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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 428**

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

**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.