



Department for Communities and Local Government

To:

The Chief Executive

Unitary, Metropolitan, District and London Borough Councils in England
County and County Borough Councils in Wales

The Town Clerk, City of London

The Clerk, Council of the Isles of Scilly

The Sub-Treasurer, Inner Temple

The Under Treasurer, Middle Temple

The Head of Building Control

Unitary Metropolitan, District and London Borough Councils in England
County and County Borough Councils in Wales

City of London

Council of the Isles of Scilly

Approved Inspectors

cc: The Chief Executive:

County Councils in England

National Park Authorities in England & Wales

The Chief Fire Officer: Fire and Rescue Authorities in England & Wales

21 December 2012

Dear Sir/Madam,

Building Control by Approved Inspectors under Part II of the Building Act 1984

Introduction

1. This Circular Letter announces the removal, on or after 6 April 2013, of the Warranty Link Rule and the removal of the limitations on the types of dwellings in respect of which approved inspectors can undertake their building control function. It also updates the position on the required professional indemnity insurance for approved inspectors.

2. ODPM Circular letter dated 31 October 2005 detailing the introduction of the Warranty Link Rule is withdrawn in respect of building work **in England**. The withdrawal takes effect on 6 April 2013.

Removal of Warranty Link Rule

3. The Warranty Link Rule was introduced in 2005 at the time that the new home building control market was opened up to approved inspectors other than NHBC (who had been operating in the sector since 1985) to alleviate concerns that approved inspectors did not have sufficient experience of supervising work of new homes. ODPM Circular Letter dated 31 October 2005 detailed the introduction of the Warranty Link Rule which requires, when an Approved Inspector is carrying out the building control function in respect of new dwellings for private sale or renting, that those new dwellings are registered under a designated warranty scheme.

4. In January 2012 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. A copy of the summary of responses can be found on the Department's website at:

<https://www.gov.uk/government/consultations/building-regulations-the-building-control-system>.

5. The removal of the Warranty Link Rule will now take effect from 6 April 2013 in respect of initial notices or combined initial notices and plans certificates given on or after 6 April 2013 and will apply to England only. From 6 April 2013 Approved Inspectors will no longer be required to check if new dwellings are 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.

6. The Warranty Link Rule did not apply to local authorities and therefore has no effect on the work undertaken by local authority building control bodies.

Designated Warranty Schemes

7. With the removal of the Warranty Link Rule there will no longer be a requirement for designated warranty schemes to be in place for the purposes of the Warranty Link Rule and the current designations of such schemes will therefore lapse from and including 6 April 2013 in England. However, this does not affect the validity of warranties in place and those issued by a designated warranty scheme provider prior to 6 April 2013 will remain valid for the full 10 years of their term.

Approval of Approved Inspectors

9. In accordance with the approvals and re-approvals issued by the Construction Industry Council, Approved Inspectors are approved for the purpose of Part II of the Building Act 1984 to supervise plans and all types of building work. In particular approved inspectors should note that the limitations previously placed on which type or dwellings for which approved inspectors could undertake their building control functions will be removed from 6 April 2013.

10. Where any existing approvals make reference to the Warranty Link Rule that inclusion in the approval will be deemed to be null and void in respect of initial notices or combined initial notices and plan certificates given on or after 6 April 2013 in England (and the terms

of the approvals should be read as if they did not include references to the Warranty Link Rule). The requirements of the Warranty Link Rule in respect of Initial notices or combined initial notices and plan certificates given before 6 April 2013 in England remain in force. All approvals and re-approvals made on or after the 6 April will not contain any reference to the Warranty Link Rule.

11. The Warranty Link Rule will still apply to approvals and re-approvals of Approved Inspectors where work is undertaken in Wales. The Welsh Government will be reviewing the changes made for England in relation to the Building Control System and any changes will be subject to consultation.

Professional Indemnity Insurance Scheme Approvals

12. The approval process of the Construction Industry Council 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.

13. 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 National House-Building Council, 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.

14. A 5 March 2002 Circular Letter to local authorities and Approved Inspectors, from the then Department for Transport, Local Government and the Regions, gave notice of the approval of schemes of professional indemnity insurance. It also set out the guidelines governing the Secretary of State's approval of professional indemnity insurance schemes under the Building Act 1984. Subsequent changes to approval of schemes have been the subject of Circular Letters dated 10 and 13 December 2004.

15. Under the Building Act 1984 and the Building (Approved Inspectors etc) Regulations 2010 (the "Approved Inspectors Regulations") with effect from 6 April 2013 in **England**, an Approved Inspector must declare on the initial notices, amendment notices, plans certificates and final certificates given to local authorities that they hold the relevant insurance. A copy of a declaration signed by the insurer that a scheme of insurance, approved by the Secretary of State, applies in relation to the relevant work must be held on the publicly available register maintained by the Secretary of State or designated approval body (i.e. the CIC). The insurance cover provided under these schemes indemnifies the approved inspector in respect of claims arising from the conduct of their building control functions.

16. Approved inspectors will wish to note:

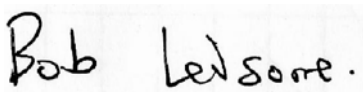
- Approved Inspector Professional Indemnity insurance is currently supplied by Griffiths & Armour.
- Approval for the PYV Limited scheme was withdrawn with effect from 21 September 2010. Policies issued by PYV prior to 21 September 2010 remain valid.
- NHBC Building Control Services Ltd is insured by its parent, the National House-Building Council, under two schemes approved in 1985 and 1996 respectively.
- Zurich Building Control Services Ltd is insured by its parent, Zurich Professional, under a scheme approved in August 2005. However, Zurich withdrew from this market in September 2009 but continues to honour existing cover.

17. A copy of the current criteria for schemes of insurance for Approved Inspectors in England can be found at Annex A to this letter.

Enquiries

18. Any enquiries on this Circular Letter should be addressed to Sandra Simoni, Building Regulations and Standards Division, DCLG, tel: 0303 44 41781 or e-mail: sandra.simoni@communities.gsi.gov.uk.

Yours faithfully,

A handwritten signature in black ink that reads "Bob Ledsome." The signature is written in a cursive style and is positioned above the printed name.

R J Ledsome

**Deputy Director
Building Regulations and Standards Division**

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", i.e. 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 only or main residence, other than under the law of contract,

cover must be provided in respect of claims notified to the insurer within 10 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 £5,000 per claim.

f) Voiding of cover

In line with commercial practice, reasonable provisions for voiding of cover will be allowed.