



Guide to determinations and appeals under the
Building Act 1984
Sections 16(10)(a), 39 and 50(2) of the Building Act 1984



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Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000
Website: www.communities.gov.uk

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Tel: 030 0123 1124
Fax: 030 0123 1125

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Introduction

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

- applying to the Secretary of State - currently for Communities and Local Government (hereafter referred to as “the Secretary of State”) - for a determination on whether plans of proposed building work comply with the Building Regulations or
- submitting an appeal to the Secretary of State against refusal by a local authority to relax or dispense with a requirement of the Building Regulations

These procedures provide for the Secretary of State to help resolve disputes arising in relation to the carrying out of building work, which is subject to the requirements of the Building Regulations. In practice, the procedures are administered on behalf of the Secretary of State by authorised officials in the Department for Communities and Local Government (hereafter referred to as “the Department”).

The guide is intended for anyone proposing to carry out building work - including building/land owners, builders and professional advisers who may be acting as an agent - who is seeking to ensure that their work complies with the Building Regulations but where agreement cannot be reached with the building control body, i.e. a local authority or a private sector approved inspector (as applicable). Building control bodies may also find it a useful reference source. It may be helpful to read the key points summary and the main stages of the determination and relaxation/dispensation/appeal procedures table on pages 5 to 8 in the first instance. However, this section is a tool for quick reference and should be read in conjunction with the rest of the guide.

The guide applies to building work being carried out in **England only**. The functions of the Secretary of State are exercised in Wales by the Welsh Ministers, and you should make your determination application or appeal, as appropriate, to the Welsh Assembly Government (see address in paragraph 48) if your work is being carried out in Wales.

Appeals under the Building Act 1984 should not be confused with appeals which may be lodged with the Secretary of State or the Welsh Ministers 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 the guide is not a definitive statement of the law and you should seek independent professional or legal advice on your particular case if needed.

Key points summary

The following summarises the key points that you should bear in mind (i.e. the building/land owner or the builder or agent) before applying for a determination or submitting an appeal to the Secretary of State. The main stages are indicated in the table on page 8.

- **Only if agreement cannot be reached** on the matter in dispute between you and the building control body (i.e. the local authority or a private sector approved inspector) relating to the compliance of your building work with the Building Regulations should you consider using the statutory determination procedure, or the relaxation/dispensation and appeal procedures.
- You should be able to achieve a quicker resolution if you are able to make use of any **voluntary alternative dispute resolution procedures** that may exist, which you may wish to discuss with the building control body.

Determinations

If you are considering applying to the Secretary of State for a determination of a question arising regarding compliance of your plans of proposed building work with the requirement (one or more) of the Building Regulations, the main points to bear in mind are:

- You must accept that your proposed building work is subject to the requirements of the Building Regulations and should believe that your plans comply with the particular requirement in question.
- You can only use the **determination** procedure if you have submitted 'full plans' (i.e. not a building notice) and other relevant information to the local authority to check and approve or employ an approved inspector to check your plans and issue a 'plans certificate'.
- As determinations are tied to the 'full plans' submission procedures relating to proposed building work, you can normally only apply for a determination before the work in question has commenced.
- If you are using the local authority building control service you can apply to the Secretary of State for a determination at any time after you have deposited your plans - i.e. usually after the authority has looked at the plans and informally told you why they are not acceptable; or after the authority has 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 you have received confirmation that the inspector is unable to issue you with a 'plans certificate'.

- As the requirements in Schedule 1 to the Building Regulations are 'functional' and primarily relate to 'reasonable standards of health and safety', it may be difficult for a local authority or the Secretary of State to relax or dispense with these requirements unless there are exceptional circumstances. Therefore, the determination process is likely to be the most appropriate way for you to resolve a difficulty over Building Regulations compliance.
- 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 building control body will take account of the guidance in the Approved Documents, your proposals must ultimately be assessed against the requirements in the Building Regulations and not the Approved Documents.
- Your determination application should preferably be submitted to the Secretary of State using the form on the Department's website, or via a letter containing the same information and supporting documents requested, including a determination fee.
- Once your application has been accepted and the building control body has been consulted, the Secretary of State will give the papers submitted careful consideration before issuing a decision to you and copying it to the building control body ('the determination'). The Secretary of State aims to issue a decision within four months of receipt of all papers.

Appeals

If you are considering submitting an appeal to the Secretary of State against a refusal by the local authority to relax or dispense with one or more requirement (one or more) of the Building Regulations, the main points to bear in mind are:

- You must accept that your plans or building works are subject to the requirements of the Building Regulations and that the plans or works do not fully or wholly comply with the particular requirement in question.
- You should believe that the particular circumstance of your plans or building work means that the requirement of the Building Regulations in question is either too onerous or inappropriate/unreasonable (i.e. that it should be relaxed or dispensed with respectively).
- The **appeal** procedure is a **two-stage process**. The first stage is for you to make an application to the local authority (whether or not you are using the local authority or an approved inspector to provide the building control service for your building work) asking the authority either for a **relaxation or dispensation** of the requirement in question.

Only if the local authority refuses will you need to consider using your right of appeal to the Secretary of State.

- Unlike a determination, an application to the local authority to relax or dispense with a requirement can be made at any stage of the building work, i.e. at design stage, before or after the submission of plans or a building notice, during construction, or after it has been completed. An appeal to the Secretary of State against the local authority's refusal must be made within one month of the date the authority lets you know of the decision.
- As the requirements in Schedule 1 to the Building Regulations are 'functional' and primarily relate to 'reasonable standards of health and safety', it may be difficult for a local authority or the Secretary of State to relax or dispense with these requirements unless there are exceptional circumstances.
- 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 assume that the only solution is to apply for a relaxation or dispensation of a requirement. Although the local authority should take account of the guidance in the Approved Documents, the authority must ultimately assess your proposals against the requirements in the Building Regulations and not the Approved Documents.
- Your application to the local authority and any subsequent appeal to the Secretary of State against a refusal should make it clear whether you are seeking a relaxation or a dispensation of the particular requirement in question and set out your case, explain your reasons and give full justification.
- When the local authority has made a decision on your application, you must obtain formal notification of this in writing. If your application has been refused, the local authority should say why, and inform you of your right to appeal to the Secretary of State within a time limit of one month. It will be important to address the local authority's reason(s) for refusal if you proceed with an appeal.
- Your appeal should preferably be submitted to the Secretary of State using the form on the Department's website, or via a letter containing the same information and supporting documents requested. No fee is payable for an appeal.
- Once your appeal has been accepted and the local authority has been consulted, the Secretary of State will give the papers submitted careful consideration before issuing a decision to you and copying it to the local authority. The Secretary of State aims to issue a decision within four months of receipt of all papers.

Main stages prior to submitting a determination or appeal

	Determination	Relaxation/Dispensation and Appeal
Your starting point	Your plans of proposed building work are subject to the requirements of the Building Regulations and you have sought 'full plans' approval from the local authority, or a 'plans certificate' from the approved inspector.	Your building work is subject to the requirements of the Building Regulations and you may have submitted full plans or a building notice to the local authority, or requested a 'plans certificate' from the approved inspector.
Building control body's view	Building control body ¹ indicates that your plans do not comply with a requirement (one or more) and may issue a formal rejection notice or withhold the 'plans certificate' (as applicable).	Building control body indicates that your plans or building works do not comply with a requirement (one or more) and may issue a formal rejection notice or withhold the 'plans certificate' (as applicable).
Your position	You believe your plans comply with the requirement in question.	You believe that the requirement in question is too onerous, inappropriate, or unreasonable in your particular case.
Action	Try to reach agreement on compliance with the building control body but, if this proves difficult, you can apply to the Secretary of State for a determination , which can be done at any point after submitting your plans to the building control body (i.e. before or after the building control body makes a formal decision on your plans) but must be before you commence the part of the building work in question.	Discuss with the building control body and, if appropriate, apply to the local authority ² for either a relaxation (if too onerous) or a dispensation (if inappropriate or unreasonable) of the requirement, which can be at any stage of the building work.
Further action		If the local authority refuses your relaxation or dispensation application, you can appeal to the Secretary of State against the decision within one month of the local authority notifying you of its decision. NB: The local authority is required to make a decision on your application within a period of two months (but can extend this period if you agree). If the local authority fails to do so, you can appeal to the Secretary of State as if your application had been refused.

¹ The building control body is either the relevant local authority or the approved inspector you have employed.

² Applications for a relaxation or dispensation can only be made to the local authority, not an approved inspector.

Building control

1. The majority of building work in England is required to comply with the Building Regulations in force at the time the work is carried out - the current regulations are The Building Regulations 2010. They are primarily designed to ensure the health, safety, welfare and convenience of people in and around buildings and provide for furthering the conservation of fuel and power. Building Regulations apply to the erection of most new buildings (domestic and non-domestic), many alterations and changes of use of existing buildings and other work such as the provision of a controlled service or fitting. The Regulations contain procedural requirements and in Schedule 1 a broad range of technical requirements.
2. The primary responsibility for achieving compliance with the Building Regulations rests with the person carrying out the building work. The information and advice in this guide is generally addressed to the person who has taken on responsibility for progressing the work through the required building control procedures, which could be the land/building owner or the builder or a professional adviser acting as an agent on their behalf (references to “you” in this guide apply to any of those persons).
3. To achieve compliance with the Building Regulations, the person carrying out the building work must use one of two building control services to check the plans and/or work (unless the person carrying out the work is a member of a competent person self-certification scheme, as set out in Schedule 3 to the Regulations³). The building control service can be provided either by the relevant local authority, or by an approved inspector⁴ who works within the private sector and has been approved specifically for this function (both referred to as a ‘building control body’). Where you have chosen to use the local authority as your building control body, you will be required to submit ‘full plans’, or a ‘building notice’, dependent upon the type of work proposed. Where you have chosen to use an approved inspector, the inspector will take on responsibility for plan checking and supervision of your work and will notify the local authority on what is referred to as an ‘initial notice’.

³ A list of competent person schemes can be found on the Department’s website at <http://www.communities.gov.uk/planningandbuilding/buildingregulations/competentpersonsschemes/>

⁴ The latest list of approved inspectors is available on the Construction Industry Council website at <http://www.cic.org.uk/home/index.shtml>

Resolving disputes arising – statutory and alternative dispute resolution procedures

4. Should a dispute arise with the building control body as to whether your plans and/or building work comply with a requirement (one or more) of the Building Regulations, then the statutory determination or relaxation/dispensation and appeal procedures under the Building Act 1984 (hereafter referred to as “the 1984 Act”) may help you to resolve that dispute. These procedures cannot, however, be used to clarify whether or not your work is subject to, or exempt from, the Building Regulations as this is a decision for the building control body.
5. Where the building control body says that your plans of proposed building work do not comply with a requirement of the Building Regulations but you believe that they do, you can apply to the Secretary of State for a **determination** relating to the matter in dispute. However, the determination procedure can only be used where the work is subject to a full plans application and where the work in question has not commenced. Determinations are not available for work being progressed under a 'building notice'.
6. Alternatively, if you believe that the requirement of the Building Regulations in question is too onerous, inappropriate or unreasonable in your particular circumstances, you could apply to the local authority for a **relaxation** or a **dispensation** of the requirement. If the local authority refuses your application you can **appeal** to the Secretary of State against the refusal within a month of the authority’s refusal. A relaxation or dispensation application must be made to the local authority, irrespective of whether you have employed an approved inspector to provide the building control service for your building work, and can be done at any stage of the work.
7. The purpose of, and procedures for, determinations and 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:
 - give brief details of the technical requirements of the Building Regulations and the guidance in Approved Documents
 - explain the purpose of the procedures in more detail and the issues to consider when deciding whether a determination or a relaxation/dispensation and any subsequent appeal is the appropriate procedure to use and
 - explain how to submit a determination application or an appeal and how these will be processed

8. However, it is important that you **try to reach agreement in the first instance with the building control body** on the matter which is causing the difficulty in achieving compliance with the Building Regulations. You may find it helpful to refer to previous determination and appeal decisions issued by the Secretary of State as they may assist you and the building control body with the issues causing difficulty in your particular case. Copies of these (with personal details expunged) are published on the Department's website.⁵
9. Only if agreement on compliance cannot be reached with the building control body should you then consider whether it is appropriate or possible to apply to the Secretary of State for a determination, or to apply to the local authority for a relaxation or dispensation of the particular requirement of the Building Regulations in question and then appeal to the Secretary of State if this is refused. You will need to take account of the stage which your plans preparation or building work has reached, as well as whether you consider your plans or work are in compliance, as this may constrain the action open to you.
10. As the statutory procedures will take a number of months (see paragraph 45), before proceeding with one of these you may also find it helpful to discuss with the building control body the possibility of using an **alternative dispute resolution procedure**. For disputes involving the local authority, the voluntary '**LABC Model Arbitration and Conciliation Procedure**' which is available in all local authority areas in England and Wales, may be helpful. This procedure (or any other local dispute resolution procedure that may exist) should expedite the resolution of your dispute and avoid the delay that will occur if the matter escalates to the Secretary of State. Details about the LABC procedure can be found on their website.⁶
11. In addition, at the time of publication of this guide, **the Building Control Alliance** is giving consideration to the possibility of extending the scope of their mediation scheme for handling procedural disputes between local authorities and approved inspectors to cover more general disputes between developers and building control bodies. This may, therefore, provide a further voluntary option for resolving disputes about compliance with the Building Regulations in the future.

⁵<http://www.communities.gov.uk/planningandbuilding/buildingregulations/determinationsandappeals/>

⁶[Arbitration and Conciliation Procedure 2011.pdf](#)

The technical requirements of the Building Regulations

12. Most determination applications and appeals will relate to the individual technical requirements which are grouped in 14 Parts in Schedule 1 to the Building Regulations 2010 and cover a wide range of building matters. Regulation 4 of the Building Regulations requires building work being carried out to comply with these requirements, as applicable. They provide a baseline of minimum standards to assure the delivery of 'fit for purpose' new and refurbished buildings.
13. The requirements in Schedule 1 are expressed in broad, **functional** terms and relate to what is 'reasonable', 'adequate' or 'appropriate', i.e they describe requirements for the completed building work in performance based terms, rather than prescribed ways of building. With the exception of the requirements falling within Part L (Conservation of fuel and power) and Part M (Access to and use of buildings) and a few others, the Building Regulations limit the effect of the requirements to the purpose of securing "reasonable standards of health and safety for persons in or about buildings"⁷. The concept of the 'functional requirement' was introduced into the Building Regulations in 1985 with the intention of giving designers and builders maximum flexibility to prepare and implement plans which comply with those broad requirements.

The Approved Documents

14. The Building Regulations are supported by statutory Approved Documents (see paragraph 46) which provide detailed practical **guidance** on ways to comply with the technical requirements in the fourteen Parts in Schedule 1 to the Regulations (and also regulation 7 relating to materials and workmanship). Each document contains:
- general guidance on the performance expected of materials and building work in order to comply with each of the requirements; and
 - practical examples and solutions on how to achieve compliance for some of the more common building situations
15. The guidance within the Approved Documents will be taken into account when the building control body is considering whether your plans of proposed building work, work in progress or completed works, comply with the applicable requirements of the Building Regulations. In particular, there is a legal presumption that following the guidance is evidence tending to support compliance with the Regulations. However, the guidance does not have to be followed as it does not constitute a set of statutory requirements. You may therefore wish to design and construct your building work in some other way providing you can show that it does comply with the requirements of the Building Regulations. It is then the

⁷ Regulation 8 of the Building Regulations 2010 (SI 2010/2214)

duty of the building control body to consider whether your plans or works comply with these requirements - not whether your plans or works necessarily accord with the general guidance or a specific example in an Approved Document.

16. It should be noted that as the Approved Documents constitute only guidance, and you are free to use other ways of complying with the requirements of the Building Regulations, it is neither necessary nor logical to provide for the relaxation/dispensation of the content of these documents as they are not binding. **The statutory procedures for relaxing and dispensing apply solely to the requirements of the Building Regulations, not the Approved Documents.**

Application to the Secretary of State for a determination

17. An application to the Secretary of State for a determination can be accepted only where the proposed building work is subject to the Building Regulations and where you believe that your plans comply with the requirement in question. You should bear in mind that the procedure is referred to as a determination and - in the event of your plans being rejected by the building control body - should not be confused with the appeal procedure which is applicable only to relaxations and dispensations.
18. 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 indicated in paragraph 5, **the determination procedure is not available where you have given a building notice to, rather than deposited full plans with, the local authority.**
19. 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 with the authority for approval under the full plans procedure, and a question arises during that procedure as to whether the plans of the proposed building work are in conformity with the Building Regulations, that question may be referred by you to the Secretary of State for determination if you are unable to reach agreement with the authority. 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 has been made to reject the plans or give a conditional approval. In the former case the local authority will still be required to proceed to a decision on your full plans application within the statutory period of five weeks or, where you agree, within two months - notwithstanding the fact that you have applied for a determination. You may therefore wish to await the local authority's formal decision on your plans before applying for a determination.

20. If you are using the services of an **approved inspector** the procedure is slightly different. Under section 50(1) of the 1984 Act you may ask your inspector for a 'plans certificate'. Once the approved inspector has formally examined your plans and is satisfied that they are complete and do not show any contravention of the Building Regulations, the inspector must then give to you and the local authority a certificate to that effect, known as a 'plans certificate'. But if the approved inspector does not believe that your plans comply with the Building Regulations the inspector will be unable to give such a certificate. In this instance, if you are unable to reach agreement with the approved inspector, the question of compliance may be referred by you to the Secretary of State for a determination under section 50(2) of the 1984 Act.
21. Details of how to submit a determination application to the Secretary of State are given in paragraphs 36-40. Your application should set out details of the building/proposed building work and the matter in dispute. You should also clearly set out your case, explaining the reasons why you believe that your plans comply with the particular requirement of the Building Regulations in question and address the comments made by the building control body. It may be relevant to refer to any guidance contained in the relevant Approved Document, or to any other technical guidance or material which you believe is supportive of your case.

Timing and validity of an application for a determination

22. Under sections 16(10)(a) and 50(2) of the 1984 Act, an application for a determination can be made in any case where a question arises regarding the conformity of plans of **proposed building work** with the Building Regulations. As a general rule, **the Secretary of State will not therefore accept an application for a determination if the question arising relates to part of the work which has commenced or been carried out before 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 will consider those carefully before seeking the views of the building control body.

Application to the local authority for a relaxation or dispensation

23. An application to the local authority for a relaxation or dispensation, and any subsequent appeal to the Secretary of State, can be made only where the building work is subject to the Building Regulations.
24. If you believe that a particular requirement of the Building Regulations is too onerous, inappropriate or unreasonable in the particular circumstances of your plans or work, you have a right under sections 8 and 9 of the 1984 Act to apply to the local authority asking for either a relaxation or dispensation of the requirement. The power to relax or dispense has been

vested in the local authority by the Building Regulations in the first instance and **you must therefore apply to the authority, whether the authority or an approved inspector is carrying out the building control service for your building work.** However, if you are using an approved inspector, you should discuss any proposal to seek a relaxation or dispensation with the inspector before proceeding.

25. Your application to the local authority should state whether you are seeking either a relaxation or a dispensation and specify in respect of which requirement in the Building Regulations, which is likely to be in Schedule 1. Simply referring to one or more of the Parts in Schedule 1 (e.g. Part B or Part K) will not be sufficient to identify the actual requirement in question. If in doubt about the requirement relating to the matter in dispute you should ask the local authority⁸ to clarify.
26. 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 fully comply with it. If you are seeking a dispensation your application will need to justify why you believe that the whole of a requirement is inappropriate or unreasonable in the particular circumstances of your plans or work.
27. The local authority can provide further details of how to proceed (i.e. whether you need to complete an application form or send a letter or email) and what to include in a relaxation or dispensation application. The local authority is required to make a decision within a period of two months from the date of your application, but can extend this period if you agree. If the local authority does not notify you of its decision within this timescale, you will be entitled to appeal to the Secretary of State as if the authority had refused your application.

Timing of an application for a relaxation or dispensation

28. An application for a relaxation or dispensation (and any subsequent appeal) can be made at **any stage of the building work**, i.e. at design stage, before or after the submission of plans or a building notice, during construction or after it has been completed (including prior to or following a regularisation application). However, you should note that leaving an application (and an appeal) to the point where the work is completed could cause you difficulties and leave you ultimately vulnerable to enforcement action. 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.

⁸ It is not possible for a local authority to grant a relaxation or dispensation in respect of regulation 26 (CO₂ emission rates for new buildings) or regulation 29 (energy performance certificates) or in respect of the energy efficiency provisions of the Building Regulations 2010 for existing buildings with a floor area greater than 1000m².

Appeal to the Secretary of State against the local authority's refusal to relax or dispense

29. If the local authority refuses your relaxation or dispensation application you have a right of appeal under section 39 of the 1984 Act to the Secretary of State against that decision, provided you do so **within one month of the date of being notified of the refusal**.
30. The local authority should give an explanation of its decision and must notify you of your right to appeal to the Secretary of State. 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 or her advice before proceeding.
31. Details of how to submit an appeal to the Secretary of State are given in paragraphs 36-40. Your appeal should set out details of the building/building work and the matter in dispute. You should also clearly set out your case in the same way that you did so for your relaxation or dispensation application, explaining your reasons and giving full justification for relaxing or dispensing with the requirement in question, and additionally addressing the comments which the local authority should have given for refusing your application. 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.
32. If the Secretary of State allows the appeal, he will give a direction for relaxing or dispensing with the requirement of the Building Regulations in question, dependant on which is appropriate.

Using the appropriate procedure

33. There are key differences between an application for a determination and an application for a relaxation or dispensation of a requirement of the Building Regulations, and any subsequent appeal, to which you should have regard before deciding how to proceed to resolve a dispute. In particular:
 - An application for a determination is made directly to the Secretary of State, whereas an application for a relaxation or dispensation is made to the local authority in the first instance. Only if the application for a relaxation or dispensation is refused can an appeal be submitted against that decision to the Secretary of State.
 - An application for a determination can only be made when full plans have been deposited with the local authority or when your plans are being checked by an approved inspector, whereas an application for a relaxation or dispensation, and any subsequent appeal, can also be made when a building notice has been given to the local authority.

- An application for a determination can only be made when the part of the building work in question has not commenced, whereas an application for a relaxation or dispensation, and any subsequent appeal, can be made at any stage of the work, i.e. before, during or when completed.
- An application for a determination should argue that plans of proposed building work comply with the requirements of the Building Regulations. This contrasts with an application for a relaxation or dispensation, and any subsequent appeal, which should accept that the plans or work do not comply in part or whole with a requirement but argue that there is a valid case for not complying.

34. You should also bear in mind that, because the technical requirements in Schedule 1 to the Building Regulations are written in functional terms (see paragraph 13), a relaxation or dispensation of one of these requirements is unlikely in most cases to be relevant to the practical and essential issue of complying with the Building Regulations in terms of health and safety. Moreover, a case for relaxing or dispensing with a functional requirement may be very difficult to argue unless exceptional circumstances apply, particularly if 'life safety' issues such as those within Part B (Fire safety) are at stake. There may be exceptions with respect to Part L (Conservation of fuel and power) and Part M (Access to and use of buildings) where the performance standards embrace more than health and safety. **But an application for determination made at the appropriate time (i.e. before the work in question has commenced) is likely to be the more appropriate course of action in most cases.**

35. You should therefore not rely on the relaxation/dispensation and appeal process to deal with an unresolved matter which should have been referred to the Secretary of State at an earlier stage as a determination. If the Secretary of State agrees with the local authority that the building work does not comply and that a case has not been made to relax or dispense with the requirement of the Building Regulations in question, he will dismiss your appeal. The requirement will continue to apply and your work will still not comply with it. You may then have to make changes to any work carried out to achieve compliance or the local authority could take enforcement action against you.

Submitting a determination application or appeal to the Secretary of State

36. An application for a determination or an appeal can be submitted to the Secretary of State by completing the appropriate form which can be found on the Department's website:
<http://www.communities.gov.uk/planningandbuilding/buildingregulations/determinationsandappeals/>

Appeal form:

<http://www.communities.gov.uk/documents/planningandbuilding/doc/1876542.doc>

Determination form:

<http://www.communities.gov.uk/documents/planningandbuilding/doc/1876339.doc>

37. The application/appeal forms have been designed to be completed electronically (all boxes will expand) and can be emailed or printed and sent by post to the addresses indicated, with the supporting documentation requested. Determination applications and appeals will also be accepted in the form of a letter via email or post - if the information and supporting documents requested as set out in the forms are provided. However, by completing the relevant form fully and accurately (paying attention to the notes on the forms and the guidance in this document) and attaching the supporting documents requested in the checklist - including the building control body's comments on your application/appeal - it will:

- make it easier for you to compile your application/appeal with the information and documents needed, saving you and the Department time and
- speed up the overall determination/appeal process enabling you to receive a quicker decision.

38. Furthermore, whilst you are not legally obliged to do so, **it will expedite your determination application or appeal if you contact your building control body before you submit your form and ask for its comments on your application/appeal to submit with your form.** The building control body's comments should be provided in a letter addressed to the Department containing a brief statement commenting on the building/building work, the matter in dispute and explaining:

- in the case of a determination - why the building control body does not believe that your proposals comply with the requirement of the Building Regulations in question
- in the case of an appeal - why the local authority refused your relaxation or dispensation application

39. Should you decide to provide the building control body's comments with your application/appeal, you should ensure that you and the building control body have seen each other's comments and have had regard to

these as appropriate, prior to referring your application/appeal to the Secretary of State.

40. There is a **fee payable for a determination application** but not for an appeal. Details of the fee payable are given on the application form.

Processing your determination application or appeal

41. Your determination application or appeal will be acknowledged by the Department, as will all documentation received. If any further clarification or information is needed after it has been checked this will be requested in writing. The Department will correspond with both you and the building control body either by email or letter and will ensure that both are copied into relevant correspondence.
42. Once your application/appeal has been accepted, if you **have not submitted the building control body's comments**, the Department will copy your application/appeal with attachments to the building control body asking for its comments and you will be notified of this. The building control body will be asked to respond within 21 days and to copy its response direct to you. You will then have a further 21 days to respond to these comments if you wish by writing to the Department, which should be similarly copied to the building control body for information. When the correspondence has concluded, the Department will give careful consideration to the documentation submitted and proceed to the decision-making process - on behalf of the Secretary of State.
43. Alternatively, if you **have submitted the building control body's comments** with your application/appeal, the Department will seek confirmation from both parties (allowing a period of 14 days) that neither wishes to comment further and - assuming this is the case - will then move directly to the consideration and decision-making process.
44. The Department considers determination applications and appeals on the basis of written representations - no meetings or hearings are held or site visits made. You will be notified of the Secretary of State's decision by letter, which will be copied simultaneously to the building control body. You should note that **once a decision has been issued the Secretary of State has no further jurisdiction in your case and any matters that follow should be taken up with the building control body**. A copy of the decision letter will be published on the Department's website and copied to interested parties for information after it has been issued, with personal details expunged.
45. The Department aims to issue a decision within **four months** of receipt of all documentation from both parties. However, if you have not submitted the building control body's comments with your application/appeal or if either party chooses to comment further, you will need to allow additional time for the whole process. Please note that it may take longer to issue a decision depending on the complexity of the case and the need to balance this with other departmental priorities.

Further guidance

46. As indicated in paragraph 14, the Department provides general guidance in Approved Documents and other information on the Building Regulations. This can be found on the Department's website⁹ and on the Planning Portal.¹⁰
47. If you would find it helpful to discuss your proposed determination application or appeal before submission, the Department can be contacted by telephone: 0303 444 3658 or 4232, or by email: enquiries.br@communities.gsi.gov.uk.
48. Guidance on determinations applications and appeals in Wales can be obtained from:

Welsh Assembly Government
Construction Unit
Department for Environment, Sustainability & Housing
Merthyr Tydfil Offices
Rhydycar
Merthyr Tydfil
CF48 1UZ

Tel: No. 01685 729232

E-mail: enquiries.brconstruction@wales.gsi.gov.uk

⁹ <http://www.communities.gov.uk/planningandbuilding/buildingregulation/>

¹⁰ <http://www.planningportal.gov.uk/buildingregulations/>

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