
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 428

The Building (Procedure) (Scotland) Regulations 2004

PART I
GENERAL

Citation and commencement

- 1.—(1) These Regulations may be cited as the Building (Procedure) (Scotland) Regulations 2004.
(2) Subject to paragraph (3) below, these Regulations shall come into force on 1st May 2005.
(3) Part 1 of these Regulations and regulations 30, 31, 35, 36, 37 and 38 shall come into force on 4th November 2004.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—
“the Act” means the Building (Scotland) Act 2003;
“application for a direction” means an application under section 3 of the Act to the Scottish Ministers for a direction;
“application for a building warrant” includes an application for amendment of a warrant;
“building regulations” means the Building (Scotland) Regulations 2004(1);
“date of receipt” means the date of the day on which the application or other document is received except that when that day is not a working day the date of receipt shall be deemed to be the next working day after that date, and “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(2), a day appointed for public thanksgiving or mourning, or any other day which is a local or public holiday in an area where the application or other document is received;
“direction” means a direction under section 3 of the Act by the Scottish Ministers dispensing with or relaxing a provision of the building regulations, given either unconditionally or subject to such conditions specified in the direction and includes a direction given under section 3(4) (c) of the Act varying or revoking a direction under section 3(2) of the Act;
“draft direction” means a draft of any direction proposed to be given by the Scottish Ministers;
“fire authority” has the same meaning as in the Fire Services Act 1947(3);
“plan” includes section, elevation, drawing and block plan, and any specification or other written or figured statement submitted to the Scottish Ministers, a verifier or a local authority as relative to a plan, section, elevation or drawing;
“prescribed fee” means a fee prescribed by regulations made under section 38 of the Act;

(1) S.S.I. 2004/406.
(2) 1971 c. 80.
(3) 1947 c. 41.

“prescribed form” means a form prescribed by regulations made under section 36 of the Act.

(2) Any reference in these Regulations to a Part, regulation or Schedule shall, unless the context otherwise requires, be construed as a reference to a Part or regulation of or a Schedule to these Regulations.

(3) Any document which, by virtue of these Regulations, may, or must, be transmitted whether or not by means of submission may be transmitted by post or, where the condition set out in paragraph (4) below is satisfied, by electronic communication.

(4) That condition is that the person to whom the transmission is to be made has, in advance, indicated that transmission by electronic communication would be acceptable.

(5) Any reference in these Regulations to an application, certificate, statement or plan being signed shall where the application, certificate, statement or plan is being submitted by electronic communication include on the application, certificate, statement or plan the electronic signature of the applicant or a duly authorised agent provided the verifier, local authority or Scottish Ministers as the case may be have first confirmed that such is acceptable and “electronic communication” has the same meaning as in the Electronic Communications Act 2000(4).

PART II

APPLICATION TO A VERIFIER FOR BUILDING WARRANT

Application of this Part

3. The provisions of this Part shall apply to an application for a building warrant under section 9 of the Act.

Making of application for building warrant

4.—(1) Subject to paragraph (2) below, an application for a building warrant shall be made by submitting to the verifier—

- (a) an application in such form as shall be determined by the verifier containing the information specified in Schedule 1 to these Regulations signed by the applicant or a duly authorised agent;
- (b) the principal, and where submission is by other than electronic communication, a copy of each of the plans specified in the case of—
 - (i) a building warrant to erect a building, in Section A of Schedule 2;
 - (ii) a building warrant to extend a building, in Section B of Schedule 2;
 - (iii) a building warrant to alter or convert a building or to provide services, fittings and equipment in or in connection with a building, in Section C of Schedule 2;
 - (iv) a building warrant to demolish a building, in Section D of Schedule 2;
 - (v) an amendment to a building warrant under section 9(4) or (5) of the Act, in Section E of Schedule 2,
 which plans shall be to such scale (if any) as the verifier may require;
- (c) details of any direction which has been given by the Scottish Ministers in relation to the particular building which is the subject of the application; and

- (d) the prescribed fee, payment of which shall be made by such method or methods as the verifier may determine.
- (2) Nothing in this regulation shall require the submission of the plans specified in Schedule 2—
 - (a) in the case of an application for a building warrant for the construction or demolition of a building, in so far as the said plans relate to such stage in the construction or demolition, as the verifier has determined in terms of section 9(4) of the Act is not to be proceeded with until the conditions under that subsection have been met; or
 - (b) in any other case of an application for a building warrant if the verifier is satisfied that the nature of the proposed works is sufficiently apparent from the application together with such plans as may accompany it.
- (3) The applicant shall if required by the verifier at any stage submit to the verifier—
 - (a) such further information or additional plans; or
 - (b) such further copies (not exceeding two) of the application or of the plans submitted with the application;as the verifier may direct.
- (4) The provisions of paragraph 11 of Section G of Schedule 2 shall have effect for the purposes of this regulation.
- (5) The verifier may reject an application for a building warrant if the verifier considers that the subjects to which the application relates are multiple and that it would be appropriate to submit a separate application in respect of each of those subjects.

Warrants granted where section 9(4) of the Act applies (staged warrants)

- 5.—**(1) For the purposes of section 9(3) of the Act in its application to construction of a building (which empowers the verifier to grant a warrant for the construction of a building subject to further information being provided in respect of specified stages in the construction) there are specified the following stages—
- (a) construction of foundations; or
 - (b) such other stages as the verifier considers appropriate having regard to any guidance issued by the Scottish Ministers.
- (2) For the purposes of section 9(3) of the Act in its application to demolition of a building (which empowers the verifier to grant a warrant for the demolition of a building subject to further information being provided in respect of specified stages in the demolition) there are specified the following stages—
- (a) isolation and removal of services, fixtures and fittings;
 - (b) isolation and protection of adjacent structures; or
 - (c) such other stages, appropriate to the method of demolition, as the verifier considers appropriate having regard to any guidance issued by the Scottish Ministers.

Building warrants: conversion

- 6.** An application for a building warrant relating to the conversion of all or part of a building may be submitted—
- (a) as a separate application; or
 - (b) as an accompanying application to—
 - (i) an application for a building warrant required for work under section 8(1)(a) of the Act; or

- (ii) an application for an amendment to a building warrant.

Building warrants: late applications

7.—(1) This regulation applies where an application for a building warrant is made in the circumstances described in section 15 of the Act (Building Warrants: late applications).

(2) Before granting the application for a building warrant the verifier may require the exposure of such concealed parts of the structure of the building as are necessary to establish that the construction as built accords with the submitted plans.

(3) In determining the application the verifier shall apply the building regulations in force at the date of the application.

Building warrants: rejection of applications

8.—(1) An application shall not be treated as received unless the application has been submitted and the prescribed fee paid.

(2) Except where regulation 4(2) and Schedule 2, section G, paragraph 10 apply, in the event that an application is submitted without the specified plans, the verifier shall—

- (a) advise the applicant that the specified plans are required; and
- (b) accept the application form on condition that the applicant will submit the said plans within the period of 42 days beginning with the date of receipt of the advice referred to in paragraph (2)(a) after which time the verifier may consider the application withdrawn and return the papers relating to the application to the applicant together with the prescribed fee.

Determination of application

9.—(1) On receipt of an application the verifier shall proceed forthwith to consider the application; and

- (a) if satisfied in accordance with section 9(1) of the Act and that the application complies with these regulations grant the application; or
- (b) within the period of three months beginning with the date of receipt of the application prepare and send to the applicant or a duly authorised agent a report thereon (“the first report”) identifying what further information is needed to assess the application, and anything which is not in accordance with section 9 (1) of the Act; or
- (c) subject to paragraph (2) refuse the application; and
- (d) within the period of 14 days beginning with the date of receipt of the application send a copy of the application or of its refusal as appropriate to the local authority for registration in the building standards register.

(2) The verifier shall not refuse the application on any ground without first giving the applicant notification of the proposed ground of refusal and an opportunity of being heard and of making written representations, and the verifier shall in any such case, before finally determining the application, consider any oral and written representations so made by the applicant or the applicant’s duly authorised agent within the period of 14 days beginning with the date on which the notification was given.

(3) In the event that the verifier refuses an application the verifier shall give reasons therefor.

Consultation

10.—(1) The verifier may, if the verifier thinks fit—

- (a) send to relevant consultees a copy of the application for building warrant inviting comments thereon; or
- (b) direct the applicant to obtain the views of relevant consultees and report such views to the verifier,

and any comments thereon shall be taken into account in the determination of the application.

(2) The verifier shall at intervals of seven days notify the relevant consultees of all applications for a building warrant received within the last seven days.

(3) In this regulation “relevant consultees” means such persons as the verifier considers may have an interest in the application having regard to any guidance thereon issued by the Scottish Ministers.

Consultation – Fire Authority

11.—(1) The provisions of this regulation shall apply on receipt by the verifier of—

- (a) an application for a building warrant—
 - (i) for a non domestic residential building;
 - (ii) for a non domestic, non residential building where the design is not in accordance with the guidance issued by the Scottish Ministers;
 - (iii) for a domestic building with a storey height over 18 metres; and
 - (iv) for a domestic building with a storey height over 7.5 metres up to 18 metres where the design is not in accordance with guidance issued by the Scottish Ministers;
- (b) an application for an amendment to a building warrant where consultation was required in respect of that building warrant in accordance with this paragraph; and
- (c) an application for an amendment to a building warrant where if that amendment is granted the design will not be in accordance with guidance issued by the Scottish Ministers and the amendment, if granted, will bring the building within the criteria specified in paragraph(1) (a).

(2) Where the provisions of this regulation apply the verifier shall consult the relevant fire authority in accordance with regulation 10(1).

Building warrants: staged warrants

12. In relation to a building warrant granted in accordance with section 9(4) of the Act (staged warrants) the building warrant must state—

- (a) the stages in construction or demolition in respect of which the building warrant is granted; and
- (b) that work on other stages cannot be proceeded with until an amendment is made to the building warrant authorising that work to proceed.

Building warrants: continuing requirements

13. Where on granting or making an amendment to a building warrant a verifier imposes on the owner of the building continuing requirements in accordance with section 22 of the Act, the building warrant or amendment to the building warrant must state—

- (a) the continuing requirements; and
- (b) the provision of the building regulations to which they relate.

Discharge and variation of continuing requirements imposed by verifiers

14. Where in accordance with section 23 of the Act a verifier discharges or varies a continuing requirement imposed under section 22 of the Act, the verifier shall within the period of fourteen days beginning with the date of the variation or discharge notify the local authority of the variation or discharge for the purposes of registration in the building standards register.

Building warrants: warrants for demolition

15. A warrant for demolition of a building must state the period of time within which the demolition work must be completed.

Building warrants: limited life buildings

16.—(1) The period of life of a building constructed in accordance with a building warrant granted under section 14 of the Act (“a limited life building”) will run from the date of notification to the relevant person in terms of section 17(10) of the Act by the verifier of acceptance of the completion certificate or, where relevant, the date of any permission for the temporary occupation or use of a building before acceptance of the completion certificate.

(2) The “relevant date” for the purposes of this regulation is the date on which the period of the life of a limited life building expires as calculated in accordance with paragraph (1).

(3) An application for a warrant for demolition of a limited life building must be submitted to the verifier not less than 3 months before the relevant date or such other later date as the verifier may, in his discretion, think fit.

(4) A building warrant granted for a limited life building must state—

- (a) the period of the life of the building not exceeding a period of five years;
- (b) the relevant date in relation to the limited life building; and
- (c) that by the relevant date the building and ancillary services should be demolished and removed from the site.

Documents to be forwarded to local authority with copy building warrant or amendment

17. For the purposes of section 9(7)(a)(ii) of the Act (which requires the verifier on granting or making an amendment to a building warrant to send to the local authority for registration in the building standards register a copy of the warrant or amendment together with such other documents and information as may be specified) there is specified—

- (a) the principal plans submitted with the application in accordance with schedule 2 to these regulations; and
- (b) any certificate submitted to the verifier in accordance with section 11(1) of the Act.

Documents to be sent with notification to owner

18. Where on the granting or making of an amendment to a building warrant a verifier issues a notification in accordance with section 9(7)(b) of the Act (notification of owner where the owner is not the person who applied for the warrant or amendment), the verifier shall send with such notification information as to where a copy of the plans submitted with reference to the relevant application may be viewed.

Duration of building warrant

19.—(1) A building warrant granted by a verifier shall, subject to paragraphs 2 to 4 below, be valid only for the period of three years beginning with the date on which that warrant is granted.

(2) The validity of such a warrant may be extended by a period of nine months where an application for that purpose has been made to, and granted by, a verifier before that period of three years has expired.

(3) Any period extended by virtue of paragraph (2) may be extended by a further period, or periods, if an application for that purpose has been made to, and granted by, a verifier before the expiry of the previous such period. Any such extension shall be for such period as that verifier may determine.

(4) Subject to paragraph (5), where the period during which a warrant is valid has expired, a verifier may nonetheless determine that that warrant should be valid for such further period as that verifier may determine.

(5) On approving a further period of validity of a building warrant on application in accordance with paragraphs (2) to (4) the verifier may, if the verifier sees fit, grant that approval subject to the condition that the compliance of any work or conversion carried out or made in accordance with the building warrant during the further period of validity shall be assessed against the building regulations⁽⁵⁾ in force at the date of the application for a further period of validity.

(6) Where a building warrant relates to multiple subjects the verifier may require on application made to the verifier under paragraphs (2) to (5) that separate applications are made in respect of such of the multiple subjects as the verifier thinks fit.

PART III

REFERENCE TO SCOTTISH MINISTERS FOR A VIEW IN RESPECT OF AN APPLICATION FOR A BUILDING WARRANT

Making of a reference for a view

20.—(1) A reference under section 12(1) of the Act to the Scottish Ministers for a view in relation to an application for a building warrant under section 9 of the Act (“the subject application”) shall be made by submitting to the Scottish Ministers such information as the Scottish Ministers may require to form a view in relation to the reference.

(2) The person making the reference shall forthwith send a copy of the reference and of any accompanying documents to the applicant or, as the case may be, the verifier.

(3) In the event that the Scottish Ministers express a view and intimate it in accordance with section 12(2) of the Act such intimation shall be accompanied by a notification of the fee payable in respect of that application, that fee shall be determined by the Scottish Ministers.

(4) A reference for a view under section 12(1) of the Act shall not be accepted if it is submitted on or after the date of acceptance of a completion certificate in accordance with section 18 of the Act in respect of the work or conversion to which the subject application relates.

PART IV

APPLICATION TO SCOTTISH MINISTERS FOR A DIRECTION IN RELATION TO A PARTICULAR BUILDING

Application of this Part

21. The provisions of this Part shall apply to an application under section 3(2)(a) of the Act to the Scottish Ministers for a direction in relation to a particular building.

Making of an application for direction

22.—(1) An application for a direction shall be made by submitting to the Scottish Ministers an application in writing signed by the applicant or a duly authorised agent and accompanied by such plans as are necessary to show the details of the part of the application for which provision a direction is sought and the relationship of the direction to the building as a whole together with where the submitting is by other than electronic communication a copy of the said application and plans by the applicant or a duly authorised agent.

(2) The applicant shall if required by the Scottish Ministers—

- (a) submit to them such further information as the Scottish Ministers may direct; and
- (b) obtain at the applicant's expense and submit to the Scottish Ministers the results of such tests as the Scottish Ministers may direct are to be undertaken.

Application for building warrant

23. Where the building to which the application in this Part relates is the subject of an application for a building warrant under section 9 of the Act (“the subject warrant application”)—

- (a) the Scottish Ministers may require the applicant for a direction to send to them a copy of the subject warrant application and the plans submitted therewith for the purposes of inspection only; and
- (b) the application for a direction shall not be accepted if it is submitted on or after the date of acceptance of a completion certificate in accordance with section 18 of the Act in respect of the work or conversion to which the subject warrant application relates.

Intimation

24. In the event that the Scottish Ministers determine not to give a direction they shall notify the applicant of their determination and of the reasons therefor.

PART V

APPLICATION TO SCOTTISH MINISTERS FOR A DIRECTION IN RELATION TO A DESCRIPTION OF BUILDING

Application of this Part

25. The provisions of this Part shall apply—

- (a) to an application under section 3(2)(b) of the Act to the Scottish Ministers for a direction in relation to a description of building;

- (b) in relation to the giving of such a direction by the Scottish Ministers whether on an application made to them or of their own accord; and
- (c) in relation to the giving of a subsequent direction under section 3(4)(c) of the Act varying or revoking such a direction.

Making of an application for direction

26.—(1) An application shall be made by submitting to the Scottish Ministers an application in writing signed by the applicant or a duly authorised agent and accompanied by such plans as are necessary to show the aspects of the building or the part thereof for which a direction is sought and the provision of the building regulations from which dispensation or relaxation is sought.

- (2) The applicant shall if required by the Scottish Ministers—
 - (a) submit to them such further information as the Scottish Ministers may direct; and
 - (b) obtain at the applicant's expense and submit to the Scottish Ministers the results of such tests as the Scottish Ministers may direct are to be undertaken.

Process of consultation

- 27.**—(1) The Scottish Ministers—
- (a) shall send to the applicant (if any) or a duly authorised agent, the Buildings Standards Advisory Committee and every verifier a copy of their draft direction; and
 - (b) may if they think fit send to any other person or body appearing to them to be interested a copy of the application and of their draft direction;

inviting comment on the draft direction to be sent in writing to the Scottish Ministers before the expiry of the period of 21 days beginning with the date of issue of the draft direction, and they shall take into account any comments received before making their decision final.

(2) Following the receipt of comments from persons to whom a copy of the draft direction has been sent in accordance with paragraph (1) the Scottish Ministers may if they think fit produce a further draft direction in accordance with that paragraph.

Determination

28.—(1) After giving a direction under section 3(2) (b) of the Act the Scottish Ministers shall give notification of the direction to the applicant if any or a duly authorised agent, and any other body or person who received a copy of the draft direction in terms of paragraph (b) of regulation 27.

(2) In the event that the Scottish Ministers determine not to give a direction on the matter referred to them they shall notify any applicant or a duly authorised agent of their determination and of their reasons therefor.

Registration in Building Standards Register

29. Where in accordance with section 3(6) of the Act, the Scottish Ministers have sent a copy of any direction to the local authority, the local authority shall proceed forthwith to register the said copy direction in the building standards register.

PART VI

VERIFIERS

Appointment of verifiers

30. Before making an appointment as a verifier under section 7(1)(a) of the Act the considerations to which the Scottish Ministers shall have regard shall include—

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

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.

PART VIII

PROCEDURE IN RELATION TO COMPLETION CERTIFICATES

Submission of Completion Certificates

41. A completion certificate shall be submitted under section 17(1), (4) and (7) of the Act by submitting to the verifier—

- (a) a completion certificate in the prescribed form which shall—
 - (i) certify the matters referred to in section 17(2) of the Act and;
 - (ii) contain—
 - (aa) a description sufficient to identify the building (which must accord with the address for that building in the building standards register);
 - (bb) a statement of any continuing requirements imposed under section 22(2) of the Act;
 - (cc) information in relation to any certificates of construction submitted with the completion certificate in accordance with section 19 of the Act including the text of the actual certificate;
 - (dd) details of any amendments to the building warrant in respect of which the completion certificate certifies in accordance with section 17(2) of the Act; and
 - (ee) in the case of a completion certificate submitted in respect of a new dwelling constructed or created by conversion an energy rating calculated in accordance with the Government Standard Assessment Procedure;
- (b) in the case of a completion certificate submitted in accordance with section 17(4) of the Act—
 - (i) the prescribed fee;
 - (ii) such plans as would have been required for an application for a building warrant in respect of the work or conversion in accordance with regulation 4(1)(b) of these regulations
 - (iii) information in relation to any certificates of construction and design submitted with the completion certificate including the text of the actual certificate; and
- (c) such other information as the verifier may require.

Completion certificates – multiple buildings

42.—(1) In relation to a completion certificate submitted under section 17(1) of the Act, where the work or conversion in respect of which the building warrant was granted relates to more than one building the relevant person may submit to the verifier—

- (a) a completion certificate for all of the buildings, other than dwellings, covered by the building warrant; or
- (b) a separate completion certificate for each dwelling or building covered by the building warrant,

but the verifier shall only issue an acceptance of such certificates if the verifier is satisfied as to the matters specified in regulation 45(3).

- (2) In this paragraph “relevant person” has the same meaning as in section 17(10) of the Act.

Acceptance and rejection of completion certificates

43. For the purposes of section 18(3) of the Act (which requires the verifier before accepting a completion certificate relating to a building or in respect of work or a conversion of such description as may be specified to consult such persons as may be specified) there is specified in the case of work or a conversion in respect of which a completion certificate has been submitted in accordance with section 17(4) of the Act the relevant fire authority only if the verifier would have done so in terms of regulation 11 had it been an application for a building warrant.

Consideration of completion certificate

44.—(1) Subject to paragraph (2), on receipt of a completion certificate the verifier shall proceed forthwith to consider the completion certificate and shall within the period of 14 days beginning with the date of receipt notify the person who submitted the certificate of its acceptance or rejection.

(2) In relation to a completion certificate submitted under section 17(4) of the Act, on receipt thereof the verifier shall proceed to consider the completion certificate in accordance with the provisions of regulation 9(1)(ii).

(3) Where a verifier accepts a completion certificate the verifier must send an acceptance in such form as the verifier thinks fit to the person who submitted the certificate.

Acceptance of completion certificates – multiple buildings

45.—(1) In relation to a completion certificate referred to in regulation 42(1) (a) and (b) the verifier—

- (a) may issue an acceptance in respect of all the buildings covered by the completion certificate; or
- (b) if requested by the relevant person and the verifier thinks fit may issue a separate acceptance in respect of each building covered by the completion certificate.

(2) In relation to a completion certificate referred to in regulation 42(1)(b) any acceptance issued by the verifier shall be in respect of the building covered by the completion certificate.

(3) The verifier shall not accept a completion certificate referred to in regulation 42(1)(a) and (b) unless the verifier is satisfied as to the following matters—

- (a) where the completion certificate is in respect of the last dwelling forming part of a housing development, that all parts of the development communal to any dwelling forming part of that development and subject to a requirement of the building regulations are complete;
- (b) where the completion certificate is in respect of a dwelling which forms part of a larger building that the areas communal to the dwelling and the larger building have been completed; and
- (c) where the completion certificate is in respect of several buildings at different postal addresses that the buildings all have the same owner.

(4) In this Regulation “relevant person ” has the same meaning as in section 17(10) of the Act.

Documents and information to be sent

46. For the purposes of section 18(4)(a)(ii) of the Act (which requires the verifier on accepting or rejecting a completion certificate to send a copy of the certificate together with such other documents and information as may be specified) there is specified—

- (a) in the case of a completion certificate submitted under section 17(4) of the Act (work or conversion for which a building warrant is required carried out or made without a building warrant) the principal plans to be submitted with the completion certificate in

accordance with regulation 42(1)(b) including where required by the verifier exposure of such concealed parts of the structure of the building as was necessary to establish that the construction as built accords with the submitted plans;

- (b) in every case a copy of the acceptance issued in accordance with regulation 45(2); and
- (c) in every case any certificate submitted to the verifier in accordance with section 19(1) of the Act.

Rejection of completion certificate

47. Where a verifier rejects a completion certificate the verifier shall notify the person who submitted the certificate and in accordance with section 18(4)(b) the owner of the building of the rejection and of the verifier's reasons therefor.

Information to fire authority

48. Where a verifier accepts a completion certificate and a fire authority has been consulted either—

- (a) in relation to the application for a building warrant in accordance with regulation 11; or
- (b) in relation to the completion certificate in accordance with regulation 44

the verifier shall send a copy of the acceptance to the relevant fire authority.

Occupation or use without completion certificate

49. Where in accordance with section 21(3) of the Act a verifier grants permission for the temporary occupation or use of a building the verifier shall send a copy of the permission to the relevant fire authority but only when the fire authority has been consulted prior to the granting of the permission.

Imposition of continuing requirements by verifiers

50. Where in accordance with section 22(2) of the Act a verifier imposes continuing requirements in relation to a building which relate to fire safety the verifier shall send a copy of the continuing requirements to the relevant fire authority.

PART IX

NOTICES BY LOCAL AUTHORITIES

Notices served by local authorities

51.—(1) Where a local authority has—

- (a) served a notice under sections 25 to 30 of the Act; or
- (b) withdrawn such a notice; or
- (c) waived or relaxed any requirement of such a notice,

particulars of that notice, withdrawal, waiver or relaxation shall be entered in the building standards register.

(2) In the event that such a notice is quashed following an appeal to the sheriff in accordance with section 47 of the Act, the particulars of the notice shall be removed from the building standards register.

Evacuation of Buildings

52. In the event that a local authority requires the occupants of a building to remove from the building in accordance with section 42(3) or (4) of the Act, the local authority must send a copy of the notice issued in accordance with section 42(5) of the Act to the owner of the building where the owner is not the occupier.

PART X

GENERAL PROCEDURE OF LOCAL AUTHORITIES AND VERIFIERS

Application of this Part

53. The provisions of this Part shall apply to applications to verifiers under Part 2 of the Act and to local authorities in the exercise of their functions under Parts 2, 3, 4 and 5 of the Act.

Procedure at hearing

54.—(1) At any hearing before the verifier or local authority any party may appear and be heard either in person or by a representative.

(2) Subject to the provisions of the Act and of these Regulations the procedure at any hearing before the verifier or local authority shall be such as the verifier or local authority may determine.

Assessors

55. If it appears to the verifier or local authority that any case coming before it calls for special knowledge and that it would be desirable for the verifier or local authority to sit with assessors the verifier or local authority shall hear the proceedings with the aid of such assessor or assessors as the verifier or local authority may after consulting such persons as it may think fit appoint.

Decisions of verifiers and local authorities

56.—(1) Where an application to a verifier is—

- (a) refused; or
- (b) in the case of an application for a building warrant under section 9 of the Act, granted subject to conditions,

the verifier shall include in its decision a statement of its reasons therefor including its reasons for any conditions attached thereto.

(2) The decision of the verifier on any application made to the verifier shall be notified in writing by the verifier to the applicant and to any person who has made representations in relation thereto.

(3) In any other proceedings before the verifier or the local authority the decision of the verifier or the local authority and the reasons therefor shall be notified by the verifier or the local authority as the case may be in writing to the parties to the proceedings.

(4) Where the verifier has on an application for a building warrant decided to grant a building warrant, the building warrant shall be sent by the verifier to the applicant accompanied by the copy of the relative plans duly signed by the verifier with reference to the grant of that building warrant.

(5) Where the verifier has on an application for a building warrant decided to refuse the application the verifier shall without delay return to the applicant the plans submitted with reference to the application unless the verifier has obtained the consent of the applicant to the retention of the plans.

Maintenance of records

- 57.**—(1) This regulation applies to the building standards register.
- (2) The building standards register shall contain two parts as follows—
- (a) Part I which shall be in electronic form and shall consist of a list of applications including details of any certificates from approved certifiers and decisions and copies of notices served under sections 25 to 30 of the Act when issued, altered or withdrawn; and
 - (b) Part II which shall consist of copy building warrants, copy completion certificates, copies of any certificates from approved certifiers submitted in support of building warrants or completion certificates, principal drawings and specifications, and all other documents submitted to the local authority for registration in the building standards register.
- (3) Part I of the building standards register shall be maintained by the local authority for all time.
- (4) Documents contained in Part II of the building standards register shall be retained by the local authority for a period of 25 years and thereafter for such period as the local authority having regard to any guidance issued by the Scottish Ministers considers reasonable.

Inspection of records and applications

- 58.**—(1) Subject to paragraph (3), Parts I and II of the building standards register shall be available for inspection by the public at all reasonable hours and without prejudice to that generality Part I shall be published on a website maintained by the relevant local authority.
- (2) Subject to paragraph (3), the local authority shall on payment of the appropriate fee provide copies of any of the documents contained in Part II of the building standards register.
- (3) Documents shall not be available for inspection in terms of paragraph (1) or for copying in terms of paragraph (2) in the cases to which paragraphs (4) and (5) apply.
- (4) This paragraph applies to cases where disclosure or copying would raise security concerns but not where the owner of the building to which the documents relate has consented, in writing, to that disclosure or copying.
- (5) This paragraph applies where the relevant building is a residential building unless the application is by an interested party and for the purposes of this paragraph “interested party” means any owner, occupier, tenant or prospective tenant.

Notices regarding work

- 59.**—(1) Subject to paragraphs 3 and 4, any person carrying out work in pursuance of a building warrant granted under the Act shall give notice to the verifier—
- (a) of the date on which work is commenced within 7 days of such date;
 - (b) when any drain has been laid and is ready for inspection or test;
 - (c) when a drain track has been in filled and the drainage system is ready for a second inspection or test;
 - (d) of the date on which the work is completed;
 - (e) of the date of completion of such other stages in the construction as the verifier may require; and
 - (f) of the intention to use an approved certifier of construction.
- (2) Notices under paragraph (1)(a) and (d) shall be in writing.
- (3) Nothing in this regulation shall require the giving of notice of the date on which work is completed where a completion certificate has been submitted to the verifier in accordance with section 17 of the Act.

(4) Nothing in this regulation shall require the giving of notice in respect of paragraphs 1(a) and (b) if these are works covered by an approved certifier of construction.

Deemed determination

60.—(1) For the purposes of section 47(2) of the Act (which provides for a deemed determination by a verifier where a determination has not been made within such period as may be specified) the following periods are hereby specified.

(2) Subject to paragraph (7), in the case of an application for a building warrant or for amendment of a building warrant if a first report has not been issued in response to an application, a period of three months from the date of receipt of the application.

(3) Subject to paragraph (7), in the case of an application for a building warrant or for an amendment of a building warrant a period of nine months from the date of issue of the first report or such longer period as agreed between the applicant and the verifier.

(4) In the case of an application to extend the period for the demolition of a building intended to have a limited life a period of 1 month from the date of receipt of the application.

(5) In the case of a determination as to whether to accept or reject a completion certificate a period of 14 days from the date of submission of the certificate or such longer period if agreed between the applicant and the verifier except where submission of the completion certificate is under section 17 (4) of the Act in which case there is specified the same period as in paragraphs (2) and (3).

(6) In the case of an application for discharge or variation of a continuing requirement imposed under section 22 of the Act a period of one month from the date of receipt of the application.

(7) In calculating the periods specified in paragraphs (2) and (3) the following periods shall be disregarded—

- (a) where an application has been made to the Scottish Ministers under section 3 of the Act (relaxation of building regulations) and in the opinion of the verifier the application under section 3 relates directly to the building warrant application, the period between the date of the application under section 3 and the date of any direction given thereunder and
- (b) where the verifier invites comments on the application in accordance with regulation 10, the period between the date on which the application is sent to the relevant consultees and the date specified as that by which any comments must be received by the verifier.

Requirement of tests by local authorities

61.—(1) A local authority may require any persons to cause to be carried out such reasonable test of materials forming part of the building or used or proposed to be used in the construction of the building, as may be specified in the requirement.

(2) The expense of carrying out any test to be carried out under this regulation shall be met by the person so required.

St Andrew's House, Edinburgh
30th September 2004

MARY MULLIGAN
Authorised to sign on behalf of the Scottish
Ministers