

SCHEDULES

SCHEDULE 7

Section 75.

AMENDMENTS OF BUILDING (SCOTLAND) ACT 1959

- 1 In section 3 (building standards regulations)—
- (a) in subsection (2), after the words "health, safety" there shall be inserted the word "welfare", and at the end there shall be added the words "and for furthering the conservation of fuel and power";
 - (b) in subsection (3), there shall be added the words—
 - “(d) be framed to any extent by reference to a document published by or on behalf of the Secretary of State or any other person.”;
 - (c) at the end of the section there shall be added the following subsection—
 - “(7) The Secretary of State may by order made by statutory instrument repeal or modify any enactment to which this subsection applies if it appears to him that the enactment is inconsistent with, or is unnecessary or requires alteration in consequence of, any provision contained in the building standards regulations.

This subsection applies to any enactment contained in any Act passed before or in the same Session as the Health and Safety at Work etc. Act 1974 other than an enactment contained in the Building (Scotland) Act 1959.”
- 2 In section 4 (relaxation of building standards regulations)—
- (a) for subsection (5) there shall be substituted the following subsections—
 - “(5) A direction under subsection (1)(b) above—
 - (a) shall, if it so provides, cease to have effect at the end of such period as may be specified in the direction;
 - (b) may be varied or revoked by a subsequent direction of the Secretary of State.
 - (5A) If at any time a direction under subsection (1)(b) above ceases to have effect by virtue of subsection (5)(a) above or is varied or revoked under subsection (5)(b) above, that fact shall not affect the continued operation of the direction (with any conditions specified therein) in any case in which before that time an application for a warrant in connection with the construction or change of use of a building, part or all of which is of the class to which the direction relates, was, in accordance with regulations made under section 2 of this Act, lodged with a buildings authority.”;
 - (b) in subsections (6) and (7), after the words "subsection (1)(b)" there shall be inserted the words "or (5)(a)";
 - (c) after subsection (7) there shall be inserted the following subsection :—

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“(7A) A person making an application under subsection (1)(b) above shall pay to the Secretary of State such fee as may be prescribed ; and regulations made by virtue of this subsection may prescribe different fees for different cases:

Provided that the Secretary of State may in any particular case remit the whole or part of any fee payable by virtue of this subsection.”.

3 After section 4A, there shall be inserted the following section—

“4B Power of Secretary of State to approve types of building, etc.

- (1) The following provisions of this section shall have effect with a view to enabling the Secretary of State, either on an application made to him in that behalf or of his own accord, to approve any particular type of building as conforming, either generally or in any class of case, to particular provisions of the building standards regulations.
- (2) An application for the approval under this section of a type of building shall be made in the prescribed manner.
- (3) Where under subsection (1) above the Secretary of State approves a type of building as conforming to particular provisions of the building standards regulations either generally or in any class of case, he may issue a certificate to that effect specifying—
 - (a) the type of building to which the certificate relates;
 - (b) the provisions of the building standards regulations to which the certificate relates ; and
 - (c) where applicable, the class or classes of case to which the certificate applies.
- (4) A certificate under this section shall, if it so provides, cease to have effect at the end of such period as may be specified in the certificate.
- (5) If, while a certificate under this section is in force, it is found, in any particular case involving a building of the type to which the certificate relates, that the building in question is of that type and the case is one to which the certificate applies, that building shall in that particular case be deemed to conform to the provisions of the building standards regulations to which the certificate relates.
- (6) The Secretary of State may from time to time vary a certificate under this section either on an application made to him in that behalf or of his own accord ; but in the case of a certificate issued on an application made by a person under subsection (1) above, the Secretary of State, except where he varies it on the application of that person, shall before varying it give that person reasonable notice that he proposes to do so.
- (7) A person making an application under subsection (1) or (6) above shall pay to the Secretary of State such fee as may be prescribed ; and regulations made by virtue of this subsection may prescribe different fees for different cases:

Provided that the Secretary of State may in any particular case remit the whole or part of any fee payable by virtue of this subsection.

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- (8) The Secretary of State may at any time revoke a certificate issued under this section, but before doing so shall give the person, if any, on whose application the certificate was issued reasonable notice that he proposes to do so.
- (9) Where the Secretary of State issues a certificate under this section or varies or revokes a certificate so issued, he shall publish notice of that fact in such manner as he thinks fit.
- (10) If at any time a certificate under this section ceases to have effect by virtue of subsection (4) above or is varied or revoked under the preceding provisions of this section, that fact shall not affect the continued operation of subsection (5) above by virtue of that certificate in any case in which before that time an application for a warrant in connection with the construction of a type of building to which the certificate relates was, in accordance with regulations made under section 2 of this Act, lodged with a buildings authority.
- (11) For the purposes of subsection (3) above or any variation of a certificate under subsection (6) above, a class of case may be framed in any way that the Secretary of State thinks fit.”

4 In section 6 (application of building standards regulations and building operations regulations to construction or demolition, and to change of use, of buildings)—

(a) after subsection (3) there shall be inserted the following subsection—

“(3A) Notwithstanding that a buildings authority are not satisfied that the information submitted to them with an application for a warrant for the construction of a building is sufficient in respect of such stage in the construction as may be prescribed to show that the building when constructed will not fail to conform to the building standards regulations, they may grant a warrant for the construction of the building but subject to the condition that work on such prescribed stage shall not be proceeded with until such further information relating to that stage as they may require is submitted to them and until they have made an amendment to the terms of the warrant authorising such work to proceed:

Provided that they shall, subject to subsection (8) of this section, make such an amendment on application being made therefor in the prescribed manner only if they are satisfied that nothing in the information submitted to them in respect of the prescribed stage shows that that stage when constructed will fail to conform to the building standards regulations.”;

(b) in subsection (10), after the words " any such " there shall be inserted the words " prescribed stage as is mentioned in subsection (3A) of this section and any such ".

5 In section 9 (certificates of completion)—

(a) in subsection (2), for the words " but only if, they are satisfied that" there shall be substituted the words " , so far as they are able to ascertain after taking all reasonable steps in that behalf, ";

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- (b) in subsection (3), for the words, " be satisfied as mentioned in the last foregoing subsection " there shall be substituted the words " grant a certificate of completion ";
- (c) after subsection (3) there shall be inserted the following subsection—

“(3A) In respect of so much of a building as consists of such an installation as may be prescribed, not being an electrical installation, a buildings authority shall not grant a certificate of completion unless there is produced to them a certificate granted by a person of such class as may be prescribed certifying that the installation complies with such of the said conditions as relate to it:

Provided that this subsection shall not apply in a case where it is shown to the satisfaction of the buildings authority that for some reasonable cause such a certificate cannot be produced.”;

- (d) in subsection (4) for the words " the last foregoing subsection " there shall be substituted the words " subsection (3) or (3A) above ".

6 In section 11(1)(b) (power of local authorities to require buildings to conform to building standards regulations), after the words " health, safety " there shall be inserted the word " welfare ", and after the word " generally " there shall be inserted the words " and for furthering the conservation of fuel and power ".

7 In section 19 (penalties), for the words " ten pounds " and " one hundred pounds ", wherever they occur, there shall be substituted respectively the words " £50 " and " £400 ".

8 After section 19 there shall be inserted the following section—

“19A Civil liability

- (1) Subject to the provisions of this section, a breach to which this section applies shall, so far as it causes damage, be actionable except in so far as may be otherwise prescribed ; and in any action brought by virtue of this subsection such defence as may be prescribed shall be available.
- (2) This section applies to the following breaches—
 - (a) failure to comply with the terms or conditions of a warrant for the construction, demolition or change of use of a building or with any order under this Act relating to the construction of a building;
 - (b) contravention of any provision of the building operations regulations ;
 - (c) constructing a building without a warrant otherwise than in accordance with the building standards regulations ;
 - (d) changing the use of a building without a warrant where after the change of use the building does not conform to so much of the building standards regulations as become applicable, or apply more onerously, to the building by reason of the change of use.
- (3) Subsection (1) above and any defence provided for in regulations made by virtue thereof shall not apply in the case of a breach to which this section applies in connection with a building erected before the date on which that subsection comes into force unless the breach arises in relation to the change

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of use, extension, alteration, demolition, repair, maintenance or fitting of such a building.

(4) Nothing in this section shall be construed as affecting the extent (if any) to which a breach to which this section applies is actionable in a case to which subsection (1) above does not apply, or as prejudicing any right of action which exists apart from the provisions of 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)."

9 In section 26 (Crown rights)—

- (a) in subsection (1) after the words " Crown and " there shall be inserted the words " subject to the provisions of this section ";
- (b) after subsection (2) there shall be inserted the following subsections—

“(2A) The building standards regulations shall, except in so far as they otherwise prescribe, apply to a Crown building as they would apply if the building were not a Crown building.

(2B) A Crown building to which the building standards regulations apply shall be constructed in accordance with those regulations.

(2C) Any extension to or alteration of a Crown building to which the building standards regulations apply or would apply on the extension or alteration of the building shall not cause the building as extended or altered, as a direct result of the extension or, as the case may be, the alteration—

- (a) if it conformed to the building standards regulations immediately before the date of commencement of the operations, to fail to conform to them ; or
- (b) if it failed to conform to the building standards regulations immediately before that date, to fail to conform to them to a greater degree than that to which it failed to conform immediately before that date ;

and any change of use of a Crown building shall not cause the building after the change of use to fail to conform to so much of the building standards regulations as will become applicable, or will apply more onerously, to the building by reason of the change of use.

(2D) Section 19A of this Act shall apply to a Crown building as it applies to a building other than a Crown building, but as if for subsection (2) there were substituted the following subsection:—

“(2) A breach to which this section applies is a failure to comply with subsection (2B) or (2C) of section 26 of this Act or a contravention of any provision of the building operations regulations”.

(2E) Without prejudice to any case to which proviso (a) to subsection (1) above is applicable, the Secretary of State shall have the like powers of dispensing with or relaxing the provisions of the building standards regulations in relation to a Crown building as he

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has under section 4(1) of this Act in relation to a building other than a Crown building ; and subsections (3), (4), (5), (5A) and (9) of the said section 4 shall apply for the purposes of this section as if—

- (a) in subsection (4), the words " or, as the case maybe, the buildings authority " were omitted ;
- (b) in subsection (5A), for the words from " an application " to the end there were substituted the words " the construction or change of use of a building, part or all of which is of the class to which the direction relates, was begun ";
- (c) in subsection (9), the words "or section 4A(3) of this Act" were omitted.

(2F) Without prejudice to any case to which the said proviso is applicable, in the application of section 4B of this Act to a Crown building, subsection (10) shall have effect as if for the words from " an application " to the end there were substituted the words " the construction of a building, part or all of which is of the type to which the certificate relates, was begun."