

BUILDING AMENDMENT ACT 1998



**BERMUDA
1998 : 33**

BUILDING AMENDMENT ACT 1998

[Date of Assent 17 July 1998]

[Operative Date]

WHEREAS it is expedient to amend the Building Act 1988 so as to provide for Building Codes and to make other minor amendments;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Short title and commencement

1 (1) This Act, which amends the Building Act 1988 ("the principal Act") may be cited as the Building Amendment Act 1998.

(2) This Act shall come into operation on such date as the Minister responsible for planning appoints by notice published in the Gazette.

Amends section 2 of principal Act

2 (1) In section 2 of the principal Act (interpretation), the following provisions are repealed—

(a) in subsection (1), the definition of "building operation", and

(b) subsections (4) and (5).

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(2) The following definitions shall be inserted in the appropriate place in alphabetical order in section 2(1) of the principal Act—

" "building Code" or "Code" means a Code issued under section 23A;"

" "building operation" includes—

- (a) the erection of any building;
- (b) the carrying out of any structural alteration or extension of any building;
- (c) the carrying out of any works whether of a structural nature or otherwise for the purpose of effecting a material change in the way any building or premises or part thereof is used;
- (d) the installation or renewal of—
 - (i) an electrical system;
 - (ii) a gas fuel system;
 - (iii) a plumbing, drainage or sewage disposal system; or
 - (iv) a mechanical system;
- (e) the carrying out of any works inside a building which affects any fire protection measure;
- (f) the excavation or quarrying of land;
- (g) the demolition of any building—
 - (i) which is within twenty-five feet of a road; or
 - (ii) to which the public has access;
- (h) the reconstruction of a building;
- (i) the roofing over of an open space between walls or buildings;
- (j) the conversion of a movable object into a building;
- (k) the removal of a building from one site and its re-erection elsewhere;"

" "material change", in relation to the use of a building, means a change from one use group to another in accordance with the building Codes;"

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Inserts new sections 23, 23A and 23B in principal Act

3 Section 23 of the principal Act (regulations) is repealed and replaced by the following sections—

"Regulations

23 (1) The Minister may make regulations prescribing anything which may be or is to be prescribed under this Act and may, in particular, make regulations which—

- (a) specify the qualifications for persons submitting plans for the purposes of this Act, and different qualifications may be prescribed in respect of different types of plans; and
- (b) specify the qualifications for plumbers, electricians or other skilled artisans connected with the building trades or prescribe the standards to be met by those persons.

(2) Regulations made under this section are subject to the affirmative resolution procedure.

(3) A person who is guilty of an offence under the building Regulations is liable on summary conviction to a fine of \$5,000 or to imprisonment for six months or both.

Building Codes

23A (1) Subject to this Act, the Minister may for the purposes of securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings issue building Codes—

- (a) with respect to the design and construction of buildings;
- (b) with respect to the provision of services, fittings and equipment; and
- (c) in connection with buildings generally,

and different Codes may be issued in relation to different types of buildings.

(2) Without limiting the generality of subsection (1), the Codes may—

- (a) provide for the giving of notices, the deposit of plans of proposed work or work already executed

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(including provision as to the number of copies to be deposited), the retention by the Building Official of copies of plans deposited with him in accordance with the Regulations, the inspection and testing of work and buildings;

- (b) make provision concerning building permits, prescribe the procedure and conditions respecting application for building permits, and specify conditions relating to the grant of any building permit or class of building permit or conditions to be attached thereto;
- (c) prescribe the period of validity of a building permit and provide for the renewal and transfer of a building permit;
- (d) make provision concerning building operations and specify the requirements to be met by owners and building contractors concerning any building operation, any inspection or testing of buildings or the maintenance and operation of any class of building;
- (e) make provision concerning occupancy permits and prescribe the procedure and conditions respecting the application for and the issue of the permits; and
- (f) provide for the proper disposal of waste products discharged from any building.

(3) In preparing any building Codes under this section, the Minister shall consult—

- (a) such officers from the Departments of Works and Engineering, Health and Fire Services as he considers appropriate; and
- (b) such persons representing the architectural, construction, engineering and surveying professions in Bermuda as he considers appropriate.

(4) Subject to subsection (5), the Minister shall inform the public by means of a notice published in the Gazette and at least one other newspaper in Bermuda at least three months in advance of the date on which a building Code comes into effect, and shall state in the notice whether the Code replaces or amends any previous building Code.

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(5) The Minister may waive or reduce the period of three months mentioned in subsection (4) as he thinks fit where a Code amends a previous Code—

- (a) to correct a mistake, or
- (b) in any circumstances where safety is an issue.

(6) Notwithstanding that a building Code has replaced or amended a previous building Code ("the old Code") with effect from a specified date, the old Code—

- (a) shall continue to apply, or
- (b) shall continue to apply without the amendments,

(as the case may be) to any building operation in respect of which the application for a building permit was received by the Building Official before that date (whether or not a permit has been issued or work has commenced).

(7) Copies of building Codes issued from time to time under this section shall be made available for inspection free of charge at the office of the Building Official during normal working hours.

(8) Building Codes issued under this section are not statutory instruments and shall not be subject to the Statutory Instruments Act 1977.

Enforcement of building Codes

23B (1) Where it appears to a building inspector that any person carrying out a building operation has failed to comply with any provision of the relevant building Code, he may by notice in writing (a "field correction notice") to such person—

- (a) specify the failure; and
- (b) require the person within such reasonable time as may be specified, or such further time as the Building Official may allow, to comply with the provision in question;

and he may also state in the notice what steps are necessary to ensure such compliance.

(2) Where it appears to the Building Official that any person carrying out a building operation has failed to comply with any provision of the relevant building Code (whether or not a field correction notice has been issued) and the Building Official

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considers it necessary to exercise his powers under this subsection, he may by notice in writing to such person—

- (a) prohibit any continuation of the building operation (such notice referred to as a "stop work notice"); or
- (b) impose conditions on the continuation of the building operation,

until such time as the provision in question has been complied with.

(3) In addition to the methods of service specified in section 27(1), a notice issued under this section may be served—

- (a) by leaving it with any apparently responsible person at the place where the building operations are being conducted; or
- (b) if no such person can be found, by affixing it, or a copy of it, to some conspicuous part of the building or structure in question.

(4) A person who fails to comply with a notice served under this section commits an offence and shall be liable on summary conviction—

- (a) to a fine of \$5,000 or to imprisonment for six months, or to both, and
- (b) to a further fine of \$500 for each day on which the offence continues."

Consequential amendments

4 (1) In sections 6, 10(1) and 10(2) of the principal Act, for the word "Regulations" there shall be substituted "Codes".

(2) In sections 3(1), 4, 7(1) (first place) and 11(4) of the principal Act, after the word "Regulations" there shall be inserted "and Codes".

(3) In sections 5(3), 7(1) (second place), 7(1)(b), 7(2)(b), 7(7), 7(10), 8, 9(1) (three places), 11 (heading), 11(1) (both places), 11(3), 12(1), 12(3), 24(1), 24(2)(a), 24(2)(b) (two places), 25(1)(a), (b), (c) and (d), 25(2), 26, 27(1), and 27(2) of the principal Act, after the word "Regulations" there shall be inserted "or Codes".

(4) In section 12(4) of the principal Act, for the words "Regulations of this Act" there shall be substituted "Regulations or Codes".

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(5) In section 62(10) of the Development and Planning Act 1974 (enforcement of planning control), after the words "Regulations" there shall be inserted "or building Codes".

Transitional provision and repeal

5 (1) Notwithstanding the repeal of section 23 of the principal Act by section 3 above, the Building Code Regulations 1991 shall continue in force until superseded by building Codes issued under section 23A of that Act; and section 23A(6) (superseded building Codes to apply to pre-commencement applications) shall apply in the case of the Building Code Regulations 1991 as if they were a building Code issued under section 23A.

(2) The Building Amendment Act 1997 is repealed.