
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 428

The Building (Procedure) (Scotland) Regulations 2004

PART VII

**PROCEDURE RELATING TO CERTIFICATION
OF DESIGN AND CONSTRUCTION**

Appointment of certifiers

31. Before making an appointment as a certifier under section 7(1)(b) or (c) of the Act the considerations to which the Scottish Ministers shall have regard shall include in relation to the person to be appointed—

- (a) qualifications;
- (b) competence;
- (c) accountability to the public; and
- (d) impartiality.

Issue by certifiers of certificates of design and construction

32. A certificate issued by an approved certifier of design for the purposes of section 11 of the Act and a certificate issued by an approved certifier of construction for the purposes of section 19 of the Act shall—

- (a) in each case certify only in relation to a matter or matters in respect of which the certifier is authorised to exercise functions under the Act;
- (b) be in such form as the Scottish Ministers may determine; and
- (c) be signed and dated by the certifier.

Issue of certificate by certifier of design

33. In assessing the design of the building and/or the proposed method of working for the purposes of the certificate to be issued by the certifier of design in accordance with section 11(1) of the Act, the certifier of design shall apply the building regulations in force at the date of the application for building warrant under section 9 of the Act.

Further certificates

34. Where in making an application for a building warrant under section 9 of the Act the applicant has submitted a certificate in accordance with section 11 of the Act, any application under section 9 for amendment to the warrant once granted shall include a further certificate in accordance with section 11 if the proposed amendment to the building warrant will affect the matters covered in the certificate submitted with the original application.

Schemes under section 7(2) of the Act

35.—(1) An application for approval of a scheme under section 7(2) of the Act shall be made by the scheme provider lodging with the Scottish Ministers—

- (a) an application in such form as the Scottish Ministers may determine;
- (b) the appropriate fee; and
- (c) such further information as the Scottish Ministers may require to enable them to consider the application.

(2) The application for approval of a scheme shall specify the competence or competences in respect of which the scheme is to operate.

Determination of Application for Approval of a Scheme

36.—(1) On receipt of an application for approval of a scheme the Scottish Ministers shall proceed forthwith—

- (a) to consider the application; and
- (b) to determine the application but shall not refuse it on any ground without first giving the applicant notification of the proposed ground of refusal and an opportunity of making written representations and the Scottish Ministers shall in any such case consider any written representations made by or on behalf of the applicant before determining the application.

(2) In considering an application the considerations to which the Scottish Ministers shall have regard shall include—

- (a) whether the members of the scheme are representative of the aspects of design and construction in respect of which the scheme is to operate;
- (b) the accountability of the governing body of the scheme to its members;
- (c) whether the conduct and membership of the scheme is transparent to the members of the scheme and to the general public;
- (d) whether members of the scheme promote good practice; and
- (e) in relation to the members of the scheme their knowledge, experience and understanding of the role and responsibilities of certifiers,

and the Scottish Ministers may require the applicant to submit to them such information as they consider necessary by way of evidence in relation to these considerations.

(3) In this regulation members of a scheme shall be considered to promote good practice if they can produce evidence satisfactory to the Scottish Ministers as to the following matters—

- (a) financial probity;
- (b) insurance relevant to certification;
- (c) adoption of quality assurance systems and codes of practice with regard to checking design and/or construction work; and
- (d) ready access to any British and European Standards or guidance documents relevant to the aspects of design and construction in respect of which the scheme is to operate.

(4) An application shall not be granted unless the scheme can produce evidence to the Scottish Ministers as to insurance in relation to its certification.

(5) The Scottish Ministers shall not refuse an application on the sole grounds that a scheme covering the aspect or aspects of design or construction in respect of which the applicant scheme proposes to operate already has approval.

(6) The Scottish Ministers may if they think fit withdraw an approval granted under this regulation but they shall not do so without first giving the members of the scheme and the scheme provider notification of the proposed withdrawal of approval and an opportunity for making written representations and shall in any such case consider any written representations so made by or on behalf of the members of the scheme or the scheme provider before finally determining whether approval should be withdrawn.

Maintenance of records by certifiers

37.—(1) Records shall be maintained by—

- (a) approved certifiers of design and approved certifiers of construction in each case appointed under section 7(1) of the Act (“ approved certifiers”);
- (b) providers of schemes approved by the Scottish Ministers under section 7(2) of the Act;
- (c) approved certifiers who are members of a scheme (“approved scheme certifiers”).

(2) Records maintained by approved certifiers shall include information showing—

- (a) how compliance with the building regulations was established;
- (b) the particulars of any complaints received; and
- (c) the manner in which such complaints are dealt with.

(3) Approved certifiers shall no later than 3 months after the date on which any record is first maintained by that certifier under paragraph (2) and, at 3 monthly intervals thereafter, prepare and submit to the Scottish Ministers a report of the matters recorded under paragraph (2).

(4) Records maintained by scheme providers shall include information showing—

- (a) the particulars of all applications for membership of certification schemes received;
- (b) the manner in which such applications are determined;
- (c) the basis on which any applications are rejected;
- (d) the particulars of any complaints received;
- (e) the manner in which complaints are dealt with; and
- (f) any terminations of membership of the scheme and the reasons therefor.

(5) Scheme providers shall no later than 7 days after the date on which any record is first maintained by that provider under paragraph (4), and at weekly intervals thereafter, prepare and submit to the Scottish Ministers a report of the matters recorded under paragraph (4).

(6) Records maintained by approved scheme certifiers shall include information showing—

- (a) a record of each certificate that that scheme certifier issues, including the date signed, name of verifier to whom the application for building warrant or completion certificate is submitted, address of the project and registration numbers of the person or persons signing the certificate; and
- (b) how compliance with the building regulations was established.

(7) Approved scheme certifiers must supply to the scheme provider the information recorded by them under paragraph (6)(a).

(8) Scheme providers shall at 3 monthly intervals prepare and submit to the Scottish Ministers a report of the matters supplied to them under paragraph (7).

Removal of verifiers and certifiers

38.—(1) For the purposes of paragraph 3 of Schedule 2 to the Act the grounds on which an appointment as a verifier or certifier appointed under section 7(1) of the Act may be varied or terminated shall include—

- (a) the breach of any of the terms on which the appointment is held;
- (b) following changes to the building legislation failure on the part of the verifier or certifier to undertake relevant training, or
- (c) following an investigation in accordance with regulation 40 the issue of a report which in the opinion of the Scottish Ministers indicates that the verifier or certifier is not properly discharging its functions for the purposes of the Act.

(2) The Scottish Ministers shall not vary or terminate an appointment under section 7(1) of the Act without first giving the verifier or certifier notification of the proposed variation or termination and the reasons therefor and an opportunity to be heard and of making written representations, and the Scottish Ministers shall in any such case consider any oral or written representations so made by or on behalf of the verifier or certifier before determining whether to vary or terminate the appointment.

Verifiers having an interest in a building

39.—(1) For the purposes of paragraph 9 of Schedule 2 to the Act a verifier has an interest in a building if that verifier is—

- (a) the owner of the land on which it is proposed to erect that building;
- (b) the tenant or prospective tenant or occupier of the building to be erected;
- (c) contracted as a developer in relation to that building.

(2) For the purposes of paragraph 1(a) of this regulation “owner” shall include a majority shareholder or other controlling interest in a company which is the owner of the land referred to in that sub-paragraph.

Evaluation of performance of verifiers and certifiers

40.—(1) A verifier or certifier appointed under section 7(1) of the Act and a scheme having approval under section 7(2) of the Act shall if required by the Scottish Ministers provide them with such information as the Scottish Ministers consider necessary to enable them to evaluate the discharge of functions by the verifier, certifier or members of the scheme.

(2) If as a result of the evaluation the Scottish Ministers consider it necessary they may appoint a person to investigate the discharge of functions by the verifier or certifier or members of the scheme and to prepare a report thereon.

(3) A copy of any report prepared following such an investigation shall be sent to the verifier, certifier or members of the scheme to whose functions the report relates and the verifier, certifier or any such member shall be given an opportunity to make written representations and the Scottish Ministers shall, in the event of any such written representations being made, consider these.