



Building Act 1984

1984 CHAPTER 55

PART I **E+W**

BUILDING REGULATIONS

Appeals in certain cases

39 Appeal against refusal etc. to relax building regulations. **E+W**

- (1) If a [^{F1}building control authority] refuse an application to dispense with or relax a requirement in building regulations that they have power to dispense with or relax, the applicant may by notice in writing appeal ^{F2}... within one month from the date on which the [^{F1}building control authority] notify the applicant of their refusal.

[^{F3}(1A) The appeal is to be made to—

- (a) the regulator, in the case of a refusal by a local authority for an area in England;
- (b) the tribunal, in the case of a refusal by the regulator;
- (c) the Welsh Ministers, in the case of a refusal by a local authority for an area in Wales.]

(2) If, within—

- (a) a period of two months beginning with the date of an application, or
- (b) such extended period as may at any time be agreed in writing between the applicant and the [^{F4}building control authority],

the [^{F4}building control authority] do not notify the applicant of their decision on the application, subsection (1) above applies in relation to the application as if the [^{F4}building control authority] had refused the application and notified the applicant of their decision at the end of the said period.

^{F5}(3)

^{F5}(4)

^{F5}(5)

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^{F5}(6)

Textual Amendments

- F1** Words in s. 39(1) substituted (1.10.2023 except in relation to W., 6.4.2024 for W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 5 para. 34](#); S.I. 2023/993, reg. 2(n)(xi) (with reg. 4); S.I. 2024/207, reg. 2(d)(xi), Sch. (with regs. 3, 4, 8-12)
- F2** Words in s. 39(1) omitted (1.10.2023 except in relation to W., 6.4.2024 for W.) by virtue of [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 6 para. 4\(2\)](#); S.I. 2023/993, reg. 2(o)(i) (with reg. 6); S.I. 2024/207, reg. 2(d)(xii) (with regs. 3, 4, 8-12)
- F3** S. 39(1A) inserted (1.10.2023 except in relation to W., 6.4.2024 for W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 6 para. 4\(3\)](#); S.I. 2023/993, reg. 2(o)(i) (with reg. 6); S.I. 2024/207, reg. 2(d)(xii) (with regs. 3, 4, 8-12)
- F4** Words in s. 39(2) substituted (1.10.2023 except in relation to W., 6.4.2024 for W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 5 para. 34](#); S.I. 2023/993, reg. 2(n)(xi) (with reg. 4); S.I. 2024/207, reg. 2(d)(xi), Sch. (with regs. 3, 4, 8-12)
- F5** S. 39(3)-(6) omitted (1.10.2023 except in relation to W., 6.4.2024 for W.) by virtue of [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 6 para. 4\(4\)](#); S.I. 2023/993, reg. 2(o)(i) (with reg. 6); S.I. 2024/207, reg. 2(d)(xii) (with regs. 3, 4, 8-12)

^{F6}39A Appeals against compliance notices and stop notices etc **E+W**

- (1) A person to whom a compliance notice has been given may appeal to the appropriate court or tribunal.
- (2) Where an appeal under [subsection \(1\)](#) is made—
 - (a) the compliance notice is of no effect pending the final determination or withdrawal of the appeal, and
 - (b) the specified period mentioned in [section 35B\(2\)](#) is treated as extended by the period—
 - (i) beginning with the day on which the appeal is made, and
 - (ii) ending with the day on which the appeal is finally determined or withdrawn.
- (3) A person to whom a compliance notice has been given may apply to the appropriate court or tribunal for an extension of the period for the doing of the thing specified in the notice.
- (4) [Subsection \(2\)](#) applies in relation to such an application as it applies in relation to an appeal under [subsection \(1\)](#).
- (5) A person to whom a stop notice has been given may appeal to the appropriate court or tribunal.
- (6) Where an appeal under [subsection \(5\)](#) is made—
 - (a) the appellant may apply to the appropriate court or tribunal for a direction that the stop notice is of no effect pending the final determination or withdrawal of the appeal, and
 - (b) unless and until any such direction is given, the stop notice continues to have effect despite the making of the appeal.]

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Textual Amendments

- F6** S. 39A inserted (6.4.2023 for specified purposes except in relation to W., 5.9.2023 for W. for specified purposes, 1.10.2023 in so far as not already in force except in relation to W.) by [Building Safety Act 2022 \(c. 30\)](#), [ss. 38\(2\)](#), [170\(4\)\(b\)\(c\)](#); S.I. 2023/362, [reg. 3\(1\)\(q\)](#); S.I. 2023/914, [reg. 2\(b\)\(v\)](#); S.I. 2023/993, [reg. 2\(h\)](#)

40 Appeal against section 36 notice. **E+W**

- (1) A person aggrieved by the giving of a section 36 notice may appeal to ^{F7}the appropriate court or tribunal^{F8}....
- (2) Subject to subsection (3) below, on an appeal under this section the court ^{F9}or tribunal] shall—
 - (a) if it determines that the ^{F10}building control authority] were entitled to give the notice, confirm the notice, and
 - (b) in any other case, give the ^{F10}building control authority] a direction to withdraw the notice.
- (3) If, in a case where the appeal is against a notice under section 36(2) above, the court ^{F9}or tribunal] is satisfied that—
 - (a) the ^{F11}building control authority] were entitled to give the notice, but
 - (b) in all the circumstances of the case the purpose for which was enacted the section of this Act by virtue of which the notice was given has been substantially achieved,the court ^{F9}or tribunal] may give a direction under subsection (2)(b) above.
- (4) An appeal under this section shall be brought—
 - (a) within 28 days of the giving of the section 36 notice, or
 - (b) in a case where the person to whom the section 36 notice was given gives notice under section 37(1)(a) above, within 70 days of the giving of the section 36 notice.
- (5) Where an appeal is brought under this section—
 - (a) the section 36 notice is of no effect pending the final determination or withdrawal of the appeal, and
 - (b) section 36(3) above has effect in relation to that notice as if after the words “28 days” there were inserted the words “(beginning, in a case where an appeal is brought under section 40 below, on the date when the appeal is finally determined or, as the case may be, withdrawn)”.
- (6) If, on an appeal under this section, there is produced to the court ^{F9}or tribunal] a report that has been submitted to the ^{F12}building control authority] under section 37(1) above, the court ^{F9}or tribunal], in making an order as to costs, may treat the expenses incurred in obtaining the report as expenses incurred for the purposes of the appeal.

Textual Amendments

- F7** Words in s. 40(1) substituted (1.10.2023 except in relation to W., 6.4.2024 for W.) by [Building Safety Act 2022 \(c. 30\)](#), s. [170\(4\)\(b\)\(c\)](#), [Sch. 6 para. 9\(h\)](#); S.I. 2023/993, [reg. 2\(o\)\(i\)](#) (with [reg. 6](#)); S.I. 2024/207, [reg. 2\(d\)\(xii\)](#) (with [regs. 3, 4, 8-12](#))

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- F8** Words in s. 40(1) repealed (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 279, **Sch. 10**; S.I. 2005/910, art. 3(y)
- F9** Words in s. 40 inserted (1.10.2023 except in relation to W., 6.4.2024 for W.) by Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 6 para. 14**; S.I. 2023/993, reg. 2(o)(i) (with reg. 6); S.I. 2024/207, reg. 2(d)(xii) (with regs. 3, 4, 8-12)
- F10** Words in s. 40(2) substituted (1.10.2023 except in relation to W., 6.4.2024 for W.) by Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 5 para. 35**; S.I. 2023/993, reg. 2(n)(xi) (with reg. 4); S.I. 2024/207, reg. 2(d)(xi), Sch. (with regs. 3, 4, 8-12)
- F11** Words in s. 40(3) substituted (1.10.2023 except in relation to W., 6.4.2024 for W.) by Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 5 para. 35**; S.I. 2023/993, reg. 2(n)(xi) (with reg. 4); S.I. 2024/207, reg. 2(d)(xi), Sch. (with regs. 3, 4, 8-12)
- F12** Words in s. 40(6) substituted (1.10.2023 except in relation to W., 6.4.2024 for W.) by Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 5 para. 35**; S.I. 2023/993, reg. 2(n)(xi) (with reg. 4); S.I. 2024/207, reg. 2(d)(xi), Sch. (with regs. 3, 4, 8-12)

41 Appeal to Crown Court. **E+W**

- (1) Where a person—
- is aggrieved by an order, determination or other decision of a magistrates' court [^{F13}under, or under an instrument made under, this Part or Part 4 as it applies in relation to this Part,] and
 - is not by any other enactment authorised to appeal to the Crown Court.
- he may appeal to the Crown Court.
- (2) Subsection (1) above does not confer a right of appeal in a case in which each of the parties concerned might under this Act have required that the dispute should be determined by arbitration instead of by a magistrates' court.

Textual Amendments

- F13** Words in s. 41(1)(a) substituted (1.10.2023 except in relation to W., 6.4.2024 for W.) by Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 5 para. 36**; S.I. 2023/993, reg. 2(n)(xi); S.I. 2024/207, reg. 2(d)(xi), Sch. (with regs. 3, 4, 8-12)

42 Appeal and statement of case to High Court in certain cases. **E+W**

- [^{F14}(A1) Where the Secretary of State gives a decision on an application for a direction under section 8, any of the following may appeal to the High Court against the decision on a point of law—
- the applicant;
 - the local authority;
 - the registered building control approver.]
- (1) Where the [^{F15}Welsh Ministers give] a decision in proceedings—
- on an appeal under section 20 or 39 above,
 - [^{F16}(b) on an appeal under section 50,] or
 - on an application for a direction under section 8 above where the power of giving the direction is not exercisable by the [^{F17}building control authority],

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the relevant person or the [^{F17}building control authority] or, as the case may be, the [^{F18}registered building control approver] may appeal to the High Court against the decision on a point of law.

- (2) In subsection (1) above, “the relevant person” means—
- (a) as regards an appeal under the said section 20 or 39, the appellant,
 - [^{F19}(b) as regards an appeal under section 50, the person on whose application the appeal was made,]
 - (c) as regards such an application as is mentioned in subsection (1)(c) above, the applicant.
- (3) At any stage of the proceedings on such an appeal ^{F20}... or application as is mentioned in subsection [^{F21}(A1) or] (1) above—
- (a) the [^{F22}appropriate national authority] may state a question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court, and
 - (b) a decision of the High Court on a case so stated is deemed to be a judgment of the court within the meaning of section 16 of the [^{F23}Senior Courts Act 1981] (appeals from the High Court to the Court of Appeal).
- (4) In relation to proceedings in the High Court or the Court of Appeal brought by virtue of this section, the power to make rules of court includes power to make rules—
- (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the [^{F24}appropriate national authority], and
 - (b) providing for the [^{F24}appropriate national authority], either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.
- (5) No appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.
- (6) In this section, “decision” includes a direction, and references to the giving of a decision shall be construed accordingly.

^{F25}(7)

Textual Amendments

- F14** S. 42(A1) inserted (1.10.2023 except in relation to W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 6 para. 5\(2\)](#); S.I. 2023/993, reg. 2(o)(i) (with reg. 6)
- F15** Words in s. 42(1) substituted (1.10.2023 except in relation to W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 6 para. 5\(3\)\(a\)](#); S.I. 2023/993, reg. 2(o)(i) (with reg. 6)
- F16** S. 42(1)(b) substituted (1.10.2023 except in relation to W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 6 para. 5\(3\)\(b\)](#); S.I. 2023/993, reg. 2(o)(i) (with reg. 6)
- F17** Words in s. 42(1) substituted (1.10.2023 except in relation to W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 5 para. 37](#); S.I. 2023/993, reg. 2(n)(xi) (with reg. 4)
- F18** Words in s. 42(1) substituted (6.4.2024 except in relation to W., 6.4.2024 for W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 4 para. 2](#); S.I. 2024/104, reg. 2(b) (with reg. 3); S.I. 2024/207, reg. 2(d)(x) (with regs. 3, 4, 6, 8-12)
- F19** S. 42(2)(b) substituted (1.10.2023 except in relation to W.) by [Building Safety Act 2022 \(c. 30\)](#), s. 170(4)(b)(c), [Sch. 6 para. 5\(4\)](#); S.I. 2023/993, reg. 2(o)(i) (with reg. 6)

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- F20** Word in s. 42(3) omitted (1.10.2023 except in relation to W.) by virtue of Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 6 para. 5(5)(a)**; S.I. 2023/993, reg. 2(o)(i) (with reg. 6)
- F21** Words in s. 42(3) inserted (1.10.2023 except in relation to W.) by Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 6 para. 5(5)(b)**; S.I. 2023/993, reg. 2(o)(i) (with reg. 6)
- F22** Words in s. 42(3)(a) substituted (1.10.2023 except in relation to W.) by Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 6 para. 5(5)(c)**; S.I. 2023/993, reg. 2(o)(i) (with reg. 6)
- F23** Words in s. 42(3)(b) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 11 para. 1(2)**; S.I. 2009/1604, art. 2(d)
- F24** Words in s. 42(4) substituted (1.10.2023 except in relation to W.) by Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 6 para. 5(6)**; S.I. 2023/993, reg. 2(o)(i) (with reg. 6)
- F25** S. 42(7) omitted (1.10.2023 except in relation to W.) by virtue of Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 6 para. 5(7)**; S.I. 2023/993, reg. 2(o)(i) (with reg. 6)

Commencement Information

- I1** S. 42(4)-(6) in force at 1.12.1984 for specified purposes, see s. 134(1)(a)

^{F26} 43 Procedure on appeal to Secretary of State on certain matters. **E+W**

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Textual Amendments

- F26** S. 43 omitted (1.10.2023 except in relation to W., 6.4.2024 for W.) by virtue of Building Safety Act 2022 (c. 30), s. 170(4)(b)(c), **Sch. 6 para. 6**; S.I. 2023/993, reg. 2(o)(i) (with reg. 6); S.I. 2024/207, reg. 2(d)(xii) (with regs. 3, 4, 8-12)

[^{F27} 43A Appeals under sections 20, 39 and 50: England **E+W**

- (1) This section applies to an appeal to the regulator or the tribunal made under section 20(5), 39 or 50(2).
- (2) On determining the appeal, the regulator or the tribunal may give any directions it considers appropriate for giving effect to its determination.
- (3) Where the appeal is determined by the regulator, a relevant person may appeal to the tribunal against the regulator’s decision (and subsection (2) applies in relation to this appeal).
- (4) “Relevant person” means—
 - (a) the appellant;
 - (b) the local authority or registered building control approver.]

Textual Amendments

- F27** S. 43A inserted (1.10.2023) by Building Safety Act 2022 (c. 30), s. 170(4)(c), **Sch. 6 para. 7**; S.I. 2023/993, reg. 2(o)(i) (with reg. 6)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(1A)(d) inserted by [2015 c. 7 s. 37\(2\)](#)
- s. 44(11) inserted by [2004 c. 22 s. 3\(8\)](#)
- s. 79A inserted by [2023 asc 3 Sch. 13 para. 65](#)
- s. 95(5) inserted by [2022 c. 30 s. 60\(2\)](#)
- s. 131A inserted by [2022 c. 30 s. 59](#)
- s. 131B inserted by [2022 c. 30 s. 60\(3\)](#)
- Sch. 1 para. 7A inserted by [2015 c. 7 s. 37\(4\)](#)
- Sch. 1 para. 7A(4) words substituted by [2022 c. 30 Sch. 5 para. 83\(5\)](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of Sch. 1 para. 7A by [2015 c. 7, s. 37\(4\)](#) is still prospective.)