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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 428**

**The Building (Procedure) (Scotland) Regulations 2004**

**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.

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(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<sup>(1)</sup> 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.

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<sup>(1)</sup> S.S.I. 2004/406.