

Dear Sir or Madam

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

a) Inclusion of Dwellings by Build or Conversion with Designated Warranty Schemes for the Purposes of a "Warranty Link Rule" (WLR)

b) Inclusion of Holiday Homes

Introduction

1. This letter concerns the introduction of the WLR linking building control by AIs on building work involving the creation of any new dwellings to the registration of those new dwellings under a designated housing warranty scheme.
2. This letter also announces the addition of holiday accommodation to the types of building control AIs can undertake.

Background

3. In the summer of 2004 ODPM consulted on proposals for a WLR linking building control by AIs on new dwellings built for private sale or renting to the registration of those dwellings under a designated housing warranty scheme; and for criteria and procedure for assessing warranty schemes for designation. Responses to the consultation were generally supportive of these proposals.
4. The aim of the warranty link rule proposals is to pave the way for private sector AIs to carry out building control on new dwellings built for sale or private renting. At present, only one AI, NHBC Building Control Services Ltd, can carry out building control on new dwellings built for sale or private renting. The ODPM's policy is that there should be the fullest possible measure of competition, choice and consumer protection in building control across the whole range of regulated building work. Developers of new homes and of mixed use buildings containing such dwellings, now have a choice between the local authority building control department, and a Construction Industry Council (CIC) authorised AI, as their building control provider.
5. The approval process of the CIC ensures that all AIs are well qualified to carry out the building control function. However, AIs 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 AI 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 AI, by ensuring that, subject to the limits on cover, the AI has the financial resources to comply with any award of damages or out of court settlement.
6. A 17 September 1997 Circular Letter to Local Authorities and AIs 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.

7. A 5 March 2002 Circular Letter to local authorities and AIs, 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. Subsequent changes to approval of schemes have been the subject of Circular Letters dated 10 and 13 December 2004.
8. Under the Building Act 1984 and the Building (AIs etc) Regulations 2000 ("the AIs Regulations"), an AI must include with initial notices, amendment notices, plans certificates and final certificates, a declaration signed by the insurer that a scheme of insurance, approved by the Secretary of State, applies in relation to the relevant work. The insurance cover provided under these schemes indemnifies the AI in respect of claims arising from the conduct of their building control functions.

Warranty Link Rule

9. Before undertaking building control on building work involving the creation by new build or conversion of any new dwellings for sale or private renting AIs are required to check the new dwellings are registered under a designated warranty scheme (DWS). If the dwellings are not registered with a designated warranty provider the AI must not undertake the building control or issue an Initial Notice. As indicated in Annex C, where projects are registered with NHBC, AIs will be required to ensure the availability to them of Sections 4 and 5 of the Buildmark Warranty. The Warranty Link Rule is an additional safeguard to professional indemnity cover for AIs.
10. Should it become apparent during construction that a warranty is no longer in place the AI must cancel the initial notice, which means that the building control for the scheme will then revert to local authority control (in accordance with Section 52 of the Building Act 1984).
11. Warranty providers (WPs) need to be satisfied not only with the credentials of builders admitted to scheme registers, but also with the credentials of building control bodies. The operators of a designated warranty scheme are free to carry out their own assessment of an AI as the basis for deciding whether, and on what terms, to make warranty cover available for dwellings where an AI is carrying out building control. It is not unreasonable for WPs to make a fair charge for assessments of this kind, and for there to be adjustments in per unit premiums, depending on which AI is involved.
12. The WLR cannot be applied to local authorities as, unlike AIs, they cannot refuse to undertake building control.
13. The range of building control work that may be undertaken by AIs re-approved by CIC (see paragraph 18) is set out in Annex.
14. An AI may only give an Initial Notice in relation to work for which the AI is approved, within the terms described in their re-approval from CIC (see Annex B). A local authority must reject an Initial Notice if the building work does not fall within any of the classes listed in their approval from CIC, on the grounds that the person

is not an AI in relation to the proposed work (paragraph 3 of Schedule 3 to the Building (AIs etc.) Regulations 2000). In such circumstances it is likely that an AI's insurance would also be invalid and paragraph 6 of Schedule 3 would constitute further grounds for rejection.

15. Details of three DWSs approved for the purposes of the WLR are listed at Annex D. It should be noted that the Zurich and Premier warranties referred to are the new versions that have been designated for the purposes of the WLR. Old versions of these policies must not be accepted.
16. The criteria detailed in Annex E were used to assess the DWSs and will be used in a similar way to gauge both the appropriateness of future schemes and changes to currently approved schemes. This criteria is intended to provide suitable "no-fault" redress to new home owners in the event of any negligence on the part of AIs when checking for compliance with the Building Regulations. Also, it is distinct from, and without prejudice to, that intended for designation of schemes in the context of the Home Information Pack.

Holiday Accommodation

17. Town Planning conditions or legal agreements often restrict the period of use so that a holiday home cannot be a person's main residence. Before undertaking building control on building work involving the creation by new build or conversion of any new dwellings for holiday accommodation AIs are required to check the new dwellings are specifically intended for use as holiday accommodation, are not intended to be a person's only or main residence, and are subject to planning conditions or legal agreements restricting their use to holiday accommodation.

Approval

18. In accordance with the re-approvals issued by CIC, AIs are approved to act for all purposes of building control subject to the limitations set out in Annex B to this letter. The approvals take effect from the date cited by the CIC re-approval letter.

Professional Indemnity Insurance Scheme Approvals

19. Griffiths & Armour and PYV Limited, the current AI Professional Indemnity insurance suppliers, have both assured ODPM that their AI Professional Indemnity schemes will cover the WLR to allow AIs to undertake building control on new dwellings built for sale or private renting.
20. NHBC Building Control Services Ltd is insured by its parent, the National House-Building Council, under two schemes approved in 1985 and 1996 respectively.
21. Zurich Building Control Services Ltd is insured by its parent, Zurich Professional, under a scheme approved in August 2005.
22. Following representations from the AI Professional Indemnity insurance suppliers we are taking the opportunity to raise the Excess to not more than £5,000. A copy of the revised Guidelines incorporating this change is at Annex A to this letter.

Enquiries

23. Any enquiries on this circular letter should be addressed to Steve Mulcair, Buildings Division, ODPM, Zone 4/A6, Eland House, Bressenden Place, London SW1E 5DU (tel: 0207 944 5752; email: enquiries.br@odpm.gsi.gov.uk).

Signed by Anne Hemming, Head of Buildings Division

Office of the Deputy Prime Minister

31 October 2005

Criterion 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.

Limitations on Dwellings

1. Approved Inspectors are approved for the purpose of Part II of the Building Act 1984 to act for **all types of building work** subject only to the limitations set out below.

2. In relation to building work consisting of the erection of a building containing any dwelling, or in connection with the change of use of a building or part of a building to create a dwelling only when the dwelling is within one of the following sub-paragraphs:

a. it is within purpose group 2(a) or (b) (residential (institutional) and residential (other)) in Appendix D to Approved Document B (2000 edition);

b. it is within purpose group 1(a), (b) or (c) (flats, maisonettes and dwelling houses) and -

(i) is being developed for letting by a local authority (including an Arms Length Management Organisation), a registered social landlord, a local housing action trust, a housing association whether or not registered with the Housing Corporation; or

(ii) is being developed, or created by conversion work, by or for a person on their own land and for their own occupation; or

(iii) is a flat serving purposes that are functionally connected to one or more non-residential uses of the building in which it is situated, whether or not access to the flat involves passing through non-residential accommodation; or

(iv) belongs to a school, university, hostel similar establishment and which is to be used as living accommodation for staff, pupils or students; or

(v) is specifically designed for use as living accommodation for the staff, pupils or students of an establishment described in sub-paragraph (iv) and which is subject to planning conditions or legal agreements restricting its use to such living accommodation; or

(vi) is subject to planning conditions or legal agreements restricting its use to use as holiday accommodation; or

(vii) is registered under one of the warranty schemes as listed and detailed below in paragraph 3.

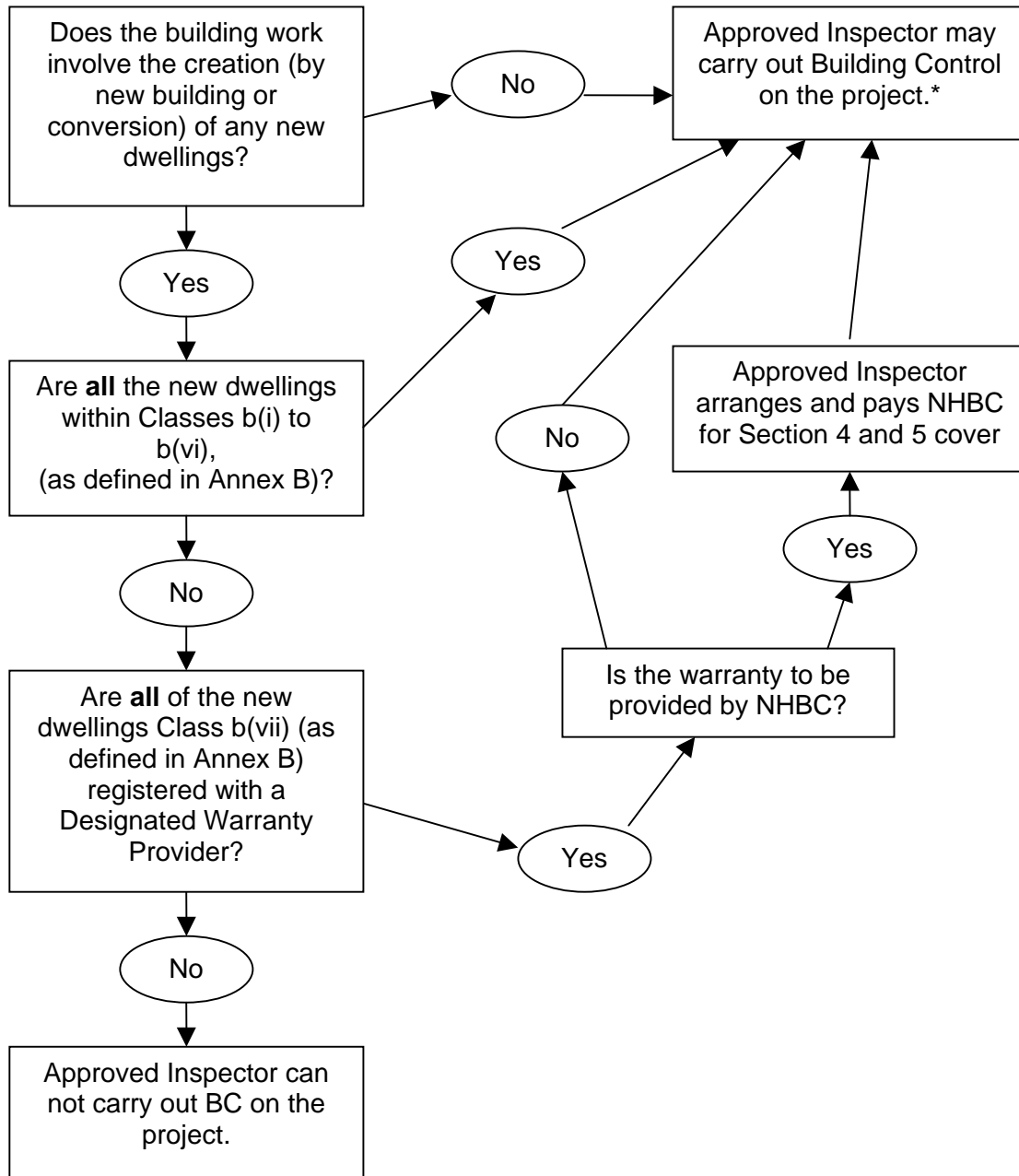
3. Designated New Home Warranties

a) NHBC Buildmark, including Sections 4 and 5 cover

b) Zurich Standard 10

c) Premier Guarantee for New Homes

Application of warranty link rule to Approved Inspectors undertaking building control work on dwellings



* Provided that any "professional or financial interest" in a "minor work" project arises only from responsibility for the design (as distinct from the construction) of any of the work.

Designated New Home Warranty Providers contact details:

- a) NHBC Buildmark
Richard Tamayo
Commercial Director
Buildmark House
Chiltern Avenue
Amersham
HP6 5AP
Tel: 01494 735213
Email: rtamayo@nhbc.co.uk
- b) Zurich Standard 10
Building Guarantee
Galaxy House
Southwood Crescent
Farnborough
Hampshire
GU14 0NL
Tel: 01252 377474
Email: building.guarantee@uk.zurich.com
- c) Premier Guarantee for New Homes
Ian Turnick
Haymarket Court
Hinson Street
Birkenhead
Merseyside
CH41 6HT
Tel: 0151 650 4343
Email: ian.turnick@premierguarantee.co.uk

Guidelines for the designation of new home warranties

For the purposes of the Warranty Link Rule (WLR), the following designation criteria are used by ODPM to assess the suitability of future new home warranty schemes. Whilst these schemes may provide general consumer protection against defects in new homes, the criteria below are intended to represent minimum cover for health and safety hazards due to non-compliance with the building regulations.

The term “designated warranty” is used in these guidelines for the purposes of the WLR. As such, the criteria below are distinct from, and without prejudice to, that intended for the purpose of designation of warranty schemes in the context of the Home Information Pack.

Council of Mortgage Lenders (CML) Criterion

1. The CML is the representative trade association for mortgage lenders in the UK. The CML Lenders' Handbook for England and Wales provides comprehensive instructions for conveyancers acting on behalf of mortgage lenders in residential conveyancing transactions. The Handbook is divided into two parts. Part 1 sets out the main instructions, which conveyancers must follow. Part 2 sets out each lender's specific requirements, which arise from these instructions. The CML Lenders' Handbook can be downloaded from the CML website (www.cml.org.uk/handbook).
2. Within paragraph 6.6 of the CML Lenders' Handbook, paragraph 6.6.1 instructs conveyancers dealing with a new, or newly converted, property to ensure that it was built or converted under a warranty scheme acceptable to the lender. Schemes listed in paragraph 6.6 of Part 1 of the CML Lender's Handbook are widely accepted by CML members as providing sound cover for homeowners.
3. A warranty scheme that is listed in paragraph 6.6 of the CML Lenders' Handbook, or which is listed by at least 10 CML members in their respective entries in Part 2 of the Handbook, can be regarded as providing a good degree of cover for owners. Listing in either of these ways in the CML Lenders' Handbook will usually be treated as satisfactory for the purposes of designation under the WLR.

Cover Period Criterion

4. All such schemes must provide a period of cover of at least 10 years.

Building Regulations Compliance Criterion

5. Warranty schemes involve technical standards, which builders undertake to comply with in carrying out their building work. The three schemes already designated for the purposes of the WLR (NHBC, Zurich and Premier) include in their scheme standards a requirement that work should comply with applicable statutory requirements including those of the Building Regulations. A criterion for designation of a warranty scheme for the purposes of the WLR is that inclusion in the scheme's technical standards states an express requirement to that effect.

Cover Note Criterion

6. The operators of the three designated warranty schemes participate in the "CML initiative" that took effect in April 2003. Under that initiative, paragraph 6.6 in Part 1 of the Lenders' Handbook was amended to require conveyancers to obtain a copy of a warranty provider's "cover note", before proceeding to completion. The cover note states that the warranty operator has carried out a satisfactory final inspection of the property and agrees to provide the warranty cover. It is therefore an express criterion of designation of a scheme for the purposes of the WLR that the scheme procedures allow for the provision of a cover note in accordance with the Lenders' Handbook.

Disputes Resolution Service Criterion

7. From time to time disputes about the standard of construction arise between the builder and the new home owner. When such disputes can not be easily resolved most warranty operators provide a free resolution service, which should involve the minimum of independent professional advice. It is important for the purposes of the WLR that new home owners have access to similar services when faced with a potential fault arising from non-compliance with the building regulations listed. It is therefore a criterion for the WLR that warranty providers offer a disputes resolution service.

“Section 4” Years 3 to 10 Additional Cover Criterion

8. A further factor that needs to be taken into account is the inclusion in a scheme of cover substantially equivalent to section 4 in the NHBC Buildmark scheme. Warranty cover, after an initial period in which the builder undertakes to carry out remedial work in defined circumstances, is likely to relate to actual damage of defined sorts. In contrast, section 4 of the NHBC scheme responds where defects of defined sorts come to light, whether or not damage has occurred. This cover provides a possible avenue of redress for an owner faced with the need to carry out remedial work to deal with a threat to health or safety, where the alternative might involve legal proceedings against the builder or the building control body. For this reason, ODPM require inclusion of cover substantially equivalent to section 4 of the NHBC scheme as a key criterion for designating a scheme under the WLR.

9. Section 4 cover relates to health and safety hazards due to the home not complying with one or more of the following Building Regulations:

- structure (Part A);
- fire safety (Part B);
- site preparation and resistance to moisture (Part C);
- hygiene (Part G);
- drainage and waste disposal (Part H);
- combustion appliances (Part J);
- protection from falling, collision and impact (Part K);
- and glazing - safety in relation to impact, opening and cleaning (Part N).

10. It is accepted that scheme operators and insurers need to be satisfied not only with the credentials of builders admitted to scheme registers, but also with the credentials of building control bodies. The operators of a designated warranty scheme would be free to

carry out their own assessment of an AI as the basis for deciding whether, and on what terms, to make the cover (i.e. including the equivalent of NHBC's Section 4) available for homes where that AI was carrying out building control. It may be reasonable for a fair charge to be made by scheme operators for assessments of this kind, and for there to be adjustments in per unit premiums, depending on which AI was involved.

11. The adequacy of "Section 4" cover as regards financial limits and exclusions will be judged by a comparison with the September 2005 terms of the NHBC Buildmark scheme. Those terms can be seen in the specimen policy booklet posted on the NHBC's web site (www.nhbc.co.uk).

Contaminated Land Cover Criterion

12. The three designated warranty schemes currently referred to in paragraph 7 above include cover in relation to contaminated land. In outline, this cover indemnifies the owner for the costs arising from compliance with a statutory notice requiring remediation of contamination in the land under or around the home, if that contamination was already present at the time of the sale of the home by the developer. Any financial limits for new warranty schemes would need to be set with this requirement in mind. In any case, such limits are unlikely to be less than the following. The lessor of the value of the home, or £250,000, to at least £20 million (all index linked to suitable indices) per site.

13. "Section 4" cover would respond if non-compliance of the original work with Part C of the Building Regulations was giving rise to a present or imminent danger to the physical health or safety of the occupants of the home. Part C has now been extended to address contaminants in land around the building as well as that within the footprint of the building. However, the contaminated land cover is not expressly linked to non-compliance with Part C. Unlike Section 4 cover, it would respond even if there is no present or imminent danger to the health and safety of occupants.

Summary of designation criteria

14. The ODPM will therefore carry out the following checks on schemes submitted for designation under the Warranty Link Rule:

a) is the scheme listed in Part 1 of the CML Lenders' Handbook or is it listed by at least 10 CML members in their entries in Part 2 of the Handbook?

b) is the period of cover at least 10 years?

c) do the scheme standards expressly include the compliance of the work with statutory requirements, including those of the Building Regulations?

d) do the scheme procedures allow for the provision of a cover note if needed in accordance with paragraph 6.6 in the CML Lenders' Handbook?

e) does the scheme include a disputes resolution service that allows the warranty operators to assist in the settlement of disagreements between home owners and developers?

f) does the scheme include terms substantially equivalent to those in Section 4 of the September 2005 NHBC Buildmark document?

g) will the scheme operator in principle make the cover, including the "Section 4" element, available where building control is done by any AI, subject to the operator's

own rules on builder registration and to any assessments it considers are necessary of the credentials of particular AIs and any adjustments of premium it considers necessary? -

h) does the scheme include cover for the costs of complying with a statutory notice requiring remediation of contamination in land under or around the home?