



# **LABC Enforcement Policy England and Wales. (V2)**

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Version Detail			
	Author/Reviewer	Checker	Approver
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## Introduction

Building control has adopted this policy to ensure that individuals, businesses, and others can understand what to expect from our Building control Inspectors whilst seeking to improve compliance in terms of the Building Regulations where necessary. There are many good designers and contractors and so where work is carried out in accordance with the regulations there may be no need to refer to this enforcement policy.

The Building Safety Act 2022 (BSA22) provides powers for the Building Safety Regulator (BSR) to:

- oversee the safety and standards of all buildings.
- help and encourage the built environment industry and building control professionals to improve their competence, which must be validated.
- lead implementation of the new regulatory framework for high-rise buildings.

## The Role of the Building Safety Regulator

The Building Safety Regulator (BSR) have a series of escalating sanctions and enforcement measures to maintain standards and deal with poor performance in terms of the regulation of the building control profession. This sets out how the BSR will conduct investigations into the building control profession. The BSR also publish findings on the performance of Building Control Bodies (BCBs) as they are a regulated profession.<sup>1</sup>

This approach to building control oversight will help BCBs across the profession, efficiently plan and deliver their functions to consistently high standards:

- The BSR clarifies roles and responsibilities, including those of duty holders, to ensure that buildings are safe and compliant.
- The BSR set out a risk-based approach to building control functions that BCBs and their professionals will be expected to adopt. This also reflects the risk-based approach the BSR will take as the building control authority for higher-risk buildings.
  - You can also expect that those who regulate have a code of conduct for Registered Building Inspectors (RBIs)<sup>1</sup> in [England](#) and [Wales](#) and professional conduct rules for Registered Building Control Approvers (RBCAs)<sup>1</sup> in [England](#) and [Wales](#).

These standards set out how the BSR regulates BCBs:

- Operational Standards Rules <sup>2</sup> for BCBs in [England](#) and [Wales](#).
- Key performance indicators (KPIs).
- Data reporting requirements and frequency.

The enforcement approach from the BSR will:

- exercise its powers in line with regulatory best practice.
- take a consistent and proportionate approach.
- target enforcement activity in cases where action is needed.
- work closely with existing regulators such as local authorities and fire and rescue authorities.

1 RBIs and RBCAs are new titles. From 6th April 2024, RBIs are surveyors employed by either an LA in the public sector, or by an RBCA in the private sector, Als are then known as RBCAs.

2 LAs in the devolved administration for Wales reports the Operational Standards to the Welsh Ministers.

Note; At the time of writing the Welsh Government are consulting on the [new building control regime for higher-risk buildings and wider changes to the building regulations in Wales](#) and this and this policy will be updated accordingly once those regulations are laid.

The BSR is, by virtue of the Building Act 1984 (BA84) S 91ZA/B, the building control authority for higher-risk buildings in England, whereas, in Wales<sup>2</sup>, S 91ZD refers to the relevant Local Authority.

HRBs are buildings with seven or more storeys or that are eighteen metres or higher, and either:

- Have at least two residential units (in Wales this is one dwelling).
- Are hospitals or care homes (during design and construction).

They assess whether duty holders are considering both building safety and regulatory compliance.

The BSR has a range of enforcement powers throughout the design and construction of an HRB development, and the enforcement powers under the BSA22 and the BA84 will be a matter for the BSR. Any building work to an HRB (new build or existing) will mean an application to the BSR before commencing any work, and they are the building control authority in England. (as outlined above).

The LA will then have the formal enforcement powers for all other types of buildings/building work, covered under the Building Regulations 2010 (as amended) and the BA84.

Note all the remaining sections in this policy relate to non HRB buildings with the exception of Dangerous structures/dilapidated buildings.

### **What is local authority enforcement?**

The work of building control includes:

- Processing Building Regulations applications and checking plans for compliance.
- Inspecting work under construction.
- Controlling building demolition, dealing with dangerous structures, and securing empty properties.
- The preparation and enforcement of general and special safety certificates and the enforcement of fire safety standards for sports stadia and certificated stands in sporting venues.
- Street naming and numbering.

Building Control is responsible for using a wide range of Acts of Parliament and Statute Laws.

“Enforcement” means action carried out in the exercise of, or against the background of, these Acts and Laws. This includes studying documents and reviewing drawings and making inspections of premises to check compliance with legislation. Local Authority Building Control teams can also take formal enforcement action that may escalate through a staged process that involves more formal correspondence and /or the issue of legal notices and ultimately prosecution.

## How do we decide when to take enforcement action?

Building Control inspectors work in line with the requirements of the **Regulators code** and will consider several factors before deciding when to act:

- The seriousness of the breach. This may involve a blatant breach of the law.
- Where the offence involves failure to comply with a statutory notice or order either immediately (if necessary) or within a reasonable period.
- Where there is obstruction of an Inspector or where an Inspector is given false or misleading information.
- The history of non-compliance or a history of similar offences.
- The continued risk to health, safety, or the environment.
- The effects of non-compliance.
- The effectiveness of enforcement choices.
- Legislation and guidance issued nationally or locally.
- The need to consult with other authorities and enforcement bodies.
- The consideration of the Crown prosecution code meeting the evidential and public interest test.

We recognise that most people want to comply with the law. We will, therefore, take care to help them meet their legal duties but will take firm but fair action against those who act illegally or behave irresponsibly.

## The stages of enforcement action

### Stage 1 (Intervention) - Informal Action

Best efforts should be taken to resolve any issues where the law may have been broken without issuing formal notices or referring the matter to the courts. This is the first option when the circumstances indicate that a minor offence may have been committed and there is confidence that appropriate corrective action will be taken. The situation should be in writing in a clear manner with an explanation as to why any remedial work is necessary and over what timescale it should be completed. When writing to residents and businesses it is important that legal requirements are clearly distinguished from recommendations.

Where the breach is not considered to meet the public interest test and the history of compliance and competency of the person carrying out the work is good, and where non-compliance will not pose a significant risk to public health, safety, or welfare then we may consider informal action. This will result in verbal and/or written advice or warnings by letter or e-mail.

### Stage 2 - Written Notice of the impending service of a Notice

Where there are breaches of legislation, a history of non-compliance, poor demonstration of competency, or a lack of confidence in management, then we will inform all relevant parties of the breach and a time scale for resolution. We will, where necessary, serve a statutory notice. We will give an opportunity to discuss the issues unless immediate action is needed. (See pages 8 to 10 for details of these notices). The time limit on notices will be realistic and we will tell recipients of their rights. In the event of a summons then the legal process will be explained under the terms of the Magistrates Court Act 1986.

Any contravention will be communicated to the applicant / designer and / or contractor and client advising on the breach. Building Control as a regulator cannot design the solution therefore the person carrying out the work will need to refer to their own competent designer/contractor in terms of the design element. Building Control will indicate what action will be taken if contraventions are not removed within a given period of time.

### Stage 3 - The service of a legal notice

The legislation that Building Control enforces provides for the service of formal notices on individuals, businesses or other organisations requiring them to meet specific legal requirements.

Where a formal notice is served, the method of appealing against the notice and the timescale for doing so will be provided in writing at the same time.

In most situations, before formal action is taken, Building Control will provide an opportunity to discuss matters and hopefully resolve points of difference. However, this may not always be possible where immediate action is considered necessary, e.g., in the interests of health and safety, or to prevent an imminent risk to health, or to protect the environment.

### Stages 4 & 5 – Caution or Prosecution

Where the circumstances warrant it, and the alternative actions mentioned previously in this policy are considered inappropriate, then prosecution may result. This formal prosecution action will be, in the first instance, to seek conviction in the Magistrates' Court, or Crown Court, following which formal prosecution action may be commenced to seek an injunction in a higher Court if necessary. As an alternative a caution alone may be administered by the courts.

### How can I appeal against enforcement action?

Those affected by enforcement decisions have a right of appeal to the Regulator, Tribunal or Court.

Appeals must be made within a certain time. We will set out these rights in writing at the same time that we act or serve notice.

You can also ask to discuss the matter with the Building Control Inspector or their Team Leader and /or, the Building Control Manager, or you can make a formal complaint against the service.

### Competency and duty holders

The Building Regulations etc. (Amendment) (England Regulations 2023. (Applies to England and Wales in Law for jurisdiction purposes, but only to England for practical purposes at the time of writing) consider in Part 2A: chapters 1 to 5 and Regulation 11A to 11O provides details on the subject of duty holders and competence.

A lack of demonstrable competence is therefore a breach of the Building Regulations. The **circular letter** by the then Department of Levelling up, Housing & Communities (DLUHC) (Note this was originally issued on the 31<sup>st</sup> October 2023, however the link goes to the amended letter of the 1<sup>st</sup> of February 2024) , clarifies the connection between competency and compliance as follows:

“Anyone undertaking design work or building work will need to plan, manage, and monitor the work to ensure that it complies with all relevant requirements. When carrying out design work the designer or the principal designer, will be required to take all reasonable steps to ensure that the design is such that if the building work to which the design relates were built in accordance with that design the building work would comply with all relevant requirements, and when carrying out building work, the contractor or principal contractor, will need to ensure the building work they carry out is in compliance with all relevant requirements.

As such there is not an expectation that proactive inspections of the duty holder and competence regime will be necessary when the work is compliant. However, when there is a failure to comply with the building regulations the duty holder and competence regulations will enable the building control authority (BCA) to track back through the design and building process for the project for each of the relevant duty holders and take appropriate action for non-compliance as appropriate.”

Building Control will consider the following factors when deciding whether to prosecute:

- The role of the client, (domestic or otherwise) Principal designer and /or Principal contractor both before work starts and as work progresses.
- The seriousness and effect of the offence.
- The foreseeability of the offence, or the circumstances leading to it.
- The intent of the offender.
- The skills, knowledge, and experience of the person(s) carrying out the work where there is a suspicion of failing or evidence of non-compliance with the building regulations.
- The history of offending.
- The deterrent effect of a prosecution, on the offender and others.
- Whether there is enough evidence to prove the offence.

**Table 1. Enforcement Powers for Building Control Authorities in England (BSR and LA's)**

Offence	Scope of Power	Maximum Penalty	Reference
Providing false or misleading information to BSR.	Criminal Offence. Triable as an either way offence.	Unlimited fine, 1 year imprisonment (Magistrates) or 2 years imprisonment. (Crown)	Section 24 BSA22.
Contravention of building regulations.	Criminal offence, triable as an either way offence, no time limit to prosecute in England.	Unlimited fine and a fine for each day the contravention continues. (Currently £200) 1 year imprisonment (Magistrates) 2 years imprisonment. (Crown)	Section 35 BA84.  Section 35(4) BA84.
Contravention of the building regulations.	Criminal offence, the Compliance notice, must be served within 12 months of the offence. (relevant date)	Unlimited fine, 1 year imprisonment (Magistrates)  2 years imprisonment. (Crown)	Section 35B BA84.
Contravention of the building regulations.	Stop notice.	If a stop notice is ignored then an unlimited fine, 1 year imprisonment (Magistrates) 2 years imprisonment. (Crown)	Section 35C BA84.
Failure to comply with compliance and stop notice.	Criminal offence.	Unlimited fine, 1 year imprisonment (Magistrates) 2 years imprisonment. (Crown)	Section 35B & C BA84.
Removal of offending work.	Time limit S36 (4), 10 years in England.	Notice to remove contravening work and the LA may also consider proceedings for a fine in respect of the contravention by S35.	Section 36 BA84.
<b>Transitional Provisions from October 2023.</b>	<b>Provisions to which S35 applies.</b>	<b>Time limit for projects that are not subject to the transitional provisions, No 993 (C.59) Regulation 7.</b>	
Note see link for transitional provisions and the time scales are further explained below. <a href="#">*(see transitional provisions 2023 No.993 (C.59) Regulation 7.</a>	All provisions with the exception of those shown in Reg 47A of the Building Regulations 2010 (as amended)	S35 is unlimited by amendment to BA84 by S39 (2) of the BSA2022 (in England). S36 for notices requiring removal or alteration of non-compliant work is 10 years by amendment to the BA84 by 39 (3) of the BSA2022 (in England).	

**Table 1A. Enforcement powers for Building Control Authorities in Wales (LA's)**

Offence	Scope of Power	Penalty	Reference
Contravention of building regulations.	Summary offence, within the period of two years beginning with the day on which the offence was committed, and within the period of six months beginning with the relevant date.	Unlimited fine and a fine not exceeding level 5 on the standard scale and a further fine not exceeding £50 for each day on which the default continues after he is convicted. (Magistrates)	Section 35 BA84 Section 35A BA84.  Section 35 (4) BA84
Removal of offending work.	Civil enforcement action.	Notice to remove contravening work and the LA may also consider proceedings for a fine in respect of the contravention by S35.	Section 36 BA84.

Note; At the time of writing the Welsh Government are consulting on the [new building control regime for higher-risk buildings and wider changes to the building regulations in Wales](#) and this and this policy will be updated accordingly once those regulations are laid.

### Amended Timescales in England.

The amendments by virtue of the BSA 22 and the BA84 have changed the original time limits for S35 and S36 as above, in England (note see [annex A on page 14](#) of this document for a table relating to timescales for previous amendments to the Building Regulations and related legislation from 2008 to 2023). There are also the timescales to consider for compliance and stop notices in table 1.

The previous timescale, prior to the 1<sup>st</sup> of October 2023, for serving papers for a summary offence was 6 months from the relevant date. ("the relevant date" means the date on which evidence sufficient to justify the proceedings comes to the knowledge of the person commencing the proceedings.)

As noted in table 1, the offences are now indictable and triable either way and therefore the advice of the LA legal teams will need to be sought on the timing of the laying of papers for those types of offences in either the Magistrates or Crown Courts.

**The HSE** have provided this general advice; "There is no time limit for commencing proceedings for an indictable offence (including an either way offence). However, in all cases, this should be done as soon as possible, as the courts have discretion to dismiss a summons on the grounds of abuse of process where there has been unjustified delay. Normally, it would also be necessary for the court to be satisfied that the defence has been so prejudiced by the delay that a fair trial cannot take place. Cases where a court would "stay proceedings" in the absence of any fault on the part of the prosecutor would be for the LA to decide if a case is answerable. "

### Section 35 Breach of Building Regulations and related Compliance and Stop Notices (England).

Any breach that has had information laid before a magistrate's court prior to the 1<sup>st</sup> of October 2023 (S35) or a notice served under (S36) will have to abide by the powers and time limits applicable at that time.

#### Transitional provisions, No 993 (C.59) Regulation 7.

On the 28th of March 2024 in [additional Q&A](#): relating to changes to the building control process for higher-risk

buildings and wider changes to procedural building regulations applying to buildings in England, DLUHC clarified that;

"Compliance notice powers became available on 1 October 2023 for all projects, including those that started under the pre-1 October system. For a compliance notice to be issued there needs to be a contravention (or the likely contravention) of a relevant provision of building regulations or a requirement imposed by the regulations.

From the 1 October 2023, if there is a contravention on site, then a compliance notice can be given. A compliance notice can also be issued for a contravention that occurred pre-1 October as long as the contravention is ongoing at the point the notice is issued. When the breach occurred is irrelevant (unless the contravention occurred more than 12 months ago, in which case a compliance notice may not be issued), the building control authority just needs to be satisfied at the point of issue that a person appears to have contravened a relevant provision and that they want it to be rectified."

### **Retroactive use of S35 and S36 (England).**

As part of that Q&A it was confirmed by **DLUHC in part 4.3** that:

"The new powers are retroactive. Whilst all the new powers became available on 1 October 2023 for all projects (The date of the offence is applicable from the 1st of October 2023 and would include building work that started under the pre-1 October 2023 system).

So long as the contravention of building regulations is ongoing at the point of action being taken (and for the issue of section 36 notices is within the specified time limit), the new provisions can be applied to any project, irrespective of the start date.

However, any prosecutions under section 35/35A already before a court on the 1st of October 2023, or section 36 notices served before that date, remain subject to the previous provisions.

Stop notices in relation to section 35C(1)(b), the contravention of a compliance notice, can only be issued for breaches that occur post 1 October 2023 (as compliance notices are a new power). Whether the contravention started pre or post 1 October is irrelevant. For example, a compliance notice could be issued on or after 1 October for a contravention that occurred before that date (so long as the contravention is ongoing at the point of issue). If the recipient fails to take the required action in the specified time period, then a stop notice can be issued. A stop notice under section 35C(1)(c) can be issued on or after 1 October 2023 for building work which breaches this condition, irrespective of when the breach started – as long the issue giving rise to a risk of serious harm is ongoing at the point of the stop notice is issued."

Not only does the BA84 consider S 35- 35C in terms of breaches, the Building Regulations 2010 (as amended) also contain **regulation 47 to 47H as follows:**

- Regulations 47 and 47A, provisions that **do not apply** to S35 and are excluded from Compliance Notices.
- Regulation 47 B- Compliance Notices: contents.
- Regulation 47C- Stop Notices: contents.
- Regulation 47D - Compliance and stop notices: giving of notices and notification to others.
- Regulation 47E Compliance and Stop Notices: withdrawal by BCA.
- Regulation 47F- Appeal to the First tier Tribunal<sup>1</sup> in relation to a compliance notice or stop notice.
- Regulation 47G- Application to the First-tier Tribunal in relation to extension of the specified period in compliance notice.
- Regulation 47H- Application to the First-tier Tribunal for direction in relation to a stop notice.

<sup>1</sup>Note: in Wales, the application/appeal will be to the magistrates' court and not the first-tier tribunal once those regulations are laid.

## Compliance Notices and Stop Notices (England).

The BSA 22 enables local authorities to issue compliance and stop notices where building regulations have been breached. Compliance notices will require specified remedial action by a set date.

Stop notices can only be issued in certain situations. These are:

- that carrying out work would contravene certain prescribed building regulations.
- an existing compliance notice has not been complied with, or
- works carried out that contravene regulations and could potentially cause a risk of serious harm.

The stop notice will require work to be stopped altogether until remedial action has been taken.

A compliance notice or stop notice must relate to no more than one contravention or likely contravention of building regulations, or a requirement imposed under building regulations. This is to ensure clarity for the duty holder to show the exact nature of the contravention and what law has considered to have been breached.

Separate notices will apply to specific contraventions relating to the relevant building regulation, and, as such, will require bespoke remedies and compliance periods. This approach provides clarity about what is required from the developer and allows flexibility in managing the construction of complex sites.

The BCA will also take all reasonable steps to notify:

- The client, Principal Contractor (or sole contractor), Principal Designer (or sole lead designer).
- The enforcing authority, where the contravention relates to Part B and the building is one to which the Regulatory Reform Fire Safety Order 2005 applies.
- If the client is a private registered provider of social housing or, in relation to refurbishment work, is either a private or public registered provider of social housing, the regulator for Social Housing.
- Where the client is a landlord in relation to any dwelling contained in the building, the local housing authority for the area in which the building is located.

There are separate types of notice under each section as follows:

- **S35B2A - Compliance Notice;** a notice requiring the recipient to take specified steps within a specified period or;
- **S35B2B – Compliance Notice;** a notice requiring the recipient to remedy the contravention or the matters giving rise to it within a specified period without describing what must be done to remedy the work or to avoid the contravention occurring.
- **S35C1A- Stop Notice;** the carrying out of the work would contravene a provision of building regulations prescribed (currently applies to HRBs by way of The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023, S61.
- **S35C1B- Stop Notice;** a compliance notice relating to the work has been contravened or
- **S35C1C- Stop Notice;** the work contravenes a provision of building regulations, or a requirement imposed by virtue of such a provision, and the risk of serious harm condition is met, in that the use of the building in question, without the contravention having been remedied, would be likely to present a risk of serious harm to people in or about the building. (N.B can be used if the criteria is met on/after 1<sup>st</sup> October 2023 for any building work (regardless of when it started).

There are also powers relating to S35B and 35C where an injunction can be considered by the authority on application to the court in S36 (6) of the BA84.

## Application of Section 36 BA84.

Where the solution is to alter or remove a contravention then the specified time limit will run from when the contravention occurred. As such, to remove a Building Regulation contravention, by way of the service of an enforcement notice by the application of S36 of the BA84, this is 10 years in the BA84 as inserted by S39 of the BSA 2022 in England.

Previous case law suggests that having served a S36 notice within the required time period,( i.e. 12 months at that time) that the Council has an infinite period of time in which to enforce the notice (Bello v London Borough of Lewisham [2003] EWCA Civ 353).

As such it was held that there was no time limit by which a Local Authority must use its powers under S36 of the BA84. In the case in question the Council enforced the removal of a contravention some 12 years after the service of the original notice.

Any action by the LA will need to be considered within a reasonable time scale, particularly in relation to the relevant date, albeit that the time scales have been extended in England.

The LA will also consider their obligations in the following sections of the BA84:

- **Section 35**, Penalty for contravening building regulations/Offence of contravening building regulations
- **Section 94**, Service of documents.
- **Section 106**, Compensation for damage.
- **Section 114**, Action by the court for continuing offences.

The Council will then make all reasonable attempts to require the owner to remove the contravention themselves.

Should powers of persuasion fail then the Council could remove or alter the work and recover those reasonable expenses in doing so, by reference to **S36(3)** of the BA84. Albeit the person to whom a S36 notice has been served can obtain a report challenging the notice by way of **S37** of the BA84.

An appeal against the service of a S36 notice can also be made as reference to **S40** of the BA84.

An appeal to the court<sup>1</sup> or tribunal is considered by **S102** of the BA84.

There are also powers, where an injunction can be considered by the authority on application to the court, in **S 36 (6)** of the BA84.

<sup>1</sup>Note: in Wales, the application/appeal will be to the Magistrates' court and not the first-tier tribunal once those regulations are laid.

## Section 95 Inspection of premises and powers of entry

As a part of its normal routine, evidence will normally be gathered through the process of notified inspections for Building Regulations matters.

Where a matter is by way of complaint, inspectors will make all reasonable attempts to gain entry to a property to carry out an inspection by way of invitation by the owner/occupier. However, where the matter is considered to be serious or access is being unreasonably withheld, inspectors have the authority to enter premises (other than premises used wholly or mainly as a private dwelling, where a warrant is required. (N.B. Applies to England not Wales at this time) at reasonable hours – unless the matter relates to a dangerous building and/or emergency measures are necessary outside normal working hours.

**S95 BA84**, Failure to allow entry to an authorised Inspector will result in a warrant being obtained from a Magistrate and the warrant will be used and entry gained – by force if necessary and accompanied by the Police.

Building Control Inspectors should carry photographic identification badges, which will be displayed on request.

Building Control will, in the application of gathering evidence and inspecting any allegation of an offence or dangerous and dilapidated building, have regard to and apply the principles set out in the Home Office publication: Code of Practice – **Powers of Entry (December 2014)**.

### **Evidence gathering Witness Statements and PACE**

Where serious breaches of the building regulations are found then LAs will seek advice from legal teams. They will help advise on matters such as the Criminal Procedure Rules 2020 and witness statements, gathering technical and procedural evidence, the use of **PACE (S67 {9})** to interview and evidence the case, the disclosure of evidence and the use of the Code for Crown prosecutors.

### **RBCA Compliance**

The private sector also has a key role in terms of compliance. Whilst they do not have formal enforcement powers, they identify non-compliance and will seek to resolve these as far as practicably possible. The RBCA may serve a notice of contravention on the client, under **Regulation 21** (of the RBCA England Regulations 2024) or **Regulation 16** (of the RBCA Wales Regulations 2024, which may specify the areas of non-compliance.

There are cases where Initial Notices might be reverted to a LA for enforcement action.

If a plans certificate has been issued to the LA then that considers the limitations of powers where work has been carried out in accordance with that plan certificate as outlined in **Regulation 12** of the Building (Registered Building Control Approvers etc.) (England) Regulations 2024 or **Regulation 11** of The Building (Registered Building Control Approvers etc.) (Wales) Regulations 2024.

If a project has had a final certificate issued to the LA and the LA becomes aware of non-compliance post completion, then there are few powers available under S57 of the BA84.

The timescales for a Local Authority to take formal enforcement action, if it has the power to do so because of a cancellation, starts from the date that the IN ceased to be in force.

### **Action by a Local Authority post completion**

Clearly once the completion is given by the LA then it is evidence but not conclusive evidence of compliance. So, the LA could investigate any report of a non-compliance in terms of S35 (open ended in England and 2 years in Wales) and S36, (10 years in England and 12 months in Wales) and if not, under s36(6) (open ended in England and Wales), default powers as to be able warrant injunction.

### **Service of Building Control enforcement notices (England and Wales)**

All Building Control enforcement notices will, except notices in relation to actions carried out to deal with emergency measures for a dangerous building – by virtue of **S78** of the BA84, include information regarding rights of appeal and appropriate time limits to make any such appeal. Reference is also made to **S78 (5) & (6)** in terms of the correct use of the emergency powers and the consideration of related expenses.

In most cases notices will be served on the owner as identified by reference to the most up-to-date records held by the Land Registry, or where an owner cannot be identified notices will be served by addressing them to – “The Owner(s) and/or Occupier(s)” and posted or affixed to the property in question.

Where the owner is a business, the notice will be addressed to the Company Secretary.

The council will, as far as it is practical to do so, make reasonable enquiries about the name and address of the owner and address any notice accordingly.

Notices will, in most cases, be delivered by Inspectors to the owner’s address – where this is within the authority boundary. In some cases, recorded or registered mail will be used.

Where notices etc. are delivered by hand these will be confirmed by reference to a certificate of service, signed by the Inspector concerned and, where possible, accompanied by a dated photograph of the place where the notice etc. was addressed, e.g.: house number and post/letter box.

### **Dangerous or dilapidated buildings ( England and Wales)– S77, S78 and S79, BA84 {Note in London refer to S61, S62 and S69 of the London Building Acts (as amended 1939)}**

In some instances, there might not be the time available to make enquiries about ownership where the nature of an incident, such as a severely dangerous building occurs. In these cases, simple enquiries about ownership will still be made but, if these come to no avail, Inspectors are authorised to take appropriate action under **S78** of the BA84 to remove any immediate danger.

Following any action under **S78** full enquiries will be undertaken as soon as it is practical to do so and a notice then served on the owner as indicated on the Land Registry records.

Where a danger constitutes, for example a loose balustrade, a non-complaint cladding system, an extended travel distance in an existing/new or extended building the use of **S77** of the BA84, by application to the court, can also be considered.

A LA also has powers in regard to **S79** of the BA84. Where buildings are dilapidated and causing serious detriment to the amenities of the neighbourhood, the LA may by notice require the owner to make good the amenity. A notice requiring work to be carried out under the above sections can be appealed by reference to **S102** of the BA84.

### **Recovery of reasonable costs incurred to enforce a notice. (England and Wales)**

Where the council incurs any costs or charges to enforce a notice in default, related to sections **35B,35C**, of the BA84 (England) and sections **36,76,78 & 79** of the BA84 (England and Wales) this will be recovered from the owner or placed as a specific financial charge on the Land Charges register.

Charges not paid in good time may accrue compound interest and it is in the interest of property owners to resolve any outstanding debt(s) made against the property, as quickly as possible.

Anyone purchasing a property after a notice has been served, and after costs have been incurred for the enforcement of a notice, may become responsible for the debt and noncompliance.

Debts left unpaid for any length of time may result in the council seeking a County Court Judgment or even seizing the property and selling it at auction, as an enforced sale, under the Law of Property Act 1985, to recover all or part of the debt.

Examples of costs might include (the list is not exhaustive):

- Council staff time in dealing with the matter.
- Contractor charges – labour, materials, plant & equipment.
- Professional advisor(s) charges.
- Legal charges.
- Court costs.

You can find more information or receive a copy of the Policy from the Local Authority Building Control Team.

Note. LABC teams in England and Wales should refer to the relevant LABC QMS for process maps and letter templates on **Building Control Approval with full plans, Building Notices, site inspections Enforcement, Transfer of Initial notices, Regularisations and Dangerous Structures.**

## Accountability

When delivering this enforcement policy, we will remain independent in our decision making and accountable for our actions. We will strive to provide effective consultation and remain cooperative in our relationships with people when undertaking enforcement.

## Alternative formats

If you would like a copy of this Policy to be provided in another format (for example large type, Braille, or audio recording) please contact your LABC team.

## Where can I complain about this Policy?

If your concern is with the way in which the Council has handled your case, you can complain using the Council's complaints system in the first instance.

If your complaint is that you have suffered injustice as a result of maladministration, you can ask for your case to be investigated by the Local Government Ombudsman. The Ombudsman is independent from the Council. Whilst they cannot set aside a decision of the Council, they can make recommendations and can, where they find that it is appropriate, recommend that the Council pays compensation where they determine that the complaint is justified. The Ombudsman will expect you to have used the Council's own complaints system before they will investigate a complaint.

**The Building Safety Regulator** also has a complaints procedure relating to registered building inspectors and registered building control approvers and local authority building control teams in England. **The Welsh Ministers** also regulate the profession in Wales.

## Annex A.

### Table 2 timescales of offences prior to the 1<sup>st</sup> of October 2023 in England and Wales.

The table below provides all the provisions on this topic from 2008 onwards. **S35A** was initially introduced by the Climate Change and Sustainable Energy Act 2006 - for Part L and came in on the 21<sup>st</sup> August 2006.

The extension of the prosecutions time limits to all provisions of the Building Regulations, was provided for in the Housing and Regeneration Bill which became law on 22<sup>nd</sup> July 2008, with the publication of the **Housing and Regeneration Act 2008 (c17)** (H&RA08). Within the H&RA08 **S317** amended **S35A** of the Building Act to allow any contravention of Building Regulations to enjoy the same time limit freedoms as those introduced for energy conservation offences.

However, S317 of the H&RA08 did not come into force automatically and was, by virtue of **S325**, to be introduced on such a day appointed by the Secretary of State.

On 9<sup>th</sup> September 2008, in a circular letter (**CL/43/19/1**) to all Building Control Bodies throughout England and Wales, the Secretary of State confirmed – thereby appointing – the date when S317 of the H&RA08 was to come into force – this being 22 September 2008.

Date of offence under section 35	Provisions to which section 35 applies breached	Time limit for bringing prosecution
Before 6 April 2008	All provisions.	Six months.
6 April 2008 to 21 September 2008.	Provisions designated by regulation 22A.	Two years, subject to a maximum of 6 months from the date of obtaining sufficient evidence to bring prosecution.
6 April 2008 to 21 September 2008.	Provisions not designated by regulation 22A.	Six months.
From 22 September 2008 to 30 <sup>th</sup> September 2023.	All provisions (as introduced by S317 of the H&RA08 above).	Two years, subject to maximum of 6 months from date of obtaining sufficient evidence to bring prosecution.

LABC is a membership organisation, providing assistance and support to its member local authorities around England and Wales. As the enforcing authority, the local authority is required to apply the regulations as they consider appropriate. The enforcement policy is a guide to the current regulations only.



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