



When do Building Regulations apply?

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Introduction

This is an often vexed question in the context of the reinstatement of damaged properties and there is a mistaken assumption by some contractors and professionals alike that ‘all repair work is subject to compliance with current regulations or codes’. Understandably there is a desire on the part of the policyholder and their advisors to reinstate to current standards and, perhaps even futureproof the reinstated building in the course of the claim. However, it is useful to unravel some of the background issues to this and why compliance, whilst it might reflect ‘good practice’, is not always necessary. (It is recognised that electrical issues frequently occur along these lines but this is outside the scope of this document.)

It is recommended that readers also refer to the associated paper entitled “*The Public Authorities Clause*” which was produced in 2015 and can be found in the CILA Technical Library.

What the Policy says

A typical policy wording effectively provides for reinstatement in a ‘like for like’ manner, in addition to which the Public Authorities clause provides cover for the additional cost of complying with mandatory

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statutory requirements, different phraseology being used between policies. However the import is always the same in that the requirement must be 'mandatory' rather than merely 'good practice'. Therefore, British Standards or the various codes of practice would not constitute a mandatory statutory requirement, unless in pursuance of a specific building regulation or other statute.

Additionally, the typical Public Authorities clause excludes undamaged property: however it is usual to find a contra-exclusion covering foundations for sensible reasons. Foundations are rarely damaged even where the building is demolished to slab level. There would however be practical difficulties in justifying the existing foundations to the satisfaction of the Building Control Officer, who would regard the reinstatement as a 'new build'. Therefore it is almost inevitable that new foundations will be required in order to achieve a compliant structure.

It is important for Loss Adjusters to both understand and explain the extent of cover to ensure policyholders' expectations are correctly met.

The Building Regulations 2010

Relevant to England and Wales the Building Regulations 2010 are pursuant to the Building Act 1984 the latter being the relevant statutory instrument. Scotland and Northern Ireland have their own codes. The Building Regulations are framed in performance terms and, in turn, refer to various Approved Documents which detail how compliance might be achieved.

It is important to note that, under regulation 3.1 of the Building Regulations there is a definition of the meaning of 'building work' or, in other words those circumstances to which the requirements will apply essentially including:

- the erection or extension of a building
- the provision or extension of a controlled service or fitting
- the material alteration of building, controlled service or fitting
- work required by regulation 23 (requirements relating to thermal elements)

(There are other circumstances listed.)

There is no precise definition as to the term of 'erection' afforded within the Building Regulations themselves. However we are assisted under section 123 of the Building Act where quite incidentally





and in the absence of any other interpretation, 'erection' is indicated as being the 'erection of a new building or reconstruction of an existing building where the walls have been demolished to within 10 feet of ground level or the frame is replaced'.

Therefore, in many cases the work of repair in a like manner should not attract compliance with Building Regulations as it is neither the erection of a new building or the material alteration of an existing building. It follows that work of an insurance repair nature should neither constitute work of alteration nor erection, provided that the repair or reinstatement is in a like for like manner.

However, nothing is quite so straightforward and there is often a matter of degree where the repair becomes so substantial that the Building Control Officer will deem the work to be effectively the 'erection of a building'. In the case of the replacement of a whole roof structure this will usually be construed as the erection of a building for the purpose of the regulations and compliance will be sought. Whilst this is very much a subjective matter which can be debated it is often unlikely that the adjuster will succeed if the local authority Building Control Officer is so-minded.

Also, where Building Regulations are deemed to apply to an element of a repair, such as a replacement roof, it does not follow that the whole building will be subject to regulation but the extent will often be a matter of negotiation. Building Regulations cannot usually be applied to upgrade buildings retrospectively. It is therefore important that the Loss Adjuster explains the position clearly to the Policyholder.

Conservation of Fuel and Power

There are a number of exceptions in which circumstances Building Regulations will always apply whether the work is new or repair in nature. Indeed, one of the more comparatively recent additions to the regulations is contained in regulation 23 covering the renovation or replacement of thermal elements. Where the renovation or replacement constitutes more than 50% of the surface area the whole element must be brought up to compliance with Part L where it is technically possible and feasible to do so. For example, where partial damage has occurred affecting greater than 50% of a roof covering over a heated building the regulations can require consideration as to replacement of the whole roof to meet the current thermal requirements of Part L. Materially (from an insurance point of view) this could in fact include undamaged portions.





It will be immediately noted that this has interesting ramifications as regards the Public Authorities clause in the insurance policy, which will usually exclude the upgrading of undamaged property; however a few policies have been written to cope with this eventuality.

Controlled services

The Building Regulations will also apply to the provision or extension of a controlled service or fitting typically including sanitary appliances, drainage and disposal, water storage systems, combustible appliances, heating pipework and lighting installations to mention a few. In these cases Building Regulation requirements will apply irrespective of whether the replacement is in a like manner or not.

A Practical Approach

In each case it is for the policyholder and their consultants to demonstrate to insurer's satisfaction that the requirement indeed applies particularly where the work is of a repair nature and will result in additional cost. Where this is successfully demonstrated compliance must be carried out on the most economical basis and, on some Public Authorities clause wordings, reinstatement may even be subject to a time limit. This may seem slightly onerous but the aftermath of the Grenfell tragedy will provide an excellent example of how changes to requirements can be swiftly imposed. Requirements are rarely relaxed.

It is often the case that the policyholder will take the opportunity to make changes in the course of the reinstatement and it is important to recognise when these changes may in themselves bring about a need for compliance with Building Regulations or even Planning. Such costs (which are solely consequent upon alterations) will not be recoverable under the policy.

The Loss Adjuster should always be prepared to question the advice from professionals including Approved Building Control Inspectors who are often risk averse, sometimes incorrectly making a general assumption that regulations apply. Above all it is important that the loss adjuster should be proactive and discuss any issues with the policyholder and their project team at the earliest stage if additional costs are ultimately to be recovered under the Public Authorities clause.





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