



## briefing

construction - summer 2006

### “L” hath no fury like a local authority scorned

#### **The Building and Approved Inspectors (Amendment) Regulations 2006 officially came into force on 6 April 2006 amending Parts F (Ventilation), L (Conservation of Fuel and Power) and P (Electricity Safety) of the Building Regulations 2000.**

The change was envisaged as being smooth, with the Office of the Deputy Prime Minister (“ODPM”) introducing transitional provisions to allow for a period of “settle in” for the new Regulations. This would, they said, allow Local Authorities to come to terms with the new Regulations, in particular the changes to Part L.

On the face of it, change was to be straightforward. Driven by the European Union, Part L requirements had been amended to cut CO<sub>2</sub> emissions on each build by at least 20%. LAs were to be provided with new software and appropriate training during a 6 month lead-in process. When plans were submitted for approval the software would assess the elements of any new build and assign an SAP (Standard assessment Procedure) calculation to it. Should the SAP calculation be below the requirements of the new Part L Regulations 2006, the Local Authority could suggest which elements of the build could be changed to allow an acceptable SAP level.

All this was due to come into force and be running smoothly by 6 April 2006.

#### **“Steady as She Goes!”**

To further facilitate these changes, transitional provisions were introduced into the new Regulations. This allowed for the old Part L requirements to be sufficient where, for example, work had already

commenced before 6 April 2006 in accordance with old Part L Regulations.

It would also be sufficient where full plans had been drawn in accordance with the old Part L Regulations and full approval was then given before 6 April 2006 with the Works then commencing before 1 April 2007.

#### **“Unworkable and Impractical”**

Despite the ODPM’s best efforts, a wide range of Local Authorities across the whole of the UK dismissed the new regulations as unworkable and impracticable and branded the transitional process as total chaos. The national Local Authority Building Control has declared that “the consensus of opinion of this organisation is that we will not be in a position to enforce the new requirements of the new Parts F and L until 1 October 2006.”

It is claimed that the six month lead-in to the new provisions with an intensive training programme, as promised by ODPM, simply didn’t happen. The resultant chaos has left Local Authorities in a perceived “force-majeure” situation where the new standards cannot yet be implemented even with the very best will in the world forcing Local Authorities to seek to try and establish a practicable and pragmatic way forward to allow consistency and predictability for its customers.

#### **Where does this leave Contractors and Employers?**

Whilst Local Authorities maintain that any new plans should now be submitted to them in line with the new Part L Building Regulations, there still remains doubt where the approval process is already underway.

The general consensus among Local Authorities is that if plans had been lodged before 6 April 2006 to comply with the old Part L regime then full approval should be completed under that regime, thus, displacing the prescribed transitional provisions of the legislation.

Local Authorities have gone further still and suggested that even where a large development has only been

given pre-submission approval by a Local Authority under the old Regulations then full approval will be given under the old Regulations even where the full plans are yet to be submitted to the Local Authority. This stance may provide an even longer transitional period for applicants.

### **Can my Local Authority help me?**

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Whilst not all Local Authorities are taking such a uniform stance in this matter, it is clear from discussions with Yorkshire DCs (Calderdale, Harrogate, Ryedale, Craven), North Wales Local Authorities (Gwynedd, Flintshire) and examination of East Hertfordshire DC policy that each LA is adopting it's own ad-hoc approach as to any final date for full approval which they unilaterally decide to implement under the old Part L regime. General opinion suggests that full approval should be given no later than 1 October 2006, although others have suggested that they may well allow approval beyond this date.

All Local Authorities agree that as long as pre-submission approval was given by 6 April 2006 and work will commence by 1 April 2007 then full approval of the plans under the old Part L Building Regulations is still viable at present.

### **Can another Local Authority help me?**

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Where a Contractor/Employer has been given pre-submission approval under the old Part L regime by a Local Authority unwilling to relax the transitional date of 6 April 2006, then it is worth exploring whether you can re-locate to another Local Authority who is willing to extend the transitional date.

It should be remembered that where this new Local Authority actually does give full approval under the old Part L regime then a final sign off will still be needed from the Local Authority that gave the original pre submission approval.

### **Is all this legitimate?**

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There seems to be no legitimate basis for excluding the transitional provision's approval date Basically, Local Authorities saw the provisions as simply unworkable, forcing them into a position where they had to make up their own rules to ensure that developments have not been unduly delayed.

It certainly should be contemplated that there could be a challenge to the legitimacy of any Local Authority that extends the time period for approval beyond the prescribed transitional provisions and there certainly is no statutory basis for this policy. However, the ODPM

is fully aware of the Local Authorities' position and we are, as yet, awaiting any ODPM condemnation of their position whilst the RICS has given it's full backing to the Local Authorities.

And, even if it is accepted that the Local Authorities' position is without basis, it is doubtful that any such approval would be seriously challenged. Firstly, there is no breach of health and safety legislation and secondly it will not be immediately evident that a building is not CO2 emission compliant as any assessment of the plans would require the appropriate software.

Whilst these factors reduce the chances of any challenge being brought against the approval it should be remembered that a Building Pack will always provide any Buyer with evidence even if that Buyer would then need to carry out further investigations.

## **Conclusion**

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These recent developments provide a Contractor / Employer with a clear choice where pre-submission approval has been given under the Old Part L Regime or plans have been submitted to the Local Authority under old Part L and have not yet been approved.

Either comply with the new Regulations which may have cost and time implications when revising drawings or use a Local Authority that is willing to give full approval under the old Regulations but in the knowledge that the build may be challenged later down the line, however unlikely this is going to be.

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