

**Policy Note 3**

**Transfer of an ongoing Project from an Approved Inspector to another BCB**

This note refers to the situation where an Approved Inspector can no longer look after a project by choice (either of the AI or their client). In these cases the Building Control function is transferred elsewhere.

**Note: this note does not deal with cancellation of the Initial Notice that occurs automatically due to default (failure to properly complete the certification process or failure to rectify contraventions). It is only for cases where none of the partially completed work is in question in regard to compliance.**

The two options of 'free' transfer are:

a) That control of the project "reverts" to LA control as the 'default'. This is called reversion and is dealt with under regulation 19 of the Approved Inspector regulations. The effect of the Initial Notice being in force for the remaining work must be cancelled and it is better if that part of the work that has already been carried out is certified as compliant by the submission of a Final Certificate for that work.

b) That it is taken over by another Approved Inspector. As above in a) the work so far carried out should be certified by Final Certificate and the Initial Notice cancelled in regard to the remainder of the work. At the same time a new Initial Notice for the remaining work should be submitted jointly by the new AI and the person carrying out the work ["Person carrying out the work" was recently agreed as the owner by the BCA IN Protocol]

**Local Authority reversion**

Regulation 19 of the Approved Inspector Regulations covers this eventuality under 19 (b). Note that we are only looking at 'voluntary' cancellation of the IN under Section 52 of the Building Act.

<p><b>19.</b></p> <p>(1) This paragraph applies where—</p> <ul style="list-style-type: none"><li>(a) any part of the work described in an initial notice has been carried out,</li><li>(b) the initial notice has ceased to be in force, by reason of regulation 17 or has been cancelled by notice under section 52 of the Act, and</li><li>(c) no other initial notice relating to that part of the work has been accepted.</li></ul> <p>(2) Where paragraph (1) applies, the owner shall—</p> <ul style="list-style-type: none"><li>(a) on being given reasonable notice by the local authority, provide them with—<ul style="list-style-type: none"><li>(i) sufficient plans of the work carried out, in respect of which no final certificate has been given, to show whether any part of that work would, if carried out in accordance with the plans, contravene any provision of the Principal Regulations, and</li><li>(ii) where a plans certificate was given and not rejected in respect of any such part of the work, a copy of the plans to which it relates; and</li></ul></li><li>(b) comply with any notice in writing from the local authority requiring the owner within a reasonable time to cut into, lay open or pull down so much of the work as prevents the local</li></ul>
--

authority from ascertaining whether any work in relation to which there is no final certificate contravenes any requirement in the Principal Regulations.

(3) Where paragraph (1) applies and work in relation to a building has been begun but not completed, a person who intends to carry out further work in relation to the partly completed work shall give the local authority sufficient plans to show that the intended work will not contravene any requirement in the Principal Regulations, including such plans of any part of the work already carried out as may be necessary to show that the intended work can be carried out without contravening any such requirement.

(4) Plans given to a local authority in accordance with paragraph (3) are not to be regarded as plans deposited in accordance with building regulations.

We note that there are constant references to the possibility of Final Certificates being submitted for the work so far complete. If this is possible (although it is not mandatory) it makes the whole thing more manageable in that there is a 'go from here' mechanism rather than one which needs to look back and investigate work already carried out.

A little known possibility is that of the Approved Inspector providing a Plans Certificate for the whole of the work and the Local Authority having to accept a role of inspecting work to ensure compliance with those plans. The effect and validity of the Plans Certificate can still remain even if the inspecting role is to be taken on by another BCB. Approved Inspectors would probably refuse to take on a job under these circumstances but a Local Authority has no choice.

### **Transfer of responsibility from one Approved Inspector to another.**

As can be seen above in 19 (1) (c) the 'default' reversion only happens when "no other initial notice relating to that part of the work has been accepted."

The process for transferring a project between Approved Inspectors is covered by the following process.

The first Approved Inspector needs to 'tidy up the job' by doing two things:

- a) Submit a final certificate for that part of the work that they have looked after (clear description is vital), and
- b) Cancel the remaining effect of the original notice in respect of the remaining work (again very clear on the description)

Note that if the work carried out so far is not 'signed off' by the original Approved Inspector then it will revert to the Local Authority even though the second Approved Inspector is to look after the remaining work under a new Initial Notice. The second Approved Inspector cannot take responsibility for work already carried out as they can only work to an Initial Notice and an Initial Notice can only ever be "a notice of intent" in connection with work yet to be carried out.

A situation involving three parties, a departed Approved Inspector, a local authority looking after reverted work and a second Approved Inspector looking after the future work will probably not be understood clearly by all parties and will result in a completely unmanageable situation. It is felt that in that situation the second approved inspector should refuse to participate.

Building Act Section 51 Final certificates.(1) Where an approved inspector is satisfied that any work to which an initial notice given by him relates has been completed, he shall give to the local authority by whom the initial notice was accepted such certificate with respect to the completion of the work and the discharge of his functions as may be prescribed (called a "final certificate").

(2)Section 50(5) to (7) above has effect in relation to a final certificate as if any reference in those subsections to a plans certificate were a reference to a final certificate.

(3)Where a final certificate—

(a)has been given with respect to any of the work to which an initial notice relates, and

(b)has been accepted by the local authority concerned, the initial notice ceases to apply to that work, but section 48(1) above continues to apply, by virtue of this subsection, in relation to that work as if the initial notice continued in force in relation to it.

The second Approved Inspector needs to submit an Initial Notice describing the remainder of the work (following on from the description in the Cancellation Notice) and then carry on with their services up to final completion of the work.

In regard to Plan Approval the first Approved Inspector can register the approval of the proposals through the submission of a Plans Certificate which would remain valid even though Initial Notices are changing. This may not be acceptable to the second Approved Inspector however and may need to be discussed first.

## **Statute pertaining to this note**

### **Voluntary cancellation of an Initial Notice**

The issue of voluntary cancellation of an Initial Notice is contained (along with non voluntary requirements) in Building Act section 52. Included below are the parts that relate to voluntary cancellation.

#### **52 Cancellation of initial notice.**

(1)If, at a time when an initial notice is in force—

(a)the approved inspector becomes or expects to become unable to carry out (or to continue to carry out) his functions with respect to any of the work to which the initial notice relates,

.....

(3)If, at a time when an initial notice is in force, it appears to the person carrying out or intending to carry out the work to which the notice relates that the approved inspector is no longer willing or able to carry out his functions with respect to any of that work, he shall cancel the initial notice by notice in the prescribed form given to the local authority concerned and, if it is practicable to do so, to the approved inspector.

.....

(6)A notice under subsection (1), (3) or (5) above has the effect of cancelling the initial notice to which it relates with effect from the day on which the notice is given.

## **Submission of a further Initial Notice**

Section 53 of the Building Act deals with this – Included below are only the references to a new Initial notice

See 53 (3) and (7)

**53 Effect of initial notice ceasing to be in force.**

(1) This section applies where an initial notice ceases to be in force by virtue of section 47(4)(b)(i) or (ii) above.

.....

**(3) If, before the day on which the initial notice ceased to be in force, a final certificate—**

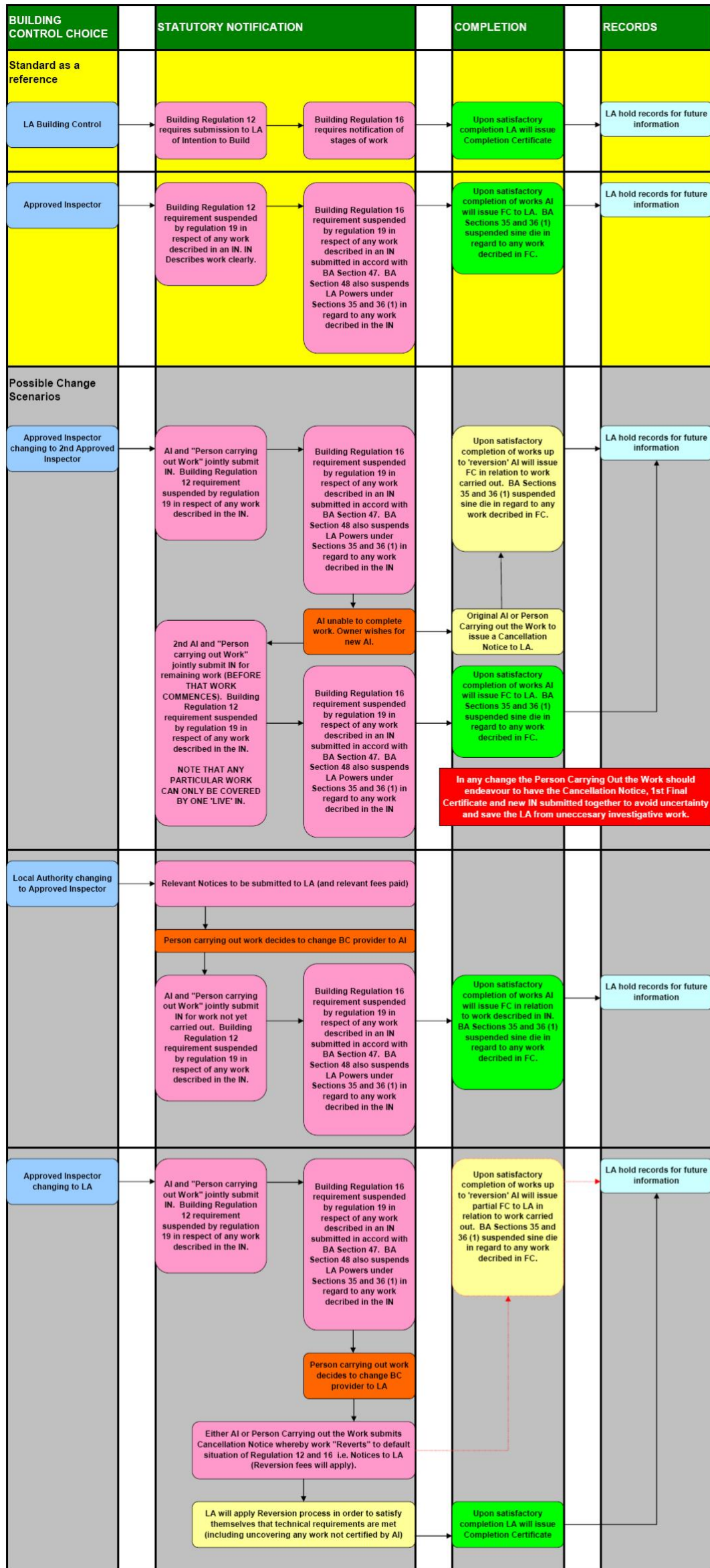
**(a) was given in respect of part of the work to which the initial notice relates, and**

**(b) was accepted by the local authority (before, on or after that day), the fact that the initial notice has ceased to be in force does not affect the continuing operation of section 51(3) above [Suspension of LAs enforcement powers] in relation to that part of the work.**

....

**(7) The fact that an initial notice has ceased to be in force does not affect the right to give a new initial notice relating to any of the work to which the original notice related and in respect of which no final certificate has been given and accepted .....**

Changing BC Provider by Choice Rather than by Default



ABBREVIATIONS: BA = Building Act. IN = Initial Notice. FC = Final Certificate