

Entering into arrangements or transferring consenting functions

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This section of the website provides guidance for territorial or regional authorities that want to enter into arrangements for the performance of, or to transfer, their building control functions.

The Building Act 2004 (the Act) requires at:

- section 212, a **territorial authority** to perform the functions of a building consent authority (BCA) within its district and in any coastal marine area adjacent to its district that is not part of another district in relation to:
 - any application for a building consent
 - any building consent granted under that application.
- section 241, a **regional authority** to be accredited and registered as a BCA at all times in order to deliver its consenting functions in relation to dams.



The requirements imposed on BCAs within a territorial authority are subject to any decisions the BCA makes to enter into arrangements under section 213 of the Act for the delivery of their building control function. Both territorial and regional authorities may also formally transfer their BCA functions under the Act.

The Building Act 2004 (<http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html>) is available on the Legislation website.

Making arrangements under section 213

Section 213 of the Act provides that a BCA within a territorial authority can make an arrangement for the performance of one or more its building control functions – with one or more other BCAs – by contract or any other means.

The making of an arrangement under section 213 of the Act is different to a BCA contracting a private organisation or person to perform building control functions. Regulation 12 of the Building (Accreditation of Building Consent) Regulations 2004 (the Regulations) does not apply to an arrangement made between BCAs under section 213 whether it is by contract or any other means.

Apportioning liability under an arrangement

The Ministry of Business, Innovation and Employment (MBIE) recommends that a BCA's Chief Executive and responsible manager should bear in mind that section 214(a) of the Act provides that the primary BCA will remain liable for any acts or omissions of the other BCA unless an agreement is made for the apportioning of liability (under section 214(b)).

Application of accreditation requirements under arrangements

A section 213 arrangement may see the building control functions of a primary BCA performed by another BCA using the:

- **primary BCA's policies, procedures and systems:** Where this occurs, the other BCA's work is within scope of the primary BCA's accreditation assessment. It is essentially working as the primary BCA. The primary BCA must include the functions being performed by the other BCA in its forecasting and planning under regulation 8 of the Regulations. But, it can rely on the other BCA's accreditation to satisfy the requirements of regulations 9, 10, 11 and 18 of the Regulations.
- **other BCA's policies, procedures and systems:** Where this is the case, for the performance of the function to be lawful, the other BCA must be registered. Also, the other BCA's work is outside the scope of the primary BCA's accreditation assessment. The primary BCA does not need to include the functions

being performed by the other BCA in its forecasting and planning under regulation 8 of the Regulations.

If the primary BCA's building control functions are being independently performed by the other BCA and the other BCA's accreditation is revoked, the primary BCA must make alternative arrangements for the performance of its building control functions. It would be wise for a primary BCA to have a contingency plan in case of any arrangement being discontinued.

A BCA must keep records of all work it performs using its own policies, procedures and systems including any work it performs for another BCA (regardless of how liability may be apportioned under any arrangement).

The Building (Accreditation of Building Consent) Regulations 2004 (<http://www.legislation.govt.nz/regulation/public/2006/0399/latest/DLM424665.html>) are available on the Legislation website.

Formal transfer of building control functions

The Act provides, at sections 233 or 244 respectively, that a territorial or regional authority can formally transfer their building control functions. Where they may choose to do so, they must:

- use the special consultative procedure in section 83 of the Local Government Act 2002
- serve notice on the Minister for Building and Construction of its proposal to transfer the function, duty, or power
- agree with the other territorial or regional authority that the transfer is desirable on the grounds of:
 - efficiency, and/or
 - technical or special capability, or expertise.

Where the Chief Executive or responsible manager of a BCA wishes to formally transfer any or all of its building control functions they must comply with the notification requirements for changes within a BCA.

It is possible for one or more territorial or regional authorities to establish a single BCA, with a single set of policies, procedures and systems, to which they formally transfer their building control functions (meeting the requirements of section 212 of the Act). For further information, BCAs can contact MBIE.

Section 83 of the Local Government Act 2002 (http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM172328.html?search=sw_096be8ed80ff3936_scope_25_se&p=1%20-%20DLM172328) is available on the Legislation website.

Regulation 6A: Notification requirements (<https://www.building.govt.nz/building-officials/bca-accreditation/detailed-regulatory-guidance/6a-notification-requirements/>)

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- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.