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BUILDING REGULATIONS FOR CONVEYANCERS

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ABOUT RICHARD SNAPE

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Lecture is aimed at: Property professionals and fee earners involved in both contentious and non-contentious property work

Learning Outcome: To give an increased knowledge of the subject matter. To update on current issues, case law and statutory provisions and to be able to apply the knowledge gained in the better provision of a service to the client.

Satisfying Competency Statement Section: B – Technical Legal Practice

For further information please see <http://www.sra.org.uk/competence>

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CONTENTS

BUILDING REGULATIONS ENFORCEMENT 5

BUILDING REGULATIONS AND COMPLETION CERTIFICATES7

BUILDING REGULATIONS AND GRENFELL9

LEASEHOLDER PROTECTIONS.....10

SOLAR PANELS13

PART P BUILDING REGULATIONS15

OTHER RECENT CHANGES17

BUILDING REGULATIONS ENFORCEMENT

Check that building regulations consent was granted.

The Building Regulations control the methods and materials to be used in the construction of a property to ensure that proper standards are maintained in all new properties. Thus, although enforcement proceedings for breach can now be brought within ten years in England and 1 year in Wales. However, prosecutions can be for up to two years (Housing and Regeneration Act 2008)(s317 Housing and Regeneration Act which amended s35 Building Act 1984), dependent on the type of breach, the lack of building regulations consent in a recently constructed property may suggest that it may not have been constructed to the proper standards and that it may be sensible to advise the client to point this out to his surveyor in order that a proper check on the structure of the property is made. The two year prosecution period is only enforceable against the person who committed the breach and not subsequent purchasers. Under s.36(6) Building Act 1984, the enforcing authority can obtain an injunction for breaches without time limit. However, any injunction must be proportionate to the breach.

Note: Under s36(4) Building Act 1984 the local authority can, within one year of the works, tell the property owner to either remove or pull down the work or build up to standards. In England, under s.39(3) Building Safety Act 2022, on October 1st 2023, the enforcement period was increased to 10 years. The Building Safety Regulator does not think this is retrospective. If they do not comply within 28 days the local authority can pull down or remove the work. This notice can only be served on the owner - unlike s35 prosecutions which may be brought against owner or builder.

Note: In addition, if there is a risk to health and safety, a local authority may obtain an injunction dealing with building regulations breaches without limit for the time period.

S.38 Building Act 1984 has finally been implemented by the Building Safety Act 2022. Anyone who breaches building regulations can be sued by anyone suffering loss. There is a 15 year limitation period.

S.38 **Building Safety Act 2022** has introduced the concept of a compliance notice requiring remedy of contraventions of building regulations or avoiding contraventions. There will also be stop notices preventing work if there is a risk of serious harm. Noncompliance with these will be a criminal offence with a maximum of two years imprisonment.

In England, higher-risk buildings and building control are now within the domain of the Building Safety Regulator. A higher-risk building is one which has at least two dwellings and is either 18 or more metres or seven or more storeys in height. Amongst other things, the accountable person who has an interest in possession in the common parts or an obligation to repair the common parts can not let anyone into residential occupation without having received completion certificates. This provision came into force on April 6th 2023. Higher-risk buildings must also be registered with the Regulator by October 1st 2023.

The Building Safety Regulator is as of October 1st 2023 the regulatory body for higher-risk buildings and responsible for building control. If the building had progressed adequately prior to October 1st so the Local Authority would accept an initial notice or deposit of plans then the local authority will be responsible if by April 6th 2024 the building is sufficiently progressed. For non higher-risk buildings, as of April 6th 2024 then the roll of approved inspectors will be transferred to registered

building control approvers. A person carrying out work must give an initial notice to the approver at least two days prior to the start of work and within five days of the start a commencement notice. The approver may give a rejection notice within four weeks of the commencement notice. At the end, a completion notice must be given that to the best of their knowledge the work complied with building regulations. The approver cannot give a final certificate without this.

In the case of ***Smoke House & Curing Housing, 18 Remus Road, London E3 2NF***, the tribunal decided that a 6-storey building with a communal roof terrace was actually a 7-storey building and a regulator would have to oversee building work. The Government guidance says that a storey must be wholly enclosed, but the tribunal decided that this went against the legislation. In October 2024, the Regulator and the Ministry of Housing stated that the guidance should be followed.

The Welsh government say there are not going to implement these provisions in relation to the occupation stage of higher-risk buildings. Quite separately they intend to introduce a Building Safety (Wales) Bill.

BUILDING REGULATIONS AND COMPLETION CERTIFICATES

The first instance case of **Cottingham v Attey Bower Jones [2000]** although controversial, continues to cause problems. In this case, an extension had been built on ten years prior to the conveyance in the late 1980's. The solicitor raised enquiries and was told that completion certificates were not available. This would be normal as completion certificates were not introduced until between 1992 and 1997 dependent on the locality. A surveyor had failed to spot rising damp in the premises, but at a later stage the surveyor had retired without insurance. This case stated that although local authorities were unlikely to proceed against someone with lack of completion certificates after a year, there was a theoretical possibility of an injunction under the **Building Act 1984**. As a consequence, local authorities may be contacted to obtain retrospective completion certificates if they are available. In spite of standard enquiries such a right may be available in perpetuity.

Cottingham is also authority for the proposition that if an enquiry is made, here as to building regulations approval or lack of completion certificate, a lack of response or a response of "not available" which is not followed up, can give rise to liability for the buyer's solicitor.

Note: If Building Regulations documents are missing then this should be referred to a valuer, in particular in relation to parts of premises which are being used as habitable rooms. A surveyor and/or structural engineer may also be notified. Furthermore, if premises without Building Regulations are being used as habitable rooms any insurance policy may be vitiated.

Note: The 2011 Protocol stated that if the purchaser wished to obtain buildings regulation documentation for works more than twenty years old, then the purchaser would be responsible. This is missing from the 2019 Protocol. Stage 13 of the Protocol states that 'Copies of competent persons certificates are not always required if the existence of the certificate is clear as mentioned in the result of enquiries and noted on the relevant website (such as FENSA).'

EXEMPTIONS FROM BUILDINGS REGULATIONS

Certain buildings are exempt, for example those not frequented by people, greenhouses, agricultural buildings, temporary buildings, ancillary buildings, small detached buildings that with extensions are less than 30 square metres unless used for sleeping accommodation. However, Part P and H (Drainage) may be required.

Conservatories cause problems. They are exempt from building regulations if less than 30 square metres in floor area, at ground level and separated from the main building by external walls, doors or windows. They must also have an independent heating system and be single storey.

Part L exemptions in relation to energy efficiency include e.g. listed buildings and buildings in conservation areas where necessary for the appearance or finish, temporary buildings and stand-alone buildings if less than 15 square metres in area.

BUILDING REGULATIONS AND GRENFELL

Prior to the Grenfell Tower disaster the Welsh Government had already introduced a requirement for sprinkler systems in new residential buildings. In December 2018 similar requirements were introduced in England but only for residential buildings of 30 metres or more in height.

Building (Amendment) Regulations 2018

Building (Amendment) (Wales) Regulations 2019

There is also a ban on various types of combustible cladding in relation to buildings more than 18 metres or more in height. This is not retrospective but is under review. The provisions came into force on 28 November 2018 in England and 10 January 2020 in Wales.

The provisions apply when the building contains one or more dwellings including student accommodation, care homes, sheltered housing, hospitals and dormitories, but excluding hostels, hotels and boarding houses.

The regulations apply to external walls and specified attachments although in **R (on the application of the British Blind and Shutter Association) v The Secretary of State for Housing, Communities and Local Government [2019] EWHC 3162** judicial review was successful against the Secretary of State in removing blinds, shutters, awnings and canopies from the regulations. Attached solar panels and balconies still come within the regulations.

The **Building (Amendment) (England) Regulations 2022** were laid before Parliament on 1 June 2022 and came into force on 1 December 2022.

They will:

- Include hotels, hostels and boarding houses within the cladding ban.
- Ban the type of metal composite material used at Grenfell in external walls of all new buildings and buildings undergoing works regardless of height or use.
- Bring curtains and slats of solar shading devices within the ban with a limited exemption for ground floor awnings.

There are also amendments to Approved Document B adding guidance for external walls and balconies for residential buildings between 11 and 18 metres.

LEASEHOLDER PROTECTIONS

Building Regulations and Responsible Actors

In relation to removal of cladding on buildings 18 metres or more in height, this should be covered by the Government's Building Safety Fund. For cladding removal on buildings of 11 metres or more in height, the Government has reached agreement with the construction industry that the developers will pay for the removal. If the developer is no longer in existence then a Government "orphan" fund is available. Forty nine builders in England have now agreed to sign a developer remediation contract whereby they will remedy critical fire safety risks. We are still awaiting any information from the Welsh Government. In Wales there is a Welsh building safety fund whereby the Welsh Government will pay for a building safety survey. There is also a Welsh Government Developer Pact whereby nine large developers have agreed to pay for remediation work. The **Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023** came into force on July 4th 2023. Developers must enter into a developer remediation scheme and a developer remediation contract within 60 days. It will be required if they have developed or refurbished residential blocks of 11 metres or more within the 30 years from April 4th 2022. Their principal business must be residential developments and their profits must be at least £10 million per annum for the year ends 2017, 2018 and 2019. If they do not sign the contract they cannot obtain planning permission for 10 or more residential units or 0.5 of a hectare in any development. If they have already obtained planning permission they cannot obtain building control approval unless innocent third parties are adversely affected, for instance the contracts have already been exchanged.

SEPTIC TANKS

Septic tanks and treatment plants will always need building regulations. For a new installation then it is expected that the sewer be connected to a public sewer if there is a public sewer within 30 metres.

If more than one property is being built, then the 30 metres distance will be multiplied by the number of dwellings.

As of 1 January 2012 in Wales, all tanks must be registered with Natural Resource Wales with an exemption or permit.

In England most domestic tanks will not need to be registered. However, there are three exceptions.

If the tank is within 50 metres of a drinking supply such as a well or borehole; where there is a discharge of more than 2m³ a day or where the discharge is within a Zone 1 ground water protection zone. In Wales registration should have occurred.

Note: Regardless of registration, maintenance records should be kept in relation to the tank and TA6 Enquiries ask for these to be provided to the buyer.

Note: That implementation of these provisions in England was put on hold in August 2011. However, they came into force in Wales on 1 January 2012.

On 9th October 2014 the Environment Agency announced results of their consultation and draft regulations will be produced for implementation on 1st January 2015. As of 1st January 2015 large septic tanks discharging more than 2m³ of waste a day will need to be registered with a discharge permit costing £125. Small tanks will not need to be registered with an exemption but will need a discharge permit if in a zone 1 water protection zone area or within 50m of a drinking supply or if the discharge is above the low water mark. Tanks in areas of outstanding natural beauty will not need to be registered. None registration is a criminal offence although the Environment Agency intend to be lenient and educate property owners rather than prosecute.

The provisions came into force in England on 1st January 2015. New tanks in designated areas will need to be registered and obtain a permit but not existing tanks. The number of designated areas has been reduced. Larger tanks will still require a permit.

In England the General Binding Rules require any septic tank which drains into a water course to be replaced as soon as is reasonably practicable. This is reflected in the TA6 enquiries. It is suggested that a drainage report may be required to find this out.

THE WATER INDUSTRY (SCHEMES FOR ADOPTION OF PRIVATE SEWERS) REGULATIONS 2011

These came into force on 1 July 2011. On 1 October 2011 all private lateral drains outside the curtilage of the premises became adopted, as will any shared sewers within private premises. The Crown may opt out.

Private pumping stations and private surface water drains which run into a watercourse went into public ownership by 1 October 2016. The Water Authority will require a build over agreement and there must be compliance with Part H4 of the Building Regulations if a building is to be built within three metres of a public sewer.

Note: For residential properties any building should not be within three metres of a drain or sewer without building regulations. If it is a public sewer, then they will also require build over agreements from the utility. It is unclear what the situation is for buildings which pre-dated the adoption of sewers in 2011 but the utilities state that if building regulations were in existence they would carry out any maintenance work and make good any damage at their own expense. If building regulations were required and were not in existence then the utility could charge the owner.

SOLAR PANELS

Planning Permission

Solar panels on domestic premises are within General Permitted Development, as are, since April 2012, solar panels on non-domestic premises.

For commercial properties permitted development exists if the installation is connected to the business use and the external appearance of the building is not materially affected. For office buildings there will only be permitted development for the ground floor. Generally solar panels must not materially affect the amenity within the locality. Some local authorities e.g. Bury Borough Council have required removal of solar panels because of nuisance caused by glare.

Note: Exceptions to Permitted Development include where an Article 1 Paragraph 4 Direction applies or where a condition of planning permission bans Permitted Development. Listed buildings will require listed building consent as will panels within the curtilage of the listed building (which will not usually include paddocks and fields). If in a conservation area, National Park, or World Heritage Site the panels should not be visible from the highway or watercourse.

All solar installations are subject to the following conditions:

- Panels on a building should be sited, so far as is practicable, to minimise the effect on the appearance of the building.
- They should be sited, so far as is practicable, to minimise the effect on the amenity of the area.
- When no longer needed for microgeneration they should be removed as soon as possible.

Roof and Wall Mounted Solar Panels

The following limits apply to roof and wall mounted solar panels:

- Panels should not be installed above the ridgeline and should project no more than 200mm from the roof or wall surface.
- If your property is a listed building installation is likely to require an application for listed building consent, even where planning permission is not needed.
- Wall mounted only - if your property is in a conservation area, or in a World Heritage Site, planning consent is required when panels are to be fitted on the principal or side elevation walls and they are visible from the highway. If panels are to be fitted to a building in your garden or grounds, they should not be visible from the highway.

Standalone Solar Panels

The following limits apply to standalone solar panels:

- Should be no higher than four metres
- Should be at least 5m from boundaries
- Size of array is limited to 9sq m or 3m wide and 3m deep
- Should not be installed within boundary of a listed building
- In the case of land in a conservation area or in a World Heritage Site it should not be visible from the highway.
- Only one stand alone solar installation is permitted.

Solar Photo Voltaic Panels

The installation of Solar PV panels is work controlled under the Building Regulations

Building Regulations

The following Regulations may apply to an installation:

- Part A – Structure
- Part B - Fire Safety
- Part C - Resistance to Moisture
- Part P - Electrical Installation

Method of demonstrating compliance with the Building Regulations:

Many installers of Solar PV systems are registered with a Competent Person Scheme (CPS). Provided that the installer is registered with a CPS which covers all relevant parts of the Building Regulations as detailed above (you must confirm this with your installer), then the installer can self-certify the work as complying with the Regulations. He must then notify his registered CPS body who in turn should notify the Local Authority of the installation.

If the installer is not registered with a CPS, or you are doing the work yourself, then you will need to submit an application for Building Regulation Consent (either as a Building Notice or a Full Plans Application) and show how you intend to comply with all the relevant Building Regulations. The Building Control Officer may inspect the work as it progresses and may require further information to justify what you have done or ask for work to be altered. When satisfied that the work complies with the Regulations, a Completion Certificate will be issued.

Income from Solar Panels

Solar PV, or photovoltaic, panels are a way of households generating electrical energy to run their appliances from solar power. This can be used to power the homes electrical appliances. Any excess power produced can be sold back to the national grid. Installation of residential solar panels by a MCS (Microgeneration Certification Scheme) approved supplier creates costs reductions and two revenue streams.

Firstly there is a reduction in bills for electricity as the solar electricity produced is free. The installation generates income by a government schemes known as Feed In Tariffs (FITs) and by the resale of excess electricity produced to the national grid, known as the generation tariff.

Restrictive covenants

There may be breach of consent to plans and alterations covenants and, possibly, breach of non-business user covenants especially where the roof space has been leased out. If leasehold, there may also be breach of the covenants of the lease.

Re Nos 11 and 27 Parklands View Sheffield 2011 EW LVT

The case involved a 200-year lease and whether placing solar panels on the roof was a breach of leasehold covenants. To some extent the decision depends on its facts. Installing solar panels amounted to a breach of an alteration covenants. Contrast **Bickmore v Dimmer 1903 1 Ch 158** where installation of a clock on the outside of a shop was not a breach. However, the landlord could not unreasonably refuse consent to the solar panels. See also **Mahon v Sims [2005] 3 EGLR 57**: Consent to alteration covenant is always subject to an implied test of reasonableness.

Nuisance and Annoyance

Whether there is a breach of such a covenant amounts to an objective test depending on the fact; and there was held to be no breach here. Contrast **Davies v Dennis [2009] EWCA 1081** where building of an extension which blocked river views was held to be a breach.

Buildings Insurance

Buildings insurance may be vitiated if the insurer is not notified.

PART P BUILDING REGULATIONS

The provisions came into force on 1 January 2005. The relevant provisions are thus. The provisions apply to dwellings, including common parts and shared amenities and also to mixed business/residential properties with a common supply.

Notification of work

0.6 The requirements apply to all electrical installation work.

When necessary to involve building control bodies

0.7 Except in the circumstances outlined in paragraph 0.8 below, notification of proposals to carry out electrical installation work must be given to a building control body before work begins.

When not necessary to involve building control bodies

0.8 It is not necessary to give prior notification of proposals to carry out electrical installation work to building control bodies in the following circumstances: -

- a. the proposed installation work is undertaken by a person who is a competent person registered with an electrical self-certification scheme authorised by the Secretary of State. In these cases, the person is responsible for ensuring compliance with BS 7671: 2001 and all relevant Building Regulations. On completion of the work, the person ordering the work should receive a signed Building Regulations self-certification certificate, and the relevant building control body should receive a copy of the information on the certificate. The person ordering the work should also receive a duly completed Electrical Installation Certificate as or similar to the model in BS 7671. As required by BS 7671, the certificate must be made out and signed by the competent person or persons who carried out the design, construction, inspection and testing work.

OR

- b. The proposed electrical installation work is non-notifiable work of the type described in Table 1 and does not include the provision of a new circuit.
 - i) When the non-notifiable work described in Table 1 is to be undertaken professionally, a way of showing compliance would be to follow BS 7671: 2001 and to issue to the person ordering the work a Minor Electrical Installation Works Certificate as or similar to the model in BS 7671². As required by BS 7671, the certificate must be made out and signed by a competent person in respect of the inspection and testing of an installation. The competent person need not necessarily be a person registered with an electrical self-certification scheme, and may be a third party.
 - ii) When the non-notifiable work described in Table 1 is to be undertaken by a DIY worker, a way of showing compliance would be to follow the IEE guidance or guidance in other authoritative manuals that are based on this, and to have a competent person inspect and test the work and supply a Minor Electrical Installation Works Certificate. The competent person need not necessarily be registered with an electrical self-certification scheme but, as required by BS 7671, must be competent in respect of the inspection and testing of an installation.
 - iii) In any event, non-notifiable works should be drawn to the attention of the person carrying out subsequent work or periodic inspections. A way of doing this would be to supply Minor Electrical Installation Works Certificates covering the additions and alterations made since the original construction of the installation or since the most recent periodic inspection.

Table 1

Work that need not be notified to building control bodies

Work consisting of: -

- I. replacing accessories such as socket-outlets, control switches and ceiling roses
- II. replacing the cable for a single circuit only, where damaged, for example, by fire, rodent or impact
- III. re-fixing or replacing the enclosures of existing installation components
- IV. providing mechanical protection to existing fixed installations

Work that is not in a kitchen or special location and does not involve a special installation and consists of: -

- I. adding lighting points (light fittings and switches) to an existing circuit
- II. adding socket-outlets and fused spurs to an existing ring or radial circuit

Table 2

Special locations and installations

Special locations:

- Locations containing a bath tub or shower basin
- Swimming pools or paddling pools
- Hot air saunas

Special installations:

- Electric floor or ceiling heating system
- Garden lighting or power installations
- Solar photovoltaic (PV) power supply systems
- Small scale generators such as microCHP units
- Extra-low voltage lighting installations, other than pre-assembled, CE-marked lighting sets

Building Regulations: Dwellinghouse and Extensions

From 1 March 2003 a new central heating boiler will have needed a certificate of installation by the contractor (or a Building Control Certificate).

Since 1 January 2005 requirements that certain electrical wiring installed or added to since that date must carry a certificate from a competent electrician that it has been done in accordance with current standards. Exemptions apply to wiring or extra sockets in a dwelling as long as they are not to wet rooms, e.g. bathrooms and kitchens (nor any outside works).

The following are examples of building works which would need Building Regulations:

- Internal alterations such as the removal or part removal of a load bearing wall, joist, beam or chimney breast would need approval.
- A loft conversion.

- Installation of a new lavatory (not just a replacement) which involves a new connection into a soil pipe.
- Conversion of a house into flats.
- Insertion of cavity wall insulation.

Replacement of all or part (more than 25%) of the roof covering e.g. tiling

Other recent changes

Woodburners

The flue for a woodburner requires building regulations, and also requires a carbon monoxide detector installation nearby for new installations since October 2015.

The Building Regulations, etc, (Amendment) (England) Regulations 2021

These will change Part L and energy efficiency. They came into force on 15 June 2022. It will also change the method of assessing energy performance.

Buildings Regulations (Amendment) (No 2) Regulations 2021

These came into force on 15 June 2022 and require all new residential and non-residential buildings and major renovations to have electric vehicle charging points.

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