

# **ODPM Circular 11/2003 - dated 5 November 2003**

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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## Contents

Front cover

Correction - 10th March 2004

Introduction

Revised Part M of Schedule 1 to the Building Regulations

Part M and Dwellings

Other Amendments of the Building Regulations

Transitional Provisions

New Approved Document M

Enquiries

Annex A: The Building (Amendment) Regulations 2003

Annex B: Building Act

Annex C: Transitional Provisions

Annex C.1: Building Notice Route

Annex C.2: Full Plans Route

Annex C.3: Approved Inspector Building Control Route

## Front cover

### Office of the Deputy Prime Minister

*ODPM Circular 11/2003*

Office of the Deputy Prime Minister

Portland House, Stag Place, London, SW1E 5LP

5 November 2003

### The Building Act 1984

### The Building (Amendment) Regulations 2003

- New Part M in Schedule 1 to the Building Regulations 2000
- Other amendments to the Building Regulations 2000

New Approved Document giving guidance on Part M (Access to and use of buildings)

## Correction - 10<sup>th</sup> March 2004

### ODPM Circular 11/2003 (5 November 2003)

### The Building Act 1984

### The Building (Amendment) Regulations 2003

- New Part M in Schedule 1 to the Building Regulations 2000
- Other amendments to the Building Regulations 2000

New Approved Document giving guidance on Part M (Access to and use of buildings)

ISBN 0-11-753903-1

## Corrections

**Page 12:** the bottom right hand box in the flow chart should read,

Building work is subject to the provisions and Approved Document applicable at the time the full plans were deposited\*.

\*But individual new buildings started on or after 1 May 2004 are subject to the revised Part M; and to the new Approved Document.

**Page 13:** the bottom right hand box in the flow chart should read,

Building work is subject to the provisions and Approved Document applicable at the time the initial notice was given\*.

\*But individual new buildings started on or after 1 May 2004 are subject to the revised Part M; and to the new Approved Document.

## **March 2004**

### **Introduction**

1. I am directed by the First Secretary of State to draw your attention to the Building (Amendment) Regulations 2003 (SI 2003/2692) which were made on 17 October 2003. The main provisions of SI 2003/2692 will come into force on 1 May 2004, subject to the transitional provisions referred to in paragraph 10 below. Other provisions will come into force on 1 December 2003 (see paragraphs 9 and 11 below).
2. In accordance with section 14(3) of the Building Act 1984, these Amendment Regulations were made after consultation with the Building Regulations Advisory Committee and with other bodies representative of the interests concerned.
3. The purpose of this Circular is to:
  - draw attention to these Amendment Regulations and explain the changes they make to the Building Regulations 2000 ("the Building Regulations")
  - explain the coming into force and transitional provisions; and
  - announce the approval and publication of a new Approved Document M.

This Circular does not give advice on the technical requirements of Part M because these are matters covered by the Approved Document. **Annex A** to this circular sets out all the changes to the Building Regulations made by SI 2003/2692, in tabular form.

## Revised Part M of Schedule 1 to the Building Regulations

4. SI 2003/2692 introduces a revised Part M (Access to and use of buildings) into Schedule 1 to the Building Regulations, and revokes the current Part M. The main changes in Part M and in the 2004 edition of Approved Document M are noted inside the front cover of the new Approved Document. One of the main changes is that Part M will now apply generally to material alterations and extensions of non-domestic buildings. Part M will apply to material changes of use to some non-domestic uses. Paragraph 12 below refers to the formal approval of the Approved Document. The notice of approval of the Approved Document is contained in **Annex B** to this circular.

5. The requirements of the revised Part M do not refer to disabled people. Instead, by requiring that reasonable provision shall be made for people to gain access to and use the building and its facilities, the needs of disabled people are encompassed as well as those of (for example) people experiencing a temporary impairment of mobility.

## Part M and Dwellings

6. The requirements of Part M in relation to dwellings are unchanged, and the technical guidance on dwellings in the new Approved Document M is essentially the same as in the 1999 edition of the Approved Document. By virtue of the limits on application, the new Part M (like the previous version) will not apply directly to material alterations and extensions of dwellings. However, the new Approved Document points out that, under Regulation 4(2) of the Building Regulations, where any building is extended, or undergoes a material alteration, the building work must be carried out so that after it has been completed, the building complies with the applicable requirements of Schedule 1, or, where it did not fully comply with any applicable requirement, it is no more unsatisfactory than before. This rule applies to domestic buildings as well as non-domestic ones. This means that an extension of a dwelling, or a material alteration of a dwelling, must not make the building less satisfactory in relation to Part M than it was before.

7. The new Approved Document points out that an alteration of a dwelling is a material alteration if the work would result in the dwelling not complying with (amongst other requirements) the requirements of Part M, where previously it did. Alternatively, if the dwelling did not previously comply with Part M, the dwelling must not be made more unsatisfactory in relation to Part M after the material alteration. Although the alteration work itself need not comply with Part M, a planned alteration to a dwelling that has the potential to reduce the compliance of the dwelling with Part M must be carried out in such a way that there is no reduction in the extent of Part M compliance. Similarly, an extension of a dwelling need not itself comply with Part M but it must not result in the dwelling being less compliant with Part M. The new Approved Document gives examples to illustrate these points. This guidance in the new Approved Document does not reflect any change in the legal position as regards Part M and dwellings, which is unchanged since the amendment of the Building Regulations 1991 that took effect in October 1999. The aim is simply to amplify the guidance on this point that was contained in the 1999 edition of the Approved Document.

## Other Amendments of the Building Regulations

8. SI 2003/2692 makes a number of other changes to the Building Regulations, mostly related to the revision of Part M:

a) a definition of "independent access" is added to Regulation 2 of the Building Regulations. This relates to the use of that expression in Regulation 6, as amended, and in the revised Part M;

b) the reference to Part M in Regulation 3(3) is updated;

c) a new subparagraph (j) is added to Regulation 5, so that if a building is used as a shop, where previously it was not, this will be a material change of use;

d) Regulation 6 is amended so that where the whole of a building is subject to a change of use to

- a hotel or boarding house
- an institution
- a public building
- a shop

paragraph M1 in the new Part M applies to the whole building. (The terms "institution", "public building" and "shop" are explained in Regulation 2 of the Building Regulations);

e) Regulation 6 is amended so that where part only of a building is subject to a relevant change of use, that part, and any sanitary conveniences provided in or in connection with that part, must comply with paragraph M1 (Access and use). In addition, the building as a whole must comply with paragraph M1(a), in that reasonable provision shall be made for suitable independent access to the part of the building that is the subject of the material change of use, or suitable access must be provided through the building to that part.

9. In addition, SI 2003/2692:

a) updates a reference to Part M in paragraph (a) in the entry relating to paragraph H3 in the limits on application column in Part H of Schedule 1 to the Building Regulations;

b) makes tidying amendments to the wording of paragraph (a) and paragraph (b) of that entry; and

c) removes one of the categories of exemption from the need to give a building notice or deposit full plans that is provided for in Schedule 2A to the Building Regulations (Schedule 2A was introduced by the Building (Amendment) Regulations 2002 (SI 2002/440)).

The category of exemption referred to in subparagraph (c) relates to certain sorts of plumbing and drainage work when carried out by a member of the Institute of Plumbing (IoP) Approved

Contractor Person Scheme. This category has been removed because that IoP scheme is not operational. The provisions of SI 2003/2692 relating to this amendment of Schedule 2A come into force on **1 December 2003**.



## Transitional Provisions

10. **Annex C** to this Circular explains the transitional provisions set out in Regulation 3(1) to (4) of SI 2003/2692, relating to the revised Part M and associated changes to the Building Regulations.

11. Regulation 3(5) relates to the amendment of Schedule 2A. It provides that, where building work is commenced before 1 December 2003 which at the time it commences falls within the relevant entry in Schedule 2A of the Building Regulations (i.e. that relating to the IoP Approved Contractor Person Scheme), the work will remain subject to the exemption from the requirements to notify the local authority. As indicated in paragraph 9 above, it is unlikely that there will be any cases within this category of exemption.

## New Approved Document M

12. The First Secretary of State, in exercise of his powers under section 6(1) of the Building Act 1984, has approved an Approved Document containing practical guidance with respect to the requirements of Part M of Schedule 1 to the Building Regulations. Formal notice of this approval, which takes effect on 1 May 2004, is contained in **Annex B** to this Circular.

13. The new Approved Document was notified in draft to the European Commission in accordance with Directive 83/189/EEC (1982 O.J. L109/8) (as amended).

14. The Secretary of State does not, for the time being, propose to withdraw the previous (1999) edition of Approved Document M, insofar as it applies to building work which, in accordance with the transitional arrangements contained in SI 2003/2692, will be unaffected by the amendments to the Building Regulations.

15. Approved Document M: Access to and use of buildings, 2004 Edition, ISBN 0-11- 753901-5, £12) is published by The Stationery Office (TSO). Copies are available from TSO (Tel: 0870 600 5522, Fax: 0870 600 5533) and through booksellers. It can also be viewed on the ODPM web-site ([www.communities.gov.uk](http://www.communities.gov.uk)).

## Enquiries

16. Enquiries on Part M of the Building Regulations should be addressed to:

David Petherick:  
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SW1E 5LP.

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Fax: 020 7944 5739

E-mail: [partm.br@communities.gsi.gov.uk](mailto:partm.br@communities.gsi.gov.uk)

17. Enquiries on administrative matters raised by this Circular should be addressed to:

Kathleen Morris:  
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Portland House,  
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### **Paul F. Overall**

Assistant Secretary in the Office of the Deputy Prime Minister

File Reference: CI 01/15/20

## Annex A: The Building (Amendment) Regulations 2003

(SI 2003/2692)

The following table lists all of the changes made by SI 2003/2692 to the Building Regulations 2000 (SI 2000/2531), as amended by SI 2001/3335, SI 2002/440 and SI 2002/2871

SI 2000/2531 (as previously amended) Regulation No.	SI 2003/2692 Regulation No.	Action
2	2 (2)	Interpretation: <i>definition of "independent access" introduced</i>
3	2(3)	Meaning of building work: <i>reference to Part M in regulation 3(3) updated</i>
5	2(4)	Meaning of material change of use: <i>new paragraph (j) introduced, relating to use of a building as a shop</i>
6	2(5)	Requirements relating to material change of use: <i>requirements for compliance with provisions in Part M where there is a change of use of the whole or a part of a building to a hotel or boarding house, institution, public building or shop</i>
Schedule 1 Part H	2(6)	Part H ( Drainage and waste disposal): <i>minor amendments to update reference to Part M and for tidying purposes</i>
Schedule 1, Part M	2(7)	Part M: <i>revised Part M (Access to and use of buildings) replaces old Part M (Access and facilities for disabled people).</i>
Schedule 2A	2(8)	Schedule 2A: Exemptions from requirements to give building notice or deposit full plans: <i>revocation of entry relating to Institute of Plumbing Approved Contractor Person Scheme</i>

## Annex B: Building Act

<b>Building Act 1984</b>	
Notice of approval of a document for the purpose of giving practical guidance with respect to the requirements of the building regulations 2000	
The First Secretary of State hereby gives notice under section 6 of the Building Act 1984 that, in exercise of his powers under the said section 6, he has approved the document listed below for the purpose of giving practical guidance with respect to the specified requirements of the Building Regulations 2000 (as amended). This approval takes effect on 1 May 2004.	
Document	<i>Requirements of the Building Regulations 2000 in respect of which the document is approved</i>
"Approved Document M: Access to and use of buildings. 2004 Edition"	Schedule 1 Part M

Signed by authority of the First Secretary of State

**Paul F Overall**

an Assistant Secretary in the Office of the Deputy Prime Minister

5 November 2003

## Annex C: Transitional Provisions

### The Building (Amendment) Regulations 2003

C.1 Paragraphs (1) to (4) in Regulation 3 of the Building (Amendment) Regulations 2003 contain transitional provisions relating to the new Part M and associated amendments. Regulation 3(1) provides that the amended terms of the Building Regulations 2000 **will not apply in relation to building work which has already started before 1 May 2004**, provided that the building work began in accordance with:

- a building notice **and** a commencement notice given to the local authority; or
- full plans deposited with, **and** a commencement notice given to, the local authority; or
- an initial notice or an amendment notice given to the local authority.

Regulation 3(2) relates to cases where an initial notice given before 1 May 2004 is varied by an amendment notice given on or after that date. Regulation 3(2) provides that, even if work pursuant to an initial notice has begun before 1 May 2004, so that it is not subject to the amended Regulations, work added to the scope of the initial notice by an amendment notice given on or after 1 May 2004 **is** subject to the amended Regulations.

C.2 Regulation 3(3) and (4) provide that the amended terms of the Building Regulations 2000 **will not apply in relation to building work begun on or after 1 May 2004** where:

- full plans have been deposited before that date and the local authority has passed the plans, without conditions, before that date; or
- full plans have been deposited before that date **and** the local authority has stated in writing, before that date, that any conditions subject to which they passed the plans have been fully met; or
- a plans certificate has been given by an approved inspector to a local authority before that date **and** is accepted (or is deemed to have been accepted) before, on or after that date.

The flow charts at Annexes C1, C2 and C3 illustrate how the transitional provisions work in relation to: the building notice route; the full plans route; and the approved inspector route.

C.3 It is important to note that (in a local authority building control case) there must be no outstanding conditions in relation to any of the provisions of Schedule 1 to the Building Regulations, by the time of the coming into force date of 1 May 2004, if Regulation 3(3) in the transitional provisions is to apply. For example, if there are outstanding conditions relating to compliance of a roof structure with Part A, then the exception provided for in Regulation 3(3) of the Amendment Regulations will not apply. This will mean that (unless Regulation 3(1) applies) the building will be subject to the revised version of Part M. Local authorities may wish to:

a) alert all those with outstanding conditions on relevant sets of plans deposited before the

date of this circular that they must submit the necessary further details well ahead of 1 May 2004 if there is to be a reasonable opportunity for the conditions to be discharged before that coming into force date;

b) alert anyone they may know is intending to deposit plans for relevant sorts of projects that deposit must be made well ahead of 1 May 2004 if there is to be a reasonable opportunity for the plans to be fully passed before that date;

c) warn those depositing plans for relevant sorts of projects at dates close to 1 May 2004 that it may (or will) not be possible to complete the process of considering the plans in time for them to be fully passed before that date.

Local authorities may also wish to alert those who have given building notices for relevant sorts of projects that, unless the work has commenced before 1 May 2004 in accordance with a commencement notice given under Regulation 15(1) of the Building Regulations, the work will be subject to the revised version of Part M. In practice, it is unlikely that any relevant project will be the subject of a building notice. Regulation 12(3) of the Building Regulations prevents the giving of a building notice where a person intends to carry out building work in relation to a building put or to be put to a "relevant use". "Relevant use" means use as a workplace to which Part II of the Fire Precautions (Workplace) Regulations 1997 applies, or a use designated under section 1 of the Fire Precautions Act 1971.

C.4 Where the work covered by a building notice, deposited plans or an initial notice consists of or includes the erection of more than one new building (e.g. a group of office buildings), the effect of the rule described in paragraph C.1 is that, unless the rule described in paragraph C.2 applies, a particular building within the overall project will be subject to the revised version of Part M if the erection of *that building* has not started before 1 May 2004. Thus if a project consists of the erection of (e.g.) three office buildings and work has begun on one building before 1 May 2004, the other two buildings *will be subject to the revised version of Part M*, unless the rule described in paragraph C.2 applies.

C.5 The ODPM considers that the start of the erection of a building would usually be marked by work such as:

- excavation for strip or trench foundations or for pad footings;
- digging out and preparation of ground for raft foundations;
- vibrofloatation (stone columns) piling, boring for piles or pile driving.

C.6 The ODPM considers that the following sorts of work would not be likely to constitute the start of erection of a building:

- removal of vegetation;
- removal of top soil;
- removal or treatment of contaminated soil;
- excavation of trial holes;
- dynamic compaction;

- general site servicing works (e.g. roadways and drainage).

C.7 Local authorities should note that where plans are deposited before 1 May 2004, but have not been passed (or all conditions discharged) before that date, and work has not begun before that date in accordance with a commencement notice, decisions on the plans taken after 1 May 2004 should be based on the amended version of Part M, and, where relevant, the associated amendments of Regulations 5 and 6.

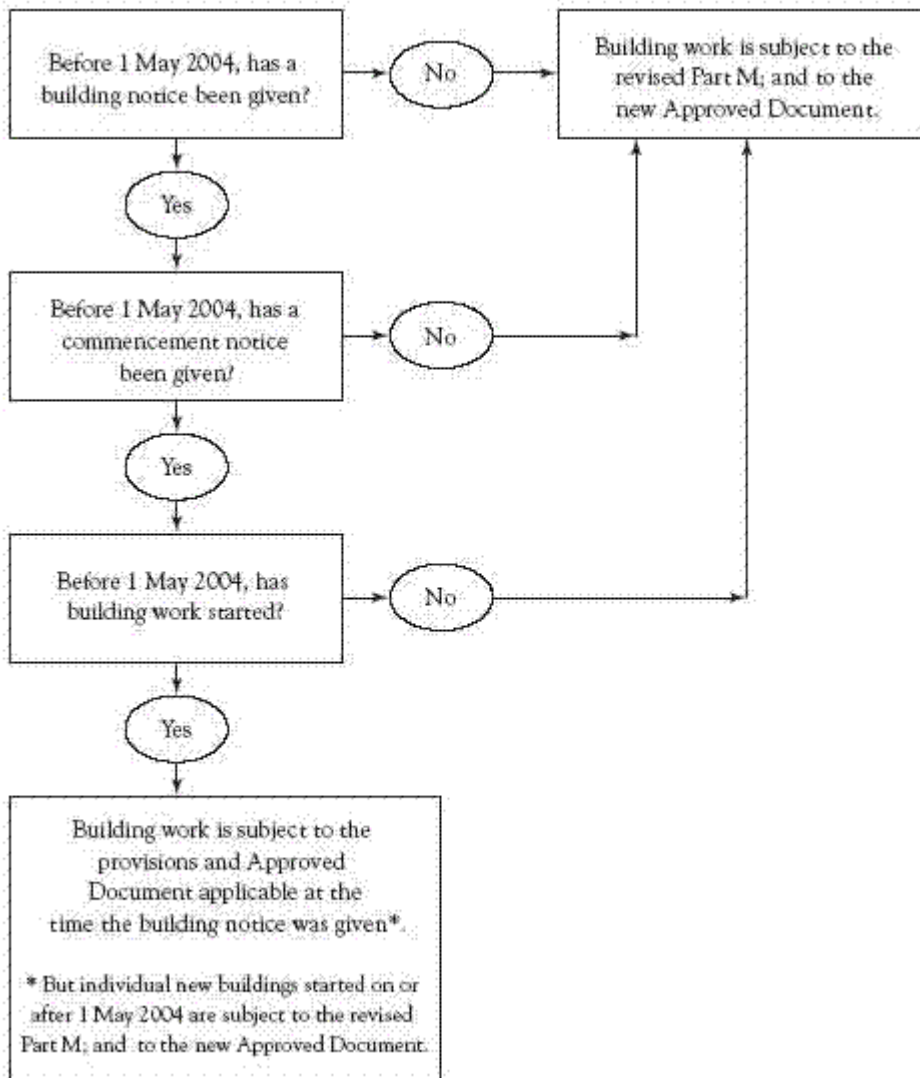
C.8 Where a building notice has been given before 1 May 2004, but work has not begun before that date in accordance with a commencement notice, local authorities' decisions on the work should be based on the amended version of Part M, and, where relevant, the associated amendments of Regulations 5 and 6.

C.9 Where an initial notice has been given before 1 May 2004, but work has not begun before that date, and no plans certificate has been given before that date, approved inspectors' decisions taken after 1 May 2004 on any plans certificate and on the work itself should be based on the amended version of Part M, and, where relevant, the associated amendments of Regulations 5 and 6.

## Annex C.1: Building Notice Route

### The Building (Amendment) Regulations 2003: Revised Part M: Transitional Provisions

#### Local Authority Building Control - Building Notice Route

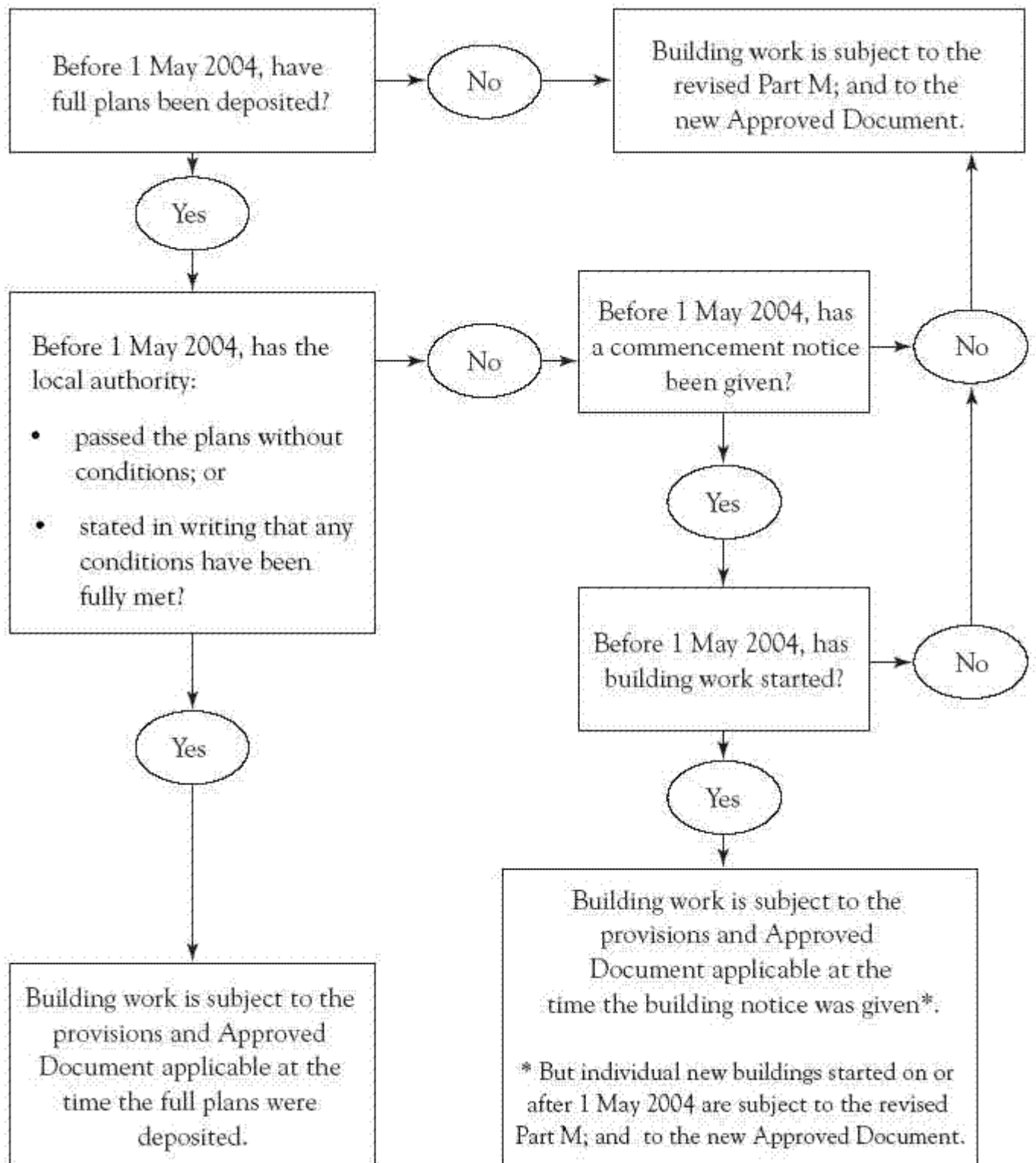




## **Annex C.2: Full Plans Route**

**The Building (Amendment) Regulations 2003: Revised Part M: Transitional Provisions**

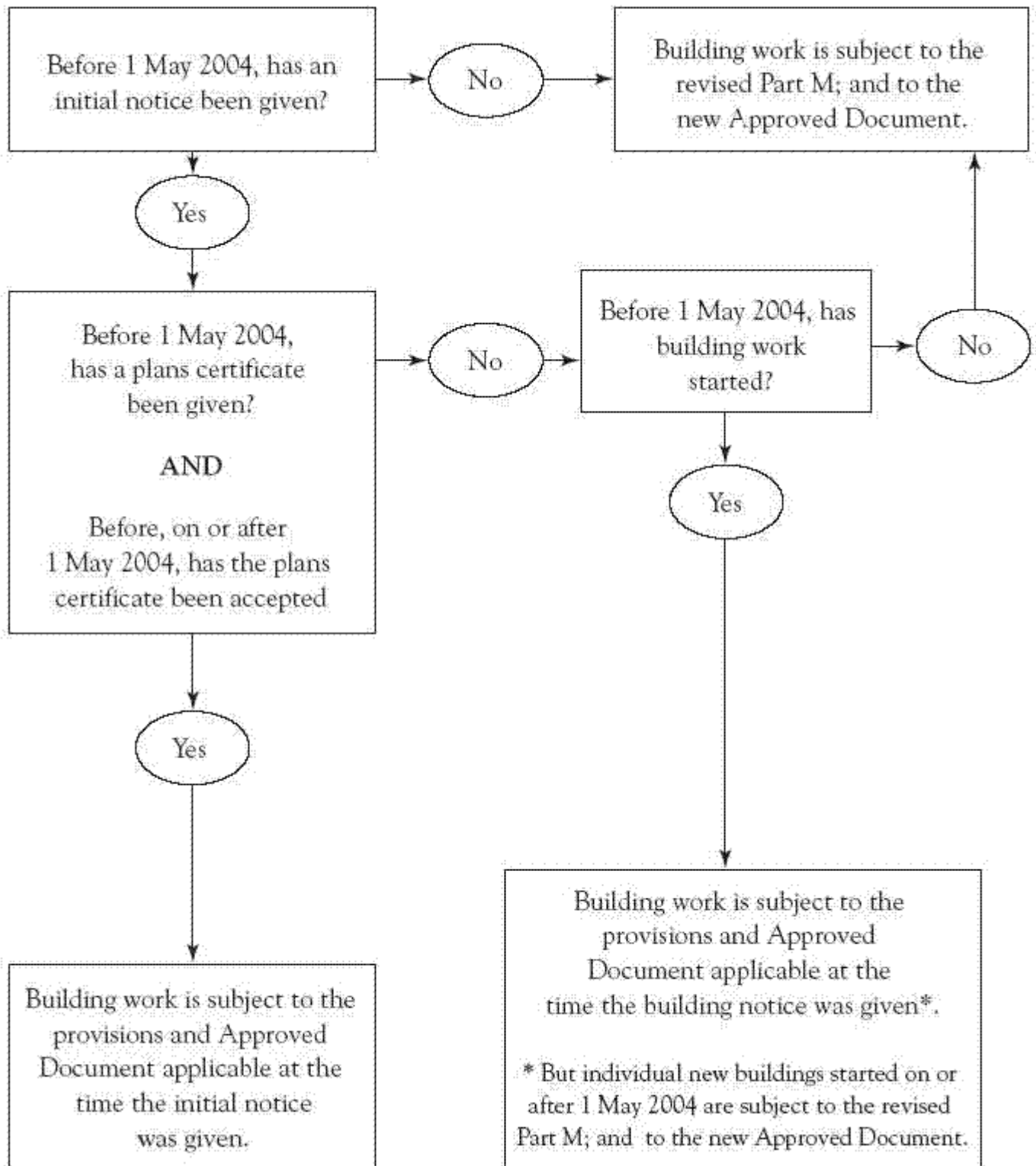
**Local Authority Building Control - Full Plans Route**



## **Annex C.3: Approved Inspector Building Control Route**

**The Building (Amendment) Regulations 2003: Revised Part M: Transitional Provisions**

**Approved Inspector Building Control Route**



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1557326 C 11/03

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