

# **Structural safety: Action by inspectors including liaison with local authorities**

## ***Open Government status:***

Fully Open

## ***Target audience***

Construction Division Inspectors, Inspectors in FOD and HID, Local Authority Inspectors enforcing health and safety legislation

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## **Summary**

This OG provides guidance on the action Inspectors should take when dealing with risks to health and safety arising from any structural instability of buildings and related structures they may encounter. Structural instability ranges from a few loose tiles or bricks through to complete instability of the building. (The various legislative definitions of 'building' and 'structure' are given in the table at the start of [Appendix 2.](#))

## **Introduction**

This OG has been prepared with assistance from the Department for Communities and Local Government; Building Standards Division of the Scottish Government; and the Local Authority Building Control national support body.

Structural instability in buildings and other structures can pose serious risk to the health and safety of workers and members of the public. Problems may be identified during inspection activity or they may be brought to the attention of an Inspector. When encountered it is important that these issues are addressed quickly and effectively. Powers under the Health & Safety at Work etc Act 1974 (HSWA) allow an Inspector to require action by a dutyholder but do not allow or fund direct action to remedy a structural concern. Local Authority Building Control (LABC) Officers do have such powers under the relevant Building Act.

This OG provides guidance on the approach Inspectors should take to resolve cases involving structural instability in workplaces including the need to liaise closely with the relevant LABC wherever practicable.

When reading this document the term 'Building Control' (BC) is used throughout for simplicity although the term 'Building Standards' is used in Scotland. The abbreviation 'LA' is used to refer to a Local Authority including a County Council, Unitary Authority, Metropolitan Authority or Borough Council, etc. The abbreviation 'LABC' therefore refers to a public body with full powers under a relevant Building Act and Building Regulations.

## **Action**

Inspectors need to be able to exercise judgement regarding situations involving instability of buildings and structures. If the area involved is isolated and under the

control of a dutyholder who can remedy the situation then action under HSWA may suffice. Where the problem could affect the public and/or workers not involved in correcting the situation then assistance should be sought from the relevant Local Authority Building Control department (LABC) as they have powers to take direct remedial action to bring a situation under control. This may result in joint working or in the matter being handed to the LABC to lead. Written notes of discussions with the LABC should be kept and the outcome confirmed to relevant parties in writing.

Construction Field Teams / Inspectors should maintain arrangements for liaising with the LABCs in their geographic area. This will assist rapid agreement on suitable action between enforcing authorities where work is discovered which compromises the structural stability of all or part of a building or built environment structure. In some LAs dangerous structures may be dealt with by the surveying or the engineering department which may be separate from Building Control.

Inspectors finding matters of structural concern need to be able to form an initial view as to the severity of the structural weakness and the likely risk to those nearby.

Telephone contact with colleagues such as a Construction Specialist Inspector may aid clarity even if their immediate attendance is not possible. The LABC duty officer may also be able to advise by phone and most, especially urban LAs will send a BC Officer to site where needed. Out of hours emergency contact numbers for LABCs are listed in HSE Regional Emergency Plans. LA emergency contact numbers are frequently also listed on their website. Note that not all LAs operate a 24hr call out service.

In cases of immediate public risk – eg potential multiple casualty scenario Inspectors should be prepared to request support from the emergency services if public evacuation and establishment of initial exclusion zones or road closure, etc is warranted. Where police support is requested they can also be asked to inform the relevant LABC.

This initial action may be needed before the Inspector is able to establish whether there is work related construction or other HSE enforced work underway. Where work is needed to establish a longer term exclusion zone or to stabilise, or carry out other emergency works to deal with an issue, HSE may need to remain involved to initial conclusion even though it transpires that the site and dutyholder is not enforced

by HSE. Where necessary this can be justified as an advisory function given the greater knowledge that HSE Inspectors have regarding systems of work necessary to achieve the end solution safely.

## ***Background***

### **Hazards**

Hazards caused by or leading to structural instability can arise for a variety of reasons. These include:

- Slow deterioration and weakening resulting in potential for sudden final failure and progressive collapse - e.g. uneven settlement; subsidence; movement; cracked, leaning or bulging walls;
- Deterioration caused by neglect or poor maintenance such as, rotten timbers, corroded fixings or reinforcement, severely frost damaged or loose brickwork where roof or floor collapse or falls of material could result;
- Damage caused by an event such as a fire, storm, flood, or by site incidents such as a vehicle colliding with a building or construction plant collapsing onto a building or a gas explosion;
- Poorly planned or poorly managed construction work to demolish, build, alter or extend a building or other structure. This is particularly pertinent in partially or fully occupied buildings or where the building being worked on is connected or close to others or where the building is on a busy public boundary. In some cases structural instability can result solely from overloaded floors, platforms or other parts of the structure;
- Poorly planned or poorly managed groundworks involving trench or basement excavation or landscaping or earthworks that removes support from adjacent buildings or surcharges/overloads other structures.

In all such cases, there may be a degree of risk to the health and safety of both workers and the public. Public concern with a situation can develop rapidly, fuelled by social and local or national media attention. The best way of providing

reassurance is for a proportionate, multi-agency, coordinated approach to rapidly contain and then resolve the situation.

## **Legal Framework**

Section 1(3) of the Health and Safety at Work etc. Act 1974 (HSWA) explains that risks to health and safety arising from work activities includes risks arising from the condition of the workplace. The Construction (Design and Management) Regulations 2015 (CDM2015) and the Workplace (Health, Safety and Welfare) Regulations 1992 may also apply. Further details are set out in [Appendix 1](#).

Building Control professionals may be employed by a Local Authority or they may be 'Approved Inspectors' working independently of the Local Authority. The main activity undertaken by LABC departments is plan approval and site inspection of permanent works to ensure compliance with Building Regulations. Where direct action is required to remedy a structural concern Local Authority employed Building Control officers have powers under the relevant Building Act and associated legislation to intervene and deal with dilapidated or dangerous structures. Approved Inspectors carry out plan approval and visit site at key stages to check compliance with Building Regulations. They are not empowered to deal with dilapidated or dangerous structures. An explanation of the permanent works role of Building Control professionals is set out in [Appendix 3](#).

In Scotland, the relevant requirements are contained in the Building (Scotland) Act 2003 and associated Regulations. In England and Wales, Building Control professionals work under the Building Act 1984 and associated Regulations. Welsh ministers have the power to make building legislation but to date have not started this process. A mix of legislation applies in London and dangerous structures are dealt with via the London Building Acts (Amendment) Act 1939.

Further information on the LA enforcement of provisions under the relevant Building Act relating to structural instability are set out in [Appendix 2](#) which also lists relevant terminology that differs between Scotland, England and Wales and Inner London.

## **Demarcation and liaison between HSE inspectors and Building Control professionals**

In essence the respective powers within health and safety legislation and building legislation mean that:

Building Control professionals deal with:

- The design and build quality of new permanent works including structural refurbishment on buildings in relation to the completed works. (But not on stand-alone civil engineering works – see section in [Appendix 3.](#));
- In addition LABC departments can require dutyholder action - or take direct action - to remedy danger from any built environment structure (including works of civil engineering - e.g. bridges);
- As a last resort most LABC also have direct powers to compulsorily purchase a site in order to deal with dilapidation.
- LABC also deal with demolition notifications/applications and issue requirements for how the site should be left following demolition.

HSE's construction remit covers how the building work will be carried out to minimise risk to workers and the public:

- especially the planning and management of the process with respect to: sequencing, timescale, workforce, logistics and systems of work, including design for ease of construction and the design and execution of temporary works;
- Concerns about the completed permanent works design of buildings are referred to the local LABC;
- Similar concerns about works of civil engineering are referred to the parties involved and resolved under HSE lead; or are referred to the enforcing authority for operational aspects of the structure - e.g. Office of Rail and Road.

HSE has a Memorandum of Understanding with the Building Control Alliance (BCA). The BCA represents both LA Building Control Officers and private Approved Inspectors. More information on this can be found in [Appendix 3.](#)

## **Dangerous Structures**

LABC departments have separate powers under the relevant Building Act in relation to defective or dangerous buildings. These powers apply to new and existing buildings and to incomplete structures. They also apply whether or not the LABC has had any prior or current involvement with the site, and whether or not an Approved Inspector is involved with the site. These powers enable action so that severely defective and outright dangerous structures can either be made safe rapidly to prevent an incident, or the area secured so that deterioration can continue without risk to the public. Private Approved Inspectors have no powers under dangerous structures legislation.

Some LABC departments provide both Building Regulations approval and dangerous structures functions using shared staff. Some departments pool resource and operate over several LAs. Metropolitan LAs in particular tend to operate separate Building Regulations approval and Dangerous Structures departments where the level of work and degree of specialisation justify this. Department names may vary – some come under e.g. the Borough Surveyor or the Borough Engineer.

LABC powers can complement those that HSE Inspectors have and liaison with LABC can provide a means of dealing with cases of structural instability more effectively. Liaison means that the respective powers, knowledge and resources of both enforcing authorities can often be used to enable a prompt resolution of cases involving structural instability.

HSE inspectors have a clear role in enforcing health and safety provisions relating to any construction work being carried out including when such work is likely to compromise the structural integrity of the building and/or other buildings or structures close by. This applies for new-build and work involving the alteration, extension or demolition of an existing building. It also applies where, for example, landscaping, earthworks, highways work or other intrusive work is carried out that may affect structural stability.

Structural problems leading to an immediate risk can also occur where large quantities or particularly heavy materials are poorly stored or stockpiled on, within or against a building. If HSE is not the enforcing authority for the premises causing the

problem then liaison with and handover to the relevant authority will be needed but should not delay sufficient action to deal with the immediate risk.

In the case of derelict or abandoned buildings where there is no construction work taking place, and especially where the freeholder is absent or unknown, the specific powers available to the LABC provide the most effective, and often the only, method of enforcement or resolution.

By way of contrast:

HSE:

- HSE powers are limited to serving enforcement notices to halt an activity or to require improvement;
- Where an action other than stopping work is required the dutyholder usually has 21 days from date of service before it can be alleged that the notice has been breached;
- A court order can only be obtained against a dutyholder to require an active response on a specific site if a conviction has already been secured against the dutyholder relating to that site under health and safety legislation;
- And if the dutyholder fails to act on the court order there are no options under health and safety law for HSE to step in and take direct remedial action.

LABC:

- Each of the various Building Acts provide powers and a limited expectation that LABC departments will intervene to require dutyholders to make safe a dangerous structure and/or allow the LA to intervene directly and arrange for work to be carried out - immediately if necessary;
- LA costs incurred are recouped from the owner, possibly in instalments and failure to reimburse can involve civil action and, as a last resort, may lead to a charge being registered against the property – meaning that costs are not recouped until the property is sold, which could be many years away;
- Understandably, due to the cost implications, LAs are often reticent about getting more heavily involved than absolutely necessary to isolate the risk;

- And where they do get involved it may be in a very limited way – for example fencing off a dangerous structure so that debris from a collapse is not likely to enter the public area.

Note that although the separate Scottish, England/Wales and Inner London Acts appear to contain similar sections dealing with dangerous structures, there are subtle differences in wording: For example - England/Wales ‘LAs may take action’; Scotland ‘LAs will take action’. See [Appendix 2](#).

### **HSE Liaison with LABC and LABC appointed contractor/s**

In situations where there is potential risk to construction workers but little or no public risk, the Inspector will need to decide what level of confidence they have in the parties or dutyholder/s involved. Also their ability or intent to deal with the situation in a professional manner. This includes for example willingness to engage a structural engineer and/or other professional support and absorb resource implications. The LABC may be prepared to advise the Inspector and the dutyholder/s but is unlikely to commit LA resource to resolve the matter unless the HSE Inspector is able to confirm that the dutyholder/s are not competent to deal with the situation in a timely and safe manner; or it becomes apparent that the dutyholder/s lack the funds to do this.

In situations where the LABC decides that it needs to act by bringing in a contractor to deal with a concern there is scope and sometimes a necessity for HSE to advise on:

- the type of contractor required (usually drawn from an LABC approved list, or there may be just one company contracted to the LA to provide emergency cover);
- the scale of organisation, level of experience, type of plant and systems of work needed (specialist structural support advice or systems, or a specialist demolition contractor may be needed). Note that some LA approved list organisations are only suitable for smaller, simpler jobs;
- the role of or need for other parties to carry out enabling works – such as service location and/or disconnection prior to demolition;
- decisions about whether entry is feasible or whether remote working is needed;

- whether detailed preparation is essential, or if a dynamic approach to setting out the arrangements and managing risk is acceptable (including preparation of a written demolition plan);
- contingency planning – e.g. in the event that the situation is worse, or better, than previously thought; and the potential effect if e.g. asbestos or other hazardous substances or situations are encountered that affect the arrangements;
- possible request for an asbestos waiver – in general if access is possible to remove asbestos first, then the situation is not dire – if access is not possible then asbestos removal may be a clean-up operation after the area has been made structurally safe by e.g. remote demolition. Liaison between HSE and the LABC does not confer special treatment with regard to a waiver request – each request situation is considered on its merits.

In most cases this will involve giving advice to the LABC and, where present, to the LABC appointed contractor. In rare situations the Inspector may need to prevent the LABC or its contractor from conducting work in a particular way. Under these circumstances normal fee for intervention protocols apply.

### **Liaison with other organisations**

Liaison with a number of additional parties may be necessary, such as:

- LA Highways Department;
- Transport Authorities such as TfL, Network Rail, Highways England/Scotland, etc. - where there is a knock-on effect due to infrastructure damage or e.g. congestion;
- Owners of nearby structures or services that could be affected including other buildings and e.g. transport or utility infrastructure;
- Environment Agency where flood or river or sea defences are involved;
- The Coal Authority where collapse of former coal workings leads to structural damage at the surface;
- LA Environmental Health Departments may have a role where public nuisance or localised pollution could result;

- LA Emergency Planning Officers and e.g. Housing Officers where temporary refuge centres are needed or where residents or other persons need alternative temporary housing;
- Utilities - where visible movement of ground or structures is underway utility attendance will often be needed for monitoring, isolation, disconnection, etc.;
- The Fire & Rescue Service will need to be present if entry into danger areas is needed to assist evacuation. They may also be able to resolve small scale issues where prompt action can prevent substantial progressive failure – e.g. tying down loose materials, stabilising a small section of low rise scaffold, etc.;
- LABC approved list contractor – where a contractor is summoned to carry out emergency works it should not be assumed that they will automatically adopt a suitable way of carrying out the work – discussion and agreement may be needed with conclusions recorded;
- The police can be asked to lead the bulk of these arrangements especially if the situation is deteriorating or if the knock-on effects will cause severe disruption.

## ***Organisation***

No special visits or other organisational requirements are involved.

## ***Further References***

London Building Acts (Amendment) Act 1939  
[www.legislation.gov.uk/ukla/1939/97/contents/enacted](http://www.legislation.gov.uk/ukla/1939/97/contents/enacted)

The Building Act 1984  
<http://www.legislation.gov.uk/ukpga/1984/55/contents>

Building (Scotland) Act 2003  
<http://www.legislation.gov.uk/asp/2003/8/part/4>

Civil Contingencies Act 2004  
<http://www.legislation.gov.uk/ukpga/2004/36/contents>

Construction (Design and Management) Regulations 2015  
<http://www.legislation.gov.uk/uksi/2015/51/contents/made>

Workplace (Health, Safety and Welfare) Regulations 1992

<http://www.legislation.gov.uk/uksi/1992/3004/contents/made> But for Reg 4A see:  
The Health & Safety (Miscellaneous Amendment) Regulations 2002  
<http://www.legislation.gov.uk/uksi/2002/2174/regulation/6/made#regulation-6-c>

Agreement for cooperation between HSE and the Building Control Alliance  
<http://www.buildingcontrolalliance.org/download/has-bca-memorandum-of-understanding/>

## ***Contacts***

Construction Sector Safety Team – lead inspector for structural matters and temporary works – including excavations, demolition, refurbishment, scaffolding

## ***Appendices***

### ***Appendix 1: Legal Framework – Powers of Enforcement under Health and Safety Legislation***

#### **Health and Safety at Work etc Act 1974 (HSWA)**

Section 1(3) of HSWA is clear that the Act applies to health and safety risks arising from the condition of the work premises. Inspectors therefore have a role to play where cases of structural instability of workplaces are discovered that constitute a risk to the health and safety of those who work in them or others who might be affected (such as visitors or passers-by). The general duties in Part 1 of HSWA can provide a basis for enforcement action in different circumstances:

- Section 2(1) requires employers to ensure, so far as is reasonably practicable, the health, safety and welfare of employees at work; and specifically - Section 2(2)(d) - that any workplace under their control is maintained in a condition that is safe and without risks to health;
- Section 3(1) places a duty on each employer to conduct their undertaking in such a way as to ensure that, so far as is reasonably practicable, others who are not their employees are not exposed to risks to their health and safety. And Section 3(2) places the same duty on the self-employed with regard to themselves and those who are not their employees.
- Section 4 places duties on those who are in control of premises to ensure that those premises are safe and without risks to health, so far as is reasonably practicable.

HSWA notes:

Section 25 Power to deal with cause of imminent danger:

This applies only to articles and substances found by an inspector in premises that they have the power to enter. A structural component may be an article but a building is not. A substance includes natural material (s.53 Interpretation). Whilst it could be argued that articles and substances may be the cause of a structure being

overloaded, s.25 brings with it no financial resource to fund any larger scale action. Therefore this section should not be used in the context of a dangerous structure.

Section 42 Power of court to order cause of offence to be remedied or, in certain cases, forfeiture:

A court order may only be requested by an inspector following conviction of the dutyholder under the Act or relevant regulation. The request for a court order to require action by the dutyholder in relation to a dangerous structure may be a useful adjunct to a case. However in most situations the structure will be a cause for concern long before conviction is secured. Where immediate action is warranted, support from LABC should be requested. Note also that where a dutyholder stalls all parties such that conviction is secured before a structure that is causing concern is adequately dealt with, there is no guarantee that the court will agree either the request or the proposed wording or extent of action.

### **Construction (Design and Management) Regulations 2015 (CDM 2015)**

The wider duties on clients, principal designers, principal contractors and contractors require that they collectively ensure construction work will be carried out safely and without risks to health.

Regulation 19 of CDM 2015 applies where construction work is undertaken in a way that could compromise the structural integrity of a building or structure. This requires all practicable steps to be taken to prevent danger to anyone arising from the collapse of any new or existing structure (or part of a structure) which may become unstable as a result of construction work.

Note that, by definition this wording allows controlled collapse which in some circumstances is an essential demolition method and may be the most practicable method when all issues are considered. Note that an already dilapidated or weakened structure is more easily compromised than a robust and complete structure. In the case of planned demolition or dismantling Regulation 20 also applies.

Regulation 19 applies to construction work on existing permanent works, new permanent works, incomplete permanent works and temporary works. An item of temporary works may comprise a structure in its own right or may form an integral

part of a larger structure – including situations where one part won't be stable without the other being present.

Where there are no buildings immediately affected, it is debatable whether existing ground can be defined as a structure in its own right under CDM 2015. Note that under Regulation 2, works of engineering construction includes earthworks – whether temporary or permanent, old or new. Existing ground that could be weakened – e.g. by excavation work - is largely covered by Regulation 22 which requires excavations to be supported including the option to use batters or benching to achieve a stable situation.

Progressive collapse of weak ground may be due to natural events or old or recent or current human activity which may not involve conventional excavation works. CDM 2015 will not apply where there is no current construction activity. CDM in current or former versions will not apply where there has been no recent construction work (i.e. pre 1994). Under such circumstances HSWA may apply if there is or has been any form of causative work activity and where there is an identifiable dutyholder linked to the time period in question.

### **Workplace Health, Safety and Welfare Regulations 1992 (WHSWR)**

Where the stability of a building is put at risk by a work activity (other than construction) in that building, regulation 4A of these Regulations applies. This says that, where a workplace is in a building, the building should have a stability and solidity appropriate to the nature of the use of the workplace. Workplace buildings have collapsed due to vertical overloading – too much weight on the floors; due to horizontal overloading – e.g. materials stacked against a wall; and due to unsuitable alterations where structural support has been deliberately or inadvertently removed or damaged.

Note that WHSWR Reg 4A is a modification introduced by the Health & Safety (Miscellaneous Amendment) Regulations 2002 and this alteration is not included in the [www.legislation.gov.uk](http://www.legislation.gov.uk) website under WHSWR – see [references list](#) above.

### **Other relevant (civil) legislation**

Occupiers Liability Act 1957 – imposes a duty on the owner/occupier towards those lawfully on site

Occupiers Liability Act 1984 – imposes a limited duty on the owner/occupier towards those on site without permission, e.g. trespassers

Party Wall etc. Act 1996 – requires an owner/occupier to consult with neighbouring owners/occupiers before undertaking any structural work on any shared building walls or boundary walls or floors, etc, and before undertaking excavation which could affect an adjoining owner's building or structure. This can include excavations taking place entirely on one owner's land even where there is no party wall or structure involved.

In all but the simplest of works the party undertaking the work is expected to appoint a party wall surveyor to liaise/mediate so that neither the design nor the system of work adversely affects neighbours. Note however that whilst a surveying, building or civil engineering qualification will assist, any independent person can take on the role of party wall surveyor.

## ***Appendix 2: Legal Framework - Building Acts***

Some terminology and operation of the respective Act is different in Scotland compared to England and Wales. The situation in London is based on a complex mix of legislation but this effectively allocates the same powers to LAs as elsewhere:

	<b>Scotland</b>	<b>England &amp; Wales</b>	<b>Inner London</b>
<b>Relevant Building Act</b>	Building (Scotland) Act 2003	Building Act 1984  Note that Sections 77 & 79 re dangerous and dilapidated buildings do not apply to Inner London or Outer London	London Building Acts (Amendment) Act 1939  Building (Inner London) Regulations 1985 and 1987(modify the 1939 and preceding Acts; and apply parts of the Building Act 1984 to Inner London)  Note that Part VII of the 1939 Act re dangerous structures currently applies to Outer London as well as Inner London Boroughs
<b>Definition of “building” / “structure”</b>	Section 53 Definition of a building:  Any structure but not road, railway line, runway, [unoccupied] bridge, sewer, mast, raised reservoir <sup>1</sup>	Section 121 Definition of a building:  Any temporary or permanent complete / incomplete / part of a fixed or moveable building or other structure including a vehicle, vessel or aircraft that is acting as a structure <sup>1</sup>	Section 60 Definition of a structure:  Any building, wall or other structure including items attached to it or projecting from it <sup>1</sup>
	Note <sup>1</sup> CDM definition of a structure under Reg 2 is wider; also in many cases a LABC dept will restrict dangerous structure action to structures that, in everyday use of the term, are either a ‘building’ or an ancillary part of a building		
<b>Building Regulations covering technical standards</b>	Building (Scotland) Regulations 2004 as amended	Building Regulations 2010 – the Regulations and guidance are similar to Scotland but not fully equivalent. Note also that the text of the 2010 Regulations may differ when applied to Wales as a result of amendments made by the Welsh ministers	Building Regulations 2010 –and the approved documents are applicable in Inner London
<b>Building Act disappplied to:</b>	Section 53 – Act applies to Crown premises but subordinate legislation (Blg Regs) currently does not <sup>2</sup>	Sections 3 to 5 – subordinate legislation (Blg Regs) is not applied to statutory undertakers. LAs and not for profit public bodies exempt from procedural aspects of Blg Regs <sup>2</sup>	Sections 149 to 155 - Complex range of exemptions to part or whole Act apply to specified owners, buildings, types/uses of building <sup>2</sup>  Crown largely exempt from whole Act <sup>2</sup>
	Note <sup>2</sup> Presumption that public bodies will adopt compliant standards of design and quality without need to use standard procedures		

## Relevant Terminology

Scotland	England & Wales	Inner London
Building Standards	Building Control	
Building Standards Register	Building Control records	
<p>Building Warrant</p> <p>(issued or declined following receipt of drawings/calculations for building work including construction and/or demolition, the provision of services, fittings or equipment in connection with a building, and/or conversion)</p>	<p>Building Control plan approval</p> <p>(For larger works this will be by Full Plans application - acceptance or rejection of permanent works design drawings and calculations. If LA approves full plans but disputes work carried out appeal by determination can be used.)</p>	
N/A	<p>Building Notice application</p> <p>(For smaller works alternative route is with inspection but without plan approval and without appeal by determination)</p>	
Verifier <sup>3</sup>	<p>Building Control Officer (LA) or</p> <p>Approved Inspector (mostly private)<sup>4</sup></p>	
Approved Certifier of Design <sup>3</sup>		
Approved Certifier of Construction <sup>3</sup>		
<p>Note<sup>3</sup> This covers both LA and private contractors and each party/individual may have a limited authorisation. Certifiers carry out or check work and inform the verifier whether it complies with Building Regulations</p>	<p>Note<sup>4</sup> Approved Inspectors do not deal with enforcement action under the Building Acts</p>	
<p>Completion Certificate – prepared by the relevant person (e.g. owner, applicant or agent) and submitted to Verifier for acceptance or rejection</p>	<p>Completion/Final Certificate – provided to dutyholder by Building Control Officer/Approved Inspector on satisfactory completion of works either where plan approval had previously been granted, or via a retrospective (late) application</p>	
<p>Demolition – carried out under a Building Warrant. Same process as building work – the relevant person applies for a warrant and permission to carry out work, in accordance with the building regulations.</p>	<p>Demolition Notice – dutyholder notifies LABC of intent to demolish and demolition notice may be issued by LABC that contains a list of requirements</p>	<p>Inner London Boroughs may enact their own byelaws on prescribed demolition topics; or may elect to follow the Building Act 1984 provisions re demolition</p>

## ***LA Powers of Enforcement in Scotland***

The [Building \(Scotland\) Act 2003](#) provides legal powers to each Local Authority (LA) including powers to deal with dangerous or structurally unstable buildings and related structures. This legislation cannot be used by HSE. The Building (Scotland) Act 2003 complements the powers available to inspectors enforcing HSWA in Scotland.

**Part 1 Section 8** – A building warrant is required prior to the carrying out of any building work including construction and/or demolition, the provision of services, fittings or equipment in connection with a building, and/or conversion, to which the Building (Scotland) Regulations 2004 as amended apply. Failure to obtain or comply with a building warrant can place the relevant person (the building owner) in breach of the Act.

### **Part 4 Defective and dangerous buildings**

#### **Section 28 Defective buildings**

The LA may serve on the owner of a building a notice (a “defective building notice”) requiring the owner to rectify such defects in the building in order to bring the building into a reasonable state of repair having regard to its age, type and location.

The notice must give the owner a minimum of 7 days from service to begin the work and not less than 21 days to complete the required work. The notice may require part of the work to be started and completed sooner than the rest, and may specify particular steps which the LA requires the owner to take in complying with the notice. A defective building notice does not remove the requirement for a building warrant to be obtained by the owner for the necessary work.

Where the owner has not commenced or completed the required work by the relevant date the owner is guilty of an offence. If this happens the LA may carry out the work necessary to complete the work required by the notice and may recover from the owner the expense of carrying out the work. If the LA take over the work it may be carried out without a building warrant and certified complete in the building standards register.

#### **Section 29 Dangerous buildings**

This section applies where it appears to the LA that a building (a “dangerous building”) constitutes a danger to persons in or about it or to the public generally, or to adjacent buildings or places.

Section **29(2)** is strongly worded: “The local authority **must** carry out such work (including, if necessary, demolition) as it considers necessary—

(a) to prevent access to the dangerous building and to any adjacent parts of any road or public place which appear to the authority to be dangerous by reason of the state of the building, and

(b) otherwise for the protection of the public and of persons or property in places adjacent to the dangerous building,

and may recover from the owner of the dangerous building any expenses reasonably incurred by it in doing so.”

Also Section **29(3)**: “Where the local authority considers that urgent action is necessary to reduce or remove the danger it may, after giving the owner of the building such notice (if any) as the circumstances permit, carry out such work (including, if necessary, demolition) as it considers necessary to reduce or remove the danger and may recover from the owner of the dangerous building any expenses reasonably incurred by it in doing so.”

Where the immediate danger has been removed and the urgency of corrective work has eased (but where the underlying defect is still present), the LA must serve on the owner of the dangerous building a notice requiring the owner to carry out work including, as necessary: repair, securing or demolition of the dangerous building which the local authority considers necessary to remove the danger.

### Section 30 Dangerous Building Notices

A dangerous building notice must specify dates by which the owner must have begun and completed the work required by the notice and may specify different dates for the commencement and completion of different parts of the work.

Where the owner has not begun, or has not completed, work required by a dangerous building notice by the date specified the owner is guilty of an offence. The local authority may carry out the work necessary to complete the work required by

the notice and may recover from the owner any expenses reasonably incurred by it in doing so.

A building warrant is not required by the owner in order to commence and carry out works under a Dangerous Building Notice, or by the LA who may carry out the work. However on completion of the work by the LA, a completion certificate must be placed in the building standards register to show that the notice has been complied with.

### Control of Demolition

Under the Building (Scotland) Act 2003 demolition is dealt with using the same process as other types of construction works. The relevant person applies for a building warrant and this may be granted and may contain a range of requirements plus a start and finish date for the works.

### Note also:

Sections: 42 Evacuation of buildings; 43 Unlawful occupation of evacuated buildings; 45 Compulsory Purchase where the owner cannot be found.

## ***LA Powers of Enforcement in England and Wales***

### **Building Act 1984**

The [Building Act 1984](#) provides legal powers to each Local Authority (LA) including those that deal with dangerous or structurally unstable buildings and related structures. This legislation cannot be used by HSE. The Building Act 1984 complements the powers available to inspectors enforcing HSWA. The following summarises the provisions in Part III of the Building Act in relation to the control of defective premises, dangerous or dilapidated buildings or demolition.

### Defective premises

**Section 76** provides two courses of action to LAs to deal with premises in a “defective state” (i.e. premises in a state “prejudicial to health or a nuisance”):

- Using a procedure set out in s.80 of the Environment Protection Act 1990 dealing with statutory nuisances that involves serving an abatement notice on the owner or occupier to rectify the matter;

- Invoking their powers under s.76 to remedy the problem themselves (after the expiry of a 9 day period of notice) and then recover expenses from the person on whom the notice was served. However, if the recipient serves a counter notice within the first 7 days of the 9-day period that he/she intends to rectify the matter personally, then the LA must take no action unless the recipient fails to begin the work within a reasonable time or fails to make reasonable progress.

S.76 contains other provisions relating to the recovery of expenses where the LA remedy the problem themselves. It does not permit the LA to serve notices under the section or proceed with the execution of any works if it would contravene the conditions of a building preservation order under the Town and Country Planning Act 1947.

### Dangerous Buildings or Structures

**Section 77** provides the LA with the power to apply to a Magistrates' Court for an order compelling the owner of a building or structure (or part of it) which is either overloaded or in a dangerous condition, to rectify the condition or demolish the building. If the owner does not carry out the order within the time specified by the court, then the LA can arrange or carry out the work itself and recover any expenses they incur from the owner. The owner is also liable to a fine on summary conviction. If the condition arises purely from overloading, the court can issue an order that restricts the use of the building until it is satisfied that the danger has been removed.

**Section 78** deals with the emergency measures that the LA **may** take in relation to dangerous buildings. Note that this is not mandatory action. If a building or structure (or part of it) is so overloaded or in such a dangerous condition that immediate action is required to remove the danger, then the LABC may implement whatever measures are necessary to remove the danger. If it is reasonably practicable, they should first notify the owner and occupiers of the action they intend to take. The LA is able to recover the expenses reasonably incurred in carrying out the work. (Costs incurred by retaining e.g. fencing or the services of security personnel for any period after the danger has been removed cannot be recovered.)

### Dilapidated Buildings

**Section 79** gives the LA powers to require the owner either to carry out necessary repairs or demolish a building (or part of it) that is "ruinous or in a dilapidated

condition seriously detrimental to the amenities of the neighbourhood” and remove rubbish. The latter includes any material resulting from or exposed by demolition. Should the owner fail to carry out the necessary work within a specified time then the LA can carry out the work and recover the expenses incurred. In addition, the owner would be liable to a fine on summary conviction plus a further fine for each day of default after conviction.

### Control of demolition

**Section 80** requires a person intending to demolish all or part of a building to notify the LA of that intent and also to inform relevant power supply utilities. This section does not apply to continuously occupied buildings where internal demolition is involved; or to small buildings (less than approx. 50m<sup>3</sup>) or to attached outbuildings or to agricultural buildings.

**Section 81** requires the LA to be given up to 6 weeks notice of the intent to demolish. The LA may then serve a notice on the dutyholder requiring them to take certain actions during and on completion of the demolition – s.82 actions. HSE will often be copied in on the s.81 notice although the legal basis for doing this relates to an old requirement to inform HSE in situations where the dutyholder may elect to demolish by deliberate firing of the building.

**Section 82** requirement placed on the dutyholder to make good during/following demolition. This may include shoring up affected buildings; weathering affected areas to prevent water ingress; removal of arisings; making good the ground surface; adapting or sealing drains; etc. Section 82(j) allows the LA to set other conditions and it is common for these to require removal of any asbestos in compliance with current legislation;

**Section 98** Power (via Court) to require an occupier to allow work to be carried out.

### ***LA Powers of enforcement in Inner<sup>1</sup> and Outer London***

Note: the following information is provided for completeness and Inspectors only need to be aware that the situation in Inner London and Outer London in relation to LA powers to deal with dangerous structures is complicated. In essence LAs have

powers available that mirror those described above for the rest of England and Wales but, in some parts, these reside in different legislation.

<sup>1</sup>Inner London comprises the boroughs of: Camden, Greenwich, Hackney, Hammersmith and Fulham, Islington, Royal Borough of Kensington and Chelsea, Lambeth, Lewisham, Southwark, Tower Hamlets, Wandsworth, Westminster. Plus the City of London Corporation and Inner & Middle Temple.

The [London Building Acts \(Amendment\) Act 1939](#) is somewhat confusingly both stand-alone and incorporated into the [Building \(Inner London\) Regulations 1985](#). Unlike most amendment legislation which tweak existing requirements, the London Building Acts (Amendment) Act 1939 largely captures and consolidates the remnants of previous Inner London Building Acts. Note also that the Building (Inner London) Regulations 1985 serve a different purpose to the Building Regulations 2010 – the latter setting technical standards for buildings across all of England and Wales.

Building legislation in London has a long history which has not been fully incorporated into the legislation applying to the rest of England and Wales – to the extent that Inner London LAs work with a mix of national legislation, London legislation and borough byelaws which collectively provide the legal powers available to each LA - including those that deal with dangerous or structurally unstable buildings and related structures. This legislation cannot be used by HSE. These enactments complement the powers available to inspectors enforcing HSWA within London. Because the mix of legislation in use by each Borough etc. can vary, Inspectors may need to check provisions via the website of an individual LA or by direct contact. This should only be necessary in unusual dispute situations.

Part VII of the London Building Acts (Amendment) Act 1939 remains in force and Sections 60 - 70 deal with dangerous and neglected structures and are summarised below. The arrangements vary slightly with those applying to the rest of England and Wales under the equivalent Sections 77 – 79 of the Building Act 1984 (Section 76 – ‘Defective Premises’ of the Building Act 1984 applies to Inner London).

The Inner London legislation explicitly applies parts of the Building Act 1984 to Inner London (mainly planning permission, building regulation regarding technical standards, parts of the fees sections and Section 76 Defective Premises). Note also that Schedule 3 of the Building Act 1984 applies specifically to Inner London and allows this Act to override parts of the earlier Inner London building legislation - see:

<http://www.legislation.gov.uk/ukpga/1984/55/contents>. For example Inner London Boroughs by virtue of part IV of schedule 3 of the Building Act 1984 may elect to apply Byelaws to demolition – including by utilising Sections 80 – 82 of the Building Act 1984. The Building Regulations 2010 (and associated approved documents which deal with technical standards) are applied in full to Inner London in most situations.

### **Outer London**

To complicate matters slightly the London Local Authorities Acts of 2000 and 2004 apply Part VII of the London Building Acts (Amendment) Act 1939 to outer London Boroughs and remove the application of the Building Act 1984 Sections 77 to 79 (dangerous and dilapidated buildings) from these boroughs.

### **London Building Acts (Amendment) Act 1939**

Part VII - Dangerous and Neglected Structures (note that Part VII applies to both Inner and Outer London boroughs)

**Section 60** Defines structure - effectively as any structure including a building or wall or anything attached to or protruding from such.

**Section 61** duty/power to survey any building that may be dangerous and prepare report. Power to take any steps to remove immediate danger or commission others to do so.

**Section 62** Power to act on the District/Borough Surveyor's report and shore up or fence off a dangerous structure and require owner by notice certifying the structure as dangerous to make permanent repairs within reasonable time.

**Section 63** Disputed survey – owner may appoint independent surveyor within 7 days. The Borough Surveyor and the owner's surveyor will jointly appoint a third surveyor to arbitrate on any matters which cannot be agreed, within 14 days of appointment. Costs to be carried by the party found wanting.

**Section 64** Section 62 dangerous structures notice enforceable by court order.

**Section 65** Power of court to require immediate action to make structure safe.

**Section 66** Expenses incurred by the LA to be paid by the owner of the structure.

**Section 67** Occupants of the dangerous structure can be removed by police if court authorises. Reoccupation by any party prohibited until structure made safe.

**Section 68** Temporary works to be removed on completion of works unless licensed by LA to remain.

### Neglected Structures

**Section 69** LA can obtain court order to require demolition or repair of a neglected structure. If owner fails to act LA may carry out the work

### Recovery of LA costs for dangerous or neglected structures

**Section 70** LA can obtain court order for recovery of incurred costs including a freeze on use of the land and/or structure until paid.

Note that Sections 151 – 155 of the 1939 Act disapply much of the Act, including Part VII, from certain owners, certain buildings and certain classes of building. This includes Crown premises. Early knowledge of ownership and status of a dangerous structure will be important as will ensuring that issues of interpretation are dealt with at a high level within the LA - so that early withdrawal and unresolved situations are prevented where possible.

## **Appendix 3:**

### ***Building Control Professionals – Function, Organisation & Role; Building Control Alliance MoU with HSE; Works of Civil Engineering***

#### **Building Control functions and organisation**

Local Authority Building Control (LABC) departments have powers for ensuring compliance with structural stability requirements and other aspects of building legislation for new build and structural work on existing buildings. The LABC role covers both the approval of submitted structural plans for work on new or existing structures and site inspection to check new permanent works for compliance with current Building Regulations. Building Regulations are not applied retrospectively to existing buildings unless structural or some other types of work are proposed to be carried out on the existing parts. The exception here is where a 'regularisation application' is made – i.e. where no consent was sought at the time that construction work was carried out.

Private 'Approved Inspectors' can offer services including plan/design checking for compliance, site inspection checks and Building Completion Certification, but have very limited enforcement powers as follows: Approved Inspectors need to inform the local LABC that they are contracted to a project by serving an 'initial notice' on the LA and the person carrying out the project. While this initial notice remains in effect the LABC is prevented from enforcing compliance with Building Regulations in respect of the project.

Note: this does not prevent the LA taking enforcement action under dangerous structures legislation.

If any work fails to comply with Building Regulations the Approved Inspector can issue a Notice of Contravention with a rectification timescale. If the person carrying out the project fails to comply then the Approved Inspector must cancel the initial notice, which has the effect of reactivating the local LABC's enforcement powers.

Some neighbouring LAs share a single Building Control Department in order to minimise operating costs. And some LA Building Control Departments offer an

Approved Inspector service outside their own LA as a way to fully employ staff and generate income.

### **Agreement for cooperation between HSE and the Building Control Alliance**

The Building Control Alliance (BCA) is a body representing both public Building Control Officers and private Approved Inspectors. The 2015 'Agreement for cooperation between the Health and Safety Executive and the Building Control Alliance (BCA) in England and Wales' deals with arrangements for a wide range of potential site issues, including structural matters of concern:

<http://www.hse.gov.uk/construction/resources/workingtogether.pdf>

Relevant sections are:

- Para 11 - BC Professionals should inform HSE of matters of evident concern - especially where the dutyholder appears unwilling or unable to deal. For structural safety concerns contact should be via the Concerns Advisory Team (CAT); or direct by local arrangement (paras 5 & 21);
- Para 17 – BC Professionals should provide commencement and demolition lists for HSE use if requested. This is a strong commitment to supply information (some LAs place this information on their public website);
- Paras 18 – 20 – Where HSE is able to do so, it will provide verbal or published guidance to BC professionals and, where appropriate, assist by joint visiting and providing training sessions;
- Para 21 – HSE may establish local arrangements for joint working with BC professionals who have a structural safety enforcement role (i.e. LABC).

Note that nothing in the 2015 protocol precludes the LABC from taking direct action under their legislation to deal immediately with a dangerous structure, whether or not they choose to inform or involve the HSE.

### **Civil Contingencies Act 2004**

Note also that HSE is subject to the Civil Contingencies Act 2004 – see:

<http://www.legislation.gov.uk/ukpga/2004/36/contents> . This Act is aimed at ensuring

the resilience of support and recovery following incidents up to catastrophic events. Much of the Act is geared to contingency arrangements. HSE is a Category 2 responder – i.e. not a Category 1 emergency service. Category 2 requires cooperation and the sharing of information with other Category 1 and 2 responders. The degree of this assistance is likely to depend on the HSE role with the site or activity during normal times. Local Authorities and utilities are also Category 2 responders but have a greater role to lead and fund remedial action. More information at: <https://www.gov.uk/guidance/preparation-and-planning-for-emergencies-responsibilities-of-responder-agencies-and-others> .

### **Works of civil engineering**

Civils projects, such as bridges and roads, etc. do not fall under the Building Regulations and Building Control Officers are not involved in plan assessment or site inspection of stand-alone works of civil engineering. However, there is no strict boundary demarcating civils from building works – often the boundary is defined by the LABC in terms of what they choose to include in their brief. For example, the foundations of a building will usually be considered for compliance with the building regulations by the Building Control professional contracted to the project. But if the foundations are particularly complex e.g. if they double as a major retaining wall the LABC or Approved Inspector may decline to include this aspect within their brief. And if an otherwise conventional building is on a site where works of civil engineering are included – roads, bridges, retaining walls, etc. then involvement in these aspects may be declined by the LABC or Approved Inspector. (The Highway Authority will have an interest in any structure that is to be adopted by the LA; and in any construction work that could have a detrimental effect on the public highway.)

Note that Building legislation exempts some building owners and some classes of building from either the full Building Regulations or from procedural aspects of the process. See table in [Appendix 2](#) for more detail.

Note that while the LABC may have had no involvement with a civils or a building project, they may still have duties and options under Dangerous Structures legislation.