

## SCHEDULES

### SCHEDULE 6

Section 56

#### APPEALS AND OTHER DETERMINATIONS

##### *Introduction*

1 The Building Act 1984 is amended as follows.

##### *Transfer from Secretary of State to the regulator*

2 In section 10(6) (procedure where appeal against decision of local authority under section 8) for the words from “to the Secretary of State” to the end substitute “copies of the representations to—

- (a) the regulator, in the case of a local authority for an area in England;
- (b) the Welsh Ministers, in the case of a local authority for an area in Wales.”

3 (1) Section 20 (use of materials unsuitable for permanent building) is amended as follows.

(2) In subsection (5) omit the words from “to the Secretary of State” to the end.

(3) After that subsection insert—

“(5A) The appeal is to be made to—

- (a) the regulator, in the case of action by a local authority for an area in England;
- (b) the tribunal, in the case of action by the regulator;
- (c) the Welsh Ministers, in the case of action by a local authority for an area in Wales.”

4 (1) Section 39 (appeal against refusal to relax building regulations) is amended as follows.

(2) In subsection (1) omit “to the Secretary of State”.

(3) After that subsection insert—

“(1A) The appeal is to be made to—

- (a) the regulator, in the case of a refusal by a local authority for an area in England;
- (b) the tribunal, in the case of a refusal by the regulator;
- (c) the Welsh Ministers, in the case of a refusal by a local authority for an area in Wales.”

(4) Omit subsections (3) to (6).

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- 5 (1) Section 42 (appeal and statement of case to High Court in certain cases) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) Where the Secretary of State gives a decision on an application for a direction under section 8, any of the following may appeal to the High Court against the decision on a point of law—
- (a) the applicant;
- (b) the local authority;
- (c) the registered building control approver.”
- (3) In subsection (1)—
- (a) for “Secretary of State gives” substitute “Welsh Ministers give”;
- (b) for paragraph (b) (not including the “or” at the end) substitute—
- “(b) on an appeal under section 50,”.
- (4) In subsection (2) for paragraph (b) substitute—
- “(b) as regards an appeal under section 50, the person on whose application the appeal was made,”.
- (5) In subsection (3)—
- (a) omit “, reference”;
- (b) after “subsection” insert “(A1) or”;
- (c) in paragraph (a) for “Secretary of State” substitute “appropriate national authority”.
- (6) In subsection (4) for “Secretary of State”, in each place it occurs, substitute “appropriate national authority”.
- (7) Omit subsection (7).
- 6 Omit section 43 (procedure on appeal to Secretary of State on certain matters).
- 7 After that section insert—

**“43A Appeals under sections 20, 39 and 50: England**

- (1) This section applies to an appeal to the regulator or the tribunal made under section 20(5), 39 or 50(2).
- (2) On determining the appeal, the regulator or the tribunal may give any directions it considers appropriate for giving effect to its determination.
- (3) Where the appeal is determined by the regulator, a relevant person may appeal to the tribunal against the regulator’s decision (and subsection (2) applies in relation to this appeal).
- (4) “Relevant person” means—
- (a) the appellant;
- (b) the local authority or registered building control approver.”
- 8 In section 50 (plans certificates) for subsections (2) and (3) substitute—

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- “(2) If a registered building control approver refuses to give a plans certificate on being asked to do so, the person intending to carry out the work may appeal to—
- (a) the regulator, in the case of work to be carried out in England;
  - (b) the Welsh Ministers, in the case of work to be carried out in Wales.”

*Transfer from magistrates’ court to the tribunal: England*

- 9 In the following provisions for “a magistrates’ court” substitute “the appropriate court or tribunal”—
- (a) section 19(4) (use of short-lived materials);
  - (b) section 21(3), (4) and (6) (provision of drainage);
  - (c) section 22(4) (drainage of buildings in combination);
  - (d) section 24(2) (provision of exits etc);
  - (e) section 25(2) and (5) (provision of water supply);
  - (f) section 33(6) (tests for conformity with building regulations);
  - (g) section 36(3) (period for compliance with section 36 notice);
  - (h) section 40(1) (appeal against section 36 notice);
  - (i) section 55(1) (appeal against rejection of certain notices);
  - (j) section 62(2) (disconnection of drain);
  - (k) section 68(3) (erection of public conveniences);
  - (l) section 73(2) (raising of chimney);
  - (m) section 75(2), in both places it occurs, and section 75(3) (cellars etc below subsoil);
  - (n) section 77(1), in both places it occurs (dangerous buildings);
  - (o) section 78(7)(a) (dangerous buildings - emergency measures);
  - (p) section 85(3) (maintenance of entrances to courtyards);
  - (q) section 98 (power to require occupier to permit work);
  - (r) section 102(1) (appeal against notice requiring works);
  - (s) section 103(3) (notification requirement as regards right of appeal);
  - (t) in [Schedule 2, paragraph 3\(3\)](#) (application under section 8).
- 10 In section 7(2)(b) after “court” insert “or tribunal”.
- 11 In section 25(5) after “the court”, in both places it occurs, insert “or tribunal”.
- 12 In section 33(6) after “the court”, in both places it occurs, insert “or tribunal”.
- 13 In section 37(3) for “a court” substitute “the appropriate court or tribunal”.
- 14 In section 40 after “the court”, in each place it occurs, insert “or tribunal”.
- 15 In section 55(2) after “court” insert “or tribunal”.
- 16 In section 62(2) after “the court” insert “or tribunal”.
- 17 In section 64(5)(b) after “court” insert “or tribunal”.
- 18 In section 70(4)(b) after “court” insert “or tribunal”.
- 19 In section 75(2) after “court” insert “or tribunal”.
- 20 In section 77(1) after “court” insert “or tribunal”.

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- 21 In section 78(7)(b) after “court” insert “or tribunal”.
- 22 In section 83(3)(b) after “court” insert “or tribunal”.
- 23 In section 98—
- (a) for “a complaint” substitute “an application or (as the case may be) complaint”;
  - (b) after “court” insert “or tribunal”.
- 24 In section 102(2), (3) and (4) after “court”, in each place it occurs, insert “or tribunal”.
- 25 (1) Section 103 is amended as follows.
- (2) After subsection (1) insert—
    - “(1A) Subsections (2) and (3) apply—
      - (a) where this Act provides for an appeal to the tribunal against a requirement, refusal or other decision of a relevant authority, and
      - (b) in relation to an appeal of a kind mentioned in subsection (1)(a).”
  - (3) In subsection (2)—
    - (a) for “local” substitute “relevant”;
    - (b) after “making of the” insert “application or”.
  - (4) In subsection (3) “local” substitute “relevant”.
  - (5) After that subsection insert—
    - “(4) In this section “relevant authority” means a local authority or the regulator.”
  - (6) In the heading for “magistrates’ court” substitute “appropriate court or tribunal”.
- 26 In section 104 after “court”, in both places it occurs, insert “or tribunal”.
- 27 In section 105 after “court” insert “or tribunal”.
- 28 In [Schedule 2 in paragraph 2\(b\)](#) after “court” insert “or tribunal”.

### *Enforcement*

- 29 After section 105 insert—
- “105A Enforcement of decisions of the First-tier and Upper Tribunal**
- (1) A decision of the First-tier Tribunal or Upper Tribunal made under or in connection with this Act is enforceable with the permission of the county court in the same way as an order of that court.
  - (2) Subsection (1) does not apply to a decision of the First-tier Tribunal or Upper Tribunal ordering the payment of a sum (as to which see section 27 of the Tribunals, Courts and Enforcement Act 2007 (enforcement)).”

### *Appeal: local authority decision not to consider application etc*

- 30 After section 101 insert—

*“Appeal against refusal to consider application etc*

**101A Appeal: refusal to consider application etc on ground is higher-risk building work**

- (1) This section applies where—
  - (a) a local authority for an area in England refuses to consider an application for building control approval, or
  - (b) a local authority refuses to consider an initial notice (within the meaning of section 47) or an amendment notice (within the meaning of section 51A),on the ground that all or part of the work to which the application or notice relates is higher-risk building work.
- (2) The person intending to carry out the work may appeal to the appropriate national authority, before the end of the prescribed period, on the ground that none of the work is higher-risk building work.
- (3) Building regulations may make provision about appeals under this section, including in particular provision—
  - (a) about the making of an appeal;
  - (b) requiring an appellant to notify the local authority of the making of an appeal;
  - (c) imposing duties on the local authority in cases where an appeal is made;
  - (d) for and in connection with the appropriate national authority appointing a person to determine the appeal (including provision conferring functions on that person and providing that their decision is treated as the decision of the appropriate national authority);
  - (e) about the procedure to be adopted in connection with the determination of the appeal.
- (4) The provision that may be made by virtue of subsection (3)(a) includes provision about—
  - (a) the form and content of a notice of appeal;
  - (b) the information and documents that are to accompany a notice of appeal;
  - (c) the way in which a notice of appeal, and anything that is to accompany it, is to be given.
- (5) The decision made on the appeal is final (subject to subsection (6)).
- (6) The appellant or the local authority may, before the end of the prescribed period and with the permission of the High Court, appeal to the High Court against the decision of the appropriate national authority on a point of law.”