



# Building (Scotland) Act 1959

## 1959 CHAPTER 24

### PART IV

#### SUPPLEMENTARY

#### 16 Appeals

- (1) Any person aggrieved by—
- (a) any decision of a buildings authority refusing to grant warrant for the construction or demolition of a building or for a change of use of a building,
  - (b) any decision of a buildings authority under subsection (5) of section six of this Act refusing to extend a period relating to a building intended to have a limited life,
  - (c) any decision of a buildings authority refusing to issue a certificate of completion, (d) any order made by a buildings authority under subsection (1) of section ten of this Act requiring the execution of operations,
  - (e) any order under section eleven of this Act by a local authority requiring a building to be made to conform to any provision of the building standards regulations,
  - (f) any order of a buildings authority under subsection (2) of section thirteen of this Act requiring the execution of operations, or
  - (g) any charging order made under the Sixth Schedule to this Act,

may appeal to the sheriff by giving notice of appeal within twenty-one days after the date of the decision or the making of the order, as the case may be:

Provided that on any appeal in a case falling under paragraph (g) of this subsection no question shall be raised which might have been raised on an appeal against the original order requiring the execution of the operations concerned.

- (2) The procedure on any appeal to the sheriff under this section shall be such as the Court of Session may by act of sederunt determine; and the powers of the Court of Session under this subsection shall include power to make provision as to expenses and as to the sitting with the sheriff of technical assessors.

- (3) On any appeal under this section the sheriff may—
- (a) if the appeal is in a case falling within paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section, either confirm the decision or direct the substitution of such other decision as seems to him proper, having regard to the provisions of this Act and of any other Act relevant to the decision in question;
  - (b) if the appeal is in a case falling within any other provision of subsection (1) of this section, confirm, vary or quash the order as he thinks just and make such order in the matter as he considers equitable;

and the determination of the sheriff on any such appeal shall be binding on all parties, and shall be final:

Provided that the sheriff may, at any stage of the proceedings on the appeal, and shall whether before or after the conclusion of the proceedings if so directed by the Court of Session, state a case for the opinion of that Court on any question of law arising in connection with the appeal; and an appeal shall lie, with the leave of the Court of Session or of the House of Lords, from any decision of the Court of Session under this section, which leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

- (4) Any order as respects which an appeal to the sheriff might be brought under this section shall not become operative until either the time within which an appeal can be made under this section has elapsed without an appeal being made, or, in a case where an appeal is made, the appeal (including any further proceedings under the last foregoing subsection) is determined or abandoned.
- (5) The sheriff may, before considering any appeal which may be made to him under this section, require the appellant to deposit such sum to cover the expenses of the appeal as may be fixed by the act of sederunt made by the Court of Session in pursuance of subsection (2) of this section.
- (6) The power of the Court of Session to make acts of sederunt under subsection (2) of this section shall be exercisable by statutory instrument, and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing an act of sederunt so made by the Court in like manner as if the act of sederunt had been made by a Minister of the Crown.

## **17 Supplementary provisions as to operations required to be carried out**

- (1) The provisions of this section shall have effect where a person is required by any order or notice under section ten, eleven or thirteen of this Act (in this section referred to as a "requirement") to demolish, or carry out operations in relation to, a building.
- (2) If the building is—
  - (a) a building in respect of which a notice under subsection (1) of section six of the Ancient Monuments Act, 1931, has been served, or is deemed under subsection (4) of that section to have been served, and which has not ceased to be included in any such list as is mentioned in the said subsection (1),
  - (b) subject to a building preservation order under section twenty-seven of the Town and Country Planning (Scotland) Act, 1947,
  - (c) included in a list of buildings of special architectural or historic interest, being a list compiled or approved under section twenty-eight of the said Act of 1947,
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(d) subject to an interim preservation notice under section ten, or a preservation order under section eleven, of the Historic Buildings and Ancient Monuments Act, 1953,

the requirement shall have effect only in so far as it is not inconsistent with any provision of the said Act of 1931, the said Act of 1947 or, as the case may be, the said Act of 1953 relating to the execution or carrying out of works or operations on or in relation to the building.

(3) If the person is not in occupation of the building he shall nevertheless, on giving to the occupier such notice as is reasonable in the circumstances, be entitled, notwithstanding any term to the contrary in any lease or other contract, to enter on the building, and any land adjacent thereto and held in connection therewith, for the purpose of complying with the requirement.

(4) Where, in pursuance of any provision of the said section ten, eleven or thirteen, the local authority seek to recover from the person any expenses incurred by them in carrying out operations in relation to the building, then, if the person proves—

- (a) that he has no interest in the building except in the capacity of a trustee, tutor, curator, judicial factor or liquidator of a company, and
- (b) that he has not, and since the date of the service on him of a demand for payment of the expenses aforesaid has not had, in his hands in that capacity sufficient funds, rents and other assets to discharge the whole demand of the authority,

his liability shall, notwithstanding anything in the said section ten, eleven or thirteen, be limited to the total amount of the funds, rents and other assets which he has, or has had, in his hands as aforesaid.

(5) In the case of a requirement being an order under the said section ten, or the said section eleven, it shall be a defence to any complaint charging the person with failure to comply with the requirement to prove that at the date of the making of the requirement—

- (a) the person had no interest in the building except in the capacity of a trustee, tutor, curator, judicial factor or liquidator of a company, and
- (b) the amount of the funds, rents and other assets in his possession in that capacity was less than the amount of the expenses which would have been incurred if the requirement had been complied with.

(6) If a person alleges that the whole or any part of the expenses incurred or to be incurred in complying with the requirement ought to be borne by any other person having an interest in the building, he may apply to the sheriff, and the sheriff may make such order concerning the expenses or their apportionment as appears to him, having regard to all the circumstances of the case, including the terms of any contract between the parties, to be equitable.

(7) The provisions of subsection (3) of the last foregoing section relating to the determination of the sheriff on an appeal under subsection (1) of that section shall apply to the order of the sheriff in an application under the last foregoing subsection as they apply to such a determination, with the substitution for any reference to the appeal under the said subsection (1) of a reference to the application.

## **18 Inspection and tests**

(1) Subject to the provisions of subsection (3) of this section the master of works, or any person authorised in writing by him or by the buildings authority on exhibiting his authority if requested to do so, may at all reasonable times enter any premises for the purpose of—

- (a) inspecting buildings which are in course of construction, or which have been constructed but for which no certificate of completion has been issued, or the sites of buildings in respect of which applications for directions under section four, or warrants under section six, of this Act have been made ;
- (b) applying any reasonable tests to determine the quality and strength of any material used or proposed to be used in the construction of any building such as is mentioned in the foregoing paragraph;
- (c) inspecting any buildings as to which the master of works has reasonable cause to believe that a change of use is proposed or has taken place ;
- (d) inspecting any building which the master of works has reasonable cause to believe is dangerous to persons inhabiting or frequenting it or adjacent buildings or places or to the public generally; or
- (e) executing any operations authorised by paragraph (b) of subsection (1) of section thirteen of this Act;

and may execute any of the said purposes.

(2) The foregoing subsection shall, subject as aforesaid, apply, as it applies to persons authorised as mentioned in that subsection for the purposes so mentioned, to any person authorised in writing by a local authority for the purpose of—

- (a) inspecting any building which the local authority consider should be examined in order to determine whether to exercise their powers under section eleven of this Act; or
- (b) executing any operations authorised under section ten, section eleven or section thirteen of this Act to be executed by the local authority.

(3) No person shall be entitled to enter any premises by virtue of subsection (1) of this section for the purposes specified in paragraph (c) thereof, or by virtue of subsection (2) of this section, unless he has given three days' notice of his intention to do so to the occupier, and (unless the owner is unknown) also to the owner, of the premises.

(4) If a justice of the peace (not being a justice of the peace who is a member of the buildings authority or the local authority) on sworn information in writing—

- (a) is satisfied that there are reasonable grounds for entering into any premises for any such purpose as is mentioned in subsection (1) or (2) of this section, and
- (b) is also satisfied either—
  - (i) that admission to the premises has been refused, or a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier, of
  - (ii) that an application for admission, of the giving of such notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the justice of the peace may, notwithstanding anything in subsection (3) of this section, by warrant under his hand authorise the buildings authority or local authority, as the case may be, by any authorised officer, to enter the premises, if need be by force.

- (5) A person entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as he found them.
- (6) Every warrant granted under this section shall continue in force for a period of one month.
- (7) A person who wilfully obstructs any person acting in the execution of any of the purposes mentioned in subsection (1) or subsection (2) of this section shall be guilty of an offence against this Act.
- (8) If any person who, by virtue of the provisions of this section, or of a warrant issued thereunder, enters a factory or work-place, discloses to any other person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret, he shall, unless such disclosure was made in the performance of his duty, be guilty of an offence against this Act.
- (9) In this section any reference to premises includes a reference to sites and buildings, and any reference to a justice of the peace includes a reference to the sheriff.
- (10) The master of works or any person authorised by him may require—
  - (a) any person who has made an application for a direction under section four of this Act, or for a warrant, in respect of a building, or
  - (b) any person by whom, or on whose behalf, a building is being or has been constructed in pursuance of a warrant,

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; and the expense of carrying out any test to be carried out under this subsection shall be met by the person so required:

Provided that the buildings authority, on application made to them, may if they think fit direct that the expense of carrying out any such test as aforesaid, or such part of that expense as may be specified in their direction, shall be met by the local authority.

## **19 Penalties**

- (1) Any person guilty of an offence under subsection (7) of section eighteen or subsection (3) of section twenty-five of this Act shall be liable on summary conviction to a fine not exceeding ten pounds.
- (2) Any person guilty of an offence against this Act, except as specified in the foregoing subsection, shall be liable on summary conviction to a fine not exceeding one hundred pounds; and, in the case of a continuing offence, to a further fine not exceeding ten pounds for every day during which the offence is continued.

## **20 Fees chargeable by buildings authorities**

- (1) A buildings authority may, in respect of such of their business as may be prescribed, charge such fees as may be prescribed in relation thereto; and different fees may be prescribed for different buildings authorities.
- (2) Any fees received by virtue of this section by a buildings authority to whom section three hundred and twenty-eight of the Local Government (Scotland) Act, 1947, or any

corresponding provision of a local Act or paragraph 11 of the Second Schedule to this Act applies shall be paid by them to the local authority.

## **21 Provisions as to masters of works**

- (1) In connection with every buildings authority the local authority shall appoint a master of works and may pay to him such reasonable salary as they may determine.
- (2) A master of works appointed under this section shall hold office during the pleasure of the local authority.
- (3) Without prejudice to any other provision of this Act, it shall be the duty of the master of works appointed in connection with any buildings authority to report to the buildings authority upon all plans, specifications and other information lodged with applications to the buildings authority, to see that the orders made by the buildings authority are duly carried into execution, from time to time to inspect the works being carried out in pursuance of any warrant granted by the buildings authority and to report to the buildings authority any breach of the conditions to which the warrant is subject; and also to perform any other duties which he may be required by the local authority to perform.
- (4) A master of works shall not be connected directly or indirectly with, or interested in, any branch of the building trade in the area of the local authority by whom he is appointed, or give any assistance, or receive any fees, in connection with applications made to the buildings authority (not being applications so made by himself acting under this Act).
- (5) After such day as may be prescribed by the Secretary of State no person shall be appointed as a master of works under this section unless he is qualified in such manner as may be prescribed by the Secretary of State after consultation with such bodies as appear to him to be representative of the interests concerned; but nothing in this subsection shall affect the tenure of office of any master of works who is in office immediately before the day prescribed as aforesaid.
- (6) Section eighty-three of the Local Government (Scotland) Act, 1947 (which provides for the appointment of deputed officers for certain officers in counties) shall apply in relation to the master of works for the landward area of a county as it applies to the officers mentioned in that section ; and section ninety-three of the said Act of 1947 (which makes similar provision in relation to certain officers in burghs) shall apply in relation to the master of works for a burgh as it applies to the officers mentioned in that section.
- (7) For the purposes of sections eighty-two and ninety-two of the said Act of 1947 (which relate to the appointment of staff of county councils and town councils respectively) the functions of the master of works for the landward area of a county or for a burgh shall be deemed to be functions of the county council or, as the case may be, the town council.
- (8) This section shall be in lieu of any provision of any enactment (including any local Act) providing for the appointment of a master of works for a burgh or in connection with the dean of guild court of a burgh, and any person who immediately before the commencement of this Act held office as master of works under any such provision shall be deemed to have been appointed as master of works in connection with the buildings authority for the burgh under this section.

## **22 Information**

Every buildings authority shall make to the Secretary of State such reports and returns, and give him such information with respect to their functions, as the Secretary of State may require.

## **23 Inquiries**

- (1) Without prejudice to anything in subsection (6) of section three of this Act the Secretary of State may, for the purposes of any of his functions under this Act, direct the holding of such public inquiries as he may think fit.
- (2) Subsections (2) to (9) of section three hundred and fifty-five of the Local Government (Scotland) Act, 1947, shall apply to any inquiry held under this section or subsection (6) of section three of this Act as it applies to the inquiries specified in the said section three hundred and fifty-five.

## **24 Regulations**

- (1) Without prejudice to any power conferred by any other provision of this Act to make regulations the Secretary of State may make regulations prescribing—
  - (a) the form of any notice or other document which is required or authorised to be used under or for the purposes of this Act, and
  - (b) any other thing which by this Act is required or authorised to be prescribed.
- (2) The forms prescribed under the foregoing subsection, or forms as near thereto as circumstances admit, shall be used in all cases in which those forms are applicable.
- (3) Any power conferred by any provision of this Act, including this section, to make regulations shall be exercisable by statutory instrument, and the statutory instrument by which any such power is exercised shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **25 Service of notices, etc.**

- (1) The provisions of section three hundred and forty-nine of the Local Government (Scotland) Act, 1947 (which relates to the service of certain notices, orders and other documents) shall apply to the service of any notice, order or other document required by any provision of this Act, or of any regulations made under this Act, to be served as they apply to the service of the notices, orders and other documents referred to in that section.
- (2) A buildings authority or a local authority may, for the purpose of enabling them to serve any notice which they are by this Act authorised or required to serve, require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises to state in writing the nature of his own interest therein and the name and address of any other person known to him as having an interest therein.
- (3) If any person, having been required by a buildings authority or a local authority in pursuance of the last foregoing subsection to give to them any information, fails to give that information, or makes in respect thereof any statement which he knows to be false or misleading in a material particular, or recklessly makes in respect thereof

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any statement which is false or misleading in a material particular, he shall be guilty of an offence against this Act.

## 26 Crown rights

- (1) Nothing in this Act shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and nothing in this Act, or in any regulations or order made, or notice given, under this Act, shall affect any Crown building:

Provided that—

- (a) in relation to a Crown building, subsection (1) of section six of this Act shall apply—
    - (i) to the conduct of any operations such as are mentioned in that subsection, and
    - (ii) to any change of use,
      - which is not effected by, or on behalf of, the Crown Estate Commissioners or a government department, or approved for the purposes of this section by the appropriate authority;
  - (b) in relation to a Crown building, the appropriate authority may direct that such provisions of section ten, section eleven and Part III of this Act as may be specified in the direction shall apply to the building as if it were not a Crown building, and may revoke any such direction;
  - (c) nothing in this section shall affect the operation of the building operations regulations in relation to operations carried out in connection with a Crown building otherwise than by servants of the Crown acting under the direction of the appropriate authority or another government department.
- (2) Except with the consent of the appropriate authority nothing in this Act, or in any regulations made, or warrant granted, under this Act, shall authorise the entry of any person into a Crown building or on to land occupied with a Crown building.
- (3) In this section the expression " Crown building " means a building an interest in which belongs to Her Majesty in right of the Crown or to a government department, or is held in trust for Her Majesty for the purposes of a government department, or of which the Minister of Works is guardian under the Ancient Monuments Consolidation and Amendment Act, 1913 ; and, in relation to a Crown building, the expression " appropriate authority " means—
- (a) in the case of a building an interest in which belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or any government department having the management of that building;
  - (b) in the case of a building an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department;
  - (c) in the case of a building of which the Minister of Works is guardian as aforesaid, that Minister;

and, if any question arises as to the authority which is the appropriate authority in relation to any building, the question shall be determined by the Treasury.

## 27 Transitional provisions

The provisions of the Eighth Schedule to this Act shall have effect for the purposes of the transitional matters specified therein.



## 28 Financial provisions

There shall be defrayed out of moneys provided by Parliament—

- (a) any expenses incurred by the Secretary of State in consequence of this Act, and
- (b) any increase attributable to this Act in sums payable out of moneys so provided under any other enactment.

## 29 Interpretation

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively—

" building " means any structure or erection of what kind or nature soever, whether temporary or permanent, and every part thereof including any fixture affixed thereto, not being a structure or erection or part thereof consisting of, or ancillary to—

- (a) any road, whether public or private, including in the case of a public road (but not in the case of a private road) any bridge on which the road is carried;
- (b) any sewer or water main which is, or is to be, vested in a public authority ;
- (c) any aerodrome runway;
- (d) any railway line;
- (e) any large reservoir within the meaning of the Reservoirs (Safety Provisions) Act, 1930; or
- (f) any telegraphic line as defined in section two of the Telegraph Act, 1878 ;

" buildings authority ", and " area " in relation to a buildings authority, have the meanings assigned to them respectively by section one of this Act;

" building operations regulations " has the meaning assigned to it by section five of this Act;

" Building Standards Advisory Committee " has the meaning assigned to it by section twelve of this Act;

" building standards regulations " has the meaning assigned to it by section three of this Act;

" burgh " has the same meaning as in the Local Government (Scotland) Act, 1947;

" certificate of completion " has the meaning assigned to it by section nine of this Act;

" change of use " in relation to a building means such change in the use or occupation of the building as will bring it within a class of building to which the building standards regulations apply, or, if it is already within such a class, within a class to which additional or more onerous provisions of the building standards regulations apply, and " change the use " shall be construed accordingly;

" construct " includes alter, erect, extend and fit, and " construction " shall be construed accordingly;

" contravene ", in relation to a provision, includes fail to comply with the provision;

" government department " includes a Minister of the Crown;

" landward area " has the same meaning as in the Local Government (Scotland) Act, 1947 ;

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" local Act " includes a decret-arbitral, provisional order or other instrument ratified or confirmed by a Parliament of Scotland or of the United Kingdom;

" local authority " means a town council or a county council, and " area " in relation to a local authority means the burgh, or, as the case may be, the landward area of the county; and references to the local authority in relation to a buildings authority and to any particular building or place are references to the local authority whose area is the area of the buildings authority or, as the case may be, includes that building or place ;

" master of works " means a master of works appointed under section twenty-one of this Act; and, in relation to any building, means the master of works so appointed for the burgh, or, as the case may be, the landward area of the county, in which the building is, or will be, situated;

" operations " includes operations carried out in relation to the enclosure and preparation of the site of a building;

" prescribed " means prescribed by the Secretary of State by regulations made under this Act;

" road " includes street and any pavement, footpath, drain, ditch or verge at the side of a road or street;

" warrant " (except in subsections (4), (5), (6) and (8) of section eighteen and subsection (2) of section twenty-six of this Act) means a warrant under section six of this Act, including (in the case of a warrant which has been granted) any conditions to which it is subject, and any amendment which has been made to it.

- (2) Any reference in this Act to a building shall, unless the context otherwise requires, be construed as including a reference to a prospective building; and, in relation to the extension, alteration or change of use of a building, the expression " building " shall in this Act, unless the context otherwise requires, be construed as a reference only to so much of the building as is comprised in the extension or is the subject of the alteration or change of use, as the case may be.
- (3) Any reference in this Act to the owner of any land or buildings shall, unless the context otherwise requires, be construed as including a reference to any person who, under the Lands Clauses Acts, would be enabled to sell and convey the land or buildings to the promoters of an undertaking.
- (4) Any reference in this Act to a public road shall be construed as a reference to a road maintainable by the Secretary of State, a county council or a town council; and any reference to a private road shall be construed as a reference to a road not so maintainable, whether it comprises a public right of way or not.
- (5) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended, applied or extended by or under any other enactment including this Act.
- (6) Any reference in this Act to a dean of guild court shall be construed as including a reference to a dean of guild sitting as a dean of guild court.
- (7) Any reference in this Act to an enactment contained in the Burgh Police (Scotland) Acts, 1892 to 1911 or any Act amending those Acts shall be construed as including a reference to that enactment as applied or adopted by a local Act or by a resolution passed under statutory authority.

- (8) Any building which extends into the areas of two or more buildings authorities, or two or more local authorities, shall be treated for the purposes of this Act as being wholly within the area of such one of those buildings authorities or, as the case may be, such one of those local authorities, as may from time to time be agreed by the authorities concerned, or, in default of agreement, determined by the Secretary of State.
- (9) Any reference in this Act (except in section sixteen thereof) or in any other Act to the exercise by a buildings authority of any of their functions shall, in the case of a function which may be delegated to any person by virtue of any provision of this Act, be construed as including a reference to the exercise of the function by that person.

### **30 Local Act provisions**

- (1) Subject to the next following subsection, where any local Act contains any provision providing for any matter which is also provided for by any provision of this Act, or of any regulations having effect by virtue of this Act, the provision of this Act, or, as the case may be, of those regulations, shall have effect in substitution for the provision of the local Act, and the provision of the local Act shall cease to have effect:

Provided that this subsection shall be without prejudice to subsection (2) of section two of this Act.

- (2) The Secretary of State may by order made by statutory instrument except from the operation of the foregoing subsection such provisions of any local Act as may be specified in the order (being provisions to which apart from the order that subsection would apply) and direct that the corresponding provisions of this Act or of any regulations having effect by virtue of this Act (which provisions shall be specified in the order) shall not have effect in the areas in which the specified provisions of the local Act have effect:

Provided that no order under this subsection shall be made in relation to a provision (being a provision of a local Act) which has ceased to have effect.

- (3) If it appears to the Secretary of State that any provision of any local Act, not being a provision which has ceased to have effect by virtue of subsection (1) of this section, is inconsistent with any provision of this Act or is no longer required, or requires to be amended, having regard to any provision of this Act, he may by order repeal or amend the provision of the local Act as he may consider appropriate.
- (4) The power of making orders conferred by the last foregoing subsection shall be exercisable by statutory instrument and any order made under that subsection shall be subject to special parliamentary procedure.

### **31 Minor and consequential amendments and repeals**

- (1) The enactments specified in the Ninth Schedule to this Act shall have effect subject to the amendments, being amendments consequential on the provisions of this Act or of a minor nature, specified in relation thereto in that Schedule.
- (2) The enactments specified in the Tenth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

**32 Short title, extent and commencement**

- (1) This Act may be cited as the Building (Scotland) Act, 1959.
- (2) This Act shall extend to Scotland only.
- (3) This Act, except sections three, five, twelve, twenty-three, twenty-four and twenty-eight and subsections (2) to (4) of section thirty thereof, and paragraph 5 of the First Schedule thereto, shall come into operation on such day as the Secretary of State may by order, made by statutory instrument, appoint, and those provisions shall come into operation on the passing of this Act; and for the purposes of this Act and of the application thereto of section thirty-seven of the Interpretation Act, 1889 (which relates to the exercise of statutory powers between the passing and the commencement of an Act) references to the commencement of this Act shall, notwithstanding the provisions of section thirty-six of the said Act of 1889 with respect to the construction of the expression " commencement", be construed as references to the time at which this Act, except the provisions of this Act specified in this section, comes into operation.