

# Building Regulations - Client Guide

Why it matters | Safety first | Fix or insure?

## Enforcement Notices?

Local authorities do not tend to use formal enforcement, but prefer to persuade the owner to carry out the work, and even then only in cases where there is a serious risk of collapse of a building, or injury, or threat to life.

The local authority can serve an Enforcement Notice giving the owner 28 days to carry out the required works, failing which the local authority can carry out the work at the owner's cost.

**Enforcement notices can only be served within 12 months of the completion of the building works that are in breach.**

## Injunctions?

In theory the local authority can apply for an Injunction, but this is very rare. There is no time limit for an injunction, but these tend to be reserved for those situations that are urgent and where the cost can be justified by the risk of serious danger to health and safety (for example, where a nightclub or cinema is at risk of fire).

## Criminal prosecutions?

A local authority may prosecute contraventions in the magistrates' court. Prosecutions are relatively rare and generally brought only for flagrant or wilful breaches.

The time limit for prosecution depends on the date of the breach, but for breaches after 22/09/2008 the prosecution must be brought **within 6 months of the breach being discovered, and within 2 years of completion of the works that are in breach.**

Most breaches are therefore out of time, and it will be too late for the local authority to take action, even if they have the staff and budget to take action.



## What are the Building Regulations?

The Building Regulations set minimum standards for the design and construction and alterations to virtually every building. This is to ensure the health and safety of people in or around those buildings.

They also include requirements to ensure that fuel and power is conserved, and that facilities are provided for people (including those with disabilities) to access and move around inside buildings.

## Interaction with planning control

For many types of building work planning permission will **also** be required. For other building work, such as internal alterations, Buildings Regulations approval will probably be needed - but planning permission may not be needed.

## What types of works are covered?

Ordinary building work, new buildings, internal or external alterations, or installing drains or other services will be dealt with by either the appropriate local authority, or by an independent building control firm's "Approved Inspectors". The GOV.UK Planning Portal at <https://www.planningportal.co.uk> has many useful interactive guides to help owners decide whether building regulations approval is needed for a wide range of common projects.

However, under the FENSA scheme an approved installer of replacement windows and conservatories is authorised to issue a certificate that the works comply with building regulations. Similarly, when gas boilers (and similar) are installed they are certified by a registered Gas Safe engineer.

## What enquiries do we make for you?

The standard conveyancing enquiries ask about any building works, window replacements, conservatories, and so on. The seller is asked to provide copies of all planning permissions, building regulation consents, double-glazing FENSA certificates, Gas Safe certificates and approvals, but they may have lost them.

We may ask them to obtain replacement copies from the local authority. Our local search may also reveal the existence of some consents and approvals, but may not reveal all double glazing FENSA certificates or Gas Safe certificates issued.

**You should always get the advice of a qualified surveyor or other suitable expert in every case where there is a potential breach of building regulations**





### **‘Regularisation certificates’**

It is also possible to apply to the local authority for retrospective building regulations approval in cases where the owner didn't get buildings regulations approval for some works that were carried out at the property.

However, this can only be used for work carried out after October 1985.

Also, it can only be obtained from the local authority, not a private building inspector. The local authority's charges for dealing with it will deliberately be higher than it would have been had a proper approval been made at the time of the work. This is to encourage people to make applications at the right time.

If you decide to make an application for a Regularisation Certificate the local authority will need to inspect the works. Not only will this take time but they may also need excavations to be carried out to reveal the foundations, for example. So it isn't likely to be a 'quick fix' in the middle of a conveyancing transaction.

It might also turn out that expensive remedial work is needed before a certificate can be issued.

In general the work will be compared with what was required for building regulations at the time of the work, not current standards, even if the current standards are now higher.



### **What if there are missing consents or approvals?**

The lack of consents or certificates may indicate that the works carried out are structurally unsound, or that consent was refused, or that no application was made for consent at the time.

### **Assess & fix the problem or just get title insurance?**

You have to realise that if you contact the local authority about the problem it is possible that they will consider enforcement action.

Secondly, you won't then be able to get title insurance - as the title insurer will be worried that a claim on a policy is more likely if the local authority is aware of the breach.

Alternatively you could have a structural surveyor or appropriate gas or electrical engineer look at the property and tell you what needs doing to make it safe or structurally secure. Knowing this, you can then decide whether to do the work yourself after you have bought the property, or possibly seek a reduction in the price to help pay for the cost of the work.

### **Is title insurance a complete solution on its own?**

Title insurance has a part to play, but it is only part of managing the risks of, for example, bad quality building work or dangerous gas appliances.

Most title insurance policies will usually cover the cost of defending any enforcement action by the local authority, though terms of policies vary.

However, most local authorities rarely if ever take enforcement except in extreme cases where there is a serious safety issue. They tend to try and persuade the owner to carry out the work voluntarily by pointing out the danger, and voluntary repair work probably won't be covered by a title insurance policy.

In any case it is often too late for the local authority to take action as, for example, an Enforcement Notice has to be served within 12 months of the breach. Often the work in question was completed years ago.

Most importantly, obtaining title insurance will not prevent a defective building falling down, having major structural problems, or occupiers being injured or killed by the collapse of walls, electrocution, carbon monoxide poisoning from badly installed boilers, or house fires where there is no proper fire-escape, or there are no fire doors installed. Sadly, events such as these regularly appear in the news.

Furthermore, if cracks later appear in the building, they may not be covered by your home buildings insurance policy, as it is usually a condition of that policy that the property is kept in a good state of repair.

**Therefore, especially where the issue identified could cause death, injury or structural problems, you should have a qualified surveyor (or other appropriate expert) assess the problem to tell you whether the works are safe or whether remedial work should be carried out. They should be able to give practical advice, and answers or solutions to the problem.**

You can then consider offering the seller a reduced price to meet the cost of the remedial works, or ask them to remedy the problem, or obtain certificates.

**We cannot advise on any of these issues as we are conveyancers, not surveyors. We have no expertise in building construction, or gas or electrical safety.**