



# Building Act 1984

## 1984 CHAPTER 55

### PART I

#### BUILDING REGULATIONS

##### *Breach of building regulations*

#### **35 Penalty for contravening building regulations.**

If a person contravenes any provision contained in building regulations, other than a provision designated in the regulations as one to which this section does not apply, he is liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding £50 for each day on which the default continues after he is convicted.

#### **[<sup>F1</sup>35A Time limit for prosecution for contravention of certain building regulations**

- (1) Despite anything in section 127(1) of the Magistrates' Courts Act 1980 (c. 43), an information relating to a relevant offence may be tried by a magistrates' court if it is laid at any time—
  - (a) within the period of two years beginning with the day on which the offence was committed, and
  - (b) within the period of six months beginning with the relevant date.
- (2) In subsection (1) above, “relevant offence” means a contravention of a provision contained in building regulations which is designated in the regulations as one to which this section applies.
- (3) A provision may be designated under subsection (2) above if, and only if—
  - (a) it was made—
    - (i) for the purpose of furthering the conservation of fuel and power or otherwise in connection with the use of fuel and power, or

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- (ii) for the purpose of reducing emissions of greenhouse gases (within the meaning of the Climate Change and Sustainable Energy Act 2006), and
  - (b) contravention of the provision would be an offence under section 35 above.
- (4) In subsection (1)(b) above, “the relevant date” means the date on which evidence sufficient to justify the proceedings comes to the knowledge of the person commencing the proceedings.
- (5) In the case of proceedings commenced by a local authority—
- (a) evidence is to be regarded for the purposes of subsection (4) above as sufficient to justify the proceedings if in the opinion of the proper officer or an authorised officer it is sufficient to justify the proceedings, and
  - (b) a certificate of the proper officer or, as the case may be, that authorised officer as to the date on which evidence which, in his opinion, was sufficient to justify the proceedings came to the knowledge of the person commencing the proceedings is to be conclusive evidence of that fact.
- (6) Subsection (1) above does not apply in relation to a contravention of any provision contained in building regulations which was committed before that provision was designated under subsection (2) above.]

#### Textual Amendments

- F1** S. 35A inserted (21.8.2006) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), **ss. 13(1), 28(1)**

### 36 Removal or alteration of offending work.

- (1) If any work to which building regulations are applicable contravenes any of those regulations, the local authority, without prejudice to their right to take proceedings for a fine in respect of the contravention, may by notice require the owner—
- (a) to pull down or remove the work, or
  - (b) if he so elects, to effect such alterations in it as may be necessary to make it comply with the regulations.
- (2) If, in a case where the local authority are, by any section of this Part of this Act other than section 16, expressly required or authorised to reject plans, any work to which building regulations are applicable is executed—
- (a) without plans having been deposited,
  - (b) notwithstanding the rejection of the plans, or
  - (c) otherwise than in accordance with any requirements subject to which the authority passed the plans,
- the authority may by notice to the owner—
- (i) require him to pull down or remove the work, or
  - (ii) require him either to pull down or remove the work or, if he so elects, to comply with any other requirements specified in the notice, being requirements that they might have made under the section in question as a condition of passing plans.

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- (3) If a person to whom a notice has been given under subsection (1) or (2) above fails to comply with the notice before the expiration of 28 days, or such longer period as a magistrates' court may on his application allow, the local authority may—
- (a) pull down or remove the work in question, or
  - (b) effect such alterations in it as they deem necessary,
- and may recover from him the expenses reasonably incurred by them in doing so.
- (4) A notice under subsection (1) or (2) above (called a “section 36 notice”) shall not be given after the expiration of 12 months from the date of the completion of the work in question.
- (5) A section 36 notice shall not be given, in a case where plans were deposited and the work was shown on them, on the ground that the work contravenes any building regulations or, as the case may be, does not comply with the authority's requirements under any section of this Act other than section 16, if—
- (a) the plans were passed by the authority, or
  - (b) notice of their rejection was not given within the relevant period from their deposit,
- and if the work has been executed in accordance with the plans and of any requirement made by the local authority as a condition of passing the plans.
- (6) This section does not affect the right of a local authority, the Attorney General or any other person to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any regulation or any provision of this Act; but if—
- (a) the work is one in respect of which plans were deposited,
  - (b) the plans were passed by the local authority, or notice of their rejection was not given within the relevant period from their deposit, and
  - (c) the work has been executed in accordance with the plans,
- the court on granting an injunction has power to order the local authority to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court shall in accordance with rules of court cause the local authority, if not a party to the proceedings, to be joined as a party to them.

**Modifications etc. (not altering text)**

C1 S. 36(2)–(6) amended by [Midland Metro Act 1989 \(c. xv\)](#), s. 45(10)s. 36(2)-(6) extended (27.7.1993) by [1993 c. xv](#), s. 55(10).S. 36(2)-(6) applied with modifications (21.7.1994) by 1994 c. XV, s. 58(10)

**37 Obtaining of report where section 36 notice given.**

- (1) In a case where—
- (a) a person to whom a section 36 notice has been given gives to the local authority by whom the notice was given notice of his intention to obtain from a suitably qualified person a written report concerning work to which the section 36 notice relates, and
  - (b) such a report is obtained and submitted to the local authority and, as a result of their consideration of it, the local authority withdraw the section 36 notice,
- the local authority may pay to the person to whom the section 36 notice was given such amount as appears to them to represent the expenses reasonably incurred by him in

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consequence of their having given him that notice including, in particular, his expenses in obtaining the report.

- (2) Subject to subsection (3) below, if a person to whom a section 36 notice has been given gives notice under subsection (1)(a) above, then, so far as regards the matters to which the section 36 notice relates, the reference to 28 days in section 36(3) above shall be construed as a reference to 70 days.
- (3) Notice under subsection (1)(a) above shall be given before the expiry of the period of 28 days referred to in section 36(3) above, or, as the case may be, within such longer period as a court allows under section 36(3); and, where such a longer period has been so allowed before notice is given under subsection (1)(a) above, subsection (2) above does not apply.

### 38 Civil liability.

- (1) Subject to this section—
  - (a) breach of a duty imposed by building regulations, so far as it causes damage, is actionable, except in so far as the regulations provide otherwise, and
  - (b) as regards such a duty, building regulations may provide for a prescribed defence to be available in an action for breach of that duty brought by virtue of this subsection.
- (2) Subsection (1) above, and any defence provided for in regulations made by virtue of it, do not apply in the case of a breach of such a duty in connection with a building erected before the date on which that subsection comes into force unless the regulations imposing the duty apply to or in connection with the building by virtue of section 2(2) [F2 or 2A] above or paragraph 8 of Schedule 1 to this Act.
- (3) This section does not affect the extent (if any) to which breach of—
  - (a) a duty imposed by or arising in connection with this Part of this Act or any other enactment relating to building regulations, or
  - (b) a duty imposed by building regulations in a case to which subsection (1) above does not apply,
 is actionable, or prejudice a right of action that exists apart from the enactments relating to building regulations.
- (4) In this section, “damage” includes the death of, or injury to, any person (including any disease and any impairment of a person’s physical or mental condition).

#### Textual Amendments

**F2** Words in s. 38(2) inserted (16.11.2004) by [Sustainable and Secure Buildings Act 2004 \(c. 22\)](#), **ss. 4(3), 11(4)**

#### Commencement Information

**I1** S. 38 in force at 1.12.1984 for specified purposes, see [s. 134\(1\)\(a\)](#)

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