

Joining forces on enforcement

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Legal provisions are in place to ensure continuity of Building Regulation enforcement between approved inspectors and local authorities, as Andrew Crooks reminds us

I have worked in building control since 1990, and after 17 years in local government enforcing the Building Regulations, I moved on to work at an approved inspector 11 years ago.

During this latter part of my career as a surveyor in private practice, I have worked as an active auditor of private building control bodies (BCBs) for the [Construction Industry Council Approved Inspectors Register](#) (CICAIR), and as an APC chairman and assessor for both RICS and the [Chartered Association of Building Engineers](#) .

In these roles I have asked questions of my colleagues, peers and students about Building Regulation enforcement in the private sector. In answer, I often hear that an approved inspector cannot enforce compliance with the regulations as this is the duty of local authorities only.

Legal mechanism

These answers are half right: the work must be referred back to the local authority for enforcement action to be formalised, but approved inspectors must also follow legal procedures. It is this that has inspired me to write this article.

The legislation that shapes the way BCBs administer their functions comes from the [Building Act 1984](#) , section 91 of which places a duty on local authorities to enforce the Building Regulations in their areas of administration. It is intended that they do so in either one of two ways:

- under the provisions of section 35 of the act, they may take court action against those responsible for building work in respect of any breach of the Building Regulations; and
- they may serve a notice under the provisions of section 36 to request removal or alteration of any works that do not comply with any of the relevant scheduled requirements of the Building Regulations, so as to secure compliance.

However, section 48 of the act suspends local authorities' duty to take any such action when an active initial notice has been served in respect to a development; in other words, they cannot take enforcement action during the time that works are controlled by an approved inspector. So how, during this period, are the relevant Building Regulations effectively enforced?

Duty

To answer this, it is first necessary to explain an approved inspector's duty.

They must follow the administrative provisions in the [Building \(Approved Inspector etc.\) Regulations 2010](#), referred to as the AI Regulations, which state that it is the function of an inspector to take such steps as are reasonable to satisfy themselves, within the limits of professional skill and care, that the controlled works are likely to comply with the relevant requirements from the Building Regulations.

But what happens when controlled works cannot be verified by the approved inspector as likely to be compliant? The act and the AI Regulations both make provision for such an event.

Section 52 of the act deals with cancelling the initial notice, giving three instances when an approved inspector may do so; the suspension of the local authority's duty is then lifted, and it may instigate action in respect to any breach of Building Regulations.

The three instances specified in the act are as follows:

1. the approved inspector becomes or expects to become unable to carry out their function with any aspect of the work;
2. the approved inspector believes any of the work is being carried out in such a way that they are unable adequately to carry out their function; and
3. the approved inspector believes there is a contravention of any provision of the Building Regulations with respect to any of the work.

In any of these circumstances, the approved inspector must cancel the initial notice using a prescribed form, which is given in the AI Regulations' schedules.

Defective work

In the case of point 1, the person responsible for the work may have fallen into contractual dispute with the approved inspector, who has then withheld their service; or, the approved inspector may no longer be able to service the work.

However, I would like to concentrate on points 2 and 3, when an approved inspector witnesses defective work or suspects that work covered up before inspection might be non-compliant.

Although it is relatively uncommon, an approved inspector might not have been informed of works commencing and so not have had the opportunity to inspect them during their initial stages. For whatever reason, critical stages of inspection may also have been missed, such as an excavation before casting the concrete foundation of a building. If this is the case, the building work may have advanced beyond the stage when an approved inspector can form a view of likely compliance.

There is a legal mechanism for approved inspectors to play their part in the enforcement process

If the approved inspector is not able to see exposed works and form such a view, or the builder simply refuses a request to expose the works to allow further inspections to assess

likely compliance, then the approved inspector must cancel the initial notice.

It is wise for an approved inspector to deal with such instances swiftly so that legal process can be followed and the matter can be referred to the local authority quickly. In accordance with the [Building Control Performance Standards](#) (BCPS), the approved inspector should furnish the local authority with enough information that it can take appropriate enforcement action against those responsible for the work.

The BCPS advocate best practice that all BCBs must follow to ensure their service to their clients and the law. The BCPS must be followed by an approved inspector as a condition of their licence to practise from CICAIR, which acts in accordance with the delegation order from the government to approve and regulate inspectors' activities.

Non-compliant work

The third instance in which an initial notice can be cancelled comes about when an approved inspector witnesses work that does not comply with a relevant Building Regulation requirement.

Under such circumstances, the approved inspector must give a contravention notice to the person responsible for the building work. AI Regulation 18 deals with the 'cancellation of initial notice', and offers guidance for the shape of the notice of contravention.

It states that if an approved inspector believes any of the work described in an initial notice contravenes any provision of the Building Regulations, they may give notice in writing to the person carrying out the work, specifying:

- the requirement of the Building Regulations that, in the approved inspector's opinion, has not been fulfilled; and
- the location of the work that contravenes that requirement.

The contravention notice shall inform the person carrying out the work that they have three months, beginning on the day the notice is given, to pull down, remove or alter the contravening work to make it comply with the Building Regulations. If the contravening work is not remedied to comply with the regulations within this three-month period, the approved inspector shall cancel the initial notice, resulting in a reversion of control of the work to the local authority under AI Regulation 19.

On the reversion of work, a local authority may, after giving reasonable notice to the person responsible for this work, request sufficient plans to identify the extent of any non-compliance with the regulations. It may also request that the owner cut into, lay open or pull down so much of the work as prevents it from ascertaining whether any other work complies with the functional requirements. It should be noted that reversion of work previously controlled by an approved inspector is different to a regularisation application.

The wording in AI Regulation 18 is very similar to that given in section 36 of the act, because both are intended to serve the same purpose. This is quite deliberate, as the aim is to achieve continuity of control in the enforcement of Building Regulations between approved inspectors and local authorities.

Through the means that I have described, BCBs are able to work harmoniously to secure the safety of people in and around buildings, by ensuring swift and effective enforcement of

the Building Regulations.

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Further information

- Related competencies include: [Legal/regulatory compliance](#)
- This feature is taken from the [RICS Building Control Journal](#) (November/December 2018)
- Related categories include: [Statutory matters](#)