



**Isle of Man**

*Ellan Vannin*

**AT 21 of 1991**

**BUILDING CONTROL ACT 1991**





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## BUILDING CONTROL ACT 1991

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**Isle of Man***Ellan Vannin*

## **BUILDING CONTROL ACT 1991**

*Received Royal Assent:* 15 October 1991  
*Passed:* 15 October 1991  
*Commenced:* See Endnote 21

**AN ACT** to make new provision for the control of building and demolition; and for connected purposes.

**GENERAL NOTE:** The maximum fines in this Act are as increased by the *Criminal Justice (Penalties, Etc.) Act 1993* s 1.

### *Power to make building regulations*

#### **1 Power to make building regulations**

- (1) The Department of Infrastructure (“the Department”) may, make regulations about building design, construction or demolition, buildings or building equipment, fittings or services for any of the following purposes —
  - (a) securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings, 99A
  - (b) furthering the conservation of fuel and power,
  - (c) preventing waste, undue consumption, misuse or contamination of water,
  - (d) environmental enhancement or protection,<sup>1</sup>
  - (e) sustainable development,<sup>2</sup>
  - (f) crime detection or prevention.<sup>3 4</sup>
- (2) Schedule 1 has effect for the matters about which regulations may provide.<sup>5</sup>
- (3) Schedule 1 does not limit subsection (1).<sup>6</sup>

## 2 Continuing requirements

[P1984/55/2]

- (1) Building regulations may impose on owners and occupiers of buildings to which building regulations are applicable such continuing requirements as the Department considers appropriate for securing, with respect to any provision of building regulations designated in the regulations as a provision to which those requirements relate, that the purposes of that provision are not frustrated or for a purpose mentioned in section 1(1); but a continuing requirement imposed by virtue of this subsection does not apply in relation to a building unless a provision of building regulations so designated as one to which the requirement relates applies to that building.<sup>7</sup>
- (2) Without limiting section 1 or subsection (1), building regulations may impose on owners and occupiers of buildings of a prescribed class (whenever erected, and whether or not any building regulations were applicable to them at the time of their erection) continuing requirements with respect to all or any of the following matters —
  - (a) the conditions subject to which any equipment, fittings or services for a building of that class may be used,<sup>8</sup>
  - (b) the inspection and maintenance of equipment, fittings or services,<sup>9</sup>
  - (c) the making of reports to a prescribed authority on the condition of equipment, fittings or services,<sup>10</sup>and so much of paragraph 7 of Schedule 1 as restricts the application of building regulations does not apply to regulations made by virtue of this subsection.<sup>11</sup>
- (3) If a person contravenes a continuing requirement imposed by virtue of this section, the building authority, without prejudice to its right to take proceedings for a fine in respect of the contravention, may —
  - (a) execute any work or take any other action required to remedy the contravention, and
  - (b) recover from that person the expenses reasonably incurred by it in so doing.
- (4) Where the building authority has power under subsection (3) to execute any work or take any other action, it may, instead of exercising that power, by notice require the owner or the occupier of the building to which the contravention referred to in that subsection relates to execute that work or take that action.
- (5) Section 58 of the *Local Government Act 1985* applies in relation to a notice given under subsection (4) subject to the modification that references in those sections to the execution of works are references to the execution of



works or the taking of other action, and references to works shall be construed accordingly.

- (6) Sections 6, 7 and 8 have effect in relation to continuing requirements imposed by virtue of this section subject to the modification that a direction under sections 6 and 7 shall, if it so provides, cease to have effect at the end of such period as may be specified in the direction.

### *Exemption from building regulations*

## **3 Exemption of particular classes of buildings etc**

[P1984/55/3]

- (1) Building regulations may exempt a prescribed class of buildings, equipment, fittings or services from all or any of the provisions of building regulations.<sup>12</sup>
- (2) The Department may by direction exempt from all or any of the provisions of building regulations —
- (a) a particular building, or
  - (b) buildings of a particular class at a particular location,
- either unconditionally or subject to compliance with any conditions specified in the direction.
- (3) A person who contravenes a condition specified in a direction given under subsection (2), or permits such a condition to be contravened, is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000, and to a further fine not exceeding £50 for each day on which the offence continues after he is convicted.

### *Approved documents*

## **4 Approval of documents for purposes of building regulations**

[P1984/55/6]

- (1) For the purpose of providing practical guidance with respect to the requirements of any provision of building regulations, the Department may by order —
- (a) approve and issue any document (whether or not prepared by it), or
  - (b) approve any document issued or proposed to be issued otherwise than by it,
- if in the opinion of the Department the document is suitable for that purpose.
- (2) References in this section and section 5 to a document include references to a part of a document; and accordingly, in relation to a document of

which part only is approved, a reference in the following provisions of this section or in section 5 to the approved document is a reference only to the part of it that is approved.

- (3) An order under subsection (1) shall —
  - (a) identify the approved document in question,
  - (b) state the date on which the approval of it is to take effect, and
  - (c) specify the provisions of building regulations for the purposes of which the document is approved.
- (4) The Department may by order —
  - (a) from time to time approve and issue a revision of the whole or any part of an approved document issued by it for the purposes of this section, and
  - (b) approve any revision or proposed revision of the whole or any part of an approved document,and subsection (3), with the necessary modifications, applies in relation to an order under this subsection as it applies in relation to an order under subsection (1).
- (5) The Department may by order withdraw its approval of a document under this section; and such a withdrawal of approval shall —
  - (a) identify the approved document in question, and
  - (b) state the date on which the approval of it is to cease to have effect.
- (6) References in subsections (4) and (5) and in section 5 to an approved document are references to that document as it has effect for the time being, regard being had to any revision of the whole or any part of it that has been approved under subsection (4).

## **5 Compliance or non-compliance with approved documents**

[P1984/55/7]

- (1) A failure on the part of a person to comply with an approved document does not of itself render him liable to any civil or criminal proceedings; but if, in any proceedings whether civil or criminal, it is alleged that a person has at any time contravened a provision of building regulations —
  - (a) a failure to comply with a document that at that time was approved for the purposes of that provision may be relied upon as tending to establish liability, and
  - (b) proof of compliance with such a document may be relied on as tending to negative liability.
- (2) In any proceedings, whether civil or criminal, a document that appears to the court to be the approved document to which an order under

section 4(1) or (4) refers shall be taken to be that approved document unless the contrary is proved.

### *Relaxation of building regulations*

## **6 Relaxation of building regulations**

[P1984/55/8 and 15]

- (1) Subject to this section, if the Department on an application for a direction under this section considers that the operation of a requirement in building regulations would be unreasonable in relation to the particular case to which the application relates, it may, after consultation with the building authority (if different), give a direction dispensing with or relaxing that requirement.
- (2) Building regulations may provide as regards a requirement contained in the regulations that subsection (1) does not apply.
- (3) In the case of a requirement as to —
  - (a) structural fire precautions,
  - (b) the provision of means of escape from buildings in case of fire, or
  - (c) the provision of means for securing that such means of escape can be safely and effectively used at all material times,

the Department shall, before exercising its power under subsection (1), consult the fire authority.

## **7 Application for relaxation**

[P1984/55/9]

- (1) An application under section 6(1) shall be made to the building authority, and shall be in such form and contain such particulars as may be prescribed.
- (2) On receipt of an application under section 6(1), a building authority other than the Department shall forward the application to the Department.
- (3) Schedule 2 has effect as regards an application for a direction that will affect the application of building regulations to work that has been carried out before the making of the application.

## **8 Advertisement of proposal for relaxation**

[P1984/55/10]

- (1) Not less than 21 days before giving a direction under section 6(1) in respect of any particular work, the Department shall publish in a newspaper published and circulating in the Island a notice —
  - (a) indicating the situation and nature of the work and the requirement to be dispensed with or relaxed, and

(b) stating that representations with regard to the effect that the direction may have on public health or safety may be made by a date specified in the notice, being a date not less than 21 days from the date of the notice,

and the Department may, as a condition of entertaining the application, require the applicant to pay or undertake to pay the cost of publication.

- (2) No notice need be published under subsection (1) where it appears to the Department that any effect that the direction may have on public health or safety will be limited to premises adjoining the site of the work, but in that case it shall give such a notice to the owner and occupier of those premises.
- (3) No notice need be published or given under subsection (1) or (2) where the work affects only an internal part of a building.
- (4) Before giving the direction, the Department, shall consider any representations duly made in pursuance of a notice published or given under subsection (1) or (2).

## **9 Type relaxation of building regulations**

[P1984/55/11]

- (1) If the Department considers that the operation of a requirement of building regulations would be unreasonable in relation to a particular type of building matter, it may, either on an application made to it or of its own accord, give a direction dispensing with or relaxing that requirement generally in relation to that type of building matter, either –
  - (a) unconditionally, or
  - (b) subject to compliance with any conditions specified in the direction, being conditions with respect to matters directly connected with the dispensation or relaxation.
- (2) A direction under subsection (1) ceases to have effect at the end of such period (if any) as may be specified in the direction.
- (3) Before giving a direction under subsection (1), the Department shall consult every building authority and such bodies as appear to it to be representative of the interests concerned.
- (4) Where the Department gives a direction under subsection (1), it shall publish notice of that fact in such manner as it thinks fit.
- (5) A person who contravenes a condition specified in a direction given under subsection (1), or permits such a condition to be contravened, is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 and to a further fine not exceeding £50 for each day on which the offence continues after he is convicted.

- (6) If at any time a direction under subsection (1) dispensing with or relaxing a requirement of building regulations ceases to have effect by virtue of subsection (2), or is varied or revoked, that fact does not affect the continued operation of the direction (with any conditions specified in it) in a case in which before that time plans of the proposed work were, in accordance with building regulations, deposited with a building authority.

*Type approval of building matter*

## 10 Power to approve type of building matter

[P1984/55/12]

- (1) The Department may, either on an application made to it or of its own accord, approve a particular type of building matter as complying, either generally or in a class of case, with particular requirements of building regulations.
- (2) An application for the approval under subsection (1) of a type of building matter shall comply with any requirements of building regulations as to the form of such applications and the particulars to be included in them.
- (3) Before approving a type of building matter under subsection (1) the Department shall consult every building authority and such bodies as appear to it to be representative of interests concerned.
- (4) Where under subsection (1) the Department approves a type of building matter, it may issue a certificate to that effect specifying —
  - (a) the type of building matter to which the certificate relates,
  - (b) the requirements of building regulations to which the certificate relates, and
  - (c) where applicable, the class or classes of case to which the certificate applies.
- (5) A certificate under subsection (4), if it so provides, ceases to have effect at the end of such period as may be specified in the certificate.
- (6) If, while a certificate under subsection (4) is in force, it is found, in a particular case involving building matter of the type to which the certificate relates, that —
  - (a) the building matter in question is of that type, and
  - (b) the case is one to which the certificate applies,that building matter shall in that particular case be deemed to comply with the requirements of building regulations to which the certificate relates.

- (7) The Department may vary a certificate under subsection (4), either on an application made to it or of its own accord; but, in the case of a certificate issued on an application made by a person under subsection (1), the Department, except where it varies the certificate on the application of that person, shall before varying it give that person reasonable notice that it proposes to do so.
- (8) Building regulations may require a person making an application under subsection (1) or (7) to pay the Department a prescribed fee, and the Department may in a particular case remit the whole or part of a fee payable under this subsection.
- (9) The Department may revoke a certificate issued under subsection (4) but, in the case of a certificate issued on an application under subsection (1) it shall before doing so give the person on whose application the certificate was issued reasonable notice that it proposes to do so.
- (10) Where the Department issues a certificate under subsection (3) or varies or revokes a certificate so issued, it shall publish notice of that fact in such manner as it thinks fit.
- (11) If at any time a certificate under subsection (3) ceases to have effect by virtue of subsection (5), or is varied or revoked under subsection (7) or (9), that fact does not affect the continued operation of subsection (6) by virtue of that certificate in a case in which before that time plans of the proposed work were, in accordance with building regulations, deposited with a building authority.
- (12) For the purposes of subsection (4), or of any variation of a certificate under subsection (7), a class of case may be framed in any way that the Department thinks fit.

*Passing and rejection of plans*

## **11 Passing and rejection of plans**

[P1984/55/16]

- (1) Where plans of any proposed work are, in accordance with building regulations, deposited with a building authority, the authority, subject to any other provision of this Act that expressly requires or authorises it in certain cases to reject plans, shall pass the plans unless —
  - (a) they are defective, or
  - (b) they show that the proposed work would contravene any of the building regulations.
- (2) Where the building authority is not required by subsection (1) to pass the plans, it shall either —
  - (a) reject them, or

- (b) if it thinks fit, before the expiry of the relevant period from the deposit of the plans and with the consent in writing of the person by whom or on whose behalf they were deposited, give notice to that person requesting him, within such period as is specified in the notice, to deposit such amended plans or further plans as are so specified.
- (3) Where amended plans or further plans are deposited pursuant to a notice under subsection (2), the building authority, subject as mentioned in subsection (1), shall pass the plans as amended, or the plans and further plans, as the case may be, unless-
- (a) they are defective, or
- (b) they show that the proposed work would contravene any of the building regulations,
- in which case it shall reject them.
- (4) Where amended plans or further plans are not deposited pursuant to a notice under subsection (2) within the period specified in the notice, the building authority shall reject the deposited plans.
- (5) The building authority shall within the relevant period from the deposit of the plans give notice to the person by whom or on whose behalf they were deposited whether they have been passed or rejected.
- (6) A notice that plans have been rejected shall specify the defects on account of which, or the regulation or provision of this Act for non-conformity with which, or under the authority of which, they have been rejected.
- (7) A notice that plans have been passed shall state that the passing of the plans operates as an approval of them only for the purposes of the requirements of —
- (a) the building regulations, and
- (b) any provision of this Act (other than this section) that expressly requires or authorises the building authority in certain cases to reject plans.
- (8) For the purposes of this Act, “**the relevant period**”, in relation to the passing or rejection of plans, means the period beginning with the deposit of the plans and ending —
- (a) on the expiry of 6 weeks beginning with such deposit, or
- (b) where a notice is given under subsection (2), on the expiry of the period specified in the notice, or
- (c) where the amended plans or further plans are deposited pursuant to such a notice within the period specified in the notice, on the expiry of 6 weeks beginning with the deposit of the amended plans or further plans;

whichever last occurs, or such extended period (expiring not later than 2 weeks after the end of that period) as may before the expiration of that period be agreed in writing between the person depositing the plans and the building authority.

### **11A Consultation with sewerage authority**

Where plans of any proposed work are, in accordance with building regulations, deposited with a building authority, then, unless the work does not include the laying or construction of a drain or sewer which may communicate (directly or indirectly) with a public sewer, the authority shall, before passing the plans, consult the sewerage authority.<sup>13</sup>

## **12 Building over sewer or under street**

- (1) This section applies to a building or an extension to a building which is proposed to be erected —
  - (a) over a sewer,
  - (b) under the carriageway of a street, or
  - (c) under any part of a highway.
- (2) Where plans of a building to which this section applies are, in accordance with building regulations, deposited with a building authority, the authority shall reject the plans unless it is satisfied that in the circumstances of the particular case it may properly consent to the erection of the building, either unconditionally or subject to compliance with any condition it may specify.
- (3) In the case of a building falling within subsection (1)(a), the building authority may not give a consent under subsection (2) without the consent of the sewerage authority, which consent may be given either unconditionally or subject to compliance with any condition that the sewerage authority may specify.<sup>14</sup>
- (4) Any question arising under this section as to —
  - (a) whether a building is one to which this section applies, or which falls within subsection (1)(a) or (c), or
  - (b) whether, and if so subject to compliance with what conditions, a consent ought to be given under subsection (2) or (3)(a) or (b),may be determined by the High Bailiff on the application of the person by whom the plans are deposited.

## **13 Determination of questions**

- (1) If any question arises between a building authority which is a local authority and a person who has executed, or proposes to execute, any work —



- (a) as to the application to that work of any building regulations, or
- (b) whether the plans of the work are in conformity with building regulations, or
- (c) whether the work has been executed in accordance with the plans as passed by the building authority,

the question may, on the application of either party, be referred to and determined by the Department.

- (2) The Department may, at any stage of the proceedings on a reference under subsection (1), and shall if so directed by the High Court, state in the form of a special case for the opinion of the High Court any question of law arising in those proceedings.
- (3) If any question of law arises between the Department and a person who has executed, or proposes to execute, any work —
  - (a) as to the application to that work of any building regulations, or
  - (b) whether the plans of the work are in conformity with building regulations, or
  - (c) whether the work has been executed in accordance with the plans as passed by the Department as building authority,

the Department may, and shall if so directed by the High Court, state the question in the form of a special case for the opinion of the High Court.

#### **14 Proposed departure from plans**

[P1984/55/31]

- (1) Where plans of any proposed work have been passed under section 11 by a building authority, the person by or on whose behalf the plans were in accordance with building regulations deposited with the building authority may, and in such cases as may be prescribed shall, for the purpose of obtaining the approval of the authority to any proposed departure or deviation from the plans as passed, deposit plans of the departure or deviation.
- (2) Section 11 applies in relation to plans deposited under subsection (1) as it applies in relation to the plans originally deposited.

#### **15 Lapse of deposit of plans**

[P1984/55/32]

- (1) Where plans of any proposed work have, in accordance with building regulations, been deposited with a building authority, and —
  - (a) the plans have been passed by the authority, or
  - (b) notice of rejection of the plans has not been given within the relevant period from their deposit,

and the work to which the plans relate has not been commenced within 3 years from the deposit of the plans, the building authority may, at any time before the work is commenced, by notice to the person by whom or on whose behalf the plans were deposited, or other the owner for the time being of the land to which the plans relate, declare that the deposit of the plans is of no effect.

- (2) Where a notice has been given under subsection (1), this Act and the building regulations shall, as respects the proposed work, have effect as if no plans had been deposited.

## **16 Tests for conformity with building regulations**

[P1984/55/33]

- (1) This section has effect for the purpose of enabling a building authority to ascertain, as regards any work or proposed work to which building regulations for the enforcement of which it is responsible are applicable, whether any provision of building regulations is or would be contravened by, or by anything done or proposed to be done in connection with, that work.
- (2) The building authority may for that purpose —
  - (a) require a person by whom or on whose behalf the work was, is being or is proposed to be done to carry out such reasonable tests of or in connection with the work as may be specified in the requirement, or
  - (b) itself carry out any reasonable tests of or in connection with the work, and to take any samples necessary to enable it to carry out such a test.
- (3) Without prejudice to the generality of subsection (2), the matters with respect to which tests may be required or carried out under that subsection include —
  - (a) tests of the soil or subsoil of the site of a building,
  - (b) tests of any material, component or combination of components that has been, is being or is proposed to be used in the construction of a building, and tests of any service, fitting or equipment that has been, is being or is proposed to be provided in or in connection with a building.
- (4) A building authority may, for the purpose of ascertaining whether there is or has been, in the case of a building, a contravention of a continuing requirement that applies in relation to that building —
  - (a) require the owner or occupier of the building to carry out such reasonable tests as may be specified in the requirement under this paragraph, or

- (b) itself carry out any tests that it has power to require under paragraph (a), and to take any samples necessary to enable it to carry out such a test;
- and in this subsection “continuing requirement” means a continuing requirement imposed by building regulations made by virtue of section 2(1) or (2).
- (5) The expense of carrying out any tests that a person is required to carry out under this section shall be met by that person, except that the building authority, on an application made to it, may, if it thinks it reasonable to do so, direct that the expense of carrying out any such tests, or such part of that expense as may be specified in the direction, shall be met by the authority.
- (6) Any question arising under this section between the building authority and a person as to the reasonableness of —
- (a) a test specified in a requirement imposed on him by the authority under this section,
  - (b) a refusal by the authority to give a direction under subsection (5) above on an application made by him, or
  - (c) a direction under that subsection given on such an application,
- may on the application of that person be determined by the High Bailiff; and in a case falling within paragraph (b) or (c) the High Bailiff may order the expense to which the application relates to be met by the building authority to such extent as he thinks just.

*Breach of building regulations*

**17 Contravention of building regulations**

- (1) 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 guilty of an offence and liable —
- (a) on summary conviction to a fine not exceeding £5,000 and to a further fine not exceeding £50 for each day on which the default continues after he is convicted; or
  - (b) in the case of a provision designated in the regulations as one to which this paragraph applies, on conviction on information to a fine
- (2) Where building regulations require plans of any proposed work to be deposited with a building authority, any person who carried out that work or any part of that work without such plans having been passed by the authority is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

- (3) In any proceedings for an offence under subsection (2), it shall be a defence to show —
- (a) that plans of the work have been deposited in accordance with building regulations, and
  - (b) that the building authority has failed to comply with section 11(2) in relation to the plans.

### 17A Prosecution time limits

- (1) A summary proceeding for an offence against this Act may be commenced only before the later of the following —
- (a) 3 years after the offence was committed;
  - (b) 6 months after the prosecutor first had sufficient evidence of the offence.
- (2) For subsection (1)(b), a prosecutor's certificate stating when the prosecutor first had the sufficient evidence is evidence of that fact.
- (3) Subsection (1) is an express contrary provision for section 75(1) of the *Summary Jurisdiction Act 1989*.
- (4) In this section —

“prosecutor's certificate” means a certificate signed, or purporting to be signed, by or for the prosecutor;

“sufficient evidence”, of the offence, means evidence that, in the prosecutor's opinion, was sufficient to justify the proceeding.<sup>15</sup>

### 18 Removal or alteration of offending work

[P1984/55/36]

- (1) If any work to which building regulations are applicable contravenes any of those regulations, the building authority, without prejudice to its 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 building authority is, by any provision of this Act other than section 11, 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 it might have made under the section in question as a condition of passing plans.
- (3) If a person to whom a notice has been given under subsection (1) or (2) fails to comply with the notice before the expiration of 28 days, or such longer period as the High Bailiff may on his application allow, the building 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 it in doing so.
- (4) A notice under subsection (1) or (2) (a “section 18 notice”) may be given only before the later of the following —
  - (a) 3 years after the work was completed;
  - (b) 6 months after the building authority first became aware of the matter the subject of the notice.<sup>16</sup>
- (5) A section 18 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 building authority’s requirements under any provision of this Act other than section 11, 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 authority as a condition of passing the plans.
- (6) This section does not affect the right of the building 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 building 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 High Court on granting an injunction has power to order the building 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 building authority, if not a party to the proceedings, to be joined as a party to them.

## 19 Obtaining of report where s 18 notice given

[P1984/55/37]

- (1) In a case where —
  - (a) a person to whom a section 18 notice has been given gives to the building authority notice of his intention to obtain from a suitably qualified person a written report concerning work to which the section 18 notice relates, and
  - (b) such a report is obtained and submitted to the building authority and, as a result of its consideration of it, the building authority withdraws the section 18 notice,

the building authority may pay to the person to whom the section 18 notice was given such amount as appears to it to represent the expenses reasonably incurred by him in consequence of its having given him that notice including, in particular, his expenses in obtaining the report.

- (2) Subject to subsection (3), if a person to whom a section 18 notice has been given gives notice under subsection (1)(a), then, so far as regards the matters to which the section 18 notice relates, the references to 28 days in section 18(3) shall be construed as a reference to 70 days.
- (3) Notice under subsection (1)(a) shall be given before the expiry of the period of 28 days referred to in section 18(3), or, as the case may be, within such longer period as the High Bailiff allows under section 18(3); and, where such a longer period has been so allowed before notice is given under subsection (1)(a), subsection (2) does not apply.

## 20 Appeal against s 18 notice

[P1984/55/40]

- (1) A person aggrieved by the giving of a section 18 notice may appeal to the High Bailiff.
- (2) Subject to subsection (3), on an appeal under this section the High Bailiff shall —
  - (a) if he determines that the building authority were entitled to give the notice, confirm the notice, and
  - (b) in any other case, give the building authority a direction to withdraw the notice.
- (3) If, in a case where the appeal is against a notice under section 18(2) the High Bailiff is satisfied that —
  - (a) the building authority was entitled to give the notice, but

- (b) in all the circumstances of the case the purpose for which was enacted the provision of this Act by virtue of which the notice was given has been substantially achieved,
- the High Bailiff may give a direction under subsection (2)(b).
- (4) An appeal under this section shall be brought —
- (a) within 28 days of the giving of the section 18 notice, or
- (b) in a case where the person to whom the section 18 notice was given gives notice under 19(1)(a), within 70 days of the giving of the section 18 notice.
- (5) Where an appeal is brought under this section —
- (a) the section 18 notice is of no effect pending the final determination or withdrawal of the appeal, and
- (b) section 18(3) 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 20, 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 High Bailiff a report that has been submitted to the building authority under section 19(1) the High Bailiff 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.

## 21 Civil liability

[P1984/55/38]

- (1) 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 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), 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 coming into operation of the first building regulations unless the regulations imposing the duty apply to or in connection with the building by virtue of section 2(2) or paragraph 7 of Schedule 1.
- (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 Act or any other enactment relating to building regulations, or
- (b) a duty imposed by building regulations in a case to which subsection (1) 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).

*Dangerous buildings etc.*

## 22 Dangerous buildings

[P1984/55/77]

- (1) If it appears to a local authority that a building or structure, or part of a building or structure, in its district is in such a condition, or is used to carry such loads, as to be dangerous, the authority may apply to the High Bailiff who may –
- (a) if the High Bailiff considers a danger arises from the condition of the building or structure, the High Bailiff may make an order (a “remedial order”) –
    - (i) authorising the local authority to carry out remedial work to remove the danger; or
    - (ii) requiring the owner to, within a stated period, carry out remedial work to remove the danger; or <sup>17</sup>
  - (b) where danger arises from overloading of the building or structure, make an order restricting its use until the High Bailiff, being satisfied that any necessary works have been executed, withdraws or modifies the restriction.
- (2) If the owner contravenes the remedial order –
- (a) the local authority may –
    - (i) carry out remedial work to remove the danger; and
    - (ii) recover from the owner its reasonable expenses in carrying out the remedial work (its “remedial expenses”) as a debt; and
  - (b) the owner commits an offence and is liable on summary conviction to a fine not exceeding £5,000.<sup>18</sup>
- (3) However, the conviction does not stop the local authority from carrying out remedial work or recovering its remedial expenses.<sup>19</sup>
- (4) Sections 46 (recovery of expenses), 47 (recovery of expenses where owner cannot be found) and 49 (recovery of establishment charges) of the *Local Government Act 1985* apply for the recovery of the local authority’s remedial expenses.<sup>20</sup>



- (5) For a provision applied under subsection (4), a reference to the premises is a reference to the premises on which is situated the building or structure the subject of the remedial order.<sup>21</sup>
- (6) In this section—
- “owner”, for a structure, means the owner of the premises on which the structure is situated;
- “remedial work”, to remove the danger, means —
- (a) all work needed to remove the danger; or
  - (b) at the election of the person authorised or required to carry out the remedial work —
    - (i) demolishing the building or structure, or, if the danger is able to be removed by only removing parts of it, those parts; and
    - (ii) removing any rubbish resulting from the demolition.<sup>22</sup>

## 23 Dangerous buildings: emergency measures

[P1984/55/78]

- (1) If it appears to a local authority that —
- (a) a building or structure, or part of a building or structure, is in such a state, or is used to carry such loads, as to be dangerous, and
  - (b) immediate action should be taken to remove the danger,
- it may take such steps as may be necessary for that purpose.
- (2) Before exercising its powers under this section, the local authority shall, if it is reasonably practicable to do so, give notice of its intention to the owner and occupier of the building, or of the premises on which the structure is situated.
- (3) Subject to this section, the local authority may recover from the owner the expenses reasonably incurred by it under this section.
- (4) So far as expenses incurred by the local authority under this section consist of expenses of fencing off the building or structure, or arranging for it to be watched, the expenses shall not be recoverable in respect of any period —
- (a) after the danger has been removed by other steps under this section, or
  - (b) after an order made under section 22(1) for the purpose of its removal has been complied with or has been executed as mentioned in section 22(2)(a).
- (5) In proceedings to recover expenses under this section, the court shall inquire whether the local authority might reasonably have proceeded

instead under section 22(1), and, if the court determines that the local authority might reasonably have proceeded instead under that subsection, the authority shall not recover the expenses or any part of them.

- (6) Subject to subsection (5), in proceedings to recover expenses under this section, the court may —
- (a) inquire whether the expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings, and
  - (b) make such order concerning the expenses or their apportionment as appears to the court to be just,

but the court shall not order the expenses or any part of them to be borne by any person other than the defendant in the proceedings unless it is satisfied that that other person has had due notice of the proceedings and an opportunity of being heard.

- (7) Where in consequence of the exercise of the powers conferred by this section the owner or occupier of any premises sustains damage, the owner or occupier may apply to the High Bailiff to determine whether the local authority were justified in exercising its powers under this section so as to occasion the damage sustained, and if the High Bailiff determines that the local authority was not so justified, the owner or occupier is entitled to compensation, to be determined (in default of agreement) by arbitration.
- (8) This section does not apply to premises forming part of a mine or quarry within the meaning of the *Mines and Quarries Regulation Act 1950*.

## 24 Ruinous buildings etc

- (1) If it appears to a local authority that a building or structure in its district is by reason of its ruinous, dilapidated or neglected condition or unfinished state detrimental to the amenities of the neighbourhood, the authority may by notice —
- (a) require its occupier to, within a stated period, carry out all work needed to the building or structure to remove the detriment (the “amenity work”);<sup>23</sup>
  - (b) require its owner to do either of the following within a stated period —
    - (i) carry out the amenity work; or
    - (ii) if the owner elects, demolish all of the building or structure or, if the detriment is able to be removed by demolishing only parts of it, demolishing those parts; or <sup>24</sup>
  - (c) if the local authority considers the amenity work cannot be carried out at reasonable cost require its owner to do either of the following within a stated period —

- (i) demolish all of the building or structure;
  - (ii) demolish stated parts of the building or structure, if the local authority considers the detriment is able to be removed by demolishing those parts;<sup>25</sup>
- as may be necessary in the interests of amenity.
- (2) If it appears to a local authority that –
- (a) rubbish or other material resulting from, or exposed by, the demolition or collapse of a building or structure in its district is lying on the site or on any adjoining land, and
  - (b) by reason thereof the site or land is in such a condition as to be detrimental to the amenities of the neighbourhood,
- the local authority may by notice require the owner or occupier of the site or land to take such steps for removing the rubbish or material as may be necessary in the interests of amenity.
- (3) [Repealed]<sup>26</sup>
- (4) If a person to whom a notice under subsection (1) or (2) is given as owner of the building, structure, site or land is no longer the owner of it, he shall, within 21 days after service of the notice on him, notify the local authority in writing of the fact, giving particulars of –
- (a) the name and address of the person who became the owner on his ceasing to be the owner, and
  - (b) the instrument or event by virtue of which he ceased to be the owner,
- and if he fails without reasonable excuse to do so, he shall, in any proceedings arising out of the notice, be conclusively presumed to have been the owner of the building, structure, site or land during the time within which the notice should have been complied with.<sup>27</sup>
- (5) In this section –
- “demolish” includes removing any rubbish resulting from the demolition;
- “owner”, for a structure, means the owner of the premises on which the structure is situated;
- “work”, for a building, means completing, repairing or restoring it.<sup>28</sup>

#### **24A LGA provisions apply for demolition notice**

- (1) If a local authority gives a demolition notice, the notice is taken –
- (a) to be a notice requiring the execution of works under section 58(1) of the LGA (Appeals against, and enforcement of, notices requiring execution of works); and
  - (b) to comply with section 58(2) of the LGA.

- (2) Sections 46, 47 and 49 of the LGA apply if, under section 58(7)(b) of the LGA, the local authority is entitled to recover its expenses of executing the works itself.
- (3) For a provision applied under subsection (2), a reference to the premises is a reference to the premises on which is situated the building or structure the subject of the demolition notice.
- (4) In this section —  
“demolition notice” means a notice given under section 24(1) or (2);  
“LGA” means the *Local Government Act 1985*.<sup>29</sup>

## 25 Powers of Department of Environment, Food and Agriculture

- (1) [Repealed]<sup>30</sup>
- (2) The powers conferred on a local authority by sections 22, 23 and 24 may be exercised by the Department of Environment, Food and Agriculture; and accordingly references in those sections to the local authority shall be taken as including the Department of Environment, Food and Agriculture acting under this subsection.<sup>31</sup>

### *Demolition of buildings*

## 26 Notice of intended demolition

[P1984/55/80]

- (1) This section applies to any demolition of the whole or part of a building except —
  - (a) a demolition in pursuance of a demolition order under the *Housing Act 1955*;
  - (b) a demolition of an internal part of a building, where the building is occupied and it is intended that it should continue to be occupied;
  - (c) a demolition of a building that has a cubic content (as ascertained by external measurement) of not more than 1,750 cubic feet;
  - (d) a demolition of a building occupied together with, or used solely in connection with agricultural operations carried on on, agricultural land, unless it is contiguous to another building that is not itself either a building so occupied or used or a building mentioned in sub-paragraph (c).
- (2) No person shall begin a demolition to which this section applies unless —
  - (a) he has given to the Department notice of his intention to do so, and

- (b) either the Department has given a notice to him under section 27 or the period referred to in section 27(2) has expired.
- (3) A notice under this section shall —
  - (a) specify the building to which it relates and the works of demolition intended to be carried out;
  - (b) contain reasonable estimates of the waste and other materials likely to result from the demolition; and
  - (c) specify how it is intended that those materials shall be disposed of or otherwise dealt with;
  - (d) in the case of materials to be disposed of, describe those materials and specify —
    - (i) how each description of those materials is to be disposed of, and
    - (ii) in what quantities.<sup>32</sup>
- (4) A person who gives a notice under this section to the Department shall give a copy of it to —
  - (a) the owner and occupier of any building adjacent to the building to be demolished;
  - (b) any body authorised by any enactment to supply gas in the locality in which the building is situated;
  - (c) [Repealed]<sup>33</sup>
  - (d) the local authority for the district in which the building is situated;
  - (e) the Manx Electricity Authority.
- (5) Any person who contravenes subsection (2) is guilty of an offence and liable on conviction on information to a fine, or on summary conviction to a fine not exceeding £5,000.
- (6) In this section “agricultural” has the same meaning as in the *Agricultural Holdings Act 1969*.

## 27 Directions by Department about demolition

- (1) The Department may give a direction under this section to —
  - (a) the person on whom a demolition order has been served under the *Housing Act 1955*,
  - (b) a person appearing to the Department to have begun or to be intending to begin a demolition to which section 26 applies, and
  - (c) a person appearing to the Department not to be intending to comply with an order under section 22 or a notice under section 24.

- (2) Where a person has given a notice under section 26 a direction under this section may only be given to him within 6 weeks from the giving of the notice under section 26 or such longer period as he may in writing allow.
- (3) Where a demolition order has been served on a person under the *Housing Act 1955*, a direction under this section may only be given to him within 7 days after the service of the demolition order on him or such longer period as he may in writing allow.<sup>34</sup>
- (4) A direction under this section shall be in writing, and the Department shall give a copy of the direction to —
  - (a) the owner and occupier of any building adjacent to the building to be demolished;
  - (b) if it contains a requirement under subsection (5)(h), to the statutory undertakers concerned;
  - (c) if it contains a requirement under subsection (5)(i), to the fire authority.
- (5) A direction under this section may require the person to whom it is given —
  - (a) to shore up any building adjacent to the building to which the notice relates;
  - (b) to weatherproof any surfaces of an adjacent building that are exposed by the demolition;
  - (c) to repair and make good any damage to an adjacent building caused by the demolition or by the negligent act or omission of any person engaged in it;
  - (d) to remove material or rubbish resulting from the demolition and clearance of the site;
  - (e) to disconnect and seal, at such points as the Department may reasonably require, any sewer or drain in or under the building;
  - (f) to remove any such sewer or drain, and seal any sewer or drain with which the sewer or drain removed is connected;
  - (g) to make good to the satisfaction of the Department the surface of the ground disturbed by anything done under paragraph (e) or (f);
  - (h) to make arrangements with the relevant statutory undertakers for the disconnection of the supply of gas, electricity and water to the building;
  - (i) to make such arrangements with regard to the burning of structures or materials on the site as may be reasonably required by the fire authority;
  - (j) to take such steps relating to the conditions subject to which the demolition is to be undertaken, and the condition in which the

site is to be left on completion of the demolition, as the Department may consider reasonably necessary for the protection of the public and the preservation of public amenity;

- (k) except where a demolition order has been served under the *Housing Act 1955*, to delay the demolition for such period as may be specified in the direction, being a period appearing to the Department to be reasonably necessary for the preservation of public amenity.

## 28 Directions under s 27: supplemental provisions

- (1) If a requirement of a direction under section 27 is inconsistent with a requirement imposed by or under the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect in the Island, the latter requirement prevails.
- (2) No one shall be required under section 27(5)(c), (e) or (f) to carry out any work on land outside the premises on which the works of demolition are being carried out if he has no right to carry out that work, but (subject to the road works code) the person undertaking the demolition or the Department acting in his default may break open a street for the purpose of complying with any such requirement.
- (3) Before a person complies with a requirement under section 27(5)(e) or (f) he shall give to the sewerage authority at least 48 hours' notice.
- (4) Before a person complies with a requirement under section 27(5)(g) he shall give to the sewerage authority at least 24 hours' notice.
- (5) A person who fails to comply with subsection (3) or (4) is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.
- (6) Section 27 and this section do not authorise interference with apparatus or works of statutory undertakers authorised by an enactment to carry on an undertaking for the supply of gas, water or electricity, or with any telecommunication apparatus kept installed, or works executed, for the purposes of a telecommunications code system, or exempt a person from —
  - (a) the obligation to obtain any consent required under paragraph 16 or 17 of Schedule 5 to the *Water Act 1991*; or<sup>35</sup>
  - (b) criminal liability under any enactment relating to the supply of gas or electricity.
- (6A) Section 58 of the *Local Government Act 1985* (appeals and enforcement) applies to a direction under section 27 as it applies to a notice mentioned in section 58(1) of that Act, subject to the following modifications —
  - (a) references to a local authority shall be construed as references to the Department;

- (b) an appeal under section 58(3) may be brought within 21 days from the date on which the direction is given;
  - (c) the grounds on which such an appeal may be brought include those specified in subsection (7); and
  - (d) section 58(5) applies to the grounds of appeal specified in subsection (7).<sup>36</sup>
- (7) The grounds of appeal mentioned in subsection (6A)(c) and (d) are —
- (a) in the case of a direction requiring an adjacent building to be shored up, that the owner of the building is not entitled to the support of that building by the building that is being demolished, and ought to pay, or contribute towards, the expenses of shoring it up;
  - (b) in the case of a direction requiring any surfaces of an adjacent building to be weatherproofed, that the owner of the building ought to pay, or contribute towards, the expenses of weatherproofing those surfaces;
  - (c) in the case of a direction to delay the demolition, that planning approval for the redevelopment of the site has been granted and a contract for such a redevelopment has been made.<sup>37</sup>
- (8) [Repealed]<sup>38</sup>
- (9) In this section —
- “the road works code” means the provisions of Schedule 4 to the *Highways Act 1986*;
- “the sewerage authority” [Repealed]<sup>39</sup>
- “telecommunication apparatus” and “telecommunications code system” have the same meanings as in the *Telecommunications Act 1984*.

### *Miscellaneous and supplemental*

## 29 Appeal to High Court

Any person who is aggrieved by an order, determination or other decision of the High Bailiff under this Act, and is not by any other enactment authorised to appeal to the High Court, may appeal to the High Court.

## 30 Obstruction

[P1984/55/112]

A person who intentionally obstructs a person acting in the execution of this Act, or of building regulations, or of an order or warrant made or issued under this Act, is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.



### 31 Prosecution of offences

[P1984/55/113]

Proceedings in respect of an offence created by or under this Act shall not, without the written consent of the Attorney General, be taken by any person other than —

- (a) a local authority,
- (b) a party aggrieved, or
- (c) the Department.

### 32 Continuing offences

[P1984/55/114]

Where provision is made by or under this Act for imposition of a daily penalty in respect of a continuing offence —

- (a) the court by which a person is convicted of the original offence may fix a reasonable period from the date of conviction for the defendant to comply with any directions given by the court, and
- (b) where the court has fixed such a period, the daily penalty is not recoverable in respect of any day before the period expires.

### 33 Meaning of “building” etc

[P1984/55/122-124]

(1) The following provisions of this section apply for the interpretation of the expressions there mentioned for the purposes of —

- (a) this Act, and
- (b) any other enactment that relates to building regulations, or that uses any of those expressions in a context from which it appears that it is intended to have the same meaning as in this Act.

(2) “**Building**” means any permanent or temporary building and, unless the context otherwise requires, includes —

- (a) any other structure or erection of whatever kind or nature (whether permanent or temporary); and
- (b) a part of a building;

and for this purpose “**structure or erection**” includes a vehicle, vessel, hovercraft, aircraft or other movable object of any kind in such circumstances as may be prescribed (being circumstances that in the opinion of the Department justify treating it for that purpose as a building).

(3) [Repealed].<sup>40</sup>

(4) Subject to subsection (5), “**building regulations**” means regulations under section 1.

- (5) A reference to building regulations, in a particular case in relation to which a requirement of building regulations is for the time being dispensed with, waived, relaxed or modified by virtue of section 6 or 9 or any other enactment, is a reference to building regulations as they apply in that case.
- (6) References to the construction or erection of a building include references to —
- (a) the carrying out of such operations (whether for the reconstruction of a building, the roofing over of an open space between walls or buildings, or otherwise) as may be designated in building regulations as operations falling to be treated for those purposes as the construction or erection of a building; and
  - (b) the conversion of a movable object into what is by virtue of subsection (2) a building;
- and “**construct**” and “**erect**” shall be construed accordingly.
- (7) A reference to the deposit of plans in accordance with building regulations is a reference to the deposit of plans in accordance with building regulations for the purposes of section 11.

### 34 Building authorities

[1976/6/4/28]

- (1) Subject to subsection (2), in this Act “**building authority**” means —
- (a) in relation to any town district or village district, the local authority for that district;
  - (b) in relation to any parish district, the Department.
- (2) The Department may —
- (a) if so requested by the local authority for any town district or village district, or
  - (b) if it is satisfied that the local authority for any town district or village district does not employ staff competent to enforce building regulations in its district, or
  - (c) if it is satisfied the local authority for a town, district or village has contravened performance standards prescribed for local authorities to enforce building regulations;<sup>41</sup>
- by order provide that the Department shall be the building authority for that district.
- (3) An order under subsection (2) may make such incidental, supplemental, consequential and transitional provisions as appear to the Department to be necessary or expedient for the purposes of the order.
- (4) It is the duty of a building authority to enforce building regulations in its area.

### 35 General interpretation

(1) In this Act, —

“**area**”, in relation to a building authority, means any district for which it is the building authority;

“**building matter**” means any building or other matter whatsoever to which building regulations are in any circumstances applicable;

“**building regulations**” means any regulations under this Act;<sup>42</sup>

“**contravention**” includes failure to comply, and

“**contravene**” has a corresponding meaning;

“**the Department**” means the Department of Infrastructure;<sup>43</sup>

“**equipment, fittings or services**”, for a building or a provision about buildings, means any of the following for the building or the buildings the provision is about —

- (a) the provision of any of those things in, or in connection with, the building or buildings;
- (b) any of those things as so provided;
- (c) for equipment or fittings—
  - (i) affixing them to the building or buildings; or
  - (ii) any of those things as affixed to the building or buildings.<sup>44</sup>

“**factory**” has the meaning given by the *Factories and Workshops Act 1909*;

“**the fire authority**” means the Department of Home Affairs;

“**functions**” includes powers and duties;

“**the highway authority**” [Repealed]<sup>45</sup>

“**house**” means a dwelling-house, whether a private dwelling-house or not;

“**modifications**” includes additions, omissions and amendments, and related expressions shall be construed accordingly;

“**notice**” means a notice in writing;

“**planning approval**” means the approval of the Department to the development of land granted pursuant to a development order under Part 2 of the *Town and Country Planning Act 1999*;<sup>46</sup>

“**plans**” includes drawings of any other description, and also specifications or other information in any form;

“**prejudicial to health**” means injurious, or likely to cause injury, to health;

“**premises**” includes buildings, land, easements and hereditaments of any tenure;

“**prescribed**” means prescribed by building regulations;<sup>47</sup>

“**prescribed fee**” [Repealed]<sup>48</sup>

“**relevant period**” has the meaning given by section 11(7);

“**section 18 notice**” means a notice under section 18(1) or (2);

“**the sewerage authority**” means the Isle of Man Water and Sewerage Authority;<sup>49</sup>

“**statutory undertakers**” means persons authorised by an enactment to construct, work or carry on a railway, tramway, gas, electricity, water or other public undertaking;

“**substantive requirements**” [Repealed]<sup>50</sup>

“**surface water**” includes water from roofs;

“**workplace**” does not include a factory, but otherwise it includes any place in which persons are employed otherwise than in domestic service.

(2) A reference in this Act to the construction of a sewer includes a reference to the extension of an existing sewer.

### 36 Application of provisions of 1985 Act

(1) Sections 5 (default powers) and 35 (powers of entry) of the *Local Government Act 1985* apply to this Act.

(2) Sections 35 to 41, 46 to 49 and 57 to 62 of the said Act of 1985 have effect in relation to functions of any Department under this Act as if references therein to a local authority there were substituted references to that Department.

(3) Section 73 (interpretation), except the definition of “building”, of the said Act of 1985 applies to this Act.

### 37 Procedure for building regulations and exemption directions

(1) Before making a building regulation or a direction under section 3(2) (subordinate legislation), the Department must —

(a) prepare a draft of the subordinate legislation;

(b) publish a public notice stating—

(i) that it has prepared draft subordinate legislation;

(ii) where the draft may be inspected; and

(iii) that anyone may make written submissions to it about the draft within a stated period of at least 6 weeks; and

(c) consider any written submissions made to it about the draft during the stated period.

(2) after complying with subsection (1), the Department may make the subordinate legislation with or without changes from the draft.

- (3) the subordinate legislation must be laid before Tynwald as soon as practicable after its making.
- (4) at the second sitting of Tynwald after the subordinate legislation has been laid, the Department must cause one of the following to be done —
  - (a) the moving of a motion to Tynwald that it approves the subordinate legislation;
  - (b) advice to Tynwald that the Department does not wish to have the subordinate legislation approved.
- (5) The subordinate legislation has no effect unless Tynwald approves it under a motion mentioned in subsection (4)(a).<sup>51</sup>

### **37A Procedure for orders about building authorities**

- (1) Before making an order under section 34(2), the Department must consult with the local authority affected by the order.
- (2) The order has no effect unless it is approved by Tynwald.<sup>52</sup>

### **37B Order about approved documents to be laid before Tynwald**

An order under section 4 must be laid before Tynwald as soon as practicable after it is made.<sup>53</sup>

## **38 Classification of buildings**

[P1984/55/34]

For the purposes of building regulations and of a direction given or instrument made with reference to building regulations, buildings may be classified by reference to size, description, design, purpose, location or any other characteristic whatsoever.

## **39 Transitional provisions, amendments and repeals**

- (1) The transitional provisions in Schedule 3 shall have effect.
- (2) The enactments specified in Schedule 4 are amended in accordance with that Schedule.
- (3) The enactments specified in Schedule 5 are repealed to the extent specified in column 3 of that Schedule.

## **40 Short title and commencement**

- (1) This Act may be cited as the Building Control Act 1991.
- (2) This Act shall come into operation on such day or days as the Department may by order appoint.<sup>54</sup>



## SCHEDULE 1

### BUILDING REGULATIONS

#### Section 1(3)

1. Building regulations may —
  - (a) provide for particular requirements of the regulations to be deemed to be complied with where prescribed methods of construction, prescribed types of materials or other prescribed means are used in or in connection with buildings,
  - (b) be framed to any extent by reference to a document published by or on behalf of the Department or another person or a body, or by reference to the approval or satisfaction of a prescribed person or body.
  
2. Building regulations may include provision as to —
  - (a) the giving of notices,
  - (b) the deposit of plans of proposed work or work already executed (including provision as to the number of copies to be deposited),
  - (c) the retention by a building authority of copies of plans deposited with it in accordance with the regulations,
  - (d) the inspection and testing of work,
  - (e) the taking of samples.
  
3. Building regulations may provide for requiring a building authority in prescribed circumstances to consult a prescribed person before taking a prescribed step in connection with any work or other matter to which building regulations are applicable.
  
4. Building regulations may provide for the issue by a building authority of certificates to the effect that, so far as the authority has been able to ascertain after taking all reasonable steps in that behalf, the requirements of building regulations as to matters of a prescribed description are satisfied in a particular case, and for such certificates to be evidence (but not conclusive evidence) of compliance with the regulations.
  
- 4A. Building regulations may provide for all or any of the following—
  - (a) that, in prescribed circumstances, a person of a prescribed class or description, must give the building authority for the relevant district a certificate that the requirements of the regulations about matters of a prescribed description have been complied with;
  - (b) the required period for giving the certificates;

- (c) the required form of the certificates;
- (d) the building authority's acceptance of the certificates;
- (e) other steps the building authority must take concerning the certificates;
- (f) that a building authority need not perform a function or exercise a power relating to the subject of a particular certificate required to be given until the certificate has been given to, and accepted by, the building authority;
- (g) that the certificates are admissible in evidence (but not conclusive evidence) of the matters certified.<sup>55</sup>

- 4B (1). Building regulations may provide for all or any of the following –
- (a) a requirement that, for work of a type that is being, or is proposed to be carried out, in prescribed circumstances, a person must be appointed for the work (the “appointed person”);
  - (b) the appointed person's functions for the planning and management of the carrying out of the work to facilitate compliance with the regulations;
  - (c) the description or class of persons who may be appointed;
  - (d) when the appointment must be made;
  - (e) who must make the appointment;
  - (f) that the appointor may, if the appointor is qualified for appointment, appoint himself or herself;
  - (g) ending the appointment and replacing the former appointed person.
- (2) Building regulations may also, in relation to the appointed person's functions, impose duties on persons who are participating, or are to participate, in the carrying out of the work, including, for example –
- (a) a duty to comply with the appointed person's directions; and
  - (b) duties framed by reference to the appointed person's decisions.<sup>56</sup>

5. Building regulations may authorise a building authority to charge prescribed fees for or in connection with the performance of prescribed functions of the authority relating to building regulations.

6. Without prejudice to the generality of section 1(1), building regulations may –
- (a) for any of the purposes mentioned in section 1(1) make provision with respect to any of the following matters –
    - (i) preparation of sites,
    - (ii) suitability, durability, use and reuse of materials and components (including surface finishes),<sup>57</sup>



- (iii) structural strength and stability, including —
  - (a) precautions against overloading, impact and explosion,
  - (b) measures to safeguard adjacent buildings and services,
  - (c) underpinning,
- (iv) fire precautions, including —
  - (a) structural measures to resist the outbreak and spread of fire and to mitigate its effects,
  - (b) services, fittings and equipment designed to mitigate the effects of fire or to facilitate fire-fighting,
  - (c) means of escape in case of fire and means for securing that such means of escape can be safely and effectively used at all material times,
- (v) resistance to moisture and decay,
- (vi) measures affecting the transmission of heat,
- (vii) measures affecting the transmission of sound,
- (viii) measures to prevent infestation,
- (ix) measures affecting the emission of smoke, gases, vapours, fumes, grit or dust or other noxious or offensive substances,<sup>58</sup>
- (x) drainage (including waste disposal units),
- (xi) cesspools and other means for the reception, treatment or disposal of foul matter,
- (xii) storage, treatment, recycling and removal of waste,<sup>59</sup>
- (xiii) installations utilising solid fuel, oil, gas, electricity or any other fuel or power (including appliances, storage tanks, heat exchangers, ducts, fans and other equipment),
- (xiv) water services (including wells and bore-holes for the supply of water) and fittings and fixed equipment associated therewith including, for example, water measuring or monitoring equipment,<sup>60</sup>
- (xv) telecommunications services (including telephones and radio and television wiring installations),
- (xvi) lifts, escalators, hoists, conveyors and moving footways,
- (xvii) plant providing air under pressure,
- (xviii) standards of heating, artificial lighting, mechanical ventilation and air-conditioning and provision of power outlets,

- (xix) open space about buildings and the natural lighting and ventilation of buildings,
- (xx) accommodation for specific purposes in or in connection with buildings, and the dimensions of rooms and other spaces within buildings,
- (xxi) means of access to and egress from buildings and parts of buildings,
- (xxii) prevention of danger and obstruction to persons in and about buildings (including passers-by),
- (xxiii) building security measures, <sup>61</sup>
- (xxiv) measures affecting fuel or power usage, <sup>62</sup>
- (xxv) measuring or monitoring fuel, heat or power supplies, <sup>63</sup>
- (xxvi) composting or other recycling facilities, <sup>64</sup>
- (xxvii) matters connected with, or ancillary to, the above matters.

<sup>65</sup>

- (b) require things to be provided or done in connection with buildings (as well as regulating the provision or doing of things in or in connection with buildings),
- (c) prescribe the manner in which work is to be carried out.

7. (1) Building regulations may be made with respect to –
- (a) alterations and extensions of buildings and of services, fittings and equipment in or in connection with buildings,
  - (b) new services, fittings or equipment provided in or in connection with buildings,
  - (c) buildings and services, fittings and equipment in or in connection with buildings, so far as affected by –
    - (i) alterations or extensions of buildings, or
    - (ii) new, altered or extended services, fittings or equipment in or in connection with buildings,
  - (d) the whole of a building, together with any services, fittings or equipment provided in or in connection with it, in respect of which there are or are proposed to be carried out any operations that by virtue of section 33(6) constitute the construction of a building for the purposes of this paragraph,
  - (e) buildings or parts of buildings, together with any services, fittings or equipment provided in or in connection with them, in cases where the purposes for which or the manner or circumstances in which a building or part of a building is used change or changes in a way that constitutes a material change of use of the building or part within the meaning of the expression “material change of

use” as defined for the purposes of this paragraph by building regulations,

- (f) buildings, parts of buildings or building equipment, fittings or services if the person in occupation of the building or part changes in prescribed circumstances. <sup>66</sup>
- (2) Subject to section 2(2) of this Act, a provision of the building regulations does not apply to a building erected before the provision commenced (an “existing building”). <sup>67</sup>
- (3) However, a provision of the building regulations may apply to an existing building regardless of when it was erected and any law that applied to its erection if the provision —
- (a) is made under subparagraph (1)(a) to (e);
  - (b) is made under subparagraph (1)(f) —
    - (i) for fuel or power conservation; or
    - (ii) for measures to secure, or contribute to, emission prevention or reduction for buildings;
  - (c) requires any person carrying out building work for the existing building to do anything for a purpose mentioned in paragraph (b)—
    - (i) for the building;
    - (ii) for equipment, fittings or services for the building;
  - (d) is for building demolition;
  - (e) is for using recycled items in components or materials; or
  - (f) is for re-using components or materials. <sup>68</sup>
- (4) In this paragraph —
- “building work”, for an existing building, means any —
- (i) construction work for the building; or
  - (ii) work for equipment, fittings or services for the building;
- “components or materials” includes surface finishes;
- “emissions”, for buildings, means emissions of fumes, gases, smoke or vapours, whether or not from the buildings;
- “using”, recycled items in components or materials, means producing them from, or incorporating them into, the items, in whole or part. <sup>69</sup>

8. Building regulations may authorise a building authority, subject to and in accordance with the regulations, to fix by means of schemes and to recover such charges for or in connection with the performance of its functions relating to building regulations as it may determine in accordance with principles prescribed by the regulations.

9. Building regulations may —
- (a) provide for a provision thereof to apply generally, or in a particular area, and
  - (b) make different provision for different areas.
10. Building regulations may repeal, amend or modify —
- (a) any provision of section 12, or
  - (b) any provision of an enactment passed or made before the passing of this Act, or
  - (c) any byelaw (whenever made) under any enactment,
- if it appears to the Department that it is inconsistent with, or is unnecessary or requires alteration in consequence of, any provision contained in or made under any enactment relating to building regulations.

## SCHEDULE 2

### RELAXATION OF BUILDING REGULATIONS FOR EXISTING WORK

#### Section 7(3)

#### *Application of Schedule*

1. This Schedule applies to a direction under section 6 that will affect the application of building regulations to work that has been carried out before the giving of the direction.

#### *Cases where no direction may be given*

2. The Department shall not give a direction to which this Schedule applies —
- (a) if the Department has, before the making of the application for the direction, become entitled under section 18(3) to pull down, remove or alter the work to which the application relates, or
  - (b) if, when the application is made, there is in force an injunction or other direction given by a court that requires the work to be pulled down, removed or altered.

#### *Suspension of certain provisions while application pending*

3. (1) Subject to the following provisions of this Schedule, after the making of an application for a direction to which this Schedule applies, and until the application is withdrawn or finally disposed of, no section 18 notice shall be given as regards the work to which the application relates on the ground that it contravenes the requirement to which the application relates.

(2) If an application for a direction to which this Schedule applies is made less than 12 months after the completion of the work to which the application relates, section 18(4) does not prevent the giving of a notice as regards that work at any time within a period of 3 months from the date on which the application is withdrawn or finally disposed of.

(3) If an application for a direction to which this Schedule applies is made after a section 18 notice has been given on the ground that the work to which the application relates contravenes the requirement to which the application relates (not being an application prohibited by paragraph 2), section 18(3) has effect in relation to that work as if for the reference to the period there mentioned there were substituted a reference to a period expiring 28 days after the application is withdrawn or finally disposed of, or such longer period as the High Bailiff may allow.

(4) Subject to sub-paragraph (5), if an application for a direction to which this Schedule applies is made after any person has, in consequence of the carrying out of the work to which the application relates in contravention of building regulations, become liable to a penalty continuing from day to day, the daily penalty is not recoverable in respect of any day after the making of the application and before it is withdrawn or finally disposed of.

(5) In a case where an application is withdrawn or is finally disposed of without any direction being given, the Department may order that the daily penalty is not recoverable in respect of any day during such further period not exceeding 28 days as may be specified in the order.

## SCHEDULE 3

### TRANSITIONAL PROVISIONS

Section 39(1)

#### PART I – BUILDING REGULATIONS

##### *Building byelaws*

1. (1) Any building byelaw in force immediately before the relevant day shall after the relevant day continue to apply in relation to —

- (a) plans which, in accordance with building byelaws, were deposited with a byelaw authority before the relevant day;
- (b) work carried out in accordance with plans deposited before the relevant day, with or without any departures or deviations from those plans; and
- (c) work carried out and completed before the relevant day.

(2) Except as provided by sub-paragraph (1), and subject to section 15(2) of the *Interpretation Act 1976*, all building byelaws shall be repealed on the relevant day.

*Relaxation of byelaw requirements*

2. (1) Subject to the following provisions of this paragraph, a building authority may, on an application made on or after the relevant day by any person and with the consent of the Department, give a direction dispensing with or relaxing any requirement of building byelaws.

(2) Sections 7 and 8 and Schedule 2 shall apply in relation to an application or direction under this paragraph as if —

- (a) references to building regulations included references to building byelaws, and
- (b) the application or direction were an application or direction under section 8.

(3) An application to suspend, alter, relax or dispense with the requirements of building byelaws under section 3 of the 1950 Act, and an appeal against the refusal of a byelaw authority to suspend, alter, relax or dispense with such requirements under section 3A of that Act, which is pending immediately before the relevant day shall have effect on and after the relevant day as if it were an application under sub-paragraph (1) to relax the corresponding requirements of building regulations.

(4) Where under the proviso to section 3 of the 1950 Act notice of any proposed relaxation or dispensation has been given before the relevant day, no notice need be published or given under section 10 as regards that relaxation or dispensation.

*Building authorities*

3. (1) Any order under section 13(2) of the 1950 Act in force immediately before the relevant day shall be deemed to have been made under section 34(2).

(2) Section 37(2) shall apply, and section 37(1) shall not apply, to an order made under section 34(2) before the relevant day which is declared to be made for the purpose of re-enacting any orders referred to in sub-paragraph (1).

*Amendments etc.*

4. The amendments and repeals made by Schedules 4 and 5 shall not apply so as —

- (a) to exclude from any enactment any reference to building byelaws as in force before the relevant day, or as continued in force by this Part; or
- (b) to substitute, in relation to any time before the relevant day, a reference to a building authority for a reference to a byelaw authority, or a reference to any provision of the 1950 Act for the corresponding provision of this Act.

*Interpretation*

5. In this Part —
- “**the 1950 Act**” means the *Local Government (Building Byelaws) Act 1950*;
- “**building byelaws**” has the same meaning as in the 1950 Act;
- “**the relevant day**” means the day on which the first building regulations come into operation.

**PART II – CONTROL OF DEMOLITION***Notice of intended demolition*

6. (1) Section 26 shall not apply, and any demolition byelaw shall after commencement continue to apply, in relation to any demolition, notice of which has been given before commencement to a local authority in accordance with the byelaw.
- (2) Except as provided by sub-paragraph (1), and subject to section 15(2) of the *Interpretation Act 1976*, all demolition byelaws shall be repealed on commencement.

*Notice by Department about demolition*

7. In relation to a demolition referred to in paragraph 6(1), the reference in section 27(2) to a notice under section 26 shall be construed as a reference to a notice under the demolition byelaw in question.

*Interpretation*

8. In this Part —
- “**commencement**” means the day on which section 26 comes into operation;
- “**demolition byelaw**” means a byelaw in force immediately before commencement and requiring notice of any demolition or intended demolition to be given to a local authority.

**SCHEDULE 4****AMENDMENT OF ENACTMENTS**

## Section 39(2)

[Sch 4 amended by Fire Precautions (Amendment) Act 1992 Sch 3, and amends the following Acts —

Fire Precautions Act 1975 q.v.

Housing Improvement Act 1975 q.v.

Church Act 1979 q.v.

Rating and Valuation (Amendment) Act 1981 q.v.  
Public Health Act 1990 q.v.]

*General*

1. Any reference in any statutory provision, deed, contract or other instrument to building byelaws shall, unless the context otherwise requires, be construed, in relation to any time after the coming into operation of the first building regulations, as a reference to building regulations.

## **SCHEDULE 5**

### **ENACTMENTS REPEALED**

Section 39(3)

[Sch 5 repeals the following Acts wholly –

Local Government (Building Byelaws) Act 1950

Building Byelaws (Supplementary Provisions) Act 1975

and the following Acts in part –

Local Government Consolidation Act 1916

Fire Precautions Act 1975

Local Government (Miscellaneous Provisions) Act 1976

Fines Act 1986

Highways Act 1986

Statute Law Revision Act 1989.]



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

- 
- <sup>1</sup> Para (d) inserted by Building Control (Amendment) Act 2011 s 3.
- <sup>2</sup> Para (e) inserted by Building Control (Amendment) Act 2011 s 3.
- <sup>3</sup> Para (f) inserted by Building Control (Amendment) Act 2011 s 3.
- <sup>4</sup> Subs (1) amended by Building Control (Amendment) Act 2011 s 3.
- <sup>5</sup> Subs (2) substituted by Building Control (Amendment) Act 2011 s 3.
- <sup>6</sup> Subs (3) substituted by Building Control (Amendment) Act 2011 s 3.
- <sup>7</sup> Subs (1) amended by Building Control (Amendment) Act 2011 s 4.
- <sup>8</sup> Para (a) amended by Building Control (Amendment) Act 2011 s 4.
- <sup>9</sup> Para (b) amended by Building Control (Amendment) Act 2011 s 4.
- <sup>10</sup> Para (c) amended by Building Control (Amendment) Act 2011 s 4.
- <sup>11</sup> Subs (2) amended by Building Control (Amendment) Act 2011 s 4.
- <sup>12</sup> Subs (1) amended by Building Control (Amendment) Act 2011 s 5.
- <sup>13</sup> S 11A inserted by Sewerage Act 1999 s 38.
- <sup>14</sup> Subs (3) substituted by SD155/10 Schs 5 and 11.
- <sup>15</sup> S 17A inserted by Building Control (Amendment) Act 2011 s 6.
- <sup>16</sup> Subs (4) substituted by Building Control (Amendment) Act 2011 s 7.
- <sup>17</sup> Para (a) substituted by Building Control (Amendment) Act 2011 s 8.
- <sup>18</sup> Subs (2) substituted by Building Control (Amendment) Act 2011 s 8.
- <sup>19</sup> Subs (3) inserted by Building Control (Amendment) Act 2011 s 8.
- <sup>20</sup> Subs (4) inserted by Building Control (Amendment) Act 2011 s 8.
- <sup>21</sup> Subs (5) inserted by Building Control (Amendment) Act 2011 s 8.
- <sup>22</sup> Subs (6) inserted by Building Control (Amendment) Act 2011 s 8.
- <sup>23</sup> Para (a) substituted by Building Control (Amendment) Act 2011 s 9.

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- <sup>24</sup> Para (b) substituted by Building Control (Amendment) Act 2011 s 9.
- <sup>25</sup> Para (c) inserted by Building Control (Amendment) Act 2011 s 9.
- <sup>26</sup> Subs (3) repealed by Building Control (Amendment) Act 2011 s 9.
- <sup>27</sup> S 24 substituted by Public Health (Amendment) Act 2000 s 9. Subs (4) amended by Local Government (Miscellaneous Provisions) Act 2001 s 5.
- <sup>28</sup> Subs (5) inserted by Building Control (Amendment) Act 2011 s 9.
- <sup>29</sup> S 24A inserted by Building Control (Amendment) Act 2011 s10.
- <sup>30</sup> Subs (1) repealed by SD155/10 Schs 5 and 11.
- <sup>31</sup> S 25 amended by SD155/10 Schs 5 and 11. Subs (2) amended by SD155/10 Schs 3, 5 and 11.
- <sup>32</sup> Subs (3) substituted by Public Health (Amendment) Act 2000 Sch.
- <sup>33</sup> Para (c) repealed by SD155/10 Schs 5 and 11.
- <sup>34</sup> Subs (3) amended by SD155/10 Sch 11.
- <sup>35</sup> Para (a) amended by Water Act 1991 Sch 8.
- <sup>36</sup> Subs (6A) inserted by Public Health (Amendment) Act 2000 Sch.
- <sup>37</sup> Subs (7) amended by Public Health (Amendment) Act 2000 Sch.
- <sup>38</sup> Subs (8) repealed by Public Health (Amendment) Act 2000 Sch.
- <sup>39</sup> Definition of “the sewerage authority” repealed by Sewerage Act 1999 Sch 4.
- <sup>40</sup> Subs (3) repealed by Building Control (Amendment) Act 2011 s 11.
- <sup>41</sup> Para (c) inserted by Building Control (Amendment) Act 2011 s 12.
- <sup>42</sup> Definition of “building regulations” inserted by Building Control (Amendment) Act 2011 s 13.
- <sup>43</sup> Definition of “the Department” amended by SD155/10 Sch 5.
- <sup>44</sup> Definition of “equipment, fittings or services” inserted by Building Control (Amendment) Act 2011 s 13.
- <sup>45</sup> Definition of “the highway authority” repealed by SD155/10 Sch 5.
- <sup>46</sup> Definition of “planning approval” amended by Town and Country Planning Act 1999 Sch 9.
- <sup>47</sup> Definition of “prescribed” amended by Public Health (Amendment) Act 2000 Sch and the amendment to be deemed always to have had effect.
- <sup>48</sup> Definition of “prescribed fee” repealed by Public Health (Amendment) Act 2000 Sch and the amendment to be deemed always to have had effect.
- <sup>49</sup> Definition of “the sewerage authority” inserted by Sewerage Act 1999 Sch 4 and amended by SD155/10 Sch 9.
- <sup>50</sup> Definition of “substantive requirements” repealed by Building Control (Amendment) Act 2011 s 13.
- <sup>51</sup> S 37 substituted by Building Control (Amendment) Act 2011 s14.
- <sup>52</sup> S 37A inserted by Building Control (Amendment) Act 2011 s14.
- <sup>53</sup> S 37B inserted by Building Control (Amendment) Act 2011 s 14.
- <sup>54</sup> ADO (ss 26 to 31, 33(1) and (2), 35, 36, 39(1) (so far as it relates to Part II of Sch 3), 40, Part II of Sch 3) 18/2/1992 (GC95/92 as amended by GC178/92); (remainder of Act) 1/7/1992 (GC199/92).

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- <sup>55</sup> Para 4A inserted by Building Control (Amendment) Act 2011 s 15.
- <sup>56</sup> Para 4B inserted by Building Control (Amendment) Act 2011 s 15.
- <sup>57</sup> Item (ii) amended by Building Control (Amendment) Act 2011 s15.
- <sup>58</sup> Item (ix) amended by Building Control (Amendment) Act 2011 s 15.
- <sup>59</sup> Item (xii) amended by Building Control (Amendment) Act 2011 s 15.
- <sup>60</sup> Item (xiv) amended by Building Control (Amendment) Act 2011 s 15.
- <sup>61</sup> Item (xxiii) substituted by Building Control (Amendment) Act 2011 s 15.
- <sup>62</sup> Item (xxiv) inserted by Building Control (Amendment) Act 2011 s 15.
- <sup>63</sup> Item (xxv) inserted by Building Control (Amendment) Act 2011 s 15.
- <sup>64</sup> Item (xxvi) inserted by Building Control (Amendment) Act 2011 s 15.
- <sup>65</sup> Item (xxvii) inserted by Building Control (Amendment) Act 2011 s 15.
- <sup>66</sup> Para (f) inserted by Building Control (Amendment) Act 2911 s 15.
- <sup>67</sup> Subs (2) substituted by Building Control (Amendment) Act 2911 s 15.
- <sup>68</sup> Subs (3) inserted by Building Control (Amendment) Act 2911 s 15.
- <sup>69</sup> Subs (4) inserted by Building Control (Amendment) Act 2911 s 15.