

HEATBASE Ltd FACTSHEET 17

Failure to carry out work in Compliance with Building Regulations

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We are seeing increased amounts of work being carried out by both registered and unregistered Installers that does not comply with the legal requirements set out in the Building Regulations. Most people that we inform regarding the non-compliance of work either choose not to believe us or decide not to make any form of Complaint to the Installer as they don't think it really matters! Any work carried out since 2002 should have complied with these regulations and standards. Apart from the possibility of having any Insurance claim made void in the event of an incident, there could be other ramifications for both the Installer and the homeowner.

The following has been taken from the Governments Planning Portal Website: -

If you do not follow the building control procedures set out for handling your building work or you carry out building work which does not comply with the requirements contained in the Building Regulations, you will have contravened the regulations.

Prosecution and enforcement notices

A local authority has a general duty to enforce the Building Regulations in its area and will seek to do so by informal means wherever possible. If informal enforcement does not achieve compliance with the regulations the local authority has two formal enforcement powers which it may use in appropriate cases.

First, if a person carrying out building work contravenes the Building Regulations, the local authority may prosecute them in the Magistrates' Court where an unlimited fine may be imposed (sections 35 and 35A of the Building Act 1984). Prosecution is possible up to two years after the completion of the offending work. This action will usually be taken against the person carrying out the work (builder, installer or main contractor).

Alternatively, or in addition, the local authority may serve an enforcement notice on the building owner requiring alteration or removal of work which contravenes the regulations (section 36 of the 1984 Act). If the owner does not comply with the notice the local authority has the power to undertake the work itself and recover the costs of doing so from the owner.

A section 36 enforcement notice cannot be served on you after the expiration of 12 months from the date of completion of the building work. A local authority also cannot take enforcement action under section 36 if the work which you have carried out is in accordance with your full plans application which the authority approved or failed to reject.

An appeal against a section 36 notice may be made to a Magistrates' Court under section 102 of the Building Act.

Where an approved inspector is providing the building control service, the responsibility for checking that the Building Regulations are complied with during the course of your building work will lie with that inspector. They will usually do this by advising you.

However, approved inspectors do not have formal enforcement powers. In a situation where the inspector considers your building work does not comply with the Building Regulations and there is a refusal to bring it into compliance the inspector will cancel the initial notice. If no other approved inspector takes on the work, the building control function will automatically be taken on by your local authority. From this point on, your local authority will also have enforcement powers set out above where it considers this necessary.

Impact on Selling the Property

Notwithstanding the possibility of enforcement action, you should bear in mind that if the local authority or approved inspector considers that building work carried out does not comply with the Building Regulations and it is not rectified, no completion/final certificate will be issued and this is likely to come to light through a local land search enquiry when you wish to sell your property.

Regularisation

Where works are carried out without Building Regulations approval being sought the owner may be prosecuted. However, to facilitate people who wish to have work approved there is a process called Regularisation. A regularisation application is a retrospective application relating to previously unauthorised works i.e. works carried out without Building Regulations consent, started on or after the 11 November 1985.

The purpose of the process is to regularise the unauthorised works and obtain a certificate of regularisation. Depending on the circumstances, exposure, removal and/or rectification of works may be necessary to establish compliance with the Building Regulations.

You are advised to contact your local authority Building Control Service to discuss your individual circumstances before submitting a regularisation application.

It is the owner/householders responsibility to ensure their system is compliant and safe.