

BUILDING REGULATIONS – A BRIEF GUIDE

WHAT THE BUILDING REGULATIONS DO

The Building Regulations (the “Regulations”) are made under powers created by the Building Act 1984. The Regulations exist to seek to ensure the health and safety of people in and around all types of buildings, both new build and existing.

Anyone carrying out building works is required to ensure that they comply with the technical standards set out in the Regulations and also follow the procedural requirements.

The primary responsibility for achieving compliance rests with the person carrying out the works but ultimately it is the owner of a building that will face any enforcement notice rather than the builder and as such, compliance is primarily an owner risk to manage rather than a contractor risk. It is important on building projects of any size to make clear whether it is the contractor or the building owner that will take responsibility for compliance with the Regulations in contractual documentation.

The Regulations have appended to them in Schedule 1 a set of requirements for various areas of construction (e.g. structure, fire safety, hygiene, electrical safety etc) backed up by a series of approved documents to be read alongside the relevant set of requirements.

From these designers and contractors can ascertain what will or will not be compliant with the Regulations. The design solutions offered in approval documents are not exhaustive or prescriptive in terms of satisfying the requirements.

HOW THE BUILDING REGULATIONS APPLY IN PRACTICE

Regulation 3 defines “building works”. It includes the erection or extension of a building and alteration involving work which will temporarily or permanently affect the ongoing compliance of the building.

It is a wide definition. It does not, however, cover repairs of a minor nature.

METHODS OF COMPLIANCE WITH BUILDING REGULATIONS

• The Local Authority Building Control Service

If building works are carried out there is an option to either use the Local Authority Buildings Control Service or an Approved Inspectors Building Control Service.

For certain types of work (some electrical, plumbing and some window installation) use of an installer registered with the relevant scheme designated in the Regulations will remove the need to involve a Building Control Service. For example use of a Gas Safe Register registered gas fitter for gas services or use of a NICEIC registered electrician for electrical services. Most works, however, will include an element within them that will not allow self certification by the contractor.

Local authorities buildings inspectors can be identified through the Local Authority.

If using a local authority inspector there are two procedures:

• A full plans application

Under this procedure full plans and construction details must be submitted to the local authority who must then issue a decision (permitting the works or requesting changes) within five weeks of notifying approval or requesting amendments.

The approval will then set out a schedule of notifications to be given at various stages (foundations, damp proof course etc).



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Once the works have commenced the inspector will review the works to ensure that they are being built in accordance with the Regulations and then finally issue a completion certificate.

- **The building notice procedure**

This procedure avoids the preparation of full plans and is designed to enable smaller works to commence quickly. It cannot always be used and is more appropriate for smaller refurbishments. It requires a building notice to be given to the local authority of an intention to start works and the local authority can then inspect and request information.

There is an obligation to serve a commencement notice at least two clear days before the commencement of works once the initial notice has been served.

The local authority is not required to issue a completion certificate under the building notice procedure.

A fee is payable for both services provided by the Local Authority.

APPROVED INSPECTORS

Approved Inspectors provide a similar service but are private entities regulated by the Construction Industry Council. Approved inspectors can only deal with residential projects for sale or private renting where some form of latent defects insurance (such as NHBC) is in place from the commencement of the project.

The Approved Inspector procedure is more commonly used in commercial developments.

Approved Inspectors can act when an "initial notice" is served on the local authority (jointly with the approved inspector) confirming that they are appointed and will act. If not specifically rejected by the local authorities within five days works can commence.

When the works are completed the Approved Inspector will issue a final certificate to the local authority to say that the works referred to in that initial notice comply with the Regulations.

A fee is payable to an Approved Inspector which is negotiated between the parties.

CONTRAVENTION AND ENFORCEMENT

Breaches can be both in connection with failure to follow the procedure and in connection with a failure to comply with the technical specifications set out in the Regulations.

Either breach can lead to a £5,000 fine for contravention. This action will be taken by the local authority against the builder responsible.

Alternatively, or in addition, the local authority may serve a Section 36 enforcement notice on the owner requiring him to alter or remove work which contravenes the Regulations.

If the owner does not comply with the notice the local authority has the power to undertake the work itself and recover the costs of doing so from the owner.

A Section 36 enforcement notice cannot be served after the expiration of the 12 months from the date of completion of the building works although the local authority can apply for injunctions outside of that time scale which can have much the same effect.

Approved Inspectors do not have enforcement powers. They will not, however, issue a final certificate where the Regulations have not been complied with and should cancel the Initial notice by notifying the local authority.

Enforcement is rare and local authorities will usually seek to reach agreement on compliance where non-compliance comes to their attention.

Non-compliance can, however, cause issues at the time of sale.

This briefing offers general guidance only. It reflects the law as at July 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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