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Consultation Document

Changes to the Building Control system and the Approved Document supporting Regulation 7

Section 2 – Regulatory Impact Assessment

Date of issue: 29 April 2013

Responses by: 21 June 2013

Overview

This is a consultation on changes to the Building (Approved Inspector etc) Regulations 2010, amendments to the Approved Document supporting regulation 7 and the removal of the Warranty Link Rule in Wales.

Section 14(7) of the Building Act 1984 requires the Welsh Ministers to consult the Building Regulations Advisory Committee for Wales (BRACW) and such other such bodies as appear to them to be representative of the interests concerned before making building regulations that contain substantive requirements.

How to respond

Consultees are invited to email responses to: enquiries.brconstruction@wales.gsi.gov.uk

Those who prefer to submit a paper copy of their response should send these to:

Changes to the Building Control system and Approved Document supporting regulation 7 Consultation
Construction Unit
Housing and Regeneration Directorate
Welsh Government
Rhyd y Car Offices
Merthyr Tydfil
CF48 1UZ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact Details

For further information:

Construction Unit
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Telephone: 0300 062 8141

E-mail: enquiries.brconstruction@wales.gsi.gov.uk

Data Protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

REGULATORY IMPACT ASSESSMENT

Title: CHANGES TO THE BUILDING (APPROVED INSPECTOR ETC) REGULATIONS 2010 AND THE REMOVAL OF THE WARRANTY LINK RULE

Lead Welsh Government Department : Construction Unit	Regulatory Impact Assessment (IA)
	Date: March 2013 Stage: Consultation Source of intervention: Domestic Type of measure: Secondary Legislation Contact for enquiries: Francois Samuel E-mail: francois.samuel@wales.gsi.gov.uk Tel: 0300 062 8232
Summary: Intervention and Options	

What is the problem under consideration? Why is government intervention necessary?

The building control system is a competitive environment between local authorities and private approved inspectors.

The changes to the Approved Inspector regulations so that Approved Inspectors will no longer have to submit their approval certificate and certificate of insurance to local authorities when submitting an initial notice will reduce the burden on local authorities and Approved Inspectors.

The removal of the provision for Approved Inspectors to have a warranty in place where dwellings are to be sold or rented places is seen as an unfair burden. There is no such requirement for local authorities and it therefore seen as unfair competition.

What are the policy objectives and the intended effects?

The effect should be a more effective and efficient building control regime. It is anticipated that there will be no net unfunded new burden on Local Authorities.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 – To do nothing

Option 2 – (our preferred option) to consult on the following proposed changes:

- (i.) **Improving private sector Approved Inspector arrangements**
- (ii.) **Removing the Warranty Link Rule**

Will the policy be reviewed? ** If applicable, set review date:

Does implementation go beyond minimum EU requirements?	No				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	N/A		N/A		

Summary: Analysis & Evidence Policy Option 2

Description: Changes to the Approved Inspector regulations and removal of the Warranty Link Rule

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0.824m

COSTS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	
High	Optional	Optional	
Best Estimate			0.002

Description and scale of key monetised costs by 'main affected groups'

The monetised costs of improving the Approved Inspector arrangements £0.002m.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	0.0
High	Optional	Optional	0.0
Best Estimate			0.826

Description and scale of key monetised benefits by 'main affected groups'

Monetised benefits include savings from the Approved Inspector processes £0.301m and the removal of the Warranty Link Rule £0.525m

Other key non-monetised benefits by 'main affected groups'

None

Key assumptions/sensitivities/risks

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:		
Costs: 0	Benefits: 0.1	Net: 0.1

Specific Impact tests

Economic and financial impacts

Competition

A Competition Assessment has not been completed because the requirements will affect all sectors equally.

Small Medium Enterprises

Small Firms may benefit from the removal of the Warranty Link Rule as they will have the opportunity of engaging Approved Inspectors without the need to have a warranty in place.

Social Impacts

Health & Well-being

The regulatory changes are not expected to result in specific health and well being impacts.

Equalities

Race equality, disability equality, gender equality and Human Rights: The proposed changes are concerned with regulatory and procedural matters and not people.

Welsh Language

There are no significant links between the proposals and the Welsh language. The proposed changes are not expected to have a positive impact on the promotion, support or development of the Welsh language nor are they expected to have a negative impact on Welsh speaking communities or Welsh language services.

Environmental Impacts

Greenhouse Gas Emissions

The proposed changes will not impact on the policies to reduce carbon emissions.

Wider Environmental Impacts

The proposed changes are not expected to result in wider environmental impacts. The changes are not expected to have any impact on water quality or quantity, biodiversity, waste

Sustainable Development

The proposed changes are concerned with the regulatory and procedural changes.

Rural

Rural proofing: The proposed changes do not relate to geographical areas.

CHANGES TO THE APPROVED INSPECTOR REGULATIONS AND THE REMOVAL OF THE WARRANTY LINK RULE

Background

This cost benefit analysis has been based on data provided by the Department of Communities and Local Government as this is the most up to date currently available. The data does not include separate values for England and Wales as there was no requirement to do so prior to the devolution of the Building Regulations to Wales in December 2011. The information provided by DCLG has been amended to reflect the situation for Wales to coincide with information received from the Local Authorities.

The information for the changes to the Approved Inspector Regulations has based on statistics that were published by DCLG in 2008 and the information in relation to the Warranty Link Rule is based on DCLG statistics for 2009/10.

Following the consultation with the local authority Building Control departments in Wales for the year of 2011-12 the number of initial notices submitted to the local authorities was approximately 3,000 for the year. Taking into consideration the DCLG figures the cost and benefits to Wales would be 7.5% of the figures quoted by DCLG.

In relation to the Warranty Link Rule based on the new build figures for year 2010-11 were 5,500 and from information received from the NHBC (National House Building Council) Approved Inspectors have 80% of the warranty market share (4,400). This equates to 3.7% of the figures quoted by in the separate DCLG impact assessment for changes in England on which this assessment has been based.

Approved Inspector Regulations

The Approved Inspector Regulations supplement the Building Regulations and expand upon many of the procedural requirements for Approved Inspectors covered in the Building Act. They largely govern the relationship between Approved Inspectors and local authorities (the relationship between an Approved Inspector and their client is covered by their contractual arrangements). The Approved Inspector Regulations also set out the functions of Approved Inspectors i.e. to take all reasonable steps to satisfy themselves within the limits of their professional care that the requirements of the Building Regulations have been complied with.

Warranty Link Rule

Until 2005 only local authorities and the National House Building Council (NHBC) (an Approved Inspector) were allowed to undertake the building control function for new homes intended for private sale or rent. All other Approved Inspectors were limited to dealing with non-domestic work. This was because of concerns that, if there were issues of non-compliance, a

homeowner would be unable to make a claim against the Approved Inspector's professional indemnity insurance due to the need to prove negligence.

The National House Building Council was included because it only undertook building control work where its own new home warranty was in place, thus providing a no-fault redress for homeowners and it had been providing such warranties for around 20 years, giving them experience of issues relating to construction of dwellings.

When the new home market was opened up to all Approved Inspectors in 2005, it was felt that a similar level of protection was required to maintain confidence in the building control system as other Approved Inspectors had no previous experience of operating in the domestic sector. The Warranty Link Rule was therefore introduced and requires that before an Approved Inspector can take responsibility for building control in respect of building work consisting of the creation by new build of dwellings (ie houses or flats) or the conversion of any building in whole or in part to houses or flats (eg a barn conversion) and the dwellings are for private sale or renting, a warranty must be in place under one of the Designated New Home Warranty Schemes approved by the Welsh Ministers (following the transfer of Building Regulation functions in 2012).

Problem under Consideration

Approved Inspector Regulations

Welsh Ministers propose to make changes to the building control processes to improve the existing system. We have considered a number of recent changes to the Approved Inspector regulations in England and have identified the following minor changes that would reduce burdens both on Approved Inspectors and local authorities in Wales:

- i. Remove the need for Approved Inspectors to send a copy of their approval certificate and certificate of insurance to the local authority with every Initial Notice. Instead the Construction Industry Council, the approval body will hold this information on an existing publicly-accessible register
- ii. Ensure all the definitions are up-to-date and make a few clarifications for ease of interpretation.

Warranty Link Rule

Following concerns over the way the Warranty Link Rule was operating, a project was set up by the Department for Communities and Local Government (DCLG) in England to consider the policy rationale for the Warranty Link Rule and whether the specific criteria were appropriate, particularly the one for contaminated land. The research in England found that Approved Inspectors

do not appear to be the subject of more complaints than local authority building control which suggests that the concerns which led to the Warranty Link Rule being put in place have not been realised in practice. The research also found that Approved Inspectors have been discouraged from carrying out the building control function on new homes for private sale and rent due to the additional burdens associated with the Warranty Link Rule.

The research suggests that the Warranty Link Rule is no longer needed, creates an unnecessary burden and acts as a barrier for Approved Inspectors to take on business. However, the research also found that there are a number of complex issues primarily in respect of the contaminated land criterion which would need to be addressed if the Warranty Link Rule were to be retained, which could increase the costs of the warranties. DCLG have announced their intention to remove the warranty link rule in England from 6th April 2013. The Welsh Government supports the conclusions of the English study as being equally relevant to Wales.

Rationale for intervention

To provide competition and choice to consumers the Building Control function can be carried out by either an Approved Inspector or local authority building control. If the Approved Inspector Regulations are not revised they will continue to impose extra unnecessary burdens on both Approved Inspectors and local authorities.

If we do not remove the Warranty Link Rule in Wales, Approved Inspectors working in Wales will be subject to more onerous requirements than will be the case in England and could be discouraged from entering the market for new homes for private sale and rent, thereby distorting competition and affecting consumer choice in Wales. Welsh Ministers would also need to revise the Warranty Link Rule to address issues that have arisen in relation to the contaminated land criterion and designated warranty approval process which would increase costs on both the warranty providers and house builders.

Although warranties are generally considered to be beneficial to homeowners it is not Welsh Government policy to require them to be provided in all cases. There has been no provision for them to be provided where a local authority is the building control body.

Policy objective

- i. To reduce unnecessary burdens on Building Control bodies.
- ii. To level the playing field between local authorities and Approved Inspectors.

Description of the options considered (including doing nothing)

We have considered two options:

Option 1 – Do nothing

Option 2 – make minor changes to the Approved Inspector Regulations and remove the Warranty Link Rule

Option 1 would mean that the problems and unnecessary burdens associated with the current Approved Inspectors processes as described earlier would remain.

Option 2 is our preferred option. It addresses the problems with the current processes and removes burdens without any substantial additional costs.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

Option 1

No additional costs, burdens or benefits arise. However issues would occur if the Warranty Link Rule was retained without the contaminated land criterion being revised and the approval process amended. Any such revisions to the criterion would create a burden on both warranty providers and/or house builders. Retaining the Warranty Link Rule would mean that Approved Inspectors will continue to be discouraged from entering the market for new homes for private sale and rent and that competition and choice would continue to be impacted.

If the Approved Inspector Regulations are not revised they will continue to impose extra unnecessary burdens on both Approved Inspectors and local authorities.

Option 2

Approved Inspector Regulations

It is estimated that the following costs and benefits will arise if we make the proposed minor changes to the Approved Inspector Regulations:

Costs

It is proposed that Approved Inspectors should no longer be required to send a copy of their insurance certificate and certificate of approval to the local authority with every Initial Notice. Instead the Construction Industry Council (CIC), the body that approves Approved Inspectors, would add the insurance information to an existing publicly accessible website.

The initial set up cost to the Construction Industry Council for expanding their website to include the insurance certificates and to uploading them onto the site has been covered through the changes announced for England. Of 70 current Approved Inspectors, only 4 operate solely in Wales, although there is there are a number of Approved Inspectors who work within both administrations.

There will also be a nominal cost for updating the insurance details on an annual basis. We estimate that this would either be included as part of the normal web management or at a nominal charge of about £2.50 per annum, on the basis of it taking 5 minutes at £30 per hour. Of the 70 current Approved Inspectors an average of 20 work in Wales the total ongoing cost would therefore be around £50 in Wales per annum.

There would be no cost with respect to the approval information as Construction Industry Council already record this information on their website. We anticipate that Construction Industry Council would recover their costs through Approved Inspectors approval/re-approval fees (re-approval is every 5 years).

There will also be a cost to Approved Inspectors of sending their insurance certificate by email to CIC each year. We estimate it will take each Approved Inspector 5 minutes to send their certificate. This gives a total time of around 2 hours in Wales at £60 per hour (assuming the same hourly rate for Approved Inspectors as for local authority building control) which gives a cost of around £120 per annum. The estimated total annual cost of £170 gives a present value of £1,463 over 10 years, the total monetised present value cost for the policy.

There will be no need for Approved Inspectors to send a copy of their Approval certificate to Construction Industry Council as the information originates with Construction Industry Council. There will be a nominal administrative cost to local authorities for checking the validity of Approved Inspectors approval and insurance certificates on the Construction Industry Council's website if they chose to do so. However, from information provided by LABC, we anticipate this will only occur in a few cases each year eg where a new Approved Inspector is involved or concerns have arisen and so costs are likely to be negligible.

Benefits

There is a saving to Approved Inspectors of not having to send their insurance and approval certificates to the local authority with each Initial Notice. There are approximately 3,000 Initial Notices in Wales per annum (2011-12) Initial Notices per annum (based on the Survey of Building Control Bodies for 2006/07 published in March 2008). We estimate that 70% (2,100 in Wales) of Initial Notices are sent by email and 30% (900 in Wales) are sent in hard copy by post because not all local authorities elect to receive Initial Notices electronically.

On the assumption that attaching both the insurance certificate and approval certificate to the Initial Notice takes five minutes of an Approved Inspector's time, whether as electronic attachments to an email as paper put into an envelope, there would be a saving of approximately 250 hours in Wales. At £60 per hour would save Approved Inspectors around £15,000 per annum.

For Initial Notices sent in hard copy by post there will also be a saving to the Approved Inspector in not having to photocopy/print off the insurance and approval certificates to send with the Initial Notice. We estimate a saving of 10p per Initial Notice which would save a further £90 per annum.

As the insurance certificates and approval certificates would in almost all cases have been filed together with the Initial Notice to which they were attached (either electronically or as paper) we do not think that there will be any quantifiable savings to local authorities from no longer receiving them. However, there will be a saving from no longer having to record the Approved Inspectors' insurers name and address information on to the register kept under section 56 of the Building Act. If this saved Local Authorities 5 mins per Initial Notice, this would total £15,000 per annum.

The Welsh Government is also aware of instances where users of the Approved Inspectors Regulations have found some of the definitions and other provisions to be unclear. As removal of the need to accompany an Initial Notice with an insurance certificate will require amendments to the Regulations we would use the opportunity to clarify the unclear provisions.

The time taken for Approved Inspectors and others to use the legislation will be less and compliance with the regulations should improve due to better understanding of what is required. An annual benefit of £30,090 per annum gives a present value benefit for the changes to the Approved Inspector Regulations over 10 years of £259,000.

Warranty Link Rule

It is estimated that the following costs and benefits will arise if we remove the Warranty Link Rule:

Costs

There are no direct costs in removing the Warranty Link Rule. However removing the Warranty Link Rule does mean the possibility of more work going to Approved Inspectors and less work going to local authorities so there may be a distributional effect.

Benefits

Problems arise where the intended use of the dwellings under construction or conversion changes from one that does not require a warranty (for example, student accommodation or social or public sector rental) to dwellings for sale or private rental which therefore do require a warranty. Similar problems arise

when a warranty provider decides it cannot issue a warranty once construction has begun. As no warranty is in place the Approved Inspector cannot continue as the building control body and the building control function must revert to the local authority.

This process costs loss of business to the Approved Inspector, is a difficult situation for the local authority who have to take over the building control function part way through the job and may require work to be uncovered so they can certify it as compliant, and results in inconvenience and potentially delays and increased costs to the developer/building owner. Abolishing the Warranty Link rule would remove these problems.

It is also estimated that every year a number of jobs that could have been dealt with by an Approved Inspector are lost to local authorities because the housebuilder does not want to pay for the provision of a warranty or the housebuilder does not meet all the requirements of the warranty provider. We estimate there are approximately 555 units per annum (range of 370 to 740) that go to the local authority either at the start of the job or during construction.

This figure could well be significantly higher in practice as housebuilders who are aware of the Warranty Link Rule may never approach an Approved Inspector at all. Clearly loss of business for an Approved Inspector is merely a gain for the local authority. However, removing the Warranty Rule would level the playing field between local authorities and Approved Inspectors and improve competition. As well as providing more choice for customers, it could result in a better quality service and possibly a drop in Building Control charges.

In addition, if work did not need to revert to the local authority due to the lack of a warranty, there would be savings from avoided disruption and delays and potentially from work needing to be uncovered so that the work can be inspected and signed off.

It is difficult to quantify such benefits as they will vary considerably depending on the circumstances of each individual case.

There would also be a benefit to the housebuilder and building owner in the reduction in warranty costs. The total number of units dealt with by Approved Inspectors per annum is approximately 4,400 in Wales based on DCLG statistics in the Approved Inspector sector for 2009/10. We estimate that the average cost of a new home warranty from a designated warranty provider is £750. The regulatory saving from not requiring a designated new home warranty to be in place where an Approved Inspector carries out the building control function on a new build dwelling for private sale or rent is therefore expected to be approximately £3.3m pa.

This would give a present value benefit over 10 years of £28.5m. However, we recognise that in practice in most cases a new home warranty will be required to satisfy other market-driven purposes, such as the Council of

Mortgage Lenders borrowing requirements. We estimate that there are approximately 81 units (range of 74) to 89 (based on 2010 figures provided by the Association of Consultant Approved Inspectors) built per annum that would fall in to the category of not needing a warranty for any other purpose than the Warranty Link Rule. We estimate that the average cost of a new home warranty is £750 (based on figures provided by designated warranty schemes) and the actual benefit to housebuilders and building owners in practice would be around £60,750 (range of £55,500 to £66,750).

If the Warranty Link Rule is removed there would also be savings to warranty providers and house builders from not having to bring their policies in line with changes that would be necessary for the Welsh Government to make to the Warranty Link Rule contaminated land criterion. It would also give more choice for consumers as they would be able to choose from a wider range of warranties not just the designated warranty schemes.

Warranties would also be more flexible to meet the specific needs of particular customers/sites (eg providing a higher level of cover on sites where there are known contamination risks).

An annual benefit for the warranty link rule of £60,750 (High: £66,750, Low: £55,500) gives a present value benefit over 10 years of £525,000 (High: £573,000, Low: £477,000).

The total present value benefit for both the Warranty Link Rule £0.525m and Approved Inspector regulations £0.301m is therefore £0.826m, against a total present value cost of £0.002m. This gives a net present value of £0.824m.