



# Building (Scotland) Act 2003

## 2003 asp 8

### PART 5

#### GENERAL

#### *Offences and liability*

#### **48 Penalties for offences**

- (1) Subsection (2) applies to an offence under any provision of this Act other than sections 14(6), 21(5), 37(4), 39(6) and 43(1).
- (2) A person guilty of an offence to which this subsection applies is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **49 Offences by bodies corporate etc.**

- (1) Where an offence under this Act which has been committed by a body corporate other than a local authority is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary, member or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where an offence under this Act which has been committed by a local authority is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) an officer or member of the authority, or
  - (b) any person who was purporting to act in any such capacity,that person, as well as the authority, is guilty of the offence and liable to be proceeded against and punished accordingly.

- (3) Where an offence under this Act which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a partner, or
  - (b) any person who was purporting to act in that capacity,
- that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where an offence under this Act which has been committed by an unincorporated association other than a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a person who is concerned in the management or control of the association, or
  - (b) any person who was purporting to act in that capacity,
- that person, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

## **50 Criminal liability of trustees etc.**

In proceedings for an offence under Part 3 or 4, it is a defence for a person to prove that, at the date of service of the notice in question—

- (a) the person had no interest in the building except in the capacity of a trustee, tutor, curator, guardian, judicial factor or liquidator of a company, and
- (b) the total amount of the funds, rents and other assets in the person's hands in that capacity was less than the amount of the expenses which would have been incurred if the notice had been complied with.

## **51 Civil liability**

- (1) Subject to this section, breach of a duty imposed by building regulations, so far as it causes damage, is actionable, except in so far as the regulations otherwise provide.
- (2) Such regulations may provide for a specified defence to be available in an action for breach of such a duty brought by virtue of subsection (1).
- (3) Subsection (1) and any defence provided for in pursuance of subsection (2) do not apply in relation to the breach of such a duty in connection with a building erected before the date on which those subsections come fully into force unless the breach arises in relation to the conversion, alteration, demolition, repair, maintenance or fitting of such a building.
- (4) Nothing in this section affects—
  - (a) the extent (if any) to which breach of a duty imposed by building regulations is actionable in a case to which subsection (1) does not apply,
  - (b) any right of action which exists apart from this section.
- (5) In this section “damage” includes the death of, or injury to, any person (including any disease and any impairment of a person's physical or mental condition).