



Housing and Building Control Act 1984

1984 CHAPTER 29

PART II

SUPERVISION OF BUILDING WORK ETC. OTHERWISE THAN BY LOCAL AUTHORITIES

Supervision of plans and work by approved inspectors

39 Giving and acceptance of an initial notice.

(1) In any cases where—

- (a) a notice in the prescribed form (in the enactments relating to building regulations referred to as an “initial notice”) is given jointly to a local authority by a person intending to carry out work and a person who is an approved inspector in relation to that work;
- (b) the initial notice is accompanied by such plans of the work as may be prescribed;
- (c) the initial notice is accompanied by such evidence as may be prescribed that an approved scheme applies, or the prescribed insurance cover has been or will be provided, in relation to the work; and
- (d) the initial notice is accepted by the local authority,

then, so long as the initial notice continues in force, the approved inspector by whom the notice was given shall undertake such functions as may be prescribed with respect to the inspection of plans of the work specified in the notice, the supervision of that work and the giving of certificates and other notices.

(2) A local authority to whom an initial notice is given—

- (a) may not reject the notice except on prescribed grounds, and
- (b) shall reject the notice if any of the prescribed grounds exists,

and in any case where the work to which an initial notice relates is work of such a description that, if plans of it had been deposited with the local authority, the authority could, under any enactment, have imposed requirements as a condition of passing the

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plans, the local authority may impose the like requirements as a condition of accepting the initial notice.

- (3) Unless, within the prescribed period, the local authority to whom an initial notice is given give notice of rejection, specifying the ground or grounds in question, to each of the persons by whom the initial notice was given, the authority shall be conclusively presumed to have accepted the initial notice and to have done so without imposing any such requirements as are referred to in subsection (2) above.
- (4) An initial notice shall come into force when it is accepted by the local authority, either by notice given within the prescribed period to each of the persons by whom it was given or by virtue of subsection (3) above and, subject to section 43(3) below, shall continue in force until—
 - (a) it is cancelled by a notice under section 44 below; or
 - (b) the occurrence of, or the expiry of a prescribed period of time beginning on the date of, such event as may be prescribed;
 and building regulations may empower a local authority to extend (whether before or after its expiry) any such period of time as is referred to in paragraph (b) above.
- (5) The form prescribed for an initial notice may be such as to require—
 - (a) either or both of the persons by whom the notice is to be given to furnish information relevant for the purposes of this Part of this Act, Part II or Part IV of the 1936 Act, Part II of the 1961 Act or any provision of building regulations; and
 - (b) the approved inspector by whom the notice is to be given to enter into undertakings with respect to his performance of any of the functions referred to in subsection (1) above.
- (6) The Secretary of State may approve for the purposes of this section any scheme which appears to him to secure the provision of adequate insurance cover in relation to any work which is specified in an initial notice and is work to which the scheme applies.
- (7) Building regulations may prescribe for the purposes of this section the insurance cover which is to be provided in relation to any work which is specified in an initial notice and is not work to which an approved scheme applies and may, in particular prescribe the form and content of policies of insurance.

40 Effect of an initial notice.

- (1) So long as an initial notice continues in force, the function of enforcing building regulations which is conferred on a local authority by section 4(3) of the 1961 Act shall not be exercisable in relation to the work specified in the notice and, accordingly—
 - (a) a local authority may not give a notice under section 65(1) of the 1936 Act (removal of alteration of work which contravenes building regulations) in relation to the work so specified; and
 - (b) a local authority may not institute proceedings under section 4(6) of the 1961 Act for any contravention of building regulations which arises out of the carrying out of the work so specified.
- (2) For the purposes of the enactments specified in sub-section (3) below,—
 - (a) the giving of an initial notice accompanied by such plans as are referred to in section 39(1)(b) above shall be treated as the deposit of plans; and

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- (b) the plans accompanying an initial notice shall be treated as the deposited plans; and
 - (c) the acceptance or rejection of an initial notice shall be treated as the passing or, as the case may be, the rejection of plans; and
 - (d) the cancellation of an initial notice under section 44(5) below shall be treated as a declaration under section 66 of the 1936 Act that the deposit of plans is to be of no effect.
- (3) The enactments referred to in subsection (2) above are—
- (a) subsection (2) of section 65 of the 1936 Act (powers of local authority where work is executed without plans being deposited etc.);
 - (b) subsection (4) of that section (restriction of powers of local authority to act), in so far as it relates to a notice under subsection (2) thereof and to non-compliance with any such requirement as is referred to in that subsection;
 - (c) subsection (5) of that section (saving for right to obtain injunction for certain contraventions), in so far as it relates to a contravention of any enactment in the 1936 Act;
 - (d) section 14(6) of the Water Act 1973 (notice of proposal to erect or extend building over water authority's sewer), and
 - (e) sections 219 to 225 of the Highways Act 1980 (the advance payments code).
- (4) For the purposes of section 13 of the Fire Precautions Act 1971 (exercise of fire authority's powers where provisions of building regulations as to means of escape apply)—
- (a) the acceptance by a local authority of an initial notice relating to any work shall be treated as the deposit of plans of the work with the authority in accordance with building regulations; and
 - (b) the references in subsections (1)(ii) and (3)(b) of that section to matters or circumstances of which particulars are not or were not required by or under the building regulations to be supplied to the local authority in connection with the deposit of plans shall be construed as a reference to matters or circumstances of which particulars would not be or, as the case may be, would not have been required to be so supplied if plans were to be or had been deposited with the authority in accordance with building regulations.

41 Approved inspectors.

- (1) In the enactments relating to building regulations “approved inspector” means a person who, in accordance with building regulations, is approved for the purposes of this Part of this Act—
- (a) by the Secretary of State; or
 - (b) by a body (corporate or unincorporated) which, in accordance with the regulations, is designated by the Secretary of State for the purpose.
- (2) Any such approval as is referred to in subsection (1) above may limit the description of work in relation to which the person concerned is an approved inspector.
- (3) Any such designation as is referred to in subsection (1)(b) above may limit the cases in which and the terms on which the body designated may approve a person and, in particular, may provide that any approval given by the body shall be limited as mentioned in subsection (2) above.

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- (4) There shall be paid on an application for any such approval as is referred to in subsection (1) above—
- (a) where the application is made to the Secretary of State, such fee as may be prescribed by building regulations;
 - (b) where the application is made to a body designated by him as mentioned in that subsection, such fee as that body may determine.
- (5) Building regulations may—
- (a) contain provision prescribing the period for which, subject to any provision made by virtue of paragraph (b) or (c) below, any such approval as is referred to in subsection (1) above shall continue in force;
 - (b) contain provision precluding the giving of, or requiring the withdrawal of, any such approval as is referred to in that subsection in such circumstances as may be prescribed by the regulations;
 - (c) contain provision authorising the withdrawal of any such approval or designation as is so referred to;
 - (d) provide for the maintenance by the Secretary of State of a list of bodies who are for the time being designated by him as mentioned in subsection (1) above and for the maintenance by the Secretary of State and by each designated body of a list of persons for the time being approved by him or them as mentioned in that subsection;
 - (e) make provision for the supply to local authorities of copies of any list of approved inspectors maintained by virtue of paragraph (d) above and for such copy lists to be made available for inspection; and
 - (f) make provision for the supply, on payment of a prescribed fee, of a certified copy of any entry in a list maintained by virtue of paragraph (d) above or in a copy list held by a local authority by virtue of paragraph (e) above.
- (6) Unless the contrary is proved, in any proceedings (whether civil or criminal) a document which appears to the court to be a certified copy of an entry either in a list maintained as mentioned in subsection (5)(d) above or in a copy of such a list supplied as mentioned in subsection (5)(e) above—
- (a) shall be presumed to be a true copy of an entry in the current list so maintained; and
 - (b) shall be evidence of the matters stated therein.
- (7) In subsection (1) of section 62 of the 1974 Act (building regulations may require local authorities to undertake consultation in prescribed circumstances) after the words “local authorities” there shall be inserted the words “and approved inspectors”.
- (8) An approved inspector may make such charges in respect of the carrying out of functions referred to in section 39(1) above as may in any particular case be agreed between him and the person who intends to carry out the work in question or, as the case may be, by whom that work is being or has been carried out.
- (9) Nothing in this Part of this Act prevents an approved inspector from arranging for plans or work to be inspected on his behalf by another person; but any such delegation—
- (a) shall not extend to the giving of any certificate under section 42 or section 43 below; and
 - (b) shall not affect any liability, whether civil or criminal, of the approved inspector which arises out of functions conferred on him by this Part of this Act or by building regulations;

and, without prejudice to the generality of paragraph (b) above, an approved inspector shall be liable for negligence on the part of any person carrying out any inspection on his behalf in like manner as if it were negligence by a servant of his acting in the course of his employment.

42 Plans certificates.

- (1) Where an approved inspector—
 - (a) has inspected plans of the work specified in an initial notice given by him, and
 - (b) is satisfied that the plans neither are defective nor show that work carried out in accordance with them would contravene any provision of building regulations, and
 - (c) has complied with any prescribed requirements as to consultation or otherwise,he shall, if requested to do so by the person intending to carry out the work, give a certificate in the prescribed form (in the enactments relating to building regulations referred to as a “plans certificate”) to the local authority and to that person.
- (2) In any case where any question arises under subsection (1) above between an approved inspector and a person who proposes to carry out any work whether plans of the work are in conformity with building regulations, that person may refer the question to the Secretary of State for this determination; and an application for a reference under this subsection shall be accompanied by such fee as may be prescribed by building regulations.
- (3) Building regulations may authorise the giving of an initial notice combined with a certificate under subsection (1) above and may prescribe a single form for such a combined notice and certificate; and where such a prescribed form is used—
 - (a) any reference in this Part of this Act to an initial notice or to a plans certificate shall be construed as including a reference to that form; but
 - (b) should the form cease to be in force as an initial notice by virtue of subsection (4) of section 39 above, nothing in that subsection shall affect the continuing validity of the form as a plans certificate.
- (4) A plans certificate—
 - (a) may relate either to the whole or to part only of the work specified in the initial notice concerned; and
 - (b) shall not have effect unless it is accepted by the local authority to whom it is given.
- (5) A local authority to whom a plans certificate is given—
 - (a) may not reject the certificate except on prescribed grounds; and
 - (b) shall reject the certificate if any of the prescribed grounds exists.
- (6) Unless, within the prescribed period, the local authority to whom a plans certificate is given give notice of rejection, specifying the ground or grounds in question, to—
 - (a) the approved inspector by whom the certificate was given, and
 - (b) the other person to whom the approved inspector gave the certificate,the authority shall be conclusively presumed to have accepted the certificate.
- (7) If it appears to a local authority by whom a plans certificate has been accepted that the work to which the certificate relates has not been commenced within the period of

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three years beginning on the date on which the certificate was accepted, the authority may rescind their acceptance of the certificate by notice, specifying the ground or grounds in question, given—

- (a) to the approved inspector by whom the certificate was given; and
- (b) to the person shown in the initial notice concerned as the person intending to carry out the work.

43 Final certificates.

- (1) Where an approved inspector is satisfied that any work specified in an initial notice given by him has been completed, he shall give—
 - (a) to the local authority by whom the initial notice was accepted, and
 - (b) to the person by whom the work was carried out,
 such certificate with respect to the completion of the work and the discharge of his functions as may be prescribed (in the enactments relating to building regulations referred to as a “final certificate”).
- (2) Subsection (4) to (6) of section 42 above shall have effect in relation to a final certificate as if any reference in those subsection to a plans certificate were a reference to a final certificate.
- (3) Where a final certificate has been given with respect to any of the work specified in an initial notice and that certificate has been accepted by the local authority concerned, the initial notice shall cease to apply to that work, but the provisions of section 40(1) above shall, by virtue of this subsection, continue to apply in relation to that work as if the initial notice continued in force in relation to it.

44 Cancellation of initial notice.

- (1) If, at any 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 specified in the initial notice, or
 - (b) the approved inspector is of the opinion that any of the work is being so carried out that he is unable adequately to carry out his functions with respect to it, or
 - (c) the approved inspector is of the opinion that there is a contravention of any provision of building regulations with respect to any of that work and the circumstances are as mentioned in subsection (2) below.
 the approved inspector shall cancel the initial notice by notice in the prescribed form given to the local authority concerned and to the person carrying out or intending to carry out the work.
- (2) The circumstances referred to in subsection (1)(c) above are—
 - (a) that the approved inspector has, in accordance with building regulations, given notice of the contravention to the person carrying out the work; and
 - (b) that, within the prescribed period, that person has neither pulled down nor removed the work nor effected such alterations in it as may be necessary to make it comply with building regulations.
- (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 specified in the notice that the approved inspector is no longer willing or able to carry out his functions with respect to any of that work,

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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.

- (4) If any person fails without reasonable excuse to give to a local authority a notice which he is required to give by subsection (3) above he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale (as defined in section 75 of the Criminal Justice Act 1982).
- (5) If, at a time when an initial notice is in force, it appears to the local authority by whom the initial notice was accepted that the work to which the initial notice relates has not been commenced within the period of three years beginning on the date on which the initial notice was accepted, the authority may cancel the initial notice by notice in the prescribed form given—
 - (a) to the approved inspector by whom the initial notice was given; and
 - (b) to the person shown in the initial notice as the person intending to carry out the work.
- (6) A notice under subsection (1), (3) or (5) above shall have the effect of cancelling the initial notice to which it relates with effect from the day on which the notice is given.

45 Effect of initial notice ceasing to be in force.

- (1) The provisions of this section apply where an initial notice ceases to be in force by virtue of paragraph (a) or paragraph (b) of subsection (4) of section 39 above.
- (2) Building regulations may provide that, if—
 - (a) a plans certificate was given before the day on which the initial notice ceased to be in force, and
 - (b) that certificate was accepted by the local authority (before, on or after that day), and
 - (c) before that day, that acceptance was not rescinded by a notice under section 42(7) above,then, with respect to the work specified in the certificate, such of the functions of a local authority referred to in section 40(1) above as may be prescribed for the purposes of this subsection either shall not be exercisable or shall be exercisable only in prescribed circumstances.
- (3) If, before the day on which the initial notice ceased to be in force, a final certificate was given in respect of part of the work specified in the initial notice and that certificate was accepted by the local authority (before, on or after that day), the fact that the initial notice has ceased to be in force shall not affect the continuing operation of section 43(3) above in relation to that part of the work.
- (4) Notwithstanding anything in subsections (2) and (3) above, for the purpose of enabling the local authority to perform the functions referred to in section 40(1) above in relation to any part of the work not specified in a plans certificate or final certificate, as the case may be, building regulations may require the local authority to be provided with plans which relate not only to that part but also to the part to which the certificate in question relates.
- (5) In any case where this section applies, the reference in subsection (4) of section 65 of the 1936 Act (twelve month time limit for giving certain notices) to the date of the completion of the work in question shall have effect, in relation to a notice under

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subsection (1) of that section, as if it were a reference to the date on which the initial notice ceased to be in force.

- (6) Subject to any provision of building regulations made by virtue of subsection (2) above, if, before the initial notice ceased to be in force, an offence under section 4(6) of the 1961 Act (contravention of provisions of building regulations) was committed with respect to any of the work specified in that notice, summary proceedings for that offence may be commenced by the local authority at any time within six months beginning with the day on which the functions of the local authority referred to in section 40(1) above became exercisable with respect to the provision of building regulations to which the offence relates.
- (7) The fact that an initial notice has ceased to be in force shall not affect the right to give a new initial notice relating to any of the work which was specified in the original notice and in respect of which no final certificate has been given and accepted; but where—
- (a) a plans certificate has been given in respect of any of that work, and
 - (b) the conditions in paragraphs (a) to (c) of subsection (2) above are fulfilled with respect to that certificate, and
 - (c) such a new initial notice is given and accepted,
- section 42(1) above shall not apply in relation to so much of the work to which the new initial notice relates as is work specified in the plans certificate.

Supervision of their own work by public bodies

46 Giving, acceptance and effect of public body's notice.

- (1) This section applies where a body (corporate or unincorporated) which acts under any enactment for public purposes and not for its own profit and is, or is of a description which is, approved by the Secretary of State in accordance with building regulations (in this Part of this Act referred to as a “public body”)—
- (a) intends to carry out in relation to a building belonging to it work to which the substantive requirements of building regulations apply; and
 - (b) considers that the work can be adequately supervised by its own servants or agents; and
 - (c) gives to the local authority in whose district the work is to be carried out notice in the prescribed form (in the enactments relating to building regulations referred to as a “public body's notice”) together with such plans of the work as may be prescribed.
- (2) A public body's notice shall be of no effect unless it is accepted by the local authority to whom it is given; and that local authority—
- (a) may not reject the notice except on prescribed grounds, and
 - (b) shall reject the notice if any of the prescribed grounds exists,
- and in any case where the work to which the public body's notice relates is work of such a description that, if plans of it had been deposited with the local authority, the authority could, under any enactment, have imposed requirements as a condition of passing the plans, the local authority may impose the like requirements as a condition of accepting the public body's notice.
- (3) Unless, within the prescribed period, the local authority to whom a public body's notice is given give notice of rejection, specifying the ground or grounds in question, the authority shall be conclusively presumed to have accepted the public body's notice

and to have done so without imposing any such requirements as are referred to in subsection (2) above.

- (4) Section 40 above shall have effect for the purposes of this section—
 - (a) with the substitution of a reference to a public body's notice for any reference to an initial notice; and
 - (b) with the substitution, in subsection (2)(a), of a reference to subsection (1)(c) of this section for the reference to section 39(1)(b).
- (5) The form prescribed for a public body's notice may be such as to require the public body by whom it is to be given—
 - (a) to furnish information relevant for the purposes of this Part of this Act, Part II or Part IV of the 1936 Act, Part II of the 1961 Act or any provision of building regulations; and
 - (b) to enter into undertakings with respect to consultation and other matters.
- (6) Where a public body's notice is given and accepted by the local authority to whom it is given, the provisions of Schedule 8 to this Act shall have effect, being provisions which correspond, as near as may be, to those made by the preceding provisions of this Part of this Act for the case where an initial notice is given and accepted.

Supplemental

47 Appeals.

- (1) A person aggrieved by the local authority's rejection of—
 - (a) an initial notice or a public body's notice, or
 - (b) a plans certificate, a final certificate, a public body's plans certificate or a public body's final certificate,may appeal to a magistrates' court acting for the petty sessions area in which is situated land on which will be or has been carried out any work to which the notice or certificate relates.
- (2) On an appeal under this section the court shall—
 - (a) if they determine that the notice or certificate was properly rejected, confirm the rejection; and
 - (b) in any other case, give a direction to the local authority to accept the notice or certificate.
- (3) The procedure on appeal to a magistrates' court under this section shall be by way of complaint for an order and the Magistrates' Courts Act 1980 shall apply to the proceedings.

48 Register of notices and certificates.

- (1) Every local authority shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to initial notices, public body's notices and certificates given to them, including information as to whether such notices or certificates have been accepted or rejected.

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- (2) The information which may be prescribed under subsection (1) above with respect to an initial notice includes information with respect to the insurance cover provided with respect to the work to which the initial notice relates.
- (3) The reference in subsection (1) above to certificates is a reference to plans certificates, final certificates, public body's plans certificates, public body's final certificates and certificates given under section 64(2C) of the 1936 Act (which provision is set out in section 56 below).
- (4) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

49 Offences.

- (1) If any person—
 - (a) gives a notice or certificate which purports to comply with the requirements of this Part of this Act or, as the case may be, of section 64(2C) of the 1936 Act and which contains a statement which he knows to be false or misleading in a material particular, or
 - (b) recklessly gives a notice or certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular,
 he shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) above shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum (as defined in section 74 of the Criminal Justice Act 1982) or imprisonment for a term not exceeding six months or both; and
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.
- (3) Where an approved inspector or person approved for the purposes of section 64(2C) of the 1936 Act is convicted of an offence under this section, the court by or before which he is convicted shall, within one month of the date of conviction, forward a certificate of the conviction to the person by whom the approval was given.

50 Information, reports and returns.

Where an initial notice or a public body's notice has continued in force for any period, the local authority by whom it was accepted may require the approved inspector or public body by whom it was given to furnish them with any information which—

- (a) they would have obtained themselves if during that period their function of enforcing building regulations had continued to be exercisable in relation to the work specified in the notice; and
- (b) they require for the purpose of performing their duty under section 230 of the Local Government Act 1972 (reports and returns);

and that section shall have effect as if during that period that function had continued to be so exercisable.

51 Interpretation of Part II.

(1) In this Part of this Act—

“the 1936 Act” means the Public Health Act 1936;

“the 1961 Act” means the Public Health Act 1961;

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“approved inspector” has the meaning assigned to it by section 41(1) above;

“contravention”, in relation to any provision of building regulations, includes a failure to comply with that provision;

“enactment” includes any enactment contained in a local Act;

“the enactments relating to building regulations” means this Part of this Act and the enactments referred to in section 76(1) of the 1974 Act;

“final certificate” has the meaning assigned to it by section 43(1) above;

“initial notice” has the meaning assigned to it by section 39(1) above;

“plans certificate” has the meaning assigned to it by section 42(1) above;

“public body” and “public body’s notice” have the meaning assigned to them by section 46(1) above;

“public body’s final certificate” has the meaning assigned to it by paragraph 3 of Schedule 8 to this Act; and

“public body’s plans certificate” has the meaning assigned to it by paragraph 2 of that Schedule.

(2) Any reference in this Part of this Act to the carrying out of work includes a reference to the making of a material change of use, as defined by and for the purposes of building regulations.

(3) Any reference in this Part of this Act to an initial notice given by an approved inspector is a reference to a notice given by him jointly with another person as mentioned in section 39(1)(a) above.

(4) Sections 74 and 76 of the 1974 Act (construction and interpretation) shall have effect as if the preceding provisions of this Part of this Act (other than subsection (1) above) were included in Part III of the 1974 Act.