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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 Authorities in England and Wales

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OUR REF: CI/46/02/05

7 DECEMBER 2007

Dear Sir or Madam

Building Regulations 2000, Schedule 1, Part L
Approved documents L1A, L1B, L2A, L2B – proposed revisions
Multi-foil insulation

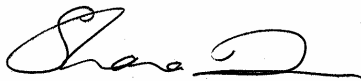
1. Communities and Local Government ("the Department") has today issued a circular to all building control bodies and other interested parties following a recent judgment in a judicial review case brought against the Department. That judgment was handed down by the judge on 2 November 2007. Full details of the effect of the judgment are given in the circular, which also notifies you of the Department's intention to revise approved documents L1A, L1B, L2A and L2B ("the Approved Documents L") in the near future, and of the intention to consult on those revisions.
2. The Department considers that it is necessary to issue this letter along with the circular because of two recent letters about the case sent to building control bodies ("BCBs") by Actis, the company which brought the case to which the 2 November judgment mentioned above relates, and Ashurst, Actis's lawyers. The content of these letters is substantially correct. However, there are a number of points which need to be either corrected or clarified.

3. First, only paragraph 3.10.2 of BR 443 “Conventions for U-value calculations”, March 2006 edition, has been declared unenforceable. The rest of BR 443 (2006) remains in force, including for multi-foil insulation products. In so far as Actis implies otherwise, its letter is incorrect.
4. Secondly, Actis’s letter also suggests that BCBs may be accepting or rejecting insulation products on the basis of the test methods used to establish their performance. The Department does not know whether this is the case, but **must emphasise that none of the guidance in the Approved Documents L is intended to imply approval or otherwise of any particular product.** The Department has always made clear that it has no objection to the use of multi-foil insulation products in construction details, provided that they are used in such a way as to comply with the requirements of building regulations.
5. Ashurst’s letter, meanwhile, contains the following inaccuracies as to what the Department will do following the judgment:
 - a. It states that the Department will consult the insulation industry on the provisions of BR 443 (2006). In fact, the Department will be consulting all stakeholders on the revised Approved Documents as noted above, including the references to BR 443. This will enable stakeholders to comment on whether those references are appropriate, in light of the content of BR 443.
 - b. It also states that the Department will notify BR 443 to the European Commission in accordance with the Technical Standards Directive. It is correct that BR 443 will be included in the package of papers that will accompany the revised Approved Documents for Part L when they are notified to the Commission, but this is simply so that other Member States can understand the reference to it in the Documents. It is the reference to BR 443 which is the technical regulation which must be notified to the Commission.
 - c. The letter implies that since April 2006 multi-foil insulation manufacturers have not been able to try to persuade BCBs to accept that the use of their products in construction details would comply with building regulations. This implication is not correct. Approved Documents are, and have always been, guidance only, and therefore it has always been possible for builders or manufacturers to attempt to persuade BCBs that any construction detail that does not follow the provisions of an Approved Document nevertheless complies with building regulations.
 - d. There is some confusion in the letter about ‘the statutory presumption’ ‘under s.7 of the Building Regulations’. There is no section 7 in the Building Regulations, and it is assumed that this refers to section 7 of the Building Act 1984. Section 7 of the Act has the effect that if a person complies with an Approved Document, it is presumed that s/he has complied with building regulations, although that presumption can be overturned by appropriate evidence to the contrary. In this case, the effect of section 7 is that if the thermal performance of an insulation material, such as multi-foil, is tested using a hot-box the results are presumed to be correct, whereas results from any other tests are not. Consequently, while BCBs would be likely to accept results of thermal performance obtained from hot-box tests at face value, they may need to be persuaded, and may consider it necessary to require further information, before accepting results obtained from other test methods.

- e. Further to this, the letter states that there is 'a presumption that products tested in accordance with BR 443 automatically comply with the Building Regulations regime'. This is a misunderstanding of building regulations and Approved Documents. It is the use of a product (in particular in a proposed construction detail) that may or may not comply with building regulations, not the product itself. The only presumption applying to products tested in accordance with BR 443 is that the thermal performance test results are accurate.

I hope this information will be of assistance to all parties in understanding the implications of the judgment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shona Dunn', with a stylized, flowing script.

SHONA DUNN