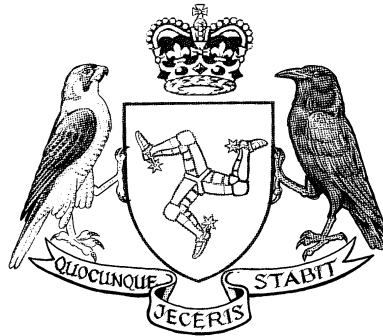


BUILDING CONTROL (AMENDMENT) ACT 2011

Arrangement of Sections

Section

1. Short title
2. Act amended
3. Section 1 (power to make building regulations) amended
4. Section 2 (continuing requirements) amended
5. Section 3 (exemption of particular classes of buildings) amended
6. Section 17A inserted
7. Section 18 (removal or alteration of offending work) amended
8. Section 22 (dangerous buildings) amended
9. Section 24 (ruinous buildings) amended
10. Section 24A inserted
11. Section 33 (meaning of “building”) amended
12. Section 34 (building authorities) amended
13. Section 35 (general interpretation) amended
14. Section 37 (Tynwald approval of regulations etc) substituted
15. Schedule 1 (building regulations) amended



Isle of Man } Signed in Tynwald: 12th July 2011
 in Wit } Received Royal Assent: 12th October 2011
 Announced to Tynwald: 18th October 2011

AN ACT

to amend the Building Control Act 1991 to extend the purposes for which regulations may be made, extend time limits for prosecutions and particular notices; amend sections 22, 24 and 34 and to make other related and consequential amendments to that Act concerning those matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1. The short title of this Act is the Building Control (Amendment) Act 2011. Short title

2. This Act amends the Building Control Act 1991. Act amended
[c.21]

3. (1) Section 1(1) is amended as follows — Section 1
(power to
make building
regulations)
amended
 - (a) for “for any of the purposes of” substitute “make regulations about building design, construction or demolition, buildings or building equipment, fittings or services for any of the following purposes”;
 - (b) in paragraph (b), “and” is repealed;
 - (c) from “make regulations” to “in connection with buildings.” substitute —

“(d) environmental enhancement or protection,

(e) sustainable development,

(f) crime detection or prevention.”.

(2) For section 1(2) and (3), substitute —

“(2) Schedule 1 has effect for the matters about which regulations may provide.

(3) Schedule 1 does not limit subsection (1).”.

Section 2
(continuing
requirements)
amended

4. (1) In section 2(1), after “frustrated”, insert “or for a purpose mentioned in section 1(1)”.

(2) In section 2(2), for “Building regulations”, substitute “Without limiting section 1 or subsection (1), building regulations”.

(3) In section 2(2)(a), from “services” to “in connection with” substitute “equipment, fittings or services for”.

(4) Section 2(2)(b) and (c), from “any services” to “so provided” substitute “the equipment, fittings or services”.

Section 3
(exemption
of particular
classes of
buildings)
amended

5. In section 3(1), for “services, fittings or equipment” substitute “equipment, fittings or services”.

Section 17A
inserted

6. After section 17, insert —

“Prosecution time limits **17A.** (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.

[c.15]

(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.”.

7. For section 18(4) substitute —

Section 18
(removal or
alteration of
offending work)
amended

“(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.”.

8. (1) For section 22(1)(a) substitute —

Section 22
(dangerous
buildings)
amended

“(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”.

(2) For section 22(2) substitute —

“(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.

(3) However, the conviction does not stop the local authority from carrying out remedial work or recovering its remedial expenses.

[c. 24]

(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.

(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.

(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.”.

Section 24
(ruinous
buildings)
amended

9. (1) For section 24(1)(a) and (b) substitute —

“(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”);

(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

(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.”.

(2) Section 24(3) is repealed.

(3) Section 24, after subsection (4), insert —

“(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.”.

10. After section 24, insert —

Section 24A
inserted

“LGA
provisions
apply for
demolition
notice

24A. (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);

[c.24]

“LGA” means the Local Government Act 1985.”.

Section 33
(meaning of
“building”)
amended

11. Section 33(3) is repealed.

Section 34
(building
authorities)
amended

12. In section 34(2)(b), after “;” insert “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;”.

Section 35
(general
interpretation)
amended

13. Section 35(1) —

(a) the following definitions are inserted alphabetically —

“ “building regulations” means any regulations under this Act;

“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.”; and

(b) the definition “substantive requirements” is repealed.

Section 37
(Tynwald
approval of
regulations
etc)
substituted

14. For section 37, substitute —

“Procedure
for building
regulations
and
exemption
directions

37. (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) an 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).

Procedure
for orders
about
building
authorities

37A. (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.

Order about
approved
documents
to be laid
before
Tynwald

37B. An order under section 4 must be laid before Tynwald as soon as practicable after it is made.”

15. (1) Schedule 1 is amended as follows.

Schedule 1
(building
regulations)
amended

(2) In paragraph 4, insert —

“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.

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.”.

(3) In paragraph 6(a)(ii), for “and use” substitute “, use and reuse”.

(4) In paragraph 6(a)(ix), after “gases”, insert “, vapours,”.

(5) In paragraph 6(a)(xii), after “treatment”, insert “, recycling”.

(6) In paragraph 6(a)(xiv), after “associated therewith” insert “including, for example, water measuring or monitoring equipment”.

(7) In paragraph 6(a)(xxiii) substitute —

- “(xxiii) building security measures;
- (xxiv) measures affecting fuel or power usage;
- (xxv) measuring or monitoring fuel, heat or power supplies;
- (xxvi) composting or other recycling facilities;
- (xxvii) matters connected with, or ancillary to, the above matters.”.

(8) After paragraph 7(1)(e) insert —

- “(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.”.

(9) For paragraph 7(2) substitute —

“(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”).

(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.

(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;

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“using”, recycled items in components or materials,
means producing them from, or incorporating
them into, the items, in whole or part.”.