



# Building (Scotland) Act 2003

## 2003 asp 8

### PART 3

#### COMPLIANCE AND ENFORCEMENT

#### **25 Building regulations compliance**

- (1) This section applies where the Scottish Ministers consider that, for any of 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,
  - furthering the conservation of fuel and power, and
  - furthering the achievement of sustainable development,
- buildings of any description to which building regulations apply ought to comply with a provision of the regulations.
- (2) Where this section applies, the Scottish Ministers may direct all local authorities, particular local authorities or local authorities of a particular description to secure that such buildings comply with that provision of the regulations.
- (3) A local authority must, if required to do so by a direction under subsection (2) and may, in any other case where it appears to the authority that a building of a description specified in such a direction does not comply with a provision of the building regulations specified in the direction in relation to buildings of that description, serve on the owner of the building a notice (a “building regulations compliance notice”)—
- specifying the provision of the regulations in question,
  - requiring the owner to secure, by such date (not less than 28 days after the date on which the notice takes effect) as the notice may specify, that the building complies with that provision,
  - specifying any particular steps which the authority requires the owner to take for that purpose, and
  - specifying the date on which the notice is to take effect.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Subject to subsection (8), nothing in this section affects any requirement to obtain a building warrant (where one is required) for work required to comply with a building regulations compliance notice.
- (5) Where a local authority serving a building regulations compliance notice is a verifier authorised to exercise functions in relation to the matter in question, the notice may require—
- (a) any application for a building warrant for work required to comply with the notice to be made, and
  - (b) any completion certificate in respect of such work to be submitted, to the authority.
- (6) If, by the date specified under subsection (3)(b) (or such later date as the local authority may have substituted under subsection (9)(b)), the owner has—
- (a) applied for a building warrant in respect of any work required to comply with the notice, and
  - (b) (if the local authority is not the verifier to which the application is made) notified the authority of the making of the application,
- the notice has effect with the substitution for the date or later date of such other date (not less than 28 days after the date on which the verifier’s decision on the application takes effect) as the local authority may specify.
- (7) If, by the date specified under subsection (3)(b) (or such later date as may have substituted under subsection (6) or (9)(b)), the owner has not complied with the notice—
- (a) the owner is guilty of an offence, and
  - (b) the authority may carry out such work as is necessary to make the building comply with the provision of building regulations specified in the notice and may recover from the owner any expenses reasonably incurred by it in doing so.
- (8) A building warrant is not required for the carrying out of work by a local authority under subsection (7)(b) but, after the completion of such work, the local authority must register in the building standards register a completion certificate certifying that the building complies with the provision of building regulations specified in the notice in question.
- (9) The local authority may—
- (a) withdraw a building regulations compliance notice,
  - (b) waive or relax any requirement of such a notice, including substituting a later date for the date specified under subsection (3)(b) or (6),
- whether or not the notice has taken effect.
- (10) The withdrawal of a building regulations compliance notice does not affect the power of the local authority to issue a further such notice.

## **26 Continuing requirement enforcement notices**

- (1) This section applies where it appears to a local authority that the owner of a building is failing to comply with a continuing requirement imposed on the owner—
- (a) by building regulations by virtue of section 2, or
  - (b) by a verifier under section 22.

- (2) Where this section applies, the local authority may serve on the owner of the building a notice (a “continuing requirement enforcement notice”)—
  - (a) specifying the continuing requirement in question,
  - (b) requiring the owner to take, by such date (not less than 28 days after the date on which the notice takes effect) as the notice may specify, such steps as the notice may specify for the purpose of complying with the continuing requirement,
  - (c) specifying the date on which the notice is to take effect.
- (3) If, by the date specified under subsection (2)(b) (or such later date as may have been substituted under subsection (5)(b)), the owner has not complied with the notice—
  - (a) the owner is guilty of an offence, and
  - (b) the authority may carry out such work as is necessary to comply with the notice and may recover from the owner any expenses reasonably incurred by it in doing so.
- (4) After the completion of such work the local authority must register in the building standards register a completion certificate certifying that the work has been completed in accordance with the notice in question.
- (5) The local authority may—
  - (a) withdraw a continuing requirement enforcement notice,
  - (b) waive or relax any requirement of such a notice, including substituting a later date for the date specified under subsection (2)(b),whether or not the notice has taken effect.
- (6) The withdrawal of a continuing requirement enforcement notice does not affect the power of the local authority to issue a further such notice.

## **27 Building warrant enforcement notices**

- (1) This section applies where it appears to a local authority that—
  - (a) work in respect of a building for which a building warrant is required under section 8(1)(a) has been or is being carried out—
    - (i) without a building warrant, or
    - (ii) where a building warrant has been granted, otherwise than in accordance with the warrant, or
  - (b) a building is of a description referred to in subsection (1) of section 14 and has not been demolished by the expiry of the period determined under that section for its demolition.
- (2) Where this section applies, the local authority may serve on the relevant person a notice (a “building warrant enforcement notice”) requiring that person—
  - (a) in a case referred to in subsection (1)(a)(i) where the work has been carried out, to submit a completion certificate to a verifier and to secure the verifier’s acceptance of the certificate,
  - (b) in a case referred to in subsection (1)(a)(ii) where the work is being carried out, to obtain a building warrant for the work,
  - (c) in a case referred to in subsection (1)(a)(ii)—
    - (i) to secure that the work complies with the warrant, or

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- (ii) to obtain an amendment to the building warrant in respect of the non-compliance,
  - (d) in a case referred to in subsection (1)(b), to obtain a building warrant for the demolition of the building and to demolish the building,

by such date (not less than 28 days after the date on which the notice takes effect) as the notice may specify.
- (3) In this section, the relevant person, in relation to a building, is—
  - (a) in a case referred to in subsection (1)(a)—
    - (i) where the work has been or is being carried out otherwise than on behalf of another person, the person who carried it out or is carrying it out,
    - (ii) where the work has been or is being carried out by a person on behalf of another person, that other person,
    - (iii) if the owner of the building does not fall within sub-paragraph (i) or (ii) and the person specified in those sub-paragraphs cannot be found or no longer has an interest in the building, the owner,
  - (b) in a case referred to in subsection (1)(b), the owner of the building.
- (4) Where a local authority serving a building warrant enforcement notice under subsection (2)(a) or (b) is a verifier authorised to exercise functions in relation to the matter in question, the notice may require the completion certificate or, as the case may be, the application for the building warrant to be submitted to the authority.
- (5) A building warrant enforcement notice—
  - (a) must specify the date on which the notice is to take effect,
  - (b) may specify particular steps which the local authority requires the person on whom the notice is served to take in complying with the notice,
  - (c) may, in a case referred to in subsection (1)(a) where work is being carried out, require the person on whom the notice is served to suspend work (other than work for complying with the notice) until the notice has been complied with.
- (6) If, by the date specified under subsection (2) (or such later date as the local authority may have substituted under subsection (9)(b)), the person on whom the notice is served has—
  - (a) applied for a direction under section 3 in relation to the building in question, and
  - (b) notified the authority of the making of the application,

the notice has effect with the substitution for the date or later date of such other date (not less than 28 days after the date on which the decision on the application for the direction takes effect) as the local authority may specify.
- (7) If, by the date specified under subsection (2) (or such later date as the local authority may have substituted under subsection (6) or (9)(b)), the person on whom the notice is served has not complied with the notice—
  - (a) the person is guilty of an offence, and
  - (b) the authority may carry out the work necessary—
    - (i) in a case referred to in subsection (2)(a) or (b), to secure that the work complies with building regulations,
    - (ii) in a case referred to in subsection (2)(c) or (d), to secure compliance with the notice,

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

- (8) A building warrant is not required for the carrying out of work by a local authority under subsection (7)(b) but, after the completion of such work, the local authority must register in the building standards register a completion certificate certifying that the work complies with building regulations or, as the case may be, that the work has been completed in accordance with the notice in question.
- (9) The local authority may—
- (a) withdraw a building warrant enforcement notice,
  - (b) waive or relax any requirement of such a notice, including substituting a later date for the date specified under subsection (2),
- whether or not the notice has taken effect.
- (10) The withdrawal of a building warrant enforcement notice does not affect the power of the local authority to issue a further such notice.