

# Building infringement scheme guidelines



These guidelines are intended to help territorial and regional authorities to implement the Building (Infringement Offences, Fees, and Forms) Regulations 2007 (the Building Infringement Regulations), as amended in 2012. They may also help territorial and regional authorities develop policies around how to enforce the Regulations.

It sets out the provisions for penalties and provides guidelines for their issue and enforcement. It includes a 'summary of rights' for any notice and offence codes.

## Purpose

The guidelines will help you to decide when an infringement notice is the right tool to use to encourage compliance with the Building Act 2004 (the Building Act).

While these guidelines are intended to assist territorial authorities and regional authorities in considering the implementation of the Building Infringement Regulations, it is the responsibility of a territorial authority or regional authority to develop, approve and implement policies and procedures in the enforcing of the Building Infringement Regulations. Territorial/regional authorities should seek their own legal advice on the development and implementation of those policies and procedures.

## Guidance

This is intended as a general guide to the Building (Infringement Offences, Fees, and Forms) Regulations 2007 ('Building Infringement Regulations') made under the Building Act and should be read in association with the Regulations. While MBIE has taken every care in preparing this document, it should not be relied upon as establishing the requirements of the Building (Infringement Offences, Fees, and Forms) Regulations 2007 under the Building Act. Readers should always refer to the Building Act and the Regulations as the source documents, and be aware that for specific situations or problems it may be necessary to seek independent legal advice.

The New Zealand Legislation website for copies of the [Building Act and the Regulations](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html) (<http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html>).

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## Introduction

### Building infringement guidelines

#### The Building Act

In New Zealand, the building of houses and other buildings and structures including dams is controlled by the Building Act 2004

(the Building Act).

The Building Act 2004 repealed the Building Act 1991 and introduced some significant changes to the way the building industry in New Zealand is regulated, with the intent of providing greater assurance to consumers.

The Building Act provides a framework to support and promote safe, high-quality developments that will satisfy the expectations of consumers, the Government and the building industry. Continued successful implementation of the Building Act is critical for development and growth in all regions of New Zealand.

## The Building Act's objectives

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The Government's aims in introducing the Building Act are to achieve:

- more clarity on the standards we expect buildings to meet
- more guidance on how those standards can be met
- more certainty that capable and competent people are undertaking the work
- more scrutiny in the building consent and inspection process.

Ongoing implementation of the Building Act is a significant undertaking that will bring about considerable change in the regulatory building control sector.

The Building Act helps ensure better decision-making throughout the building process, and provides more assurance to consumers and homeowners that buildings are designed and built right the first time.

Under the Building Act, building owners are required to seek approval from their local building consent authority to carry out building works at specific sites. In practice the builder/designer/architect acting as the owner's agent may also obtain approval on behalf of the building owner.

Approval is sought to ensure that proposed building work complies with the [Building Code<sup>1</sup>](https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn1) (eg building, plumbing, drainage, fire safety and accessibility requirements). Dam safety is also covered by the Building Act and dam owners must ensure they comply with relevant dam safety provisions in the Building Act.

## The agencies that have a role in building compliance

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There are three types of agencies in New Zealand that have a role in building compliance. These are: territorial authorities, regional authorities and building consent authorities. The Building Act requires territorial or regional authorities to be accredited and registered if they wish to act as building consent authorities.

The powers under the Building Infringement Regulations and these guidelines relate to territorial and regional authorities. These guidelines may also be of interest to building consent authorities.

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### Appendix 1: General roles and responsibilities

Learn more on the general functions of agencies under the Building Act (<https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/appendix-1-general-roles-and-responsibilities/>)

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Infringement notices were introduced on 1 July 2008 when the Building (Infringement Offences, Fees, and Forms) Regulations 2007 came into force. The Regulations provide territorial and regional authorities the option of issuing infringement notices to any person who commits an offence by not complying with certain provisions of the Building Act. These provisions are those specified in the Building Infringement Regulations. The person who commits the offence could be a builder, designer, architect, property manager, site manager, independent qualified person (IQP), building owner, tenant or any other person who commits an offence by not complying with those provisions.

Recent amendments to the Regulations were made by the Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2012, which took effect on 3 September 2012.

# Building (Infringement Offences, Fees, and Forms) Regulations 2007

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## Overview

The Building Infringement Regulations are made under section 402(y), (z) and (za) of the Building Act 2004.

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## Building (Infringement Offences, Fees, and Forms) Regulations 2007

An infringement offence is an offence as declared by the Building (Infringement Offences, Fees, and Forms) Regulations 2007.

Visit the Legislation website (<http://www.legislation.govt.nz/regulation/public/2007/0403/latest/DLM6340501.html>)

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The Building Infringement Regulations specify the exact offences under the Building Act 2004 that may be dealt with as infringement offences and the fees for each one (see [What offences are covered by the Building Infringement Regulations?](#)).

The Building Infringement Regulations also prescribe forms for infringement notices and infringement reminder notices (see [Appendix 3 \(https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/appendix-3-template-infringement-notice/\)](#)).

[Schedule 1 to the Building Infringement Regulations \(https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/appendix-2-building-infringement-offences-fees-and-forms-regulations-2007-schedule/\)](#) is attached in Appendix 2.

(<https://www.building.govt.nz>)Footnote

The Building Regulations 1992 contain the mandatory New Zealand Building Code, which sets out performance standards that all new building work must meet. It covers aspects such as structural stability, fire safety, access, moisture control, durability, services and facilities.

## The building infringement system

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### Why was the infringement system introduced?

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As noted in the Introduction, territorial/regional authorities and building consent authorities are responsible for enforcing various aspects of the Building Act to ensure builders, designers, building owners or owners' agents etc meet their obligations.

Until the Building Infringement Regulations came into force, the only 'enforcement' action (where a builder or building owner is obliged by law to fix or rectify something) territorial/regional authorities could take were court-based prosecutions.

This reliance on court-based prosecutions as a means of ensuring compliance was identified as an issue during a review of building legislation in 2003. This review found that this means of enforcement was costly, time-consuming, and often disproportionate to the offence. As a result, compliance with the Act was lower than desired<sup>2</sup> (<https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn2>).

By putting in place an infringement system, territorial/regional authorities now have an extra tool to encourage compliance with

the Building Act. An infringement system was chosen as the appropriate tool to use as:

- many territorial/regional authorities already have established infringement systems (for example, parking or dog control infringement systems)
- infringement notices can be used quickly and easily
- infringement notices are easily understood by the public and are simple to implement
- infringement notices are a 'no surprises' way to encourage compliance
- offenders can avoid time and association costs of court action, but will face significantly greater certainty of council enforcement actions (in the form of instance fines).

Infringement notices are intended to be used as a deterrent, to encourage rectification and to reduce persistent re-offending – not as a revenue-raising tool.

## Is the building infringement system compulsory?

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No. Territorial/regional authorities have the option of implementing the infringement system under the Building Infringement Regulations or they can continue using court-based prosecutions as the only form of enforcement. If territorial/regional authorities do adopt the building infringement system, they have to adopt it exactly as set out in the Building Act and Building Infringement Regulations, which includes reference to the Summary Proceedings Act 1957<sup>3</sup>. (<https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn3>)

This is to ensure the building infringement system is applied fairly and consistently across the country (ie, similar processes are followed in deciding when and how to impose an infringement notice, and when a notice is imposed it is the same fee imposed for the same offence).

Territorial/regional authorities must adopt the system as set out in the Building Infringement Regulations, as any deviation from the requirements of the Act could mean parts of the system would not be enforceable.

### Footnotes

(<https://www.building.govt.nz>)<sup>2</sup>. Territorial /regional authorities issue on average 350 formal notices to fix per annum, however, compliance rates are at best 50 percent and as low as 20 percent, so between 500 and 1250 notices to fix per annum are not complied with. Only 1–7 percent of these offences are prosecuted due to the time and cost associated with taking court action. Taking a prosecution generally costs a local authority \$ 3,000 – \$ 20,000. Court fines (if given) have ranged from \$ 2,000 – \$30,000, depending on the nature and level of offending. While the local authority taking the prosecution receives 90 percent of any court-imposed fine, and can, in addition, be awarded costs, these combined rarely cover the prosecution costs.

(<https://www.building.govt.nz>)<sup>3</sup>. The Summary Proceedings Act, amongst other things, sets out how general infringement notices, fees and associated processes work.

## What offences are covered by the Building Infringement Regulations?

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### Offences and fees – key points

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The Building Infringement Regulations contain a clear and unambiguous list of infringement offences.

These infringement offences are based on specific existing building offences. There are no new building offences introduced by the system. The option of issuing an infringement notice is new.

Infringement fees are prescribed – that is, you must only charge the exact fee as set out in the Building Infringement Regulations.

The fees were set by the Government (following consultation with territorial and regional authorities and building sector representatives) with the following principles in mind.

- Higher fees would reflect direct risks to health and safety.
- There should be consistency between offences that are similar in nature.

Fees range from \$250 (for procedural offences) to \$2,000 (for more serious breaches), with the level of fee reflecting a smaller percentage of the maximum fine already specified in the building Act.

The offences cover 'initial' offences, for example:

- not complying with a compliance schedule
- building without a consent
- failing to display a building warrant of fitness.

Subsequent offences are also included, for example, failing to comply with a notice to fix.

A list of infringement offences and fees is in the table below.

This list forms Schedule 1 of the Building (Infringement Offences, Fees and Forms) Regulations 2007 which is reproduced in Appendix 2.

#### Building Infringement Offences and Fees

Provision under Building Act (section, description)	Infringement fee	Issuing body	Fine if offence proceeds through the courts
<b>General building offences</b>			
s40 Failing to comply with the requirement that building work must be carried out in accordance with a building consent	\$750	Territorial or regional authority	Maximum fine: \$100,000 and \$10,000 for every day offending continues
s42 Failing to apply for certificate of acceptance for urgent work as soon as reasonably practicable after completion of building work	\$500	Territorial or regional authority	Maximum fine \$5,000
s101 Failing to comply with requirement to obtain a compliance schedule	\$250	Territorial or regional authority	Maximum fine: \$20,000 and \$2,000 for every day offending continues
s108(5)(a) Failing to display a building warrant of fitness required to be displayed	\$250	Territorial or regional authority	Maximum fines for all offences: \$20,000
s108(5)(b) Displaying a false or misleading building warrant of fitness	\$1,000	Territorial or regional authority	Maximum fines for all offences: \$20,000
s108(5)(c) Displaying a building warrant of fitness other than in accordance with section 108	\$1,000	Territorial or regional authority	Maximum fines for all offences: \$20,000
s116B(1)(a) Using, or knowingly permitting the use of, a building for a use for which it is not safe or not sanitary	\$1,500	Territorial or regional authority	Maximum fine: \$100,000 and \$10,000 for every day offending continues

s116B(1)(b) Using, or knowingly permitting the use of, a building that has inadequate means of escape from fire	\$2,000	Territorial or regional authority	Maximum fine: \$100,000 and \$10,000 for every day offending continues
s124 Failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a dangerous, earthquake-prone, or insanitary building	\$1,000	Territorial or regional authority	Maximum fine: \$200,000
s128 Using or occupying a building, or permitting another person to do so, contrary to a territorial authority's hoarding, fence, or notice	\$2,000	Territorial or regional authority	Maximum fine: \$200,000 and \$20,000 for every day offending continues
s168 Failing to comply with a notice to fix	\$1,000	Territorial or regional authority	Maximum fine: \$200,000 and \$20,000 for every day offending continues
s363 Using, or permitting use of building having no consent or code compliance certificate or certificate for public use for premises for public use	\$1,500	Territorial or regional authority	Maximum fine: \$200,000 and \$20,000 for every day offending continues
s367 Wilfully obstructing, hindering, or resisting a person executing powers conferred under the Act or its regulations	\$500	Territorial or regional authority	Maximum fine: \$5,000
s368 Wilfully removing or defacing a notice published under the Act or inciting another person to do so	\$500	Territorial or regional authority	Maximum fine: \$5,000
<b>Restricted building work</b>			
s85(1) Person who is not licensed building practitioner carrying out restricted building work without supervision of licensed building practitioner	\$750	Territorial or regional authority	Maximum fine: \$20,000
s85(2)(a) Licensed building practitioner carrying out restricted building work without appropriate licence	\$500	Territorial or regional authority	Maximum fine: \$20,000
s85(2)(b) Licensed building practitioner supervising restricted building work without appropriate licence	\$500	Territorial or regional authority	Maximum fine: \$20,000
s314(1) Person holding himself or herself out as being licensed to do or supervise building work or building inspection work while not being so licensed	\$500	Territorial or regional authority	Maximum fine: \$5,000
<b><u>Dam safety offences<sup>4</sup> (<a href="https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn4">https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn4</a>)</u></b>			
s134 Dam owner failing to classify dam	\$500	Regional authority	Maximum fine: \$20,000
s138 Dam owner failing to comply with a direction from a regional authority to have a classification re-audited and submitted	\$250	Regional authority	Maximum fine: \$5,000
s140 Dam owner failing to prepare, or arrange the preparation of, a dam safety assurance programme and submit it for audit	\$500	Regional authority	Maximum fine: \$20,000
s145 Dam owner failing to comply with a direction from a regional authority to have a dam safety assurance programme re-audited and submitted	\$250	Regional authority	Maximum fine \$10,000
s150(4)(a) Dam owner knowingly failing to display a dam compliance certificate required to be displayed	\$250	Regional authority	Maximum fine: \$5,000

s150(4)(b) Dam owner displaying a false or misleading dam compliance certificate	\$1,000	Regional authority	Maximum fine: \$5,000
s150(4)(c) Dam owner displaying a dam compliance certificate other than in accordance with section 150	\$1,000	Regional authority	Maximum fine: \$5,000
s154 Dam owner failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a <b>dangerous dam</b> <sup>5</sup> ( <a href="https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn5">https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn5</a> ).	\$2,000	Regional authority	Maximum fine: \$200,000

## Footnotes

(<https://www.building.govt.nz>)<sup>4</sup>. Regulatory requirements relating to dam safety have yet to be made. These regulatory requirements will likely have a two-year lead-in period before they come into force. This means it is likely the relevant offences above will come into force in 2014.

(<https://www.building.govt.nz>)<sup>5</sup>. Please note s154 of the Building Act 2004 is currently enforceable.

# Issuing an infringement notice

## Powers of entry and issue

The Building Act gives authorised officers the power to enter building sites and to issue infringement notices. These powers and who they apply to are discussed below.

## Inspection by authorised officers

To inspect a property you need to be an authorised officer of a territorial/regional authority. Section 222 of the Building Act gives you this power. This power means you can inspect buildings, building sites or land where building is under way or proposed, and enter premises during normal working hours. The officer must produce to the occupier written evidence of his or her identity when first entering private land and when requested at any other time.

When you enter private property, under section 224 of the Building Act you must also show your written warrant.

## Enforcement officers

Even though you may be authorised by a territorial authority/ regional authority<sup>6</sup> (<https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn6>) for inspections, you also need to be authorised as an enforcement officer to issue infringement notices.

Section 229 of the Building Act allows a territorial authority<sup>6</sup> (<https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn6>) to authorise any of its officers to issue infringement notices under section 372. If it grants an authorisation to issue an infringement notice, the territorial authority must supply the enforcement officer with a warrant.

The warrant must clearly state the functions and powers the enforcement officer has been authorised to carry out under the Building Act.

You need to carry your warrant and identification at all times and show them when asked (section 230). It is important to know that there are some restrictions on these powers. Under section 226, an authorised officer cannot enter a household without the consent of the owner or by order of a District Court.

## Overall

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While you may have authority to go onto property and carry out enforcement activities, the law also expects you to do so in a reasonable and professional manner. For example, you are required to:

- find the owner or occupier as soon as you enter a property
- once you find them, produce your identification and warrant and show it any time you are asked for it
- if there is more than one building officer present, make sure you both show your identification and warrant
- if the owner is not present, leave a written notice showing the date and time of the inspection and the name of each enforcement officer who inspected the property. This should be left in a prominent position at the property, or attached to the structure inspected.

## Factors to consider before issuing an infringement notice

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Under Section 372 of the Building Act, an infringement notice may be served on a person if an enforcement officer:

- observes the person committing an infringement offence, or
- has reasonable cause to believe an infringement offence is being or has been committed by that person.

This section notes some points you should consider before deciding to issue an infringement notice.

## Know your legal basis and policies

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Always refer back to the Building Act and the Building Infringement Regulations. It is important that you can explain the legal basis for issuing an infringement notice to an offender if necessary.

Territorial/regional authorities will likely develop policies for managing the infringement system. It may be helpful to refer to similar policies developed for a range of other infringement systems such as the Resource Management Act infringement system. Policies need to be clear, transparent and applied consistently. Be familiar with your policies and how they work.

## Best practice approach

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As well as ensuring you are acting consistently with the Building Act and Building Infringement Regulations, and are following territorial/regional authority policy and building consent authority policy, you may like to also give regard to the following elements of a 'best practice' approach.

**No surprises.** The building infringement system assumes infringement notices will be served on a 'no surprises' basis (ie, offenders should generally have good warning that an infringement notice could be issued). For example, territorial/ regional authorities could publicly signal crack-downs on persistent offences, before issuing infringement notices. An early discussion or letter about the infringement system to builders and building owners could be a helpful first step in encouraging compliance. A warning letter or notice to fix could be issued prior to an infringement notice. The key point is that the infringement notices are intended to act as a deterrent and achieve compliance, not as an 'out of the blue' punishment.

**Be fair.** In some situations you will need to use your discretion. For example, you could consider the scale of the offending involved when deciding whether to warn, issue a notice to fix, or to issue an infringement notice (the examples below deal with this in more detail). As a guide, remember 'natural justice'. Natural justice is a legal concept based on the idea that some legal principles are so obvious they should be applied without having to be enacted into legislation.

For example, everyone has the right to tell their side of the story. Think about fairness on a case-by-case basis. Deciding whether to issue an infringement notice is as much about investigating all the facts. An infringement notice may work well as a deterrent to a repeat offender (eg a tradesperson who has often breached the Building Act), rather than a homeowner who may not be fully aware of their obligations under the Building Act.

**Be consistent.** It is important that the building infringement system is implemented as set out in the Building Infringement Regulations and that territorial/regional authority policy is followed. This will help ensure the infringement system is implemented consistently and



that correct procedures are followed both in your region and across New Zealand.

**Document and record.** Most enforcement policies put in place by territorial/regional authorities will include a process for documenting decisions around issuing infringement notices. You may already be familiar with Building (Accreditation of Building Consent Authorities) Regulations 2006 section 6, which covers the need for clear and detailed record-keeping.

The same attention to detail and documentation needs to be followed here. If the infringement notice is later challenged in court, good record-keeping will be important. It is also important to think about obtaining the best possible evidence prior to issuing infringement notices. Think about what you have observed and be thorough in recording this.

#### Footnote

(<https://www.building.govt.nz>)<sup>6</sup>. And regional authorities by virtue of s14(3)(b) of the Building Act.

## Examples of infringement situations

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Remember – in all situations, the officer who inspects a site needs to be an authorised officer of a territorial/regional authority and the officer who issues an infringement notice must be an enforcement officer who is warranted.

### Example A:

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- A building consent authority officer visits a site for a pre-pour concrete inspection. During the inspection the officer identifies that the next stage of the work involves earthworks and making vertical cuts, which will result in a fall hazard.
- The officer notes on the inspection form that the specified person (in this case, the property developer) must install safety barriers to comply with Clause F5 of the Building Code and discusses this with the builder on site.
- At the next inspection, the building consent authority officer notes that the barriers have not been installed and issues a notice to fix requiring barriers to be installed.
- At a later time, the officer returns and identifies that the specified person still has not installed the barriers.
- The territorial authority enforcement officer then<sup>8</sup> (<https://www.building.govt.nz/building-officials/guides-for-building-officials/building-infringement-scheme-guidelines/downloadpdf#fn8>) issues an infringement notice to the developer for failing to comply with the first notice to fix (s168) followed by a second notice to fix requiring the work to stop until such time as Clause F5 is complied with. The infringement notice is for not complying with section 168 of the Building Act.

**Note:** Notices to fix and building infringement notices are two separate tools. They can be used separately or at the same time. In this situation, the building consent authority officer gave clear instruction to the builder and had issued a notice to fix subsequent to a number of visits and discussions. An infringement notice and fee is an appropriate penalty for ignoring the first notice to fix on such an important safety issue.

The builder must pay the fee regardless of whether the second notice to fix is complied with.

Even if the infringement notice is paid, the territorial authority would still need to determine whether the original offence has been rectified.

### Example B:

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- A building consent authority officer, while undertaking an inspection in a building that contains specified systems, identifies that the building warrant of fitness (BWof) is not on display.
- The territorial authority has recently publicised that this has been a recurring problem and that it intends to crack down on offenders. The officer contacts the building owner via a message on voicemail about the issue.
- The officer follows up the message with a letter explaining the need to display the BWof, the offences prescribed in the Building Act 2004 and the possible issuing of an infringement notice.
- One week later, having received no response, the territorial authority enforcement officer visits the building to determine if the notice has been displayed. The notice is not visible so the officer issues a notice to fix.

- Ten days later the territorial authority enforcement officer revisits the building. The BWoF is still not displayed, at which point the officer issues an infringement notice, with the previous correspondence attached. The officer hand delivers the infringement notice to the registered office of the building owner.

**Note:** In this situation the building owner was well informed of the need to display a BWoF. Failure to display the BWoF prompts a notice to fix. The infringement notice was then issued to further encourage compliance. The infringement is for not complying with section 108(5)(a) of the Building Act.

## Example C:

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- A building consent authority officer visits a private home to undertake an inspection in accordance with a building consent. While undertaking the inspection, he notes that a well-known and experienced builder is erecting a retaining wall over 2 metres in height in the dwelling next door.
- Further investigation reveals that the building work has not been consented. A discussion with the building owner reveals that the builder had told them a building consent was not required.
- In this case, the territorial authority enforcement officer issues an infringement notice to the builder and a notice to fix to the builder and the homeowner requiring work to stop and a consent be obtained.

**Note:** The officer has investigated the situation and ascertained that the homeowner was not aware of the need for a consent. The homeowner did not receive an infringement notice, as the officer considered that the homeowner had been following the guidance of an experienced builder. The infringement is for non-compliance with section 40 of the Building Act.

## Example D:

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- During heavy rain, a slip occurs that undermines the foundations of a house. In order to protect the house from any further damage, an engineer requires a retaining wall to be constructed to underpin the house foundation and prevent further slippage. The owner contacts the territorial authority, explains the situation and the territorial authority agrees to allow the retaining structure to be constructed under emergency works provisions. The territorial authority also explains to the owner the need to obtain a certificate of acceptance as soon as possible. This advice is followed up in writing by the territorial authority. The territorial authority observes at the end of the first week that the wall is nearing completion.
- One month after the work is complete the territorial authority writes to the owner noting the work is complete but no application for a certificate of acceptance (COA) has been made. The correspondence points out the relevant provisions and offences and provides the COA application forms.
- After another month, the territorial authority issues a notice to fix allowing ten working days for an acceptable application for a COA to be made. At the end of 15 working days (five working days after the due date) no application has been received. The territorial authority issues an infringement notice for failing to apply for a COA within the required timeframe. The infringement notice is issued for not complying with s42 of the Building Act.

### Footnotes

<https://www.building.govt.nz>7. These examples are to be treated as possible situations where an infringement notice could be issued rather than an exact narrative of how such a notice is issued or whether it is appropriate to issue such a notice.

<https://www.building.govt.nz>8. The building consent authority officer and territorial authority enforcement officer may be one and the same person.

## Infringement notice - the forms and process

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Section 402(1)(y) to (za) of the Building Act enables regulations to be made that specify infringement offences, set the fee for each infringement notice and prescribes forms for issuing infringement notices. The Building Infringement Regulations prescribe the infringement notice and reminder notice which must be used. As required, the prescribed forms include the summary of rights.

A template for the infringement notice (including prescribed requirements and summary of rights) is attached as Appendix 3.

Each territorial/regional authority may develop its own individual template. However, please note that it must include all information prescribed in the Building Infringement Regulations.

The infringement notice must include:

- the name of the enforcement authority
- the details of the person to whom the notice is being issued (eg name and address)
- the details of the infringement (the nature of the alleged offence under the Building Act and the date, time and place of when it occurred)
- how much time the offender has to pay the fee (28 days) and by when it must be paid where the fee can be paid
- how the fee can be paid
- a 'summary of rights'
- a statement of the person's right to request a hearing
- a statement of what will happen if the person doesn't pay the fee or request a hearing.

## Summary of rights

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The summary of rights is an important part of any infringement notice.

The summary of rights provides the offender with an explanation of how they can deal with the infringement notice including how to pay, or how to take steps to challenge it.

The summary of rights should be set out on the back of the infringement form and must be replicated as prescribed in the Building Infringement Regulations.

It is important that you understand these rights and can explain the basics if asked.

See Appendix 3 for the Summary of rights.

## Serving the infringement notice

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An enforcement officer can either deliver the notice to the person receiving the infringement notice by hand or post it to them to the person's last known residence or business address (section 372 of the Building Act). It is important to ensure the notice reaches the correct person in a timely manner. This may not always be the person or address on the consent application. For example, if a builder applied for a consent on behalf of an owner, but it was the owner who committed the offence, then the authorised officer will need to confirm the right address for the owner.

## Multiple parties

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When a number of people are responsible for the activity, a separate infringement notice can be issued to each person who has caused the problem (eg the owner and occupier, the company directors and employees).

This is very much a case-by-case situation and discretion needs to be used.

In this situation the most culpable people need to be identified. Ask some questions. Who was initially warned of the offence and advised an infringement notice was possible? Who received the notice to fix? If a person is unaware of the offence and the penalties, they may have a defence under section 386 of the Building Act.

## Continuing offences

Section 380 of the Building Act defines a continuing offence as 'The continued existence of anything, or the intermittent repetition of any action, contrary to any provision of this Act is taken to be a continuing offence'. For example, a lack of a building consent for a four-week period is one offence over that period of four weeks.

## Flow chart example

The flow chart sets out an example of an infringement notice process **[Figure - flow chart]**

# What happens after an infringement notice is issued?

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## Payments

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As set out in the infringement notice, the offender has 28 days to pay the fee to the issuing authority.

The territorial/regional authority is entitled to retain all infringement fees received for infringement notices issued by its enforcement officers.

Offenders can arrange to pay the fee in installments. This is at the discretion of the territorial/regional authority. Section 21(3A) of the Summary Proceedings Act provides that an arrangement can be made to pay by installments if:

- the reminder notice has not been filed in court; and
- the territorial/regional authority has the necessary management and accounting systems in place to allow the defendant to pay by instalments.

Note, the arrangement must be entered into within six months after the date of the offence and be completed within 12 months after the date of the offence. If the defendant defaults in payment of any installments, the territorial/regional authority can enter into another arrangement for payment by installments or serve a reminder notice on the defendant (note: the reminder notice should include a record of the amount of infringement fee unpaid).

If a reminder notice is issued, the defendant does not have the option of requesting a hearing.

Refer back to the summary of rights for other options.

## Infringement reminder notices

If the recipient of an infringement notice does not pay the infringement fee, does not seek reconsideration of the offence in writing and does not request a hearing within 28 days of the date of service of the infringement notice, the territorial/ regional authority can issue an infringement reminder notice. It is important that the reminder notice follows the prescribed form as noted in the Building Infringement Regulations, see Appendix 3.

The infringement reminder notice must contain the same, or substantially the same, particulars as the infringement notice under section 21(2) of the Summary Proceedings Act. The offender also has a further 28 days to pay after a reminder notice is issued.

## Prosecutions

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Infringement notices are an additional tool to achieve compliance. There will still be some situations where proceeding to prosecution is the most appropriate option (eg not complying with notice/s to fix on serious breaches of the Building Act).

Most territorial/regional authorities will already be familiar with the prosecution process and the need to keep good records and documentation should a prosecution be considered.

For offences declared by the Building Infringement Regulations, territorial authorities and regional authorities should adhere to their own policies and procedures when considering the issuing of an infringement notice and/or prosecution. Territorial authorities and regional authorities should seek their own legal advice on a case-by-case basis.

# Appendix 1: General roles and responsibilities

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## Roles and responsibilities of a territorial/regional authority

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A territorial/regional authority performs the following functions (including any functions that are incidental and related to, or consequential upon, these functions).

### Issuing

- Project information memoranda
- Building consents where the consent is subject to a waiver or modification of the Building Code
- Certificates of acceptance
- Compliance schedules and amending compliance schedules

### Power to inspect and enter land

Sections 222 to 228 provide details of the powers of entry to undertake an inspection. A clear reason for any inspection must be provided to the owner/ occupier/builder.

### Enforcement powers

The territorial/regional authority may choose to warrant enforcement officers to issue infringement notices under section 372 of the Building Act.

### Other

- Follows up and resolves notices to fix
- Administers annual building warrants of fitness
- Enforces the provisions relating to annual building warrants of fitness
- Decides the extent to which buildings must comply with the Building Code when they are altered, their use is changed, or their specified intended life changes
- Performs functions relating to dangerous, earthquake-prone or insanitary buildings
- Determines whether building work is exempt under Schedule 1 (paragraph k) of the Building Act from requiring a building consent
- Carries out any other functions and duties specified in the Building Act 2004. Administers dam safety regime

## Roles and responsibilities of a building consent authority

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A building consent authority performs the following functions:

- Issues building consents (except consents subject to a waiver or modification)
- Inspects building work for which it has granted a building consent
- Issues notices to fix
- Issues code compliance certificates
- Issues compliance schedules

## Appendix 2: Building (infringement offences, fees, and forms) regulations 2007 - Schedule

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Schedule 1 Infringement offences and fees. Find out more about these offences on the [New Zealand Legislation website](http://www.legislation.govt.nz/regulation/public/2007/0403/latest/DLM6340509.html) (<http://www.legislation.govt.nz/regulation/public/2007/0403/latest/DLM6340509.html>)

Description of offence	Fee (\$)
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<b>General building offences</b>	
s40 Failing to comply with the requirement that building work must be carried out in accordance with a building consent	1,000
s42 Failing to apply for a certificate of acceptance for urgent building work as soon as practicable after completion of building work	500
s85(1) Person who is not a licensed building practitioner carrying out restricted building work without supervision of a licensed building practitioner with appropriate licence	750
s85(2)(a) Licensed building practitioner carrying out restricted building work without appropriate licence	500
s85(2)(b) Licensed building practitioner supervising restricted building work without appropriate licence	500
s101 Failing to comply with the requirement to obtain a compliance schedule	250
s108(5)(aa) Failing to supply territorial authority with a building warrant of fitness	250
s108(5)(a) Failing to display a building warrant of fitness required to be displayed	250
s108(5)(b) Displaying a false or misleading building warrant of fitness	1,000
s108(5)(c) Displaying a building warrant of fitness other than in accordance with section 108	1,000
116B(1)(a) Using, or knowingly permitting the use of, a building for a use for which it is not safe or not sanitary	1,500
s116B(1)(b) Using, or knowingly permitting the use of, a building that has inadequate means of escape from fire	2,000
s124 Failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a dangerous, earthquake prone, or insanitary building	1,000
s128A(2) Using or occupying a building, or permitting another person to do so, contrary to a territorial authority's hoarding, fence, or notice	2,000
s162E Supplying a pool product without an approved notice	500
s168(1AA) Failing to comply with a notice to fix in relation to a means of restricting access to a residential pool	500
s168(1) Failing to comply with any other notice to fix	1,000
s314(1) Person holding himself or herself out as being licensed to do or supervise building work or building inspection work while not being so licensed	500
s362D(4) Failing to provide prescribed disclosure information	500
Failing to provide prescribed checklist	500
s362F(4) Failing to have a written contract as prescribed	500
s362T(4) Failing to provide prescribed information or documentation to specified persons	500
s363 Using, or permitting use of a building having no consent or code compliance certificate or certificate for public use for premises for public use	1,500
s367 Wilfully obstructing, hindering, or resisting a person executing powers conferred under the Act or its regulations	500
s368 Wilfully removing or defacing a notice published under the Act or inciting another person to do so	500
<b>Earthquake-prone building offences</b>	
s133AU(1) Failing to complete seismic work by deadline	1,000
s133AU(2) Failing to comply with requirement to attach EPB notice or EPB exemption notice	1,000
s133AU(3) Failing, when EPB notice or EPB exemption notice ceases to be attached or becomes illegible, to notify the territorial authority	1,000
s133AU(5) Using or occupying an earthquake-prone building, or permitting another person to do so, contrary to a territorial authority's hoarding, fence, or notice	2,000
<b>Dam safety offences</b>	
s134C Dam owner failing to classify a dam	500
s138 Dam owner failing to comply with a direction from a regional authority to have a classification re-audited and submitted	250
s140 Dam owner failing to prepare, or arrange the preparation of, a dam safety assurance programme and submit it for audit	500
s145 Dam owner failing to comply with a direction from a regional authority to have a dam safety assurance programme re-audited and submitted	250
s150(4)(a) Dam owner knowingly failing to display a dam compliance certificate required to be displayed	250
s150(4)(b) Dam owner displaying a false or misleading dam compliance certificate	1,000
s150(4)(c) Dam owner displaying a dam compliance certificate other than in accordance with section 150	1,000

s154 Dam owner failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a dangerous dam	2,000
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## Appendix 3: Template - infringement notice

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appendix 3 template  
infringement notice  
example

[PDF 49 KB]

<https://www.building.govt.nz/assets/Uploads/building-officials/guides/appendix-3-template-infringement-example.pdf>

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## Summary of rights

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Please read this summary. If you do not understand it, you should consult your lawyer immediately.

1. This notice sets out 1 or more infringement offences that you are alleged to have committed.

The ways you may deal with the offence are set out below. However, paragraphs 6 (b) and (c), 7, and 8 do not apply to you if you enter, or have already entered, into a time-to-pay arrangement under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957.

You may act in the same way on all the offences or in different ways on different offences.

### Payments

2. If you pay the fee for the offence within 28 days after you get this notice, there will be no further enforcement action against you for the offence.

You can pay to the territorial authority or regional authority at the place shown on the front page of this notice.

### Defences

3. You have a complete defence against proceedings for an offence if the fee for the offence has been paid to the territorial authority or regional authority at the place shown on the front page of this notice within 28 days after you get a reminder notice. Late payment is not a defence and neither is payment made at any other place.

4. This paragraph describes a defence additional to the one described in paragraph 3. You must prove either of the following to have the defence:

- (a) that:
- (i) the action or event to which the offence relates was necessary for the purposes of saving or protecting life or health or preventing serious damage to property; and
  - (ii) your conduct was reasonable in the circumstances; and
  - (iii) you adequately mitigated or remedied the effects of the action or event after it occurred; or

(b) that:

- (i) the action or event to which the offence relates was due to an event beyond your control, including natural disaster, mechanical failure, or sabotage; and
- (ii) you could not reasonably have foreseen or provided against the action or event; and
- (iii) you adequately mitigated or remedied the effects of the action or event after it occurred.

5. This paragraph describes a defence additional to those described in paragraphs 3 and 4. This defence is available if:

(a) you are:

- (i) a principal; or
- (ii) an employer; and

(b) you may be liable for an offence alleged to have been committed by:

- (i) your agent; or
- (ii) your employee.

If you are a natural person, including a partner in a firm, you must prove either of the following to have the defence:

(a) that you:

- (i) did not know, and could not reasonably be expected to have known, that the offence was to be, or was being, committed; and
- (ii) took all reasonable steps to remedy any effects of the act or omission giving rise to the offence; or

(b) took all reasonable steps to:

- (i) prevent the commission of the offence; and
- (ii) remedy any effects of the act or omission giving rise to the offence.

If you are a body corporate, you must prove either of the following to have the defence:

(a) that:

- (i) neither the directors nor any person involved in the management of the body corporate knew, or could reasonably be expected to have known, that the offence was to be, or was being, committed; and
- (ii) you took all reasonable steps to remedy any effects of the act or omission giving rise to the offence; or

(b) that you took all reasonable steps to:

- (i) prevent the commission of the offence; and
- (ii) remedy any effects of the act or omission giving rise to the offence.

## Further action

6. You may write a letter to the territorial authority or regional authority if you want to do 1 of the following:

- (a) raise a matter about the circumstances of the offence for the authority to consider; or
- (b) deny liability for the offence and ask for a court hearing (refer to paragraphs 7 and 11); or
- (c) admit liability for the offence but have a court consider written submissions (refer to paragraphs 8 and 11).

You must sign the letter yourself; direct it to the authority's address shown on the front page of this notice; and ensure it arrives within 28 days after you get this notice.

7. If you deny liability for the offence and ask for a court hearing, the territorial authority or regional authority will consider whether it will bring proceedings against you for the offence. If it decides to bring proceedings, it will serve you with a notice of hearing setting out the place and time at which you will have an oral hearing before the court.

8. If you admit liability for the offence but want to have a court consider written submissions, you must do the following in your letter to the territorial authority or regional authority:



- (a) admit liability; and
- (b) ask for a hearing; and
- (c) set out the written submissions that you want the court to consider.

The authority will consider whether it will bring proceedings against you for the offence. If it decides to bring proceedings, it will file your letter with the court. You will not have an oral hearing before the court.

### Non-payment of fee

9. If you do not pay the fee and do not ask for a court hearing within 28 days after you get this notice, the territorial authority or regional authority will decide whether to serve you with a reminder notice.

10. If you do not pay the fee and do not ask for a court hearing within 28 days after you get the reminder notice, the territorial authority or regional authority will consider whether it will bring proceedings against you for the offence. If it does, you are liable to pay a fine and court costs.

### Queries and correspondence

11. When you are writing to the territorial authority or regional authority or paying a fee, please state:

- (a) the date of the offence; and
- (b) the number of this infringement notice; and
- (c) if this notice sets out more than 1 offence, whether you are paying all the fees for all the offences; and
- (d) if paragraph (c) does not apply, how you are dealing with each offence; and
- (e) your full address for replies.

If it is not clear which offence a payment is for, the payment may be treated as for the offences in the order in which they are set out on the front page of this notice. All queries and correspondence about the offence(s) must be made to the territorial authority or regional authority at the address shown on the front page of this notice.

## Appendix 4: Offence codes

These are offence codes for the Building Act 2004 empowered by the Building (Infringement Offences, Fees, and Forms) Regulations 2007 (SR 2007/403).

None of these offences are punishable by imprisonment.

Value	Description
9015	s40 Failing to comply with the requirement that building work must be carried out in accordance with a building consent
9016	s42 Failing to apply for a certificate of acceptance for urgent building work as soon as practicable after completion of building work
9017	s101 Failing to comply with the requirement to obtain a compliance schedule
9018	s108(5)(a) Failing to display a building warrant of fitness required to be displayed
9019	s108(5)(b) Displaying a false or misleading building warrant of fitness
9021	s108(5)(c) Displaying a building warrant of fitness other than in accordance with section 108
9022	s116B(1)(a) Using, or knowingly permitting the use of, a building for a use for which it is not safe or not sanitary
9023	s116B(1)(b) Using, or knowingly permitting the use of, a building that has inadequate means of escape from fire
9024	s124 Failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a dangerous, earthquake-prone, or insanitary building
9025	s128 Using or occupying a building, or permitting another person to do so, contrary to a territorial authority's hoarding, fence, or notice
9026	s168 Failing to comply with a notice to fix
9027	s363 Using, or permitting use of building having no consent or code compliance certificate or certificate for public use for premises for public use

9028	s367 Wilfully obstructing, hindering, or resisting a person executing powers conferred under the Act or its regulations
9029	s368 Wilfully removing or defacing a notice published under the Act or inciting another person to do so
9031	s134 Dam owner failing to classify a dam
9032	s138 Dam owner failing to comply with a direction from a regional authority to have a classification re-audited and submitted
9033	s140 Dam owner failing to prepare, or arrange the preparation of, a dam safety assurance programme and submit it for audit
9034	s145 Dam owner failing to comply with a direction from a regional authority to have a dam safety assurance programme re-audited and submitted
9035	s150(4)(a) Dam owner knowingly failing to display a dam compliance certificate required to be displayed
9036	s150(4)(b) Dam owner displaying a false or misleading dam compliance certificate
9037	s150(4)(c) Dam owner displaying a dam compliance certificate other than in accordance with section 150
9038	s154 Dam owner failing to comply with a notice, within the time stated in the notice, requiring work to be carried out on a dangerous dam
9309	s314(1) Person holding himself or herself out as being licensed to do or supervise building work or building inspection work while not being so licensed

This information is published by the Ministry of Business, Innovation and Employment's Chief Executive. It is a general guide only and, if used, does not relieve any person of the obligation to consider any matter to which the information relates according to the circumstances of the particular case. Expert advice may be required in specific circumstances. Where this information relates to assisting people:

- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.