

# A Guide to Determinations and Appeals

## Sections 16(10)(a) & 39 of the Building Act 1984

Department for Transport, Local Government and the Regions National Assembly for Wales November 2001  
An explanation of their purpose and how to proceed

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#### ABBREVIATIONS:

'Building control body' – local authority or approved inspector  
'Secretary of State' – Secretary of State for Transport, Local Government and the Regions  
'NAW' – National Assembly for Wales  
'DTLR' – Department for Transport, Local Government and the Regions  
'1984 Act' – Building Act 1984

## Foreword

This guide provides general guidance on the procedures contained in the Building Act 1984 for:

- applying to the Secretary of State for Transport, Local Government and the Regions or the National Assembly for Wales for a determination in respect of the compliance of plans of building work with the Building Regulations; or
- lodging an appeal to the Secretary of State or the National Assembly for Wales against refusal by a local authority to relax or dispense with a requirement in the Building Regulations.

These procedures provide for the Secretary of State/NAW to adjudicate in disputes arising between people carrying out building work subject to the requirements of the Building Regulations and a local authority or a private sector approved inspector. The guide is intended for anyone proposing to carry out building work – including designers, builders, and professional advisers who may be acting in a representative capacity – who is seeking to ensure that their work complies with the Building Regulations but has run into difficulties. Local building control authorities and approved inspectors may also find it a useful reference source. There is a 'key points' section and a table indicating the main stages of the procedures at the back of the guide which may be particularly helpful to those less familiar with the procedures such as individual householders and property owners acting on their own account.

Appeals under the Building Act 1984 should not be confused with appeals which may be lodged with the Secretary of State or the National Assembly for Wales under some 30 local Acts which apply in various county and unitary authorities in England and Wales. These Acts provide sundry powers for local authorities, including the power to require additional fire precautions over and above those required by the Building Regulations. This guide does not cover these and advice should be sought in the first instance direct from the local authority concerned. You should note that in providing the following guidance, the guide does not purport to be a definitive statement of the law.

## General Introduction

1. The majority of building work in England and Wales is required to comply with the Building Regulations – the current edition is 'The Building Regulations 2000' – although there are exemptions for small works and certain buildings as defined in Schedule 2 to the regulations. The Building Regulations deal with functional standards of design and building work for the construction of domestic, commercial and industrial buildings. They are designed to ensure the health and safety of people in and around buildings; and in addition provide for energy conservation, convenience and welfare. A key part of the Building Regulations comprise specific technical requirements contained in Schedule 1 to the regulations. The Department for Transport, Local Government and the Regions and the National Assembly for Wales jointly publish a free explanatory booklet on the purpose and operation of the Building Regulations, which provides a general introduction to the regulations – see paragraph 48 below.

2. The information and advice in this guide is generally addressed in terms of the second person – i.e. 'you'. Depending upon the context this should be taken as addressing either 'you' as the owner of the land or building for which building work is proposed and/or executed; or 'you' as the individual, professional adviser or company who has taken responsibility for complying with the Building Regulations and progressing the work through the procedures on a client's behalf. As in all circumstances where building work is commissioned which must comply with the Building Regulations, it is essential to be clear from the outset about who is taking responsibility for ensuring that compliance and for dealing with the procedures set out in this guide.

### **BUILDING CONTROL**

3. Building work which is subject to the Building Regulations must comply with these regulations and their requirements. The primary responsibility for achieving this compliance will usually rest with the person carrying out the work, which typically means the main contractor. To help achieve compliance the legislation requires whoever takes on that responsibility to use one of two building control services, and to follow one of three procedures depending upon the scale and type of work involved and which of the two building control services you have opted to use.

4. The building control service can be provided either by the relevant local authority, or by approved inspectors<sup>1</sup> who work within the private sector and are approved specifically for this function. The three different procedures, from which you will need to choose one, are:

(i) The depositing with the local authority of 'full plans', together with other information prescribed in the Building Regulations, for their approval and subsequent site inspection. In addition you may request a 'completion certificate' which, provided the local authority is satisfied that the completed building work complies with the regulations, they will issue after receiving notification that the work is complete.

(ii) The giving to the local authority of a 'building notice', together with other information prescribed in the Building Regulations. This procedure avoids the preparation of detailed, 'full plans' as in (i) above, and is designed to enable some types of building work to get under way quickly; although it is perhaps best suited to small work. There are also specific restrictions in the regulations as to when 'building notices' cannot be used, primarily in respect of fire safety issues where a building is used as a workplace. A local authority is not required to issue a 'completion certificate' under this procedure.

(iii) The employment of an approved inspector to check your plans and the building work on site. Under this procedure the approved inspector will take on responsibility for plan checking and supervision of your work, instead of the local authority. The procedure requires you and the approved inspector jointly to notify the local authority of your intentions on what is referred to as an 'initial notice'. At any stage you may ask the approved inspector for a 'plans certificate' formally stating his/her view that your plans comply with the Building Regulations. Whether or not you ask for a 'plans certificate', the approved inspector is required to issue a 'final certificate' after satisfactory completion of the work.

#### **THE DETERMINATION, AND RELAXATION/DISPENSATION AND APPEAL PROCEDURES**

5. Where the local authority or approved inspector says that your plans do not comply with one or more of the requirements of the Building Regulations (see paragraphs 10 and 11) but you believe that they do, the Building Act 1984 provides a specific procedure for the Secretary of State for Transport, Local Government and the Regions (for cases arising in England) or the National Assembly for Wales (for cases arising in Wales) to resolve such matters for you. This is referred to as a determination. Slightly different determination procedures apply according to which type of building control service you are using, but details of both procedures are set out below. However, the determination procedure is not available for building work being progressed by a 'building notice'.

6. The Building Act 1984 also gives the power to a local authority to relax or dispense with a particular requirement in Schedule 1 to the Building Regulations. Therefore where you believe that the particular circumstances of your case are such that one or more requirements in the Building Regulations should either be relaxed or dispensed with altogether, so that your plans or building work can meet the requirements, the 1984 Act enables you to apply to the local authority for a relaxation or a dispensation of one or more requirements. If the local authority refuses your application, the 1984 Act provides a procedure for you to appeal to the Secretary of State or the National Assembly for Wales (as appropriate) against that decision. A relaxation or dispensation application may be made, and any subsequent appeal lodged, irrespective of whether the building control service is being carried out by a local authority or an approved inspector.

7. The purpose of and procedures for determinations, and for appeals against a local authority's refusal to relax or dispense with a requirement, are distinctly different and it is important if you are contemplating using them to have a clear understanding of each. The following sections of this guide therefore explain these in more detail; highlight the issues to consider when deciding whether a determination or a relaxation/dispensation and any subsequent appeal is the appropriate procedure to use; and identify the difficulties which can arise if the relaxation/dispensation procedures and appeal process are misused. The three annexes at the back give details about the functional requirements in the Building Regulations, and explain in detail how to apply to the Secretary of State/National Assembly for Wales for a determination or how to lodge an appeal to the same in respect of a refusal by a local authority to relax or dispense with a requirement.

8. Before proceeding with an application for a determination, or an application to relax or dispense with a requirement, it is important that you should try to reach agreement by discussing with the local authority or approved inspector the issues which are causing the difficulty over achieving compliance. If appropriate, and if you have not already done so, you may wish to seek independent professional advice to assist these

discussions (see also paragraphs 46 – 48). Only if agreement cannot be reached should you then consider whether the correct course of action is to proceed with an application to the Secretary of State/National Assembly for Wales for a determination, or to apply to the local authority for a relaxation/dispensation (with the option of appealing to the Secretary of State/National Assembly for Wales in the event of a refusal).

9. Wherever it is necessary to refer jointly to a local authority and an approved inspector throughout the rest of this guide, they are referred to as the 'building control body'. References to the 'Secretary of State' are to the Secretary of State for Transport, Local Government and the Regions; and references to the 'NAW' are to the National Assembly for Wales. References to the Department for Transport, Local Government and the Regions are abbreviated to the 'DTLR' and references to the Building Act 1984 are abbreviated to the '1984 Act'.

## THE REQUIREMENTS OF THE BUILDING REGULATIONS 2000

10. The requirements in Schedule 1 to the Building Regulations 2000 cover a wide range of building matters. They are expressed in broad, functional terms and relate to what is 'reasonable', 'adequate' or 'appropriate'. They are therefore referred to as 'functional requirements' and are grouped under thirteen 'parts'. The matters covered include: structure; fire safety; protection from falling, collision and impact; conservation of fuel and power; and access and facilities for disabled people. With the exception of the requirements falling within the last two parts cited, the regulations limit the effect of the requirements to the purpose of securing 'reasonable standards of health and safety for persons in or about buildings' (Annex A lists all the requirements under the thirteen parts). The concept of the functional requirement was introduced into the Building Regulations in 1985 with the intention of giving designers and builders the maximum of flexibility to prepare and implement plans which comply with those requirements. The background is explained in paragraphs 29 and 30 in the context of relaxations and dispensations.

11. It would not be appropriate for the building control body to determine issues of conformity of plans in anything other than the context of the functional requirements in the Building Regulations which apply to the building work in question. However, as a matter of good practice the building control body may bring to your attention other requirements concerned with matters such as planning, licensing/registration and the Party Wall etc. Act 1996 which it may be sensible to consider and address at the same time as you are drawing up your plans for building regulations purposes. The building control body should clearly identify for you what is, and what is not, a matter for conformity with the Building Regulations. It will then be for you to decide whether you wish to take account of the non-building regulations matters at the same time as drawing up your plans for the building control process.

## THE APPROVED DOCUMENTS

12. Practical guidance on ways to comply with the requirements in the Building Regulations is contained in Approved Documents which support each of the thirteen parts in Schedule 1 to the regulations. Each document contains:

- general guidance on the performance expected of materials and building work in order to comply with each of the requirements of the Building Regulations; and
- practical examples and solutions on how to achieve compliance for some of the more common building situations.

13. The guidance in the Approved Documents does not constitute a set of statutory requirements and does not have to be followed if you wish to design and construct your building work in some other way which nevertheless can still be shown to comply with the applicable requirements of the Building Regulations. This guidance will be taken into account when the building control body is considering whether your plans of proposed work, or work in progress, complies with particular requirements. In addition, there is a legal presumption that following the guidance is evidence tending to support compliance with the Building Regulations. However, it is the building control body's duty to consider whether your plans comply with the functional requirements in the Building Regulations – not whether your plans necessarily accord with the general guidance or a specific example in an Approved Document.

14. In the past there has been some confusion as to whether the guidance in the Approved Documents can be relaxed or dispensed with by application to the local authority in the first instance and, if necessary, on appeal to the Secretary of State/NAW. Because the Approved Documents constitute only guidance, and you are free

to use other ways of complying with the requirements, it would be neither necessary nor logical to provide for the relaxation/dispensation of the content of the documents. The statutory procedures for relaxing and dispensing therefore apply solely to the functional requirements in Schedule 1 to the Building Regulations, not the Approved Documents.

## Applications for Determinations

15. It is a logical pre-requisite for a valid application for determination that you accept that the particular requirement of the Building Regulations in question applies to your proposed building work and that you believe that your plans comply with it. You should bear in mind that the procedure is a determination and not some form of 'appeal' against any decision made by the building control body. You should therefore only refer to your application as a 'determination' and not confuse it with the appeal procedure which is applicable only to relaxations and dispensations.

### PROCEDURES AND TIMING

16. There are provisions in the 1984 Act to enable you to apply for a determination irrespective of whether you are using the local authority or an approved inspector to provide the building control service. However, as mentioned in paragraph 5, the determination procedure is not available where the 'building notice' procedure has been used.

17. If you are using the local authority building control service section 16(10)(a) of the 1984 Act provides that once plans have been deposited for approval under the 'full plans' procedure, and a question arises during that procedure as to whether the plans of the proposed work are in conformity with the Building Regulations, then that question may be referred by you to the Secretary of State/NAW for determination. The large majority of questions relate to the individual requirements in Schedule 1 to the regulations. In some cases the question will arise if the local authority raises doubts before it gives a formal decision on the plans, in others not until a decision to reject the plans has been made. In the former case the local authority will still be required to proceed to a decision on your 'full plans' application within the prescribed five weeks or, where you agree, within two months – notwithstanding the fact that you have applied for a determination.

18. If you are using the services of an approved inspector the procedure is slightly different. Under section 50(2) of the 1984 Act you may ask your inspector for a 'plans certificate'. He/she must then formally examine your plans to be satisfied that they are sufficiently complete, and do not show any contravention of the Building Regulations. If satisfied then he/she must give to you and the local authority a certificate to that effect. If on the other hand the approved inspector does not believe that your plans comply with the Building Regulations he/she will be unable to give such a certificate. Your inability to obtain a certificate will be treated in the same way as a local authority's refusal to pass deposited 'full plans', and if the question regarding compliance remains unresolved you may refer it to the Secretary of State/NAW for determination.

19. In making your determination application you must clearly set out your case as to why you believe that your plans comply with the particular requirement of the Building Regulations in question, and also address the comments made by the building control body. It may be relevant to refer to any guidance contained in the supporting Approved Document, or to any other technical guidance or material which you believe is supportive of your case. A determination fee is payable (see paragraph 3 of **Annex B**).

### VALIDITY OF APPLICATIONS

20. Section 16(10)(a) of the 1984 Act confers jurisdiction on the Secretary of State in any case where a question has arisen regarding the conformity of formative plans of the proposed work with the Building Regulations. The Secretary of State/NAW will not, therefore, as a general rule accept applications for a determination under this section in relation to building work which has substantially commenced at the date on which an application is made. If, however, you consider that there are exceptional reasons justifying a later application, the Secretary of State/NAW will consider those reasons carefully. But, when work has commenced and reached a stage where it has foreclosed on the options necessary to achieve compliance of the particular element of the work in question, an application for determination at this stage is unlikely to qualify as one relating to plans of proposed work and would therefore not be accepted.

## LOCAL AUTHORITY CONDITIONAL APPROVALS

21. This sub-section only applies where the local authority is the building control body. It is relevant to the comparatively rare situation where a determination relates to the conditions which a local authority has applied to a 'full plans' approval.

22. Where 'full plans' of proposed work are defective such that it would contravene any of the Building Regulations, under sub-sections 16(2)-(5) of the 1984 Act the local authority may either reject the plans or pass them subject to one or other, or both, of two types of conditions. The two conditions are that:

- (i) specific modifications should be made to the deposited plans; and
- (ii) specified further plans must be deposited.

A 'conditional approval' can therefore be a useful means of expediting an approval rather than the local authority rejecting the plans outright. However, the local authority is required to seek your agreement to the imposition of conditions. Any request by you for the imposition of a condition, or any consent by you to the imposing of a condition, must be in writing.

23. Because your consent, as the applicant, is required before a condition can be attached to the approval of your 'full plans' application, the general assumption is that a 'conditional approval' is unlikely to be the subject of a subsequent application for a determination. However, there may be circumstances where although you have had misgivings about the imposition of particular conditions you nevertheless have agreed to them in order to secure a valid 'full plans' approval. The alternative course of refusing to accept the conditions is likely to lead to the local authority having to reject your plans if, for no other reason than, the matter cannot be resolved within the time period which the authority is required to come to a decision. Given that the Secretary of State and the NAW can, and usually do, consider applications for determinations after a local authority has come to a decision on a 'full plans' application, they are prepared to consider applications for determinations relating to the imposition of conditions.

24. Details of how to proceed with an application to the Secretary of State/NAW for a determination, and guidance on what it should contain, are given in Annex B. This also explains how your application will be processed and the timescale involved.

## Applications for Relaxation or Dispensation of a Requirement and subsequent Appeals

25. If you believe that a particular requirement of the Building Regulations is too onerous, or inappropriate, in the particular circumstances of your plans or building work, you have a right under sections 8 and 9 of the 1984 Act to apply to the local authority asking them to either relax or dispense with the requirement. The power to relax or dispense has been vested in the local authority in the first instance and it is to them that you must apply irrespective of whether the authority or an approved inspector is carrying out the building control service. If you are using an approved inspector, you should discuss any proposal to seek a relaxation or dispensation with the inspector before proceeding.

26. If the local authority refuses your application you have a right of appeal under section 39 of the 1984 Act to the Secretary of State/NAW against that decision, provided you do so within one month of the date of being notified.

## KEY DIFFERENCES BETWEEN RELAXATIONS/DISPENSATIONS (AND ANY SUBSEQUENT APPEALS) AND DETERMINATIONS

27. There are four key differences between an application to relax or dispense with a requirement and an application for a determination. They are as follows:

- (i) An application to relax or dispense with a requirement, and any subsequent appeal, must be based on the premise that you accept that the requirement is applicable, but that the plans or building works do not comply with that requirement in part or in whole. Your case for a relaxation or dispensation must therefore be based on why you believe you have a valid reason for not complying in part or in whole. This compares with a determination where you would be arguing that your plans do comply.

(ii) An application to relax or dispense with a requirement is made to the local authority, not the Secretary of State/NAW as for a determination. Only if your application is refused can you lodge an appeal against that decision to the Secretary of State/NAW.

(iii) Unlike a determination, an application to relax or dispense with a requirement, and any subsequent appeal, is not restricted to the 'full plans' procedure provided by the local authority building control service or the building control service provided by an approved inspector, but may also be made where the 'building notice' procedure is being carried out by the local authority building control service.

(iv) Unlike a determination, an application to relax or dispense with a requirement, and any subsequent appeal, may relate to either plans of proposed building work, or to work already under construction or completed. An application can therefore be made at any time from when you develop the first outlines of your proposals and discover that there will be a problem of compliance with a requirement (i.e. before you deposit 'full plans' or give a 'building notice', as applicable, to the local authority, or pass plans to the approved inspector), to when the work has been completed. This contrasts with a determination where the application must relate, in general, to work which has not substantially commenced.

28. The most appropriate time to apply for a relaxation or dispensation is, as implied by (iv) above, likely to be at early design stage. The result can then be taken account of in your plans from the outset. Leaving an application to the point where building work is completed is not recommended and should not be used as a last resort in response to the building control body formally challenging compliance of the completed works and thereby leaving you ultimately vulnerable to enforcement action (see paragraphs 41 and 42). In this respect, you should also note that the local authority cannot consent to a relaxation or dispensation if, before you apply, the authority has already taken enforcement action which requires the work to be pulled down, removed or altered.

### **BACKGROUND TO THE RELAXATION AND DISPENSATION PROCEDURES**

29. By way of background it is important to appreciate that prior to the 1984 Act the requirements in Building Regulations were very detailed in nature and contained technical and prescriptive specifications/requirements. It was therefore appropriate for local authorities to have the power to consider selectively relaxing certain aspects of those requirements or of dispensing with one or more requirements altogether. The Building Regulations 1985 removed most of these prescriptive requirements and the requirements in Schedule 1 to the Building Regulations 1991 (now consolidated into the Building Regulations 2000) completed the transition and are now written in far more general terms as 'functional requirements'.

30. The intention has been to give designers and builders far greater flexibility in the way they comply with the requirements; but the corollary is that it may be very difficult for a local authority to see how it can selectively relax some aspects of a functional requirement, or dispense with a requirement, given that all but two of the thirteen parts (within which the requirements are grouped) relate only to the reasonable provision of some health and safety feature (Annex A gives a list of all the parts and requirements, and identifies these particular two parts).

### **APPLICATIONS TO THE LOCAL AUTHORITY FOR A RELAXATION OR DISPENSATION**

31. Your application to the local authority should clearly state whether you are seeking either a relaxation or a dispensation, and specify in respect of which requirement in Schedule 1 to the Building Regulations. Simply referring to one of the parts in Schedule 1 to the Building Regulations (e.g. Part B or Part K) will not identify the actual requirement.

32. Your application must also clearly set out your case. If you are seeking a relaxation you should state the reasons why you believe a requirement is too onerous and indicate why you should not comply with a particular aspect of it. This will enable the local authority to consider the relaxation request in the confidence that there is a sound rationale for approving it and that the extent of your obligation to comply will be clear.

33. If you are seeking a dispensation your application will need to justify clearly why you believe that the whole of a requirement is inappropriate, or unreasonable, in the particular circumstances of your plans or building work. The effect of a dispensation will be to absolve you totally from complying with the requirement. You may

find that the case for justifying a dispensation will be easier to define than for a relaxation. However, the onus will still be upon you to give a clear justification for seeking the dispensation.

34. The local authority can provide further details of how to proceed and what to include in a relaxation or dispensation application.

### **APPEALS TO THE SECRETARY OF STATE/NAW AGAINST THE LOCAL AUTHORITY'S REFUSAL TO RELAX OR DISPENSE**

35. If the local authority refuses your application for a relaxation or dispensation of a particular requirement they should give an explanation of their reasoning. The local authority must also notify you of your right to appeal to the Secretary of State/NAW against their decision within one month of notification of that decision. Where an approved inspector is providing the building control service and the local authority has not already done so, you should inform the inspector of the authority's decision and seek his advice before proceeding. If you decide to appeal to the Secretary of State/NAW, your appeal should similarly set out your case giving full justification for relaxing or dispensing with the requirement, and also address the reasons which the local authority should have given for refusing your application.

36. Details of how to proceed with an appeal to the Secretary of State/NAW, and guidance on what it should contain, are given in Annex C. This also explains how your appeal will be processed and the timescale involved.

### **Using the correct procedure**

37. When reading this section you may find it helpful to refer to the 'key points' section and table relating to the main procedures and timings for determinations and appeals on pages 17-20.

### **GENERAL CONSIDERATIONS**

38. As stated in paragraph 8, it is very important to discuss and clarify with the building control body the issues which are causing the difficulty over achieving compliance. Only if agreement cannot be reached should you decide whether it is appropriate to either apply to the Secretary of State/NAW for a determination, or to apply to the local authority for a relaxation or dispensation of a particular requirement of the Building Regulations. In addition, it is important to take account of the stage which your plans preparation or building work has reached, as this may well also constrain the action open to you.

39. As explained earlier, applications for determinations, and applications for relaxation or dispensation of requirements (and subsequent appeals to the Secretary of State/NAW), both work on the basis that as the applicant you accept that specific requirements are applicable to the building work in question; but there are important differences which have been explained in paragraph 27 and these need to be taken into account when deciding on the correct procedure for any particular case. However, because the requirements in the Building Regulations are now written in functional terms, a relaxation or dispensation of one or more of the functional requirements is unlikely in most cases to be relevant to the practical issue of complying with the Building Regulations in terms of health and safety. Moreover, a case for relaxing or dispensing with a requirement may be very difficult to argue, particularly if 'life safety' issues are at stake. There may be exceptions with respect to Parts L and M whose performance standards embrace more than just health and safety (see paragraphs 10, 29 and 30). But, by and large an application for determination made at the appropriate time (i.e. before work has substantially commenced) is likely to be the more appropriate course of action.

40. When deciding which is the more appropriate procedure, it is also important to understand what the end result may be of some appeals to the Secretary of State/NAW against a refusal by a local authority to relax or dispense with a requirement. In particular, if you have maintained from the outset that your proposals comply with the requirements in the Building Regulations but the building control body does not agree, the appropriate course of action is likely to be to apply for a determination. If instead you apply to the local authority for a relaxation or dispensation of a requirement this is likely to be a contradiction of what you have argued at the outset – namely, that your proposals did comply. It follows that a relaxation or dispensation is not what is required and that the application is, in effect, a misuse of the system. Where local authorities have refused applications to relax or dispense in these circumstances, a subsequent appeal to the Secretary of State/NAW may result in a decision which does no more than confirms their decision by dismissing the appeal. Moreover,



because the Secretary of State/NAW is only obliged to include in an appeal decision such information as is appropriate to discharge his/their statutory functions, the decision will not necessarily deal with the issue of compliance of your proposals with the requirement as it stands (i.e. without a relaxation or dispensation) and you may be little further forward with resolving your problems.

### **POSSIBILITY OF ENFORCEMENT ACTION**

41. A local authority has a general duty to enforce the Building Regulations in its area. An authority has power under section 36 of the 1984 Act to issue an enforcement notice – referred to as a ‘section 36 notice’ – requiring the pulling down, removal or alteration of building work which does not comply with the Building Regulations, and can seek recourse to the courts as necessary. In addition, section 35 of the 1984 Act provides that the person responsible for the contravention is liable on summary conviction to a fine. Although a local authority will seek to deal with enforcement matters by informal means wherever possible, these are the ultimate sanctions to which they can have recourse in order to fulfil their statutory duty of ensuring the Building Regulations are enforced.

42. Where an approved inspector is providing the building control service the local authority’s enforcement powers under sections 35 and 36 of the 1984 Act are disapplied to the building work concerned whilst it is in progress, and will continue to be disapplied if the approved inspector issues a final certificate after completion of the work. However, if the approved inspector considers during the course of construction, or at completion, that any of the work which you have carried out does not comply with any of the requirements of the Building Regulations, he/she has the power to issue a ‘notice of contravention’. If this is not complied with within three months, the approved inspector will cancel the ‘initial notice’ given to the local authority (see paragraph 4 (iii)). The local authority can then take over the building control function, and they may then take enforcement action under sections 35 and/or 36.

### **RESPONSES TO ENFORCEMENT ACTION**

43. If you have been unable to resolve a question of compliance of your building work with the building control body, and that body decides either during construction or on completion that contravention has occurred, then you may be served with an enforcement notice by the local authority as described in paragraph 41. If you wish to contest the notice you can do so in one of two ways. You may either appeal against the notice in the Magistrates’ Court under section 40 of the 1984 Act and demonstrate your case for compliance there; or you may proceed under section 37 of that Act and counter the ‘section 36 notice’ by obtaining a written report from a suitably qualified person concerning the compliance of your work with a view to persuading the local authority to withdraw the notice.

44. A third, but separate option, which is sometimes adopted is to seek a relaxation or dispensation of a requirement in order for the completed building work to be deemed to achieve compliance. However, if you respond to the threat of enforcement in this way and at this late stage, but had originally maintained that your work was in compliance, you will run the risk of being seen to be changing your view by accepting that your work now does not comply with a particular requirement. Under such circumstances your application to the local authority to relax or dispense with a requirement, and any subsequent appeal to the Secretary of State/NAW, is likely to be more difficult to justify.

45. Paragraphs 43 and 44 serve to emphasise the importance of seeking a determination, or – where the circumstances can be shown to justify it – applying for a relaxation or dispensation of a requirement at the earliest opportunity.

## **Further Guidance**

46. Local authorities, together with approved inspectors where appropriate, have the statutory duty of carrying out the building control functions and procedures in the 1984 Act and the Building Regulations 2000. Except for determinations and appeals, the DTLR and the NAW have, in general, no direct role to play in that process (although there are default powers that may be applied in exceptional circumstances).

47. It follows that the DTLR and the NAW cannot normally intervene with the general running of the building control process operated by the building control body. However, the DTLR/NAW may be able to help by giving general guidance on the 1984 Act, the Building Regulations and Approved Documents and with further advice, if needed, on the determinations and appeals procedures (address and telephone numbers etc. are at

Annexes B and C). But it must always be borne in mind that it is for building control bodies to interpret and apply the regulations in the first instance and ultimately for the courts. As advised in paragraph 8, it is also open for you to seek independent professional advice on your case if you consider it necessary.

48. Previous determination and appeal decision letters issued by the Secretary of State/NAW may assist you with your particular case. Copies of these letters – with personal and location details removed – are available on request from the DTLR or alternatively can be found on the DTLR website: [www.safety.dtlr.gov.uk/bregs/app-det/index-let.htm](http://www.safety.dtlr.gov.uk/bregs/app-det/index-let.htm). Copies of the 1984 Act, the Building Regulations 2000, the Building (Approved Inspectors etc) Regulations 2000, and the Approved Documents can be purchased from the Stationery Office, PO Box 29, Norwich NR3 1GN (Tel: 0870 600 5522). The DTLR and the NAW jointly publish a free explanatory booklet on the purpose and operation of the Building Regulations. Copies may be ordered from DTLR Free Literature (address and telephone number etc. are on the inside cover of this guide). Most of these publications – including this guide – are also available on the DTLR website.

## Key points to consider

The following key points summarise what you should bear in mind before applying for a determination or lodging an appeal. The main stages of the procedures are summarised in the table on page 20.

### Determinations

If you are considering applying to the Secretary of State/NAW for a determination, the main points to bear in mind are:

- You must accept that the particular requirement of the Building Regulations in question applies to your proposed building work and you should believe that your plans comply with it.
- You can only use the determination procedure if you have submitted 'full plans' and other relevant information to the local authority or approved inspector for them to approve (in the case of a local authority), or issue a 'plans certificate' (in the case of an approved inspector).
- Because determinations are tied to the 'full plans' submission procedures relating to proposed work, you can normally only apply for a determination before the building work has substantially commenced.
- If you are using the local authority building control service you can apply to the Secretary of State/NAW for a determination at any time after you have submitted your plans – i.e. usually after the authority has looked at the plans and informally told you that they are not acceptable; or after they have sent you a notice formally rejecting the plans. If you are using the services of an approved inspector you may apply for a determination once he/she has confirmed that he/she is unable to issue you with a 'plans certificate'. The sooner you are able to apply for a determination the less delay there will be to your building work.
- The guidance in the Approved Documents is only that, and the fact that your plans do not follow it does not necessarily mean that they do not comply with the requirements of the Building Regulations. Although the local authority or approved inspector should take account of the guidance in the Approved Documents, they must ultimately judge your proposals against the requirements in the Building Regulations and not the Approved Documents. • Your determination application must contain the information set out in **Annex B**, including a determination fee (see paragraph 3).
- Once your application is accepted, all parties are consulted before the Secretary of State/NAW gives it careful consideration and gives you and the local authority, or approved inspector, a decision ('the determination').

### You should particularly bear in mind that:

- Usually the determination process is likely to be the most appropriate way for you to resolve a difficulty over Building Regulations compliance with the local authority or approved inspector. It is therefore essential that you proceed with a determination as soon as it becomes apparent that one may be necessary and before the building work has substantially commenced.

- If you do proceed with the building work in the face of warnings from the local authority or approved inspector about the compliance of your work they would be unable to give you a 'completion certificate'/'final certificate' (as appropriate), and the local authority may take enforcement action requiring you to modify or demolish your defective work.

## Appeals

If you are considering lodging an appeal to the Secretary of State/NAW against a refusal by the local authority to relax or dispense with a requirement, the main points to bear in mind are:

- You must accept that the particular requirement of the Building Regulations in question is applicable but that your plans or building works do not comply with that requirement in part or in whole.
- You must believe that the particular circumstances of your plans or building work means that the applicable requirement of the Building Regulations is either too onerous or inappropriate (i.e. that it should be relaxed or dispensed with respectively).
- The appeal process is the second stage in seeking to achieve what you want. The first stage is for you to make an application to the local authority asking them either to relax or to dispense with the requirement. Only if the local authority refuses will you need to consider using your right of appeal to the Secretary of State/NAW.
- Unlike a determination, an application to the local authority to relax or dispense with a requirement can be made at any time from before the building work starts (i.e. at design stage and before you deposit 'full plans' or give a 'building notice' or employ an approved inspector), during construction, or after it has been completed. An appeal against the local authority's decision must be made within one month of the date they let you know of the decision.
- The guidance in the Approved Documents is only that, and the fact that your plans or building works do not follow it does not necessarily mean that they do not comply with the requirements of the Building Regulations. You should therefore not immediately jump to the conclusion that the only solution is to apply for a relaxation or dispensation of a requirement. Although the local authority or approved inspector should take account of the guidance in the Approved Documents, they must ultimately judge your proposals against the requirements in the Building Regulations and not the Approved Documents.
- Your application to the local authority and any subsequent appeal against a refusal must make it clear whether you are seeking a relaxation or a dispensation; specify the particular requirement in question; and set out your case giving full justification. The full information required for an appeal is set out in **Annex C**.
- When the local authority has made a decision, you must obtain formal notification of this. If they have refused your application they should say why, and inform you of your right to appeal to the Secretary of State/NAW within a time limit of one month. It will be important to address the local authority's reasons for refusal if you proceed with an appeal.
- No fee is payable for an appeal.
- Once the Secretary of State/NAW has accepted your appeal, he/they will consult all parties before giving it careful consideration and coming to a decision.

## You should particularly bear in mind that:

- The requirements in the Building Regulations (see Annex A) are referred to as 'functional requirements' and have evolved over the years from earlier versions of the regulations where the requirements were far more prescriptive. They are primarily concerned with health and safety, and are expressed in terms of what is 'reasonable', 'adequate' or 'appropriate'. Appealing against a refusal to grant a relaxation or a dispensation is therefore likely to be very difficult to argue unless very special circumstances exist. You will particularly need to have regard to 'life safety' issues.

- Do not rely on the appeal process to deal with an unresolved matter which really should have been referred to the Secretary of State/NAW at an earlier stage as a determination. Remember that if the Secretary of State/NAW dismisses your appeal the requirement in question will still apply and your building work will still not comply with it. Moreover, in considering your appeal the Secretary of State/NAW is only obliged to include in the decision such information as is appropriate to discharge their statutory function. The decision on an appeal will therefore not necessarily give an indication of compliance of your proposals with the applicable requirement as it stands (i.e. without a relaxation or dispensation)

### Main stages of procedures

CONTEXT	DETERMINATION A requirement in the Building Regulations applies:	RELAXATION A requirement in the Building Regulations applies:	DISPENSATION A requirement in the Building Regulations applies:
YOUR POSITION	– You believe your plans comply (notwithstanding the fact that they may not accord with guidance in the relevant Approved Document).	– You believe a requirement is too onerous and that there are good reasons for not complying with a particular aspect of it.	– You believe the whole of a requirement is inappropriate, or unreasonable, in your particular case.
ACTION BY YOU	– Discuss with building control body* and then seek local authority 'full plans approval, or a 'plans certificate' from approved inspector.	– Discuss with building control body* and if appropriate then apply to local authority for a <b>relaxation</b> .	– Discuss with building control body* and if appropriate then apply to local authority for a <b>dispensation</b> .
OUTCOME OF APPLICATION	– Building control body: <ul style="list-style-type: none"> <li>indicates does not comply;</li> <li>issues a formal rejection/withholds 'plans certificate'.</li> </ul>	– Local authority refuses your application.	– Local authority refuses your application.
FURTHER ACTION BY YOU, IF YOU WISH, AND TIMING	– You can apply for a <b>determination</b> to the Secretary of State/NAW at any stage from submitting plans to building control body, but this must be before you substantially commence the building work.	– You can <b>appeal</b> to the Secretary of State/NAW against decision within 1 month of local authority notifying you of their decision.	– You can <b>appeal</b> to the Secretary of State/NAW against decision within 1 month of local authority notifying you of their decision.

\* The building control body will be either the relevant local authority or the approved inspector you have employed.

## ANNEX A

### A list of the 13 parts and sub-heads to the requirements contained in Schedule 1 to the Building Regulations 2000

#### **PART A\* STRUCTURE**

- A1. – Loading
- A2. – Ground movement
- A3. – Disproportionate collapse

#### **PART B\* FIRE SAFETY**

- B1. – Means of warning and escape
- B2. – Internal fire spread (linings)
- B3. – Internal fire spread (structure)
- B4. – External fire spread
- B5. – Access and facilities for the fire service

#### **PART C\* SITE PREPARATION AND RESISTANCE TO MOISTURE**

- C1. – Preparation of site
- C2. – Dangerous and offensive substances
- C3. – Subsoil drainage
- C4. – Resistance to weather and ground moisture

#### **PART D\* TOXIC SUBSTANCES**

- D1. – Cavity insulation

#### **PART E\* RESISTANCE TO THE PASSAGE OF SOUND**

- E1. – Airborne sound (walls)
- E2. – Airborne sound (floors and stairs)
- E3. – Impact sound (floors and stairs)

#### **PART F\* VENTILATION**

- F1. – Means of ventilation
- F2. – Condensation in roofs

#### **PART G\* HYGIENE**

- G1. – Sanitary conveniences and washing facilities
- G2. – Bathrooms
- G3. – Hot water storage

#### **PART H\* DRAINAGE AND WASTE DISPOSAL**

- H1. – Foul water drainage
- H2. – Cesspools, septic tanks and settlement tanks
- H3. – Rainwater drainage
- H4. – Solid waste storage

#### **PART J\* HEAT PRODUCING APPLIANCES**

- J1. – Air supply
- J2. – Discharge of products of combustion
- J3. – Protection of building

#### **PART K\* PROTECTION FROM FALLING, COLLISION AND IMPACT**

- K1. – Stairs, ladders and ramps
- K2. – Protection from falling
- K3. – Vehicle barriers and loading bays
- K4. – Protection from collision with open windows etc.
- K5. – Protection against impact from and trapping by doors

## **PART L CONSERVATION OF FUEL AND POWER**

L1.

## **PART M ACCESS AND FACILITIES FOR DISABLED PEOPLE**

M1. – Interpretation

M2. – Access and use

M3. – Sanitary conveniences

M4. – Audience or spectator seating

## **PART N\* GLAZING – SAFETY IN RELATION TO IMPACT, OPENING AND CLEANING**

N1. – Protection against impact

N2. – Manifestation of glazing

N3. – Safe opening and closing of windows etc.

N4. – Safe access for cleaning windows etc.

These parts and requirements are subject to change. An up-to-date list can be found on the DTLR website.

\* Regulation 8 of the Building Regulations 2000 limits the purpose of these requirements to that which will secure reasonable standards of health and safety for persons in or around buildings (and any others who may be affected by buildings, or matters connected with buildings).

## **ANNEX B**

### **Applications to the Secretary of State/NAW for a determination**

1. There is no model form on which to apply to the Secretary of State or the NAW for a determination. Your application should be made in the form of a letter, with relevant enclosures as indicated below. Applications can be transmitted via e-mail, but it may not be feasible to submit all the enclosures required electronically.

*For England your application should be addressed to:*

Department for Transport, Local Government and the Regions Building Regulations Division  
Floor 3/C1  
Eland House  
Bressenden Place  
London SW1E 5DU

Tel: 020 7944 5748 or 5742

Fax: 020 7944 5739

E-mail: bregsb.br@dtlr.gov.uk

*For Wales your application should be addressed to:*

National Assembly for Wales  
Housing Division  
Crown Buildings  
Cathays Park  
Cardiff CF1 3NQ

Tel: 029 2082 6913

Fax: 029 2082 5136

E-mail: housing.directorate@wales.gsi.gov.uk

2. The information that should be provided with your determination application should include:

- the names and addresses of the parties involved, including any agents; the local authority or approved inspector providing the building control service; and the full address of where the proposed building work will be carried out;

- a statement setting out details of the building, the proposed work, and the matter in dispute;
- a statement setting out your case for compliance with the particular requirement of the Building Regulations in question;
- a copy of each of the plans of the proposed work and other documents which have been submitted to the local authority with your 'full plans' application, or those for which the approved inspector was unable to give a 'plans certificate', and of all relevant correspondence with the authority/inspector involved, including the 'notice of rejection of plans' if one has been issued;
- a copy of any listed building consent where the proposed work has required this. If relevant, a copy of any associated planning permission relating to the listed building should also be provided;
- a copy of any other documentation – whether commissioned by you or otherwise – supporting your case for compliance, including any calculations. Where appropriate, it may also be helpful to include a location and block plan, and a few photographs of the proposed work to illustrate particular points;
- a determination fee – see paragraph 3 below.

3. Regardless of whether the local authority or an approved inspector is providing the building control service, a fee is payable for a determination and should be included with your application. It is calculated on the basis of half of the local authority's plan charge, excluding VAT, subject to a minimum limit of £50 and an upper limit of £500. Cheques should be made payable to either the "Department for Transport, Local Government and the Regions" or "The National Assembly for Wales", as appropriate.

4. Your determination application will be acknowledged – as will all documentation received. Once your application has been checked and accepted, it will be copied to the building control body for their comments and you will be notified of this. The building control body will be asked to respond within 21 days and to copy their response direct to you. You will then have 21 days to respond to their comments if you wish by writing to the Secretary of State/NAW, which should be similarly copied to the building control body. Thereafter, if no further comments are received, the Secretary of State/NAW will give careful consideration to the documentation submitted and will proceed to a decision. You will be notified of the decision by letter, which will be copied simultaneously to the building control body. Once the decision has been issued the Secretary of State/NAW has no further jurisdiction in your case and any matters that follow should be taken up with the building control body.

5. The Secretary of State/NAW considers determination applications on the basis of written representations – no site visits are made. If it is necessary during the technical appraisal of your case for the Secretary of State/NAW to seek further information from either party, this will be done in writing and copied to the other party.

6. The Secretary of State/NAW aims to issue a decision within 3 months of receipt of all documentation – you will therefore need to allow around 6 months for the whole process. But on occasions it may take longer depending on the complexity of the case.

## ANNEX C

### Appeals to the Secretary of State/NAW against refusal by a local authority either to relax or to dispense with a requirement in Schedule 1 to the Building Regulations 2000

1. There is no model form on which to appeal to the Secretary of State or the NAW. Your appeal should be made in the form of a letter, with relevant enclosures as indicated below. Appeals can be transmitted via e-mail, but it may not be feasible to submit all the enclosures required electronically.

*For England your appeal should be addressed to:*

Department for Transport, Local Government and the Regions Building Regulations Division  
Floor 3/C1  
Eland House  
Bressenden Place  
London SW1E 5DU

Tel: 020 7944 5748 or 5742

Fax: 020 7944 5739

E-mail: bregsb.br@dtlr.gov.uk

*For Wales your appeal should be addressed to:*

National Assembly for Wales  
Housing Division  
Crown Buildings  
Cathays Park  
Cardiff  
CF1 3NQ

Tel: 029 2082 6913

Fax: 020 2082 5136

E-mail: housing.directorate@wales.gsi.gov.uk

2. The information that should be provided with your appeal should include:

- the names and addresses of the parties involved, including any agents; the local authority or approved inspector providing the building control service; and the full address of where the building work will be/has been carried out;
- a statement setting out details of the building, the building work, and the matter in dispute;
- a statement setting out your case for either relaxing or dispensing with the particular requirement of the Building Regulations in question;
- a copy of each of the plans of the building work and other documents which were submitted to the local authority with your relaxation or dispensation application and of all relevant correspondence with the authority involved, including the authority's 'notice of refusal'. If an approved inspector is undertaking the building control service, a copy of the correspondence with him/her should also be enclosed;
- a copy of any listed building consent where the building work has required this. If relevant, a copy of any associated planning permission relating to the listed building should also be provided;
- a copy of any other documentation – whether commissioned by you or otherwise – supporting your case for relaxation or dispensation, including any calculations. Where appropriate, it may also be helpful to include a location and block plan, and a few photographs of the building work to illustrate particular points.

3. No fee is payable for an appeal.



4. Your appeal will be acknowledged – as will all documentation received. Once your appeal has been checked and accepted, it will be copied to the local authority (and also to the approved inspector if he/she is carrying out the building control service) for their comments and you will be notified of this. The local authority (and approved inspector if applicable) will be asked to respond within 21 days and to copy their response direct to you. You will then have 21 days to respond to their comments if you wish by writing to the Secretary of State/NAW, which should be similarly copied to the local authority (and approved inspector if applicable). Thereafter, if no further comments are received, the Secretary of State/NAW will give careful consideration to the documentation submitted and will proceed to a decision. You will be notified of the decision by letter, which will be copied simultaneously to the local authority (and approved inspector if applicable). Once the decision has been issued the Secretary of State/NAW has no further jurisdiction in your case and any matters that follow should be taken up with the local authority and/or the approved inspector, as appropriate.

5. The Secretary of State/NAW considers appeals on the basis of written representations – no site visits are made. If it is necessary during the technical appraisal of your case for the Secretary of State/NAW to seek further information from either party, this will be done in writing and copied to the other party.

6. The Secretary of State/NAW aims to issue a decision within 3 months of receipt of all documentation – you will therefore need to allow around 6 months for the whole process. But on occasions it may take longer depending on the complexity of the case.