessment Limited, Certsure LLP, NAPIT Registration Limited, Oil Firing Technical Association Limited or Stroma Certification Limited.
9. Installation of fixed low or extra-low voltage electrical installations in dwellings, as a necessary adjunct to or arising out of other work being carried out by the registered person.	A person registered in respect of that type of work by Association of Plumbing and Heating Contractors (Certification) Limited, Benchmark Certification Limited, Blue Flame Certification Ltd, Building Engineering Services Competence Assessment Limited, Certsure LLP, NAPIT Registration Limited or Stroma Certification Limited.
10. Installation, as a replacement, of a window, rooflight, roof window or door in an existing dwelling.	A person registered in respect of that type of work by BM Trada Certification Limited, BSI Assurance UK Limited, Blue Flame Certification Ltd, CERTASS Limited, Certsure LLP, by Fensa Limited under the Fenestration Self- Assessment Scheme, by NAPIT Registration Limited, Network VEKA Limited or Stroma Certification Limited.
11. Installation, as a replacement, of a window, rooflight, roof window or door in an existing building other than a dwelling. This paragraph does not apply to glass which is load bearing or structural or which forms part of glazed curtain walling or a revolving door.	A person registered in respect of that type of work by BM Trada Certification Limited, Blue Flame Certification Ltd, CERTASS Limited, Certsure LLP, by Fensa Limited under the Fenestration Self-Assessment Scheme, by NAPIT Registration Limited, Network VEKA or Stroma Certification Limited.
12. Installation of a sanitary convenience, sink, washbasin, bidet, fixed bath, shower or bathroom in a dwelling that does not involve work on shared or underground drainage.	A person registered in respect of that type of work by Association of Plumbing and Heating Contractors (Certification) Limited, Benchmark Certification Limited, Building Engineering Services Competence Assessment Limited, Certsure LLP, HETAS Limited, NAPIT Registration Limited or Stroma Certification Limited.
13. Installation of a wholesome cold-water supply or a softened wholesome cold-water supply.	A person registered in respect of that type of work by Association of Plumbing and Heating Contractors (Certification) Limited, Benchmark Certification Limited, Building Engineering Services Competence Assessment Limited, Certsure LLP, HETAS Limited, NAPIT Registration Limited or Stroma Certification Ltd.
14. Installation of a supply of non-wholesome water to a sanitary convenience fitted with a flushing device that does not involve work on shared or underground drainage.	A person registered in respect of that type of work by Association of Plumbing and Heating Contractors (Certification) Limited, Benchmark Certification Limited, Building Engineering Services Competence Assessment Limited, Certsure LLP, HETAS Limited, NAPIT Registration Limited or Stroma Certification Limited.