

SCHEDULES

SCHEDULE 6

Section 61.

AMENDMENTS OF ENACTMENTS RELATING TO BUILDING REGULATIONS

PART I

AMENDMENTS

Amendments of Public Health Act 1936

- 1 In section 64 of the 1936 Act (passing or rejection of plans)—
- (a) for subsection (3) substitute—
- “(3) Where plans of any proposed work deposited with a local authority are rejected in pursuance of the preceding provisions of this section, the person by whom or on whose behalf they were deposited may appeal against the rejection to the Secretary of State within the prescribed time and in the prescribed manner; and where the rejection results wholly or partly from the fact that a person or body whose approval or satisfaction in any respect is required by the regulations has withheld approval or not been satisfied, an appeal under this subsection may be brought on (or on grounds which include) the ground that the person or body in question ought in the circumstances to have approved or been satisfied in that respect.”; and
- (b) subsection (4) shall cease to have effect.
- 2 In section 65 of the 1936 Act (power to require removal or alteration of work not in conformity with building regulations etc.)—
- (a) in subsection (1), after "therein" insert " and additions thereto and to execute such additional work in connection therewith ";
- (b) after subsection (2) insert as subsection (2A)—
- “(2A) Where a local authority have power to serve a notice under subsection (1) or (2) above on the owner of any work, they may in addition or instead serve such a notice on one or more of the following persons, namely the occupier and any builder or other person appearing to the authority to have control over the work.”;
- (c) in subsection (3), after " therein " insert " and additions thereto and execute such additional work in connection therewith " , and at the end add as a proviso—
- “Provided that where a notice under subsection (1) or (2) above is given to two or more persons in pursuance of subsection (2A) above, then—

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- (a) if they are given the notices on different dates, the said period of twenty-eight days shall for each of them run from the later or latest of those dates; and
- (b) if the notice is not complied with before the expiration of the said period or such longer period as a court of summary jurisdiction may on the application of any of them allow, any expenses recoverable as aforesaid may be recovered from any of them.”; and
- (d) in subsection (4), for " or subsection (2)" substitute " , (2) or (2A) " , and at the end add as a proviso—

“Provided that, in a case where plans were deposited nothing in this subsection shall be taken to prevent such a notice from being given (before the expiration of twelve months from the completion of the work in question) in respect of anything of which particulars were not required to be shown in the plans.”.

- 3 In section 90 of the 1936 Act (interpretation of Part II of that Act)—
- (a) in subsection (2) (extended meaning, in that Part and building regulations, of references to the erection of a building), for the words from " and, so far " to " those regulations " substitute " except sections 61 to 71 and any other enactment to which section 74(1) of the Health and Safety at Work etc. Act 1974 applies "; and
 - (b) for subsection (3) (meaning of references to deposited plans) substitute—
 - “(3) In this Part of this Act, unless the context otherwise requires.—
 - (a) any reference to the deposit of plans in accordance with building regulations shall be construed as a reference to the deposit of plans in accordance with those regulations for the purposes of section 64 of this Act; and
 - (b) " plans" includes drawings of any other description and also specifications or other information in any form, and any reference to the deposit of plans shall be construed accordingly.”

Amendments of Public Health Act 1961

- 4 In section 4 of the 1961 Act (power to make building regulations)—
- (a) in subsection (2) (power to make different provision for different areas) at the end add " and generally different provision for different circumstances or cases "; and
 - (b) in subsection (6) (penalties for contravening building regulations) after " building regulations" insert " other than a provision designated in the regulations as one to which this subsection does not apply, ", and for " one hundred pounds " and " ten pounds " substitute respectively " £400 " and "£50".
- 5 In section 6 of the 1961 Act (power to dispense with or relax requirements of building regulations)—
- (a) in subsection (1), add at the end the words " either unconditionally or subject to compliance with any conditions specified in the direction, being conditions with respect to matters directly connected with the dispensation or relaxation. ";

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- (b) in the proviso to subsection (2), for the words from " shall " onwards substitute " may except applications of any description ";
 - (c) for subsection (6) substitute—
 - “(6) An application by a local authority in connection with a building or proposed building in the area of that authority shall be made to the Secretary of State except where the power of giving the direction is exercisable by that authority.”;
 - (d) after subsection (7), there shall be inserted as subsections (7A) and (7B)—
 - “(7A) If, on an application to the Secretary of State for a direction under this section, the Secretary of State considers that any requirement of building regulations to which the application relates is not applicable or is not or would not be contravened in the case of the work or proposed work to which the application relates, he may so determine and may give any directions that he considers necessary in the circumstances.
 - (7B) A person who contravenes any condition specified in a direction given under this section or permits any such condition to be contravened shall be liable to a fine not exceeding £400 and to a further fine not exceeding £50 for each day on which the offence continues after he is convicted. and”;
 - (e) subsection (8) shall be omitted.
- 6 In section 7 of the 1961 Act (appeal against local authority's refusal to dispense with or relax requirements of building regulations)—
- (a) in subsection (1), after second " relax " insert " or grant such an application subject to conditions ", for " by notice in writing " substitute " in the prescribed manner ", for " one month " substitute " the prescribed period " and for " refusal " substitute " decision on the application ";
 - (b) in subsection (2), for the words from " a period " to " and the local authority " substitute " the prescribed period ";
 - (c) subsections (3) to (6) shall be omitted ; and
 - (d) at the end there shall be added the following subsection:—
 - “(7) Section 6(7A) of this Act shall apply in relation to an appeal to the Secretary of State under this section as it applies in relation to an application to him for a direction under section 6.”.
- 7 For section 8 of the 1961 Act (advertisement of proposal to relax building regulations) substitute—

“8 Opportunity to make representations about proposal to relax building regulations.

- (1) Before the Secretary of State or a local authority give a direction under section 6 of this Act the prescribed steps shall be taken for affording to persons likely to be affected by the direction an opportunity to make representations about it; and before giving the direction the Secretary of State or, as the case may be, the local authority shall consider any representations duly made in accordance with the regulations.
- (2) Building regulations—

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- (a) may make provision as to the time to be allowed for making representations under the preceding subsection ;
 - (b) may require an applicant for such a direction, as a condition that his application shall be entertained, to pay or undertake to pay the cost of publishing any notice which is required by the regulations to be published in connection with the application; and
 - (c) may exclude the requirements of the preceding subsection in prescribed cases.”.
- 8 In section 9(3) of the 1961 Act (consultation with Building Regulations Advisory Committee and other bodies before making building regulations), at the end add " (including in particular, as regards regulations relevant to any of their functions, the National Water Council). ".

PART II

PUBLIC HEALTH ACT 1936 SECTION 65 AND PUBLIC HEALTH ACT 1961 SECTIONS 4, 6 AND 7 AS AMENDED

“The Public Health Act 1936

- 65** (1) If any work to which building regulations are applicable contravenes any of those regulations, the authority, without prejudice to their right to take proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alterations therein and additions thereto and to execute such additional work in connection therewith as may be necessary to make it comply with the regulations.
- (2) If, in a case where the local authority are by any section of this Act other than the last preceding section expressly required or authorised to reject plans, any work to which building regulations are applicable is executed either without plans having been deposited, or notwithstanding the rejection of the plans, or otherwise than in accordance with any requirements subject to which the authority passed the plans, the authority may by notice to the owner either require him to pull down or remove the work, or 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 which they might have made under the section in question as a condition of passing plans.
- (2A) Where a local authority have power to serve a notice under subsection (1) or (2) above on the owner of any work, they may in addition or instead serve such a notice on one or more of the following persons, namely the occupier and any builder or other person appearing to the authority to have control over the work.
- (3) If a person to whom a notice has been given under the foregoing provisions of this section fails to comply with the notice before the expiration of twenty-eight days, or such longer period as a court of summary jurisdiction may on his application allow, the local authority may pull down or remove the work in question, or effect such alterations therein and additions thereto and execute such additional work in connection therewith as they deem necessary, and may recover from him the expenses reasonably incurred by them in so doing:

Provided that where a notice under subsection (1) or (2) above is given to two or more persons in pursuance of subsection (2A) above, then—

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- (a) if they are given the notices on different dates, the said period of twenty-eight days shall for each of them run from the later or latest of those dates ; and
 - (b) if the notice is not complied with before the expiration of the said period or such longer period as a court of summary jurisdiction may on the application of any of them allow, any expenses recoverable as aforesaid may be recovered from any of them.
- (4) No such notice as is mentioned in subsection (1), (2) or (2A) of this section shall be given after the expiration of twelve months from the date of the completion of the work in question, and, in any case where plans were deposited, it shall not be open to the authority to give such a notice on the ground that the work contravenes any building regulation or, as the case may be, does not comply with their requirements under any such section of this Act as aforesaid, if either the plans were passed by the authority, or notice of their rejection was not given within the prescribed period from the deposit thereof, and if the work has been executed in accordance with the plans and of any requirement made by the local authority as a condition of passing the plans:

Provided that, in a case where plans were deposited, nothing in this subsection shall be taken to prevent such a notice from being given (before the expiration of twelve months from the completion of the work in question) in respect of anything of which particulars were not required to be shown in the plans.

- (5) Nothing in this section shall affect the right of a local authority, or of 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 enactment in this Act, but if the work is one in respect of which plans were deposited and the plans were passed by the local authority, or notice of their rejection was not given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the court on granting an injunction shall have power to order the local 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 local authority, if not a party to the proceedings, to be joined as a party thereto.

The Public Health Act 1961

- 4 (1)
- (2) Any provision contained in building regulations may be made so as to apply generally, or in an area specified in the regulations, and the regulations may make different provision for different areas and generally different provision for different circumstances or cases.
 - (3) It shall be the function of every local authority to enforce building regulations in their district.
 - (4) Local authorities shall, in relation to building regulations, have all such functions under sections 64 and 65 of the Public Health Act 1936 (which confer power to pass plans, and to enforce building byelaws) as they have in relation to building byelaws.
 - (5) Building regulations may include such supplemental and incidental provisions as appear to the Secretary of State to be expedient.
 - (6) If a person contravenes or fails to comply with any provision contained in building regulations, other than a provision designated in the regulations as one to which this

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subsection does not apply, he shall be liable to a fine not exceeding £400 and to a further fine not exceeding £50 for each day on which the default continues after he is convicted.

- (7) The power of making building regulations shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 6 (1) Subject to the provisions of this section, if the Secretary of State, on an application made in accordance with the provisions of this Act, considers that the operation of any requirement in building regulations would be unreasonable in relation to the particular case to which the application relates, he may after consultation with the local authority, give a direction dispensing with or relaxing that requirement either unconditionally or subject to compliance with any conditions specified in the direction, being conditions with respect to matters directly connected with the dispensation or relaxation.
- (2) If building regulations so provide as regards any requirement contained in the regulations, the power to dispense with or relax that requirement under subsection (1) of this section shall be exercisable by the local authority (instead of by the Secretary of State after consultation with the local authority):
- Provided that any building regulations made by virtue of this subsection may except applications of any description.
- (3) Building regulations may provide as regards any requirement contained in the regulations that the foregoing subsections of this section shall not apply.
- (4) An application under this section shall be in such formand shall contain such particulars as may be..... prescribed.
- (5) The application shall be made to the local authority and, except where the power of giving the direction is exercisable by the local authority, the local authority shall at once transmit the application to the Secretary of State and give notice to the applicant that it has been so transmitted.
- (6) An application by a local authority in connection with a building or proposed building in the area of that authority shall be made to the Secretary of State except where the power of giving the direction is exercisable by that authority.
- (7) The provisions of Part I of the First Schedule to this Act shall have effect as regards any application made under this section for a direction which will affect the application of building regulations to work which has been carried out before the making of the application.
- (7A) If, on an application to the Secretary of State for a direction under this section, the Secretary of State considers that any requirement of building regulations to which the application relates is not applicable or is not or would not be contravened in the case of the work or proposed work to which the application relates he may so determine and may give any directions that he considers necessary in the circumstances.
- (7B) A person who contravenes any condition specified in a direction given under this section or permits any such condition to be contravened shall be liable to a fine not exceeding £400 and to a further fine not exceeding £50 for each day on which the offence continues after he is convicted.
- 7 (1) If a local authority refuse an application to dispense with or relax any requirement in building regulations which they have power to dispense with or relax, or grant such an application subject to conditions, the applicant may in the prescribed manner appeal

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to the Secretary of State within the prescribed period from the date on which the local authority notify the applicant of their decision on the application.

- (2) If within the prescribed period the local authority do not notify the applicant of their decision on the application, subsection (1) of this section shall apply in relation to the application as if the local authority had refused the application and notified the applicant of their decision at the end of the said period.

.....

- (7) Section 6(7A) of this Act shall apply in relation to an appeal to the Secretary of State under this section as it applies in relation to an application to him for a direction under section 6.”