



# Building (Scotland) Act 2003

## 2003 asp 8

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th February 2003 and received Royal Assent on 26th March 2003**

An Act of the Scottish Parliament to make further provision with respect to buildings, building standards, work in relation to buildings and related matters; and for connected purposes.

VALID FROM 22/09/2004

### PART 1 **S**

#### BUILDING REGULATIONS

##### *Power to make building regulations*

#### **1 Building regulations **S****

- (1) The Scottish Ministers may, for any of the purposes of—
  - (a) securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings,
  - (b) furthering the conservation of fuel and power, and
  - (c) furthering the achievement of sustainable development,make regulations (“building regulations”) with respect to the design, construction, demolition and conversion of buildings and the provision of services, fittings and equipment in or in connection with buildings.
- (2) Before making regulations under subsection (1) (except regulations consolidating other regulations) or an order under subsection (4) the Scottish Ministers must consult—
  - (a) the Building Standards Advisory Committee, and

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- (b) such other persons as appear to them to be representative of the interests concerned.
- (3) Schedule 1 makes further provision about the matters as to which building regulations may provide.
- (4) The Scottish Ministers may by order modify paragraph 5(2) of that schedule.
- (5) The Scottish Ministers may by order modify any enactment if it appears to them that the enactment is inconsistent with, or is unnecessary or requires alteration in consequence of, any provision of building regulations.

## 2 Continuing requirements **S**

- (1) Building regulations may impose on owners of buildings to which such regulations apply such continuing requirements as the Scottish Ministers consider appropriate for securing that the purposes of any designated provision of the regulations are not frustrated.
- (2) In subsection (1), “designated provision” means a provision designated in the regulations as one to which the continuing requirements relate.
- (3) A continuing requirement imposed by virtue of subsection (1) does not apply in relation to a building unless a provision of the regulations designated in relation to that requirement applies to the building.
- (4) Continuing requirements may by virtue of subsection (1) be imposed on owners of buildings of such description as the regulations may specify (whenever erected, and whether or not any building regulations were applicable to them at the time of their erection).

VALID FROM 01/05/2005

### *Relaxation of building regulations*

## 3 Relaxation of building regulations **S**

- (1) This section applies where the Scottish Ministers consider that it is unreasonable that any provision of building regulations which would, apart from this section, apply in relation to any building or description of building should so apply, or should so apply without relaxation.
- (2) Where this section applies the Scottish Ministers may—
  - (a) on an application made to them by any person, give a direction dispensing with or relaxing the provision in question in relation to the building,
  - (b) whether or not on an application made to them, give a direction dispensing with or relaxing the provision in question generally in relation to a description of building.
- (3) No direction may be given under subsection (2) in relation to a provision of building regulations specified in the regulations as one in relation to which such a direction is not competent.

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- (4) A direction under subsection (2)—
  - (a) may be given unconditionally or subject to such conditions as the direction may specify,
  - (b) ceases to have effect on such date (if any) as the direction may specify,
  - (c) may be varied or revoked by a further direction.
- (5) Before giving a direction under subsection (2)(b) or a direction under subsection (4) (c) varying or revoking such a direction the Scottish Ministers must consult—
  - (a) the Building Standards Advisory Committee, and
  - (b) such other persons as appear to them to be representative of the interests concerned.
- (6) The Scottish Ministers must send a copy of any direction under subsection (2)(a) and any direction under subsection (4)(c) varying or revoking such a direction to—
  - (a) the local authority, and
  - (b) every verifier authorised to exercise functions under this Act in relation to the building in question or other buildings of that description in the area of the local authority.
- (7) The Scottish Ministers must send a copy of any direction under subsection (2)(b) and any direction under subsection (4)(c) varying or revoking such a direction to—
  - (a) every verifier, and
  - (b) every local authority which is not a verifier.
- (8) Where—
  - (a) an application for a building warrant is made to a verifier,
  - (b) all or part of the building to which the application relates is of a description to which a direction under subsection (2)(b) relates, and
  - (c) after the application is lodged, the direction ceases to have effect by virtue of subsection (4)(b) or is varied or revoked under subsection (4)(c),the direction (with any conditions specified in it) continues to have effect in relation to the application.
- (9) Unless the context otherwise requires, references in this Act or any other enactment to building regulations are, in relation to any building or description of building in relation to which a direction under this section is in force, to the regulations as, subject to that direction, they apply to that building or description of building.

#### *Guidance documents*

#### **4 Guidance documents for purposes of building regulations S**

- (1) The Scottish Ministers may issue guidance documents for the purpose of providing practical guidance with respect to the requirements of any provision of building regulations and may issue revisions of the whole or any part of any guidance document.
- (2) A guidance document or revision issued under subsection (1) takes effect in accordance with a notice issued by the Scottish Ministers—
  - (a) identifying the guidance document or, as the case may be, the revision,

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- (b) stating the date on which the document or revision is to take effect, and
  - (c) specifying the provisions of building regulations for the purpose of which the document or revision is issued.
- (3) The Scottish Ministers may withdraw guidance documents.
- (4) A withdrawal of a guidance document under subsection (3) takes effect in accordance with a notice issued by the Scottish Ministers—
- (a) identifying the document in question, and
  - (b) stating the date on which the document is to cease to have effect.
- (5) In subsections (3) and (4) of this section and section 5—
- “guidance document” means a document issued under subsection (1) of this section subject to any revision issued under that subsection,
  - “document” includes part of a document.

VALID FROM 01/05/2005

## 5 Compliance with guidance documents **S**

- (1) Failure to comply with a guidance document does not render a person liable to civil or criminal proceedings.
- (2) But proof of compliance with such a document may be relied on in any proceedings (whether civil or criminal) as tending to negative liability for an alleged contravention of building regulations.
- (3) In any proceedings (whether civil or criminal)—
- (a) a document purporting to be a notice issued under section 4(2) or (4) is to be taken to be such a notice unless the contrary is proved,
  - (b) a document which appears to the court to be the guidance document to which such a notice refers is to be taken to be that guidance document unless the contrary is proved.

PROSPECTIVE

### *Building standards assessments*

## 6 Building standards assessments **S**

- (1) A local authority must, if requested to do so by the owner of a building, carry out a building standards assessment.
- (2) A building standards assessment is an assessment of the extent to which the authority considers that—
- (a) the building complies with building regulations as the regulations apply to the building at the time of the assessment,
  - (b) any work which has been carried out in relation to the building was carried out without any authorisation required by or under any enactment,

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- (c) any continuing requirement which applies in relation to the building is being and has been complied with,
  - (d) the building has defects which entitle the authority to serve on the owner a defective building notice.
- (3) The Scottish Ministers may by regulations make further provision as to the matters to be assessed in a building standards assessment including, in particular, provision as to—
- (a) the period to which an assessment in pursuance of subsection (2)(b) is to relate,
  - (b) circumstances in which an assessment is to be made in relation to part only of a building or, where a building forms part of a larger building, in relation to that larger building,
  - (c) matters which are not to be included in an assessment in any particular case or description of case.

VALID FROM 22/09/2004

## PART 2 **S**

### APPROVAL OF CONSTRUCTION WORK ETC.

#### *Verifiers and certifiers*

#### 7 **Verifiers and certifiers** **S**

- (1) For the purposes of this Act the Scottish Ministers may appoint persons (whether individuals or bodies corporate or unincorporate and including public bodies and office-holders) as—
- (a) verifiers,
  - (b) approved certifiers of design,
  - (c) approved certifiers of construction.
- (2) The Scottish Ministers may approve schemes in accordance with which persons (whether individuals or bodies corporate or unincorporate) who are for the time being members of the schemes are entitled to exercise for the purposes of this Act the functions of (either or both)—
- (a) an approved certifier of design,
  - (b) an approved certifier of construction,
- and references in this Act to approved certifiers of design or approved certifiers of construction include (unless the context requires otherwise) any persons who are by virtue of their membership of any such scheme entitled to exercise the functions of such certifiers.
- (3) The Scottish Ministers may—
- (a) approve any such scheme subject to such limitations as they may impose, which may be framed by reference to area, description of building, cost of building or building work or any other factor whatsoever,

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- (b) withdraw any approval given under subsection (2).
- (4) The Scottish Ministers must keep lists of verifiers, approved certifiers of design and approved certifiers of construction.
- (5) Such lists must, in relation to each verifier, approved certifier of design and approved certifier of construction, contain details of the matters in respect of which that verifier or certifier is authorised to exercise functions under this Act (including details of any limitations imposed on that verifier's or certifier's appointment under paragraph 2 of schedule 2 and, in the case of a certifier referred to in paragraph 4 of that schedule, any limitations referred to in that paragraph).
- (6) The Scottish Ministers must make the lists available for public inspection at all reasonable times.
- (7) The Scottish Ministers may exercise the functions of a verifier under this Act to the extent, and in the circumstances, specified in a direction given by them; and references in this Act (other than schedule 2) to a verifier are to be construed accordingly.
- (8) The Scottish Ministers may, in any of the circumstances specified in subsection (9), direct a verifier to refer to them—
- (a) any application specified in the direction, being an application made to the verifier under section 9 for a building warrant or an amendment to a building warrant and not determined by the verifier as at the date of the direction,
  - (b) any completion certificate specified in the direction, being a completion certificate submitted to the verifier under section 17 and not accepted or rejected by the verifier as at that date,
- and the Scottish Ministers, instead of the verifier, may exercise the functions of a verifier under this Act in relation to any such application or certificate.
- (9) The circumstances referred to in subsection (8) are where—
- (a) the verifier requests the Scottish Ministers to issue the direction, or
  - (b) the Scottish Ministers consider that the verifier is incapable for any reason of exercising the functions of a verifier under this Act in relation to the application or, as the case may be, completion certificate specified in the direction.
- (10) The Scottish Ministers may give verifiers directions of a general or specific character as to the exercise of their functions under this Act.
- (11) Such directions may be given to all verifiers, to a particular verifier or to verifiers of a particular description.
- (12) Schedule 2 makes further provision about verifiers, approved certifiers of design and approved certifiers of construction.

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### *Building warrants*

## **8 Building warrants** **S**

- (1) A warrant granted under section 9 (a “building warrant”) is required for—
  - (a) any work for—
    - (i) the construction or demolition of, or
    - (ii) the provision of services, fittings or equipment in or in connection with,  
a building of a description to which building regulations apply,
  - (b) any conversion of a building.
- (2) Where such work is carried out, or such a conversion is made—
  - (a) without a building warrant, or
  - (b) in a case where a building warrant has been granted, otherwise than in accordance with the warrant,the persons specified in subsection (3) are guilty of an offence.
- (3) Those persons are—
  - (a) any person carrying out the work or, as the case may be, making the conversion,
  - (b) any person on whose behalf the work is being carried out or, as the case may be, the conversion is being made,
  - (c) if the owner of the building does not fall within paragraph (a) or (b), the owner.
- (4) In any proceedings against a person referred to in subsection (3)(a) for an offence under subsection (2)(a), it is a defence for the accused to show that before the work was carried out or the conversion was made a person referred to in subsection (3) (b) or (c) had given the accused reasonable cause to believe that a building warrant had been granted for the work or the conversion.
- (5) In any proceedings against a person referred to in subsection (3)(b) or (c) for an offence under subsection (2)(b), it is a defence for the accused to show that at the time of the alleged commission of the offence the accused did not know, and had no reasonable cause to know, that the work was being carried out or the conversion made otherwise than in accordance with the warrant.
- (6) In any proceedings against a person referred to in subsection (3)(c) for an offence under subsection (2)(a), it is a defence for the accused to show that at the time of the alleged commission of the offence the accused did not know, and had no reasonable cause to know, that the work was being carried out or the conversion made.
- (7) The accused is to be taken to have shown the fact specified in subsection (4) or, as the case may be, (5) or (6) if—
  - (a) sufficient evidence is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (8) Subsection (1) does not apply in relation to—

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- (a) such work or conversions,
  - (b) such buildings or descriptions of building,
  - (c) such services, fittings or equipment,
- as building regulations may specify.

- (9) A building warrant has effect for the benefit of the building to which it relates and of all persons for the time being having an interest in it.

## **9 Building warrants: grant and amendment** S

- (1) A verifier must, on an application for a building warrant made to it, grant a building warrant if, but only if, it is satisfied as to the matters specified in subsection (2).

- (2) Those matters are—

- (a) so far as the application is for a warrant for the construction or demolition of a building—
  - (i) that the work involved will be carried out in accordance with building regulations, and
  - (ii) where the work is for the construction of a building, that nothing in any plan, specification or other information submitted with the application indicates that the building when constructed will fail to comply with building regulations,
- (b) so far as the application is for a warrant for the provision of services, fittings or equipment in or in connection with a building—
  - (i) that the work involved will be carried out in accordance with building regulations, and
  - (ii) that nothing in any plan, specification or other information submitted with the application indicates that the services, fittings or equipment will fail to comply with building regulations,
- (c) so far as the application is for a warrant for conversion of a building, that after the conversion the building as converted will comply with building regulations.

- (3) Subsection (4) applies where, on an application for a building warrant for the construction or demolition of a building, the verifier is not satisfied that the information submitted with the application is sufficient, in relation to a stage in the construction or demolition specified in procedure regulations, to show that the building when constructed or the demolition will comply with building regulations.

- (4) Where this subsection applies, the verifier may grant a building warrant for the construction or demolition of the building subject to the condition that work on the stage in question is not to be proceeded with until—

- (a) such further information relating to that stage as the verifier may require is submitted to it,
- (b) it is satisfied, on the basis of that information, as to the matter specified in subsection (3), and
- (c) it has made an amendment to the warrant authorising the work to proceed.

- (5) Subsection (6) applies where—

- (a) a building warrant has been granted, and



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- (b) before any completion certificate has been accepted in relation to the building in respect of the work or conversion, an application is made to the verifier for an amendment to the warrant.
- (6) Where this subsection applies, the verifier must make the amendment if, but only if, it continues to be satisfied as to the matters specified in subsection (2), taking into account the proposed amendment and any plan, specification or other information submitted with the application for the amendment.
- (7) Where a verifier grants, or makes an amendment to, a building warrant under this section the verifier must—
  - (a) send a copy of the warrant or amendment, together with—
    - (i) a copy of any continuing requirements imposed under section 22, and
    - (ii) such other documents and information as may be specified in procedure regulations,to the local authority for registration in the building standards register, and
  - (b) notify the owner of the building of the granting of the warrant or the making of the amendment and of the imposition of any continuing requirements under section 22, unless the owner is the person who applied for the warrant or amendment.
- (8) Subsection (7)(a) does not apply where the verifier is the local authority.
- (9) References in this section and sections 10 to 14 (other than section 14(4)) to building regulations are to those regulations as they have effect at the time of the application under subsection (1) for the building warrant in question but subject, in relation to an application for an amendment to a warrant, to any later direction under section 3(2) in force in relation to the building in question or buildings of the same description.
- (10) This section and section 10 are without prejudice to any enactment (other than this Act) conferring power on a local authority to refuse to grant a building warrant in particular circumstances.

## **10 Building warrants: extension, alteration and conversion** S

- (1) Despite section 9, a verifier must refuse to grant a building warrant (or an amendment to the terms of a warrant) under that section if the application relates to an extension to a building or alteration or conversion of all or part of a building and subsection (2) or (3) of this section is satisfied.
- (2) This subsection is satisfied if—
  - (a) the whole building, at the time of the application, complied with building regulations, and
  - (b) the verifier considers that, as a result of the extension, alteration or conversion, the whole building as extended, altered or converted will fail to comply with building regulations.
- (3) This subsection is satisfied if—
  - (a) the whole building, at the time of the application, failed to comply with building regulations, and

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- (b) the verifier considers that, as a result of the extension, alteration or conversion, the whole building as extended, altered or converted will fail to comply with building regulations to a greater degree.

## **11 Building warrants: certification of design** S

- (1) On making an application under section 9 for a building warrant or for amendment of a warrant, the applicant may submit to the verifier a certificate issued by an approved certifier of design certifying (either or both)—
  - (a) that the design of the building, or of such part of it as is specified in the certificate, complies with building regulations,
  - (b) in relation to work for construction or demolition or for provision of services, fittings or equipment, that the proposed method of working, or any part of it, complies with building regulations.
- (2) In subsection (1), “design” includes the specification of the material to be used.
- (3) In determining the application, the verifier must accept the certificate as conclusive of the facts to which it relates.
- (4) Any approved certifier of design who—
  - (a) issues a certificate under subsection (1) containing a statement which the certifier knows to be false or misleading in a material particular, or
  - (b) recklessly issues a certificate under subsection (1) which is false or misleading in a material particular,
 is guilty of an offence.
- (5) In this section, “certificate” means a certificate which the approved certifier of design is authorised to issue—
  - (a) in the case of such a certifier appointed under section 7(1), by the terms of the certifier’s appointment,
  - (b) in the case of a person who is such a certifier by virtue of membership of a scheme approved under section 7(2), by the scheme as approved.

## **12 Building warrants: reference to Ministers** S

- (1) Where, in relation to an application under section 9 for a building warrant, the verifier or the applicant considers that there is doubt about—
  - (a) the extent to which the proposals in the application comply with any provision of building regulations, or
  - (b) whether it is necessary to impose continuing requirements under section 22,
 the verifier or, as the case may be, the applicant may refer the matter to the Scottish Ministers.
- (2) On a reference under subsection (1) the Scottish Ministers may, if they think fit, express a view on the matter referred to them and must intimate any such view to both the verifier and the applicant.
- (3) In determining the application or, as the case may be, considering whether it is necessary to impose continuing requirements under section 22, the verifier must have regard to any view expressed under subsection (2).

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### **13 Building warrants: further provisions** S

- (1) A building warrant is subject to the following conditions—
  - (a) that the work or conversion in respect of which the warrant was granted is carried out or, as the case may be, made as described in the warrant (including any related plans and specifications) and in accordance with building regulations, and
  - (b) where a direction has been given under section 3, that any conditions specified in the direction are observed.
- (2) A building warrant for the demolition of a building is subject to the condition that the demolition is completed within such period as is specified in the warrant.

### **14 Building warrants: limited life buildings** S

- (1) In relation to a building to be constructed in accordance with any special provisions of building regulations made by virtue of paragraph 3 of schedule 1—
  - (a) an application for a building warrant must state the period of the intended life of the building, which must not exceed the period specified in the regulations in relation to the special provisions, and
  - (b) the warrant is subject to the condition that the building is demolished by the expiry of the period stated in the application, but does not constitute a warrant for the demolition.
- (2) Where a warrant is subject to the condition specified in subsection (1)(b), the owner of the building may, before the expiry of the period specified in the warrant, or that period as extended under subsection (3), make an application to the verifier to extend, or further extend, the period.
- (3) On such an application the verifier, if it is satisfied having regard to the special provisions referred to in subsection (1) that it is proper to do so, may extend or, as the case may be, further extend the period.
- (4) The period of any such extension or further extension must not exceed the period specified in building regulations (as they have effect at the time of the application under subsection (2)) in relation to the special provisions.
- (5) Where—
  - (a) a warrant is subject to the condition specified in subsection (1)(b), and
  - (b) the owner of the building fails to demolish the building by the expiry of the period specified in the warrant (or, if that period has been extended or further extended under subsection (3), the period as so extended or further extended),the owner is guilty of an offence.
- (6) Any person who, after the expiry of the period specified in a warrant by virtue of subsection (1)(b) (or, if that period has been extended or further extended under subsection (3), the period as so extended or further extended), occupies or uses the building to which the warrant relates (other than solely for the purposes of its demolition)—
  - (a) knowing that the period has expired, or
  - (b) without any regard for whether the period has expired,is guilty of an offence.

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- (7) A person guilty of an offence under subsection (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (8) Whether or not a local authority has exercised or proposes to exercise any of its other powers under this Act the authority may, by means of an application for interdict, seek to restrain or prevent any actual or apprehended occupation or use of a building which constitutes, or would constitute, an offence under subsection (6).
- (9) On such an application the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the occupation or use.
- (10) In subsection (9), “the court” means the Court of Session or the sheriff.

### 15 Building warrants: late applications **S**

Where work for which a building warrant is required under section 8 has commenced without a warrant, an application under section 9 for a warrant may be made at any time before a completion certificate has been accepted in respect of the building in question.

### 16 Applications and grants: offences **S**

- (1) Any person who—
- (a) makes an application under section 9 for a building warrant or an amendment to a warrant containing a statement which that person knows to be false or misleading in a material particular, or
  - (b) recklessly makes such an application containing a statement which is false or misleading in a material particular,
- is guilty of an offence.
- (2) Any verifier who grants a building warrant, or makes an amendment to a warrant, under that section knowing that the application for the warrant or amendment contains a statement which is false in a material particular is guilty of an offence.

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### *Completion certificates*

### 17 Completion certificates **S**

- (1) After the completion of the work or conversion in respect of which a building warrant has been granted, the relevant person must submit to the verifier a completion certificate certifying the matters specified in subsection (2).
- (2) Those matters are—
- (a) that the work was carried out or, as the case may be, the conversion was made in accordance with the building warrant, and
  - (b) that—

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- (i) in the case of work for the construction of a building, the building as constructed complies with building regulations,
  - (ii) in the case of work for the provision of services, fittings or equipment in or in connection with a building, the services, fittings or equipment provided comply with building regulations,
  - (iii) in the case of conversion of a building, the building as converted complies with building regulations.
- (3) In subsection (2), the references to building regulations are to those regulations as they applied for the purposes of the building warrant.
- (4) Where—
  - (a) work for which a building warrant is required under section 8 has been carried out, or
  - (b) a conversion of a building for which a building warrant is required under that section has been made,without a building warrant, the relevant person must submit to a verifier a completion certificate certifying the matters specified in subsection (5).
- (5) Those matters are—
  - (a) that the work was carried out or, as the case may be, the conversion was made in accordance with building regulations, and
  - (b) that—
    - (i) in the case of work for the construction of a building, the building as constructed complies with building regulations,
    - (ii) in the case of work for the provision of services, fittings or equipment in or in connection with a building, the services, fittings or equipment comply with building regulations,
    - (iii) in the case of conversion of a building, the building as converted complies with building regulations.
- (6) In subsection (5), the references to building regulations are to those regulations as they have effect on the date on which the completion certificate is submitted under subsection (4).
- (7) After the completion of the work required by—
  - (a) a building regulations compliance notice or a defective building notice, in a case where no building warrant is required,
  - (b) a continuing requirement enforcement notice, or
  - (c) a dangerous building notice,the owner of the building in question must submit to a verifier a completion certificate certifying that the work has been completed in accordance with the requirements of the notice.
- (8) Subsection (7) does not apply in relation to work carried out by a local authority under section 25(7)(b), 26(3)(b), 28(10)(b) or 30(4)(b).
- (9) A completion certificate submitted to a verifier in pursuance of a building warrant enforcement notice under section 27(2)(a) must certify that the building in question complies with building regulations as those regulations have effect on the date on which the certificate is submitted.
- (10) In this section, the relevant person, in relation to a building, is—

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- (a) where the work was carried out, or the conversion made, otherwise than on behalf of another person, the person who carried out the work or made the conversion,
- (b) where the work was carried out, or the conversion made, by a person on behalf of another person, that other person,
- (c) if the owner of the building does not fall within paragraph (a) or (b) and the person required by those paragraphs to submit the completion certificate has failed to do so, the owner.

## **18 Completion certificates: acceptance and rejection** S

- (1) A verifier must accept or reject a completion certificate submitted to it under this Act.
- (2) The verifier must accept the certificate if, but only if, after reasonable inquiry, it is satisfied as to the matters certified in the certificate.
- (3) Before accepting a completion certificate—
  - (a) relating to a building, or
  - (b) in respect of work or a conversion,
 of such description as procedure regulations may specify, the verifier must consult such persons as may be so specified.
- (4) Where a verifier accepts or rejects a completion certificate the verifier must—
  - (a) send a copy of the certificate, together with—
    - (i) in the case of an accepted certificate, a copy of any continuing requirements imposed under section 22, and
    - (ii) such other documents and information as may be specified in procedure regulations,
 to the local authority for registration in the building standards register, and
  - (b) notify the owner of the building of—
    - (i) the acceptance or rejection of the certificate, and
    - (ii) in the case of an acceptance, the imposition of any continuing requirements under section 22,
 unless the owner is the person who submitted the certificate.
- (5) Subsection (4)(a) does not apply where the verifier is the local authority.

## **19 Completion certificates: certification of construction** S

- (1) On submitting a completion certificate to a verifier under this Act, the person submitting the completion certificate may submit to the verifier a certificate issued by an approved certifier of construction certifying in relation to the building in question that such construction as is specified in the certificate complies with building regulations.
- (2) In subsection (1), the reference to building regulations is—
  - (a) in relation to a completion certificate submitted under subsection (1) of section 17, to those regulations as they applied for the purposes of the building warrant,

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- (b) in relation to a completion certificate submitted under subsection (4) of that section, to those regulations as they have effect on the date on which the completion certificate is submitted.
- (3) In determining whether or not to accept the completion certificate, the verifier must accept the certificate of the approved certifier of construction as conclusive of the facts to which it relates.
- (4) Any approved certifier of construction who—
  - (a) issues a certificate under subsection (1) containing a statement which the certifier knows to be false or misleading in a material particular, or
  - (b) recklessly issues a certificate under subsection (1) which is false or misleading in a material particular,is guilty of an offence.
- (5) In this section—
  - “certificate”, in relation to construction, means a certificate which the approved certifier of construction is authorised to issue—
    - (a) in the case of such a certifier appointed under section 7(1), by the terms of the certifier’s appointment,
    - (b) in the case of a person who is such a certifier by virtue of membership of a scheme approved under section 7(2), by the scheme as approved,
  - “construction” includes any building or work in relation to a building and includes services, equipment and fittings provided in or in connection with a building.

## **20 Completion certificates: offences** **S**

- (1) Any person who, under this Act—
  - (a) submits to a verifier a completion certificate containing a statement which that person knows to be false or misleading in a material particular, or
  - (b) recklessly submits to a verifier a completion certificate containing a statement which is false or misleading in a material particular,is guilty of an offence.
- (2) Any verifier who accepts a completion certificate submitted to it under this Act knowing that the certificate contains a statement which is false in a material particular is guilty of an offence.

## **21 Occupation or use without completion certificates** **S**

- (1) This section applies to a building which is being, or has been, constructed or converted—
  - (a) by virtue of a building warrant or,
  - (b) in a case where such a warrant is required under section 8, without such a warrant,if the condition specified in subsection (2) is satisfied.
- (2) That condition is that no completion certificate has been accepted in respect of the construction or conversion under section 18(1).

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- (3) On an application made to the verifier—
- (a) where the construction or conversion is being, or has been, carried out otherwise than on behalf of another person, by the person carrying out, or who carried out, the construction or conversion,
  - (b) where the construction or conversion is being, or has been, carried out by a person on behalf of another person, by that other person,
  - (c) in any case, by the owner of the building in question,
- the verifier may grant permission for the temporary occupation or use of the building during such period as is specified in the permission and must, where it does so, send a copy of the permission to the local authority (unless the verifier is the local authority).
- (4) The period specified in a permission under subsection (3) may be extended from time to time on a further application under that subsection.
- (5) Any person who occupies or uses a building to which this section applies (other than solely for the purpose of its construction or conversion)—
- (a) knowing that no completion certificate has been accepted under section 18(1) in respect of the construction or conversion, or
  - (b) without any regard for whether a completion certificate has been so accepted,
- is guilty of an offence unless the occupation or use is authorised by a permission granted under subsection (3).
- (6) A person guilty of an offence under subsection (5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (7) Whether or not a local authority has exercised or proposes to exercise any of its other powers under this Act the authority may, by means of an application for interdict, seek to restrain or prevent any actual or apprehended occupation or use of a building which constitutes, or would constitute, an offence under subsection (5).
- (8) On such an application the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the occupation or use.
- (9) In subsection (8), “the court” means the Court of Session or the sheriff.
- (10) In the application of this section to a building which is being or has been converted, references to occupation or use of the building are to the changed occupation or use.
- (11) In this section, references to construction do not include alteration.

VALID FROM 01/05/2005

*Imposition of continuing requirements by verifiers*

**22      Imposition of continuing requirements by verifiers** S

- (1) Subsection (2) applies where a verifier—



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- (a) grants, or makes an amendment to, a building warrant (other than a warrant for demolition), or
  - (b) accepts a completion certificate submitted under section 17(4),
- in respect of any building.

- (2) Where the verifier considers it necessary to do so for securing that the purposes of any provision of building regulations are not frustrated, the verifier must, on granting or making the amendment to the building warrant or, as the case may be, accepting the completion certificate, impose on the owner of the building such continuing requirements (in addition to any imposed by virtue of section 2) in relation to the building as the verifier considers necessary for securing that matter.
- (3) Continuing requirements imposed under this section must state the provision of building regulations to which they relate.

### **23 Discharge and variation of continuing requirements imposed by verifiers** S

- (1) A verifier must—
- (a) on an application made to it for discharge of a continuing requirement imposed under section 22, discharge the continuing requirement if satisfied that—
    - (i) the building in relation to which the requirement was imposed complies with building regulations (as they apply at the time of the application), and
    - (ii) the requirement is no longer necessary for securing that the purposes of the provision of building regulations to which it relates are not frustrated,
  - (b) on an application made to it for variation of a continuing requirement imposed under that section, make the variation if satisfied that—
    - (i) the building in relation to which the requirement was imposed complies with building regulations (as they apply at the time of the application), and
    - (ii) the variation will not result in the purposes of the provision of building regulations to which the requirement relates being frustrated.
- (2) References in this Act to continuing requirements imposed under section 22 include such requirements as varied under this section.
- (3) Continuing requirements imposed in relation to a building under section 22 cease to have effect if—
- (a) a building warrant is granted in respect of the building, or
  - (b) a completion certificate submitted under section 17(4) in respect of the building is accepted.
- (4) Subsection (3) does not affect the power of the verifier to impose further continuing requirements in relation to the building under section 22 on granting the building warrant or, as the case may be, accepting the completion certificate referred to in subsection (3).

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VALID FROM 01/05/2005

*Building standards registers*

**24 Building standards registers** **S**

- (1) Every local authority must keep a register (a “building standards register”) for the area of the authority containing information in relation to—
  - (a) applications for building warrants and amendments to building warrants,
  - (b) the manner in which such applications have been dealt with, and
  - (c) completion certificates and their acceptance or rejection.
- (2) The Scottish Ministers may by regulations make provision as to—
  - (a) matters, in addition to those specified in subsection (1)(a) to (c), in relation to which building standards registers are to contain information,
  - (b) the information which such registers are to contain,
  - (c) the form and manner in which such registers are to be kept.
- (3) Regulations under subsection (2) may also make provision for—
  - (a) building standards registers to include copies of plans, specifications, estimates of costs, certificates issued by certifiers and other documents,
  - (b) the removal from such registers of all or part of entries relating to applications, and things relating to them.
- (4) Building standards registers must be kept open for public inspection at all reasonable times.

VALID FROM 01/05/2005

**PART 3** **S**

COMPLIANCE AND ENFORCEMENT

**25 Building regulations compliance** **S**

- (1) This section applies where the Scottish Ministers consider that, for any of the purposes of—
  - (a) securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings,
  - (b) furthering the conservation of fuel and power, and
  - (c) furthering the achievement of sustainable development,
 buildings of any description to which building regulations apply ought to comply with a provision of the regulations.

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- (2) Where this section applies, the Scottish Ministers may direct all local authorities, particular local authorities or local authorities of a particular description to secure that such buildings comply with that provision of the regulations.
- (3) A local authority must, if required to do so by a direction under subsection (2) and may, in any other case where it appears to the authority that a building of a description specified in such a direction does not comply with a provision of the building regulations specified in the direction in relation to buildings of that description, serve on the owner of the building a notice (a “building regulations compliance notice”)—
  - (a) specifying the provision of the regulations in question,
  - (b) requiring the owner to secure, by such date (not less than 28 days after the date on which the notice takes effect) as the notice may specify, that the building complies with that provision,
  - (c) specifying any particular steps which the authority requires the owner to take for that purpose, and
  - (d) specifying the date on which the notice is to take effect.
- (4) Subject to subsection (8), nothing in this section affects any requirement to obtain a building warrant (where one is required) for work required to comply with a building regulations compliance notice.
- (5) Where a local authority serving a building regulations compliance notice is a verifier authorised to exercise functions in relation to the matter in question, the notice may require—
  - (a) any application for a building warrant for work required to comply with the notice to be made, and
  - (b) any completion certificate in respect of such work to be submitted, to the authority.
- (6) If, by the date specified under subsection (3)(b) (or such later date as the local authority may have substituted under subsection (9)(b)), the owner has—
  - (a) applied for a building warrant in respect of any work required to comply with the notice, and
  - (b) (if the local authority is not the verifier to which the application is made) notified the authority of the making of the application,the notice has effect with the substitution for the date or later date of such other date (not less than 28 days after the date on which the verifier’s decision on the application takes effect) as the local authority may specify.
- (7) If, by the date specified under subsection (3)(b) (or such later date as may have substituted under subsection (6) or (9)(b)), the owner has not complied with the notice—
  - (a) the owner is guilty of an offence, and
  - (b) the authority may carry out such work as is necessary to make the building comply with the provision of building regulations specified in the notice and may recover from the owner any expenses reasonably incurred by it in doing so.
- (8) A building warrant is not required for the carrying out of work by a local authority under subsection (7)(b) but, after the completion of such work, the local authority must register in the building standards register a completion certificate certifying

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that the building complies with the provision of building regulations specified in the notice in question.

- (9) The local authority may—
- (a) withdraw a building regulations compliance notice,
  - (b) waive or relax any requirement of such a notice, including substituting a later date for the date specified under subsection (3)(b) or (6),
- whether or not the notice has taken effect.
- (10) The withdrawal of a building regulations compliance notice does not affect the power of the local authority to issue a further such notice.

## **26 Continuing requirement enforcement notices** **S**

- (1) This section applies where it appears to a local authority that the owner of a building is failing to comply with a continuing requirement imposed on the owner—
- (a) by building regulations by virtue of section 2, or
  - (b) by a verifier under section 22.
- (2) Where this section applies, the local authority may serve on the owner of the building a notice (a “continuing requirement enforcement notice”)—
- (a) specifying the continuing requirement in question,
  - (b) requiring the owner to take, by such date (not less than 28 days after the date on which the notice takes effect) as the notice may specify, such steps as the notice may specify for the purpose of complying with the continuing requirement,
  - (c) specifying the date on which the notice is to take effect.
- (3) If, by the date specified under subsection (2)(b) (or such later date as may have been substituted under subsection (5)(b)), the owner has not complied with the notice—
- (a) the owner is guilty of an offence, and
  - (b) the authority may carry out such work as is necessary to comply with the notice and may recover from the owner any expenses reasonably incurred by it in doing so.
- (4) After the completion of such work the local authority must register in the building standards register a completion certificate certifying that the work has been completed in accordance with the notice in question.
- (5) The local authority may—
- (a) withdraw a continuing requirement enforcement notice,
  - (b) waive or relax any requirement of such a notice, including substituting a later date for the date specified under subsection (2)(b),
- whether or not the notice has taken effect.
- (6) The withdrawal of a continuing requirement enforcement notice does not affect the power of the local authority to issue a further such notice.

## **27 Building warrant enforcement notices** **S**

- (1) This section applies where it appears to a local authority that—

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- (a) work in respect of a building for which a building warrant is required under section 8(1)(a) has been or is being carried out—
    - (i) without a building warrant, or
    - (ii) where a building warrant has been granted, otherwise than in accordance with the warrant, or
  - (b) a building is of a description referred to in subsection (1) of section 14 and has not been demolished by the expiry of the period determined under that section for its demolition.
- (2) Where this section applies, the local authority may serve on the relevant person a notice (a “building warrant enforcement notice”) requiring that person—
- (a) in a case referred to in subsection (1)(a)(i) where the work has been carried out, to submit a completion certificate to a verifier and to secure the verifier’s acceptance of the certificate,
  - (b) in a case referred to in subsection (1)(a)(i) where the work is being carried out, to obtain a building warrant for the work,
  - (c) in a case referred to in subsection (1)(a)(ii)—
    - (i) to secure that the work complies with the warrant, or
    - (ii) to obtain an amendment to the building warrant in respect of the non-compliance,
  - (d) in a case referred to in subsection (1)(b), to obtain a building warrant for the demolition of the building and to demolish the building,
- by such date (not less than 28 days after the date on which the notice takes effect) as the notice may specify.
- (3) In this section, the relevant person, in relation to a building, is—
- (a) in a case referred to in subsection (1)(a)—
    - (i) where the work has been or is being carried out otherwise than on behalf of another person, the person who carried it out or is carrying it out,
    - (ii) where the work has been or is being carried out by a person on behalf of another person, that other person,
    - (iii) if the owner of the building does not fall within sub-paragraph (i) or (ii) and the person specified in those sub-paragraphs cannot be found or no longer has an interest in the building, the owner,
  - (b) in a case referred to in subsection (1)(b), the owner of the building.
- (4) Where a local authority serving a building warrant enforcement notice under subsection (2)(a) or (b) is a verifier authorised to exercise functions in relation to the matter in question, the notice may require the completion certificate or, as the case may be, the application for the building warrant to be submitted to the authority.
- (5) A building warrant enforcement notice—
- (a) must specify the date on which the notice is to take effect,
  - (b) may specify particular steps which the local authority requires the person on whom the notice is served to take in complying with the notice,
  - (c) may, in a case referred to in subsection (1)(a) where work is being carried out, require the person on whom the notice is served to suspend work (other than work for complying with the notice) until the notice has been complied with.

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- (6) If, by the date specified under subsection (2) (or such later date as the local authority may have substituted under subsection (9)(b)), the person on whom the notice is served has—
- (a) applied for a direction under section 3 in relation to the building in question, and
  - (b) notified the authority of the making of the application,
- the notice has effect with the substitution for the date or later date of such other date (not less than 28 days after the date on which the decision on the application for the direction takes effect) as the local authority may specify.
- (7) If, by the date specified under subsection (2) (or such later date as the local authority may have substituted under subsection (6) or (9)(b)), the person on whom the notice is served has not complied with the notice—
- (a) the person is guilty of an offence, and
  - (b) the authority may carry out the work necessary—
    - (i) in a case referred to in subsection (2)(a) or (b), to secure that the work complies with building regulations,
    - (ii) in a case referred to in subsection (2)(c) or (d), to secure compliance with the notice,
 and may recover from the person any expenses reasonably incurred by it in doing so.
- (8) A building warrant is not required for the carrying out of work by a local authority under subsection (7)(b) but, after the completion of such work, the local authority must register in the building standards register a completion certificate certifying that the work complies with building regulations or, as the case may be, that the work has been completed in accordance with the notice in question.
- (9) The local authority may—
- (a) withdraw a building warrant enforcement notice,
  - (b) waive or relax any requirement of such a notice, including substituting a later date for the date specified under subsection (2),
- whether or not the notice has taken effect.
- (10) The withdrawal of a building warrant enforcement notice does not affect the power of the local authority to issue a further such notice.

VALID FROM 01/05/2005

## PART 4 S

### DEFECTIVE AND DANGEROUS BUILDINGS

#### 28 **Defective buildings** S

- (1) A local authority may serve on the owner of a building a notice (a “defective building notice”) requiring the owner to rectify such defects in the building as the notice may specify.

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- (2) The defects which may be specified in a defective building notice are defects which require rectification in order to bring the building into a reasonable state of repair having regard to its age, type and location.
- (3) A defective building notice must specify—
  - (a) a date not less than 7 days after the date of service of the notice by which the owner must have begun the work required by the notice, and
  - (b) a date not less than 21 days after the date specified under paragraph (a) by which the owner must have completed that work,and may specify different dates for the commencement and completion of different work.
- (4) A defective building notice may specify particular steps which the local authority requires the owner to take in complying with the notice.
- (5) Subject to subsection (11), nothing in this section affects the requirement to obtain a building warrant (where one is required) under section 8 for any work required to comply with a defective building notice.
- (6) Where a local authority serving a defective building notice is a verifier authorised to exercise functions in relation to the matter in question, the notice may require—
  - (a) any application for a building warrant for work required to comply with the notice to be made, and
  - (b) any completion certificate in respect of such work to be submitted, to the authority.
- (7) If, by the date specified under subsection (3)(a) (or such later date as the local authority may have substituted for that date under subsection (12)(b)), the owner has—
  - (a) applied for a building warrant in respect of any work required to comply with the notice, and
  - (b) (if the local authority is not the verifier to which the application is made) notified the authority of the making of the application,the notice has effect with the substitutions specified in subsection (8).
- (8) Those substitutions are that—
  - (a) for the date referred to in subsection (7) there is substituted such later date (not less than 7 days after the date on which the verifier's decision on the application takes effect) as the local authority may specify, and
  - (b) for the date specified under subsection (3)(b) (or such later date as the local authority may have substituted for that date under subsection (12)(b)) there is substituted such later date (not less than 21 days after the date specified under paragraph (a)) as the local authority may specify.
- (9) Subsection (10) applies where the owner—
  - (a) has not begun the work required by a defective building notice by the date specified under subsection (3)(a), or
  - (b) has not completed that work by the date specified under subsection (3)(b),(or, in either case, such later date as the local authority may have substituted under subsection (7) or (12)(b)).
- (10) Where this subsection applies—

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- (a) the owner is guilty of an offence, and
  - (b) the local authority may carry out the work necessary to complete the work required by the notice and may recover from the owner any expenses reasonably incurred by it in doing so.
- (11) A building warrant is not required for the carrying out of work by a local authority under subsection (10)(b) but, after the completion of such work, the local authority must register in the building standards register a completion certificate certifying that the work has been completed in accordance with the notice in question.
- (12) The local authority may at any time—
- (a) withdraw a defective building notice,
  - (b) waive or relax any requirement of such a notice, including substituting a later date for a date specified under subsection (3)(a) or (b).
- (13) The withdrawal of a defective building notice does not affect the power of the local authority to issue a further such notice.

## 29 Dangerous buildings **S**

- (1) This section applies where it appears to a local authority that a building (a “dangerous building”) constitutes a danger to persons in or about it or to the public generally or to adjacent buildings or places.
- (2) The local authority must carry out such work (including, if necessary, demolition) as it considers necessary—
- (a) to prevent access to the dangerous building and to any adjacent parts of any road or public place which appear to the authority to be dangerous by reason of the state of the building, and
  - (b) otherwise for the protection of the public and of persons or property in places adjacent to the dangerous building,
- and may recover from the owner of the dangerous building any expenses reasonably incurred by it in doing so.
- (3) Where the local authority considers that urgent action is necessary to reduce or remove the danger it may, after giving the owner of the building such notice (if any) as the circumstances permit, carry out such work (including, if necessary, demolition) as it considers necessary to reduce or remove the danger and may recover from the owner of the dangerous building any expenses reasonably incurred by it in doing so.
- (4) The work which may be carried out under subsection (3) is work which could have been specified in a notice under subsection (6) in relation to the dangerous building.
- (5) A building warrant is not required for the carrying out of work by a local authority under subsection (2) or (3) but, after the completion of such work, the local authority must register in the building standards register a completion certificate certifying that the work has been carried out.
- (6) Except where the danger has been removed by work carried out under subsection (3), the local authority must serve on the owner of the dangerous building a notice (a “dangerous building notice”) requiring the owner to carry out such work as the notice may specify.
- (7) Section 30 makes further provision about dangerous building notices.



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### 30 Dangerous building notices **S**

- (1) The work to be specified in a dangerous building notice is the work for the repair, securing or demolition of the dangerous building which the local authority considers necessary to remove the danger.
- (2) A dangerous building notice must specify dates by which the owner must have begun and completed the work required by the notice and may specify different dates for the commencement and completion of different work.
- (3) Subsection (4) applies where the owner has not begun, or has not completed, work required by a dangerous building notice by the date specified under subsection (2) for its commencement or, as the case may be, completion (or such later date as the local authority may have substituted under subsection (6)(b)).
- (4) Where this subsection applies—
  - (a) the owner is guilty of an offence, and
  - (b) the local authority may carry out the work necessary to complete the work required by the notice and may recover from the owner any expenses reasonably incurred by it in doing so.
- (5) A building warrant is not required for the carrying out of any work required by a dangerous building notice or for the carrying out of any work by a local authority under subsection (4)(b) but, where such work is carried out by a local authority, the authority must, after the completion of the work, register in the building standards register a completion certificate certifying that the work has been completed in accordance with the notice in question.
- (6) The local authority may at any time—
  - (a) withdraw a dangerous building notice,
  - (b) waive or relax any requirement of such a notice, including substituting a later date for a date specified under subsection (2).
- (7) The withdrawal of a dangerous building notice does not affect the power of the local authority to issue a further such notice.

## PART 5 **S**

### GENERAL

VALID FROM 22/09/2004

#### *Building Standards Advisory Committee*

### 31 Building Standards Advisory Committee **S**

- (1) There is to continue to be a committee, to be known as the Building Standards Advisory Committee, for the purpose of—
  - (a) advising the Scottish Ministers on the exercise of their functions under this Act,

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- (b) keeping under review the operation of regulations under this Act and making recommendations to the Scottish Ministers in connection with the regulations, and
  - (c) advising the Scottish Ministers on any question relating to their functions under this Act which they may refer to the committee.
- (2) The members of the committee are to be appointed by the Scottish Ministers after consultation with such persons as appear to them to be representative of the interests concerned.
- (3) The Scottish Ministers may by regulations make provision—
- (a) as to the constitution and procedure of the committee,
  - (b) requiring the committee to submit to them reports as to the exercise of its functions.
- (4) The Scottish Ministers may pay—
- (a) to the members of the committee—
    - (i) such remuneration, and
    - (ii) such allowances in respect of expenses properly incurred in the performance of their duties,
  - (b) to persons attending meetings of the committee at the committee’s request, such allowances in respect of expenses properly incurred in connection with such attendance,
- as the Scottish Ministers may determine.

VALID FROM 22/09/2004

*Functions of Ministers, local authorities, verifiers and certifiers*

VALID FROM 01/05/2005

**32 Exercise of local authority functions** **S**

- (1) The Scottish Ministers may give local authorities directions of a general or specific character as to the exercise of their functions under this Act.
- (2) Such directions may be given to all local authorities, to a particular local authority or to local authorities of a particular description.
- (3) Subsections (1) and (2) are without prejudice to section 7(10) and (11).
- (4) If the Scottish Ministers so direct, the functions of a local authority under any of sections 25 to 30 and schedule 5 are exercisable by them in place of the authority to the extent specified in the direction; and for the purpose of such exercise, references in those provisions and this Part to a local authority are, so far as necessary, to be read as references to the Scottish Ministers.
- (5) A direction under subsection (4) may be of a general or specific character and may, for example, relate to a particular—
  - (a) building or description of building,

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- (b) local authority or description of local authority,
- (c) geographical area.

### 33 Procedure regulations **S**

- (1) The Scottish Ministers may by regulations (“procedure regulations”) make provision as to—
  - (a) the procedure to be followed in connection with—
    - (i) applications authorised or required to be made under this Act and the determination of such applications,
    - (ii) directions under section 3,
    - (iii) references to the Scottish Ministers under section 12,
    - (iv) the submission to verifiers of completion certificates and the acceptance or rejection of such certificates,
  - (b) the procedure to be followed—
    - (i) by certifiers in relation to the issue of certificates for the purposes of sections 11 and 19,
    - (ii) by local authorities in connection with their functions under Parts 3 and 4 and this Part,
  - (c) the appointment and removal of, and the exercise of functions by, verifiers and certifiers,
  - (d) the approval of schemes under section 7(2) and the withdrawal of such approval.
- (2) Such regulations may in particular provide for the matters specified in schedule 3.
- (3) Such regulations may provide for—
  - (a) the combination in a single document (a “combined application”) of—
    - (i) any application authorised or required to be made under this Act, and
    - (ii) any such application as is mentioned in section 274(1) (combined applications) of the Town and Country Planning (Scotland) Act 1997 (c. 8),
  - (b) the making of a combined application in such form and manner, and to such authority, as the regulations may specify, and
  - (c) the transmission of copies of the application by that authority to such other authorities as the regulations may specify.
- (4) Subsections (2) to (6) of section 274 of that Act apply in relation to regulations made in pursuance of subsection (3) as they do in relation to regulations made under subsection (1) of that section.

VALID FROM 01/05/2005

### 34 Reports and information **S**

- (1) Every local authority, verifier and certifier must provide the Scottish Ministers with such reports and information as the Scottish Ministers may require in relation to the functions of the authority, verifier or certifier under this Act.

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- (2) Any local authority, verifier or certifier which knowingly or recklessly provides information in pursuance of a requirement under subsection (1) which is false or misleading in a material particular is guilty of an offence.

VALID FROM 01/05/2005

*Scheduled monuments, listed buildings etc.*

**35 Scheduled monuments, listed buildings etc. S**

- (1) This section applies to a building which is—
- (a) included in the schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46),
  - (b) included in a list of buildings of special architectural or historic interest, being a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9),
  - (c) subject to a building preservation notice under section 3 of that Act, or
  - (d) one to which section 66 of that Act (control of demolition in conservation areas) applies.
- (2) Before—
- (a) serving—
    - (i) a building regulations compliance notice,
    - (ii) a continuing requirement enforcement notice,
    - (iii) a building warrant enforcement notice,
    - (iv) a defective building notice, or
    - (v) a dangerous building notice,
 requiring a person to carry out any work (including demolition) in relation to a building to which this section applies, or
  - (b) carrying out work under section 29(3) in relation to such a building, a local authority must (but in the case of paragraph (a)(v) or (b) only if reasonably practicable) consult the persons specified in subsection (3).
- (3) Those persons are—
- (a) the Scottish Ministers,
  - (b) the planning authority (where the planning authority is not the local authority), and
  - (c) such other persons as the local authority thinks fit.
- (4) Where, in relation to a building to which this section applies, a person is required by a notice of a description specified in subsection (2)(a) to carry out any work (including demolition) in relation to the building, the requirement has effect only in so far as it is not inconsistent with any provision of the Acts specified in subsection (1) relating to the carrying out of work on or in relation to the building.

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VALID FROM 22/09/2004

### Documents

#### 36 Forms **S**

- (1) The Scottish Ministers may by regulations make provision as to the form and content of any application, warrant, certificate, notice or document authorised or required to be used under or for the purposes of this Act.
- (2) Where any such application, warrant, certificate, notice or document is used, it must be used in the form provided for in such regulations, or a form as close to it as circumstances permit.

VALID FROM 01/05/2005

#### 37 Service of notices etc. **S**

- (1) Where a local authority serves on any person a notice under any of sections 25 to 29, it must—
  - (a) unless that person is the owner of the building in question, serve a copy of the notice on the owner,
  - (b) unless that person is the occupier, serve a copy of the notice on the occupier, and must serve a copy of the notice on any other person appearing to the local authority to have an interest in the building.
- (2) Subsections (1) to (4) of section 192 (service of notices etc.) of the Local Government (Scotland) Act 1973 (c. 65) apply to the service of any notice or other document authorised or required by or under this Act to be served by any person, with the substitution (if necessary) for references to the local authority of references to that person.
- (3) Any such person may, for the purpose of enabling the service of any such notice or other document, by notice in writing require the occupier of any premises and any person who, directly or indirectly, receives rent in respect of any premises to state in writing—
  - (a) the nature of the interest in the premises of the person to whom the notice is addressed, and
  - (b) the name and address of any other person known to that person as having an interest in the premises.
- (4) Any person who, having been required by a notice under subsection (3) to give information—
  - (a) refuses or fails to give that information,
  - (b) makes in respect of that information any statement which the person knows to be false or misleading in a material particular, or
  - (c) recklessly makes in respect of that information any statement which is false or misleading in a material particular,

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is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 22/09/2004

*Fees and charges*

**38 Fees and charges** **S**

The Scottish Ministers may by regulations make provision for the charging of fees and other charges by the Scottish Ministers, local authorities and verifiers in respect of the performance of functions under this Act.

VALID FROM 01/05/2005

*Entry, inspection and tests*

**39 Powers of entry, inspection and testing** **S**

- (1) For the purposes of the exercise of their functions under section 3, the Scottish Ministers may exercise the powers specified in subsection (2).
- (2) Those powers are—
  - (a) power to enter any premises for the purpose of exercising a power specified in paragraph (b) or (c),
  - (b) power to inspect any building, or the site of any building, in respect of which an application has been made under section 3,
  - (c) power to carry out reasonable tests to determine the quality and strength of any material used or proposed to be used in the construction of a building referred to in paragraph (b).
- (3) For the purposes of the exercise of the functions of a local authority under sections 25 to 30, the authority may exercise the powers specified in subsection (4).
- (4) Those powers are—
  - (a) power to enter any premises for the purpose of—
    - (i) exercising a power specified in paragraph (b) or (c),
    - (ii) carrying out work under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b),
  - (b) power to inspect any building, or the site of any building, in connection with the authority's functions under sections 25 to 30,
  - (c) power to carry out reasonable tests to determine the quality and strength of any material used or proposed to be used in the construction of a building which the authority is entitled to inspect under paragraph (b).
- (5) The owner and occupier of any premises in relation to which the powers specified in subsections (2) and (4) are exercised, and any person on the premises when those

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powers are being exercised must give the Scottish Ministers or, as the case may be, the local authority such assistance, and provide such information, as they or it may reasonably require.

- (6) A person who—
- (a) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (5), or
  - (b) intentionally obstructs a person acting in the exercise of any power conferred by subsection (1) or (3),
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Schedule 4 makes further provision about the exercise of the powers conferred by subsections (1) and (3); and references in this section and that schedule to a power conferred by either of those subsections include references to such a power exercisable by virtue of a warrant under that schedule.
- (8) In this section and that schedule “premises” includes sites and buildings.

#### **40 Work required by notice: right of entry** **S**

- (1) This section applies where a person is required by a building regulations compliance notice, a continuing requirement enforcement notice, a building warrant enforcement notice, a defective building notice or a dangerous building notice to carry out any work (including demolition) in relation to a building.
- (2) The person, if not in occupation of the building, is entitled to enter the building and any land adjacent to it and held in connection with it for the purpose of complying with the requirement.
- (3) The person must give the occupier reasonable notice before exercising the right conferred by subsection (2).
- (4) That right applies despite any term to the contrary in any lease or other contract.

#### **41 Tests of materials** **S**

- (1) The Scottish Ministers may require any person who has made an application to them under section 3(2) to carry out a materials test.
- (2) A verifier may require any person—
  - (a) who has under section 9 applied to the verifier for a building warrant or for an amendment to a building warrant,
  - (b) by whom a building is being or has been constructed in pursuance of a building warrant, or
  - (c) who has under section 17 submitted to the verifier a completion certificate, to carry out a materials test.
- (3) A materials test is such reasonable test as the requirement may specify of materials—
  - (a) forming part of, or
  - (b) used or proposed to be used in the construction of,the building in question and includes a test of such materials in combination with other such materials and a test of the building as a whole.

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VALID FROM 01/05/2005

### *Evacuation of buildings*

#### **42 Evacuation of buildings** S

- (1) Where a local authority considers that the occupants of a dangerous building or any adjacent building are endangered by the state of the dangerous building, the authority must require those occupants to remove immediately from the building in question.
- (2) A local authority must require the occupants of a dangerous building to remove immediately from the building if—
  - (a) it intends to demolish the building under subsection (2) or (3) of section 29, or
  - (b) it intends to carry out other work under either of those subsections and considers that the occupants may be endangered by the carrying out of the work.
- (3) A local authority must require the occupants of a dangerous building to remove from the building if the building is to be demolished in pursuance of a dangerous building notice.
- (4) A local authority must require the occupants of a building to remove from the building if—
  - (a) it intends to carry out work under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b) or 30(4)(b), and
  - (b) the authority considers that the occupants may be endangered by the carrying out of the work.
- (5) A requirement under subsection (3) or (4) must be made by notice in writing specifying—
  - (a) the reason for the requirement, and
  - (b) the period within which the occupants must remove from the building.
- (6) Subsection (7) applies where, following a requirement under this section, a person has removed from a building in compliance with the requirement or has been ejected from the building under schedule 5.
- (7) If the local authority considers that—
  - (a) the ground for making the requirement no longer exists, and
  - (b) if the person were to resume occupation of the building, there would be no other ground for making a requirement under this section in relation to the person,the authority must (unless the building has been demolished) give the person notice to that effect.
- (8) Schedule 5 makes provision about the evacuation of buildings for the purposes of this section.

#### **43 Unlawful occupation of evacuated buildings** S

- (1) Any person who—



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- (a) has removed from a building in compliance with a requirement under section 42, or has been ejected from a building under schedule 5, and
  - (b) thereafter occupies the building,
- is guilty of an offence unless notice under section 42(7) has been given to the person.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

VALID FROM 01/05/2005

### *Execution of work*

#### **44 Expenses** **S**

- (1) Subsection (2) applies where a local authority serves on a person a demand for payment of expenses incurred by the authority in carrying out work in relation to a building under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b).
- (2) If the person proves—
- (a) that the person has no interest in the building except in the capacity of a trustee, tutor, curator, guardian, judicial factor or liquidator of a company, and
  - (b) that the total amount of the funds, rents and other assets in the person's hands in that capacity since the date of the service of the demand is insufficient to discharge the whole demand,
- the person's liability is limited to that total amount.
- (3) If a person alleges that expenses incurred or to be incurred in complying with a building regulations compliance notice, a continuing requirement enforcement notice, a building warrant enforcement notice, a defective building notice or a dangerous building notice should be borne to any extent by any other person having an interest in the building, the person may, by summary application, apply to the sheriff.
- (4) On such an application the sheriff may make such order as the sheriff thinks fit having regard to all the circumstances, including any contract between the parties.
- (5) The decision of the sheriff on an application under subsection (3) is final.

#### **45 Compulsory purchase where owner cannot be found** **S**

- (1) This section applies where—
- (a) a local authority has carried out work under section 29(2) or (3) or 30(4)(b), and
  - (b) the expenses incurred in doing so cannot be recovered from the owner of the building because the owner cannot be found.

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- (2) In such a case the Scottish Ministers may authorise the local authority to purchase the building and its site compulsorily.
- (3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to a compulsory purchase under subsection (2) as if that subsection had been in force immediately before the commencement of that Act.
- (4) The local authority may deduct from the compensation payable on a compulsory purchase under that subsection the amount of the expenses referred to in subsection (1)(b) so far as not otherwise recovered.

#### 46 Sale of materials from demolished buildings **S**

- (1) If a building is demolished by a local authority under section 27(7)(b), 29(2) or (3) or 30(4)(b), the authority may sell any building material arising from the demolition.
- (2) The authority may set off the proceeds of any such sale against any sum recoverable by it from the owner of the building or any other person under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b).
- (3) If the proceeds of sale exceed the total of any such sums, the authority must account to the owner or, as the case may be, the other person for the surplus.

VALID FROM 01/05/2005

### *Appeals*

#### 47 Appeals **S**

- (1) This subsection applies to—
  - (a) a decision under section 3 refusing an application for a direction dispensing with or relaxing a provision of building regulations,
  - (b) a decision of a verifier under section 9 refusing to grant a building warrant or an amendment to the terms of a warrant,
  - (c) a decision of a verifier under section 14 refusing to extend the period for the demolition of a building intended to have a limited life,
  - (d) a decision of a verifier under section 18 rejecting a completion certificate,
  - (e) a decision of a verifier under section 22 imposing continuing requirements,
  - (f) a decision of a verifier under section 23 refusing to discharge or vary a continuing requirement,
  - (g) a building regulations compliance notice, a continuing requirement enforcement notice, a building warrant enforcement notice, a defective building notice and a dangerous building notice.
- (2) Where a verifier has not, within such period as may be specified in procedure regulations or such extended period as may at any time be agreed between the verifier and the owner of a building, determined—
  - (a) an application for a building warrant or for an amendment to a building warrant,

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- (b) an application to extend the period for the demolition of a building intended to have a limited life,
- (c) whether to accept or reject a completion certificate submitted to it, or
- (d) an application for discharge or variation of a continuing requirement imposed under section 22,

the verifier is deemed, for the purposes of subsection (1), to have taken a decision of a description specified in paragraph (b), (c), (d) or, as the case may be, (f) of that subsection on the last day of the specified period or extended period.

- (3) Any person aggrieved by a decision or notice to which subsection (1) applies may, by summary application made within 21 days of the date of the decision or notice, appeal to the sheriff.
- (4) A decision or notice to which subsection (1) applies is of no effect until—
  - (a) the period within which an appeal may be brought under subsection (3) has elapsed without an appeal being brought, or
  - (b) where such an appeal is brought, the appeal is withdrawn or finally determined.
- (5) Despite subsection (4), a provision of a building warrant enforcement notice made in pursuance of subsection (5)(c) of section 27—
  - (a) has effect as soon as the notice is served, and
  - (b) where an appeal is brought under subsection (3) of this section, continues to have effect (regardless of the terms of the notice), unless quashed by an order of the sheriff under subsection (6), until the enforcement notice has been complied with.
- (6) On an appeal under this section the sheriff may make such order as the sheriff thinks fit.
- (7) The decision of the sheriff on an appeal under this section is final.

VALID FROM 01/05/2005

### *Offences and liability*

#### **48 Penalties for offences** **S**

- (1) Subsection (2) applies to an offence under any provision of this Act other than sections 14(6), 21(5), 37(4), 39(6) and 43(1).
- (2) A person guilty of an offence to which this subsection applies is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **49 Offences by bodies corporate etc.** **S**

- (1) Where an offence under this Act which has been committed by a body corporate other than a local authority is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary, member or other similar officer of the body corporate, or

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- (b) any person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where an offence under this Act which has been committed by a local authority is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) an officer or member of the authority, or
- (b) any person who was purporting to act in any such capacity, that person, as well as the authority, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) Where an offence under this Act which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a partner, or
- (b) any person who was purporting to act in that capacity, that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where an offence under this Act which has been committed by an unincorporated association other than a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a person who is concerned in the management or control of the association, or
- (b) any person who was purporting to act in that capacity, that person, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

## 50 Criminal liability of trustees etc. **S**

In proceedings for an offence under Part 3 or 4, it is a defence for a person to prove that, at the date of service of the notice in question—

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

## 51 Civil liability **S**

- (1) Subject to this section, breach of a duty imposed by building regulations, so far as it causes damage, is actionable, except in so far as the regulations otherwise provide.
- (2) Such regulations may provide for a specified defence to be available in an action for breach of such a duty brought by virtue of subsection (1).
- (3) Subsection (1) and any defence provided for in pursuance of subsection (2) do not apply in relation to the breach of such a duty in connection with a building erected before the date on which those subsections come fully into force unless the breach arises in relation to the conversion, alteration, demolition, repair, maintenance or fitting of such a building.

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- (4) Nothing in this section affects—
- (a) the extent (if any) to which breach of a duty imposed by building regulations is actionable in a case to which subsection (1) does not apply,
  - (b) any right of action which exists apart from 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).

VALID FROM 01/05/2005

### *Inquiries*

#### **52 Inquiries S**

- (1) The Scottish Ministers may, for the purpose of any of their functions under this Act, direct the holding of such public inquiries as they think fit.
- (2) Subsections (2) to (8) of section 210 (local inquiries) of the Local Government (Scotland) Act 1973 (c. 65) apply in relation to any such inquiry.

VALID FROM 01/05/2009

### *Crown application*

#### **53 Crown application S**

- (1) This Act binds the Crown.
- (2) Subsection (1) does not require subordinate legislation made under this Act to bind the Crown.
- (3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.
- (5) In the application of this Act to the Crown, “owner”—
  - (a) in the case of a building belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
  - (b) in the case of any other building belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having management of the building,
  - (c) in the case of a building belonging to an office-holder in the Scottish Administration or to a government department or held in trust for the

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purposes of the Scottish Administration or a government department, means that office-holder or government department.

- (6) It is for the Scottish Ministers to determine any question which arises as to who is, for the purposes of this Act, the owner of a building falling within paragraphs (a) to (c) of subsection (5); and their decision is final.

### *Orders and regulations*

#### **54 Orders and regulations** **S**

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes and different areas,
  - (c) provision for the delegation of functions.
- (3) An order under section 57 may modify any enactment, instrument or document.
- (4) The fact that a power to make orders or regulations is conferred by this Act does not prejudice the extent of any other such power.
- (5) A statutory instrument containing an order or regulations under this Act (except section 59 and, where subsection (6) applies, section 1(5) or 57) is subject to annulment in pursuance of a resolution of the Parliament.
- (6) No order under section 1(5) or 57 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

VALID FROM 22/09/2004

### *Interpretation*

#### **55 Meaning of “building”** **S**

- (1) In this Act “building” means any structure or erection, whether temporary or permanent, other than a structure or erection to which subsection (2) applies.
- (2) This subsection applies to any structure or erection consisting of, or ancillary to—
  - (a) any public road (including any bridge on which the road is carried),
  - (b) any private road,
  - (c) any sewer or water main which is, or is to be, vested in Scottish Water,
  - (d) any aerodrome runway,
  - (e) any railway line,
  - (f) any large raised reservoir within the meaning of the Reservoirs Act 1975 (c. 23),

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(g) any wires and cables, their supports above ground and other apparatus used for telephonic or telegraphic communication.

(3) In this Act, unless the context otherwise requires—

- (a) references to a building include references to a prospective building,
- (b) references to a building, structure or erection include references to a part of the building, structure or erection,
- (c) in relation to the extension, alteration or conversion of a building, references to a building are to so much of the building as is comprised in the extension or the subject of the alteration or conversion.

(4) For the purposes of this Act and any orders and regulations made under it buildings may be classified by reference to size, description, design, purpose, location or any other characteristic whatsoever.

## 56 Interpretation **S**

(1) In this Act, unless the context otherwise requires—

“approved certifier of construction” and “approved certifier of design” are to be construed in accordance with section 7(1) and (2),

“building” is to be construed in accordance with section 55,

“building regulations” means regulations under section 1(1); and references to building regulations in relation to a building of a particular description are references to so much of the regulations as apply to a building of that description,

“building regulations compliance notice” has the meaning given by section 25(3),

“Building Standards Advisory Committee” has the meaning given in section 31(1),

“building standards register” has the meaning given in section 24(1),

“building warrant” has the meaning given in section 8(1) and includes, 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,

“building warrant enforcement notice” has the meaning given by section 27(2),

“certifier” means an approved certifier of design or an approved certifier of construction,

“completion certificate” means a certificate submitted to a verifier under section 17(1), (4) or (7) or in pursuance of a building warrant enforcement notice under section 27(2)(a),

“construct” includes alter, erect and extend, and “construction” and related expressions are to be construed accordingly,

“continuing requirement enforcement notice” has the meaning given by section 26(2),

“convert”, in relation to a building, means to make such change in the occupation or use of the building as building regulations may specify, and “conversion” and related expressions are to be construed accordingly,

“dangerous building” is to be construed in accordance with section 29(1),

“dangerous building notice” has the meaning given in section 29(6),

“defective building notice” has the meaning given in section 28(1),

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“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and references to a local authority, in relation to a building, are to the authority in whose area the building is situated,

“owner”, in relation to land or buildings, includes 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,

“private road” means a road not maintainable by the Scottish Ministers or a local roads authority (whether or not comprising a public right of way),

“procedure regulations” means regulations under section 33(1),

“public road” means a road maintainable by the Scottish Ministers or a local roads authority,

“road” has the same meaning as in the Roads (Scotland) Act 1984 (c. 54) except that it also includes any drain or ditch at the side of a road,

“verifier” means a person appointed in pursuance of section 7(1)(a),

“work” in relation to a building includes work carried out in relation to the enclosure and preparation of the site of the building.

- (2) A building which is in the area of two or more local authorities is to be treated for the purposes of this Act as being wholly within the area of such one of them as they may agree or, failing agreement, as the Scottish Ministers may determine.

## PART 6 **S**

### SUPPLEMENTARY

#### 57 Ancillary provision **S**

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

VALID FROM 01/05/2005

#### 58 Modification of enactments **S**

Schedule 6 makes modifications of enactments in consequence of this Act.

#### 59 Commencement and short title **S**

- (1) The provisions of this Act, except sections 54 and 57 and this section, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Building (Scotland) Act 2003.



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VALID FROM 22/09/2004

## SCHEDULE 1 **S**

*(introduced by section 1)*

### BUILDING REGULATIONS

.....

## SCHEDULE 2 **S**

*(introduced by section 7)*

### VERIFIERS AND CERTIFIERS

.....

## SCHEDULE 3 **S**

*(introduced by section 33)*

### PROCEDURE REGULATIONS: PARTICULAR MATTERS

.....

VALID FROM 01/05/2005

## SCHEDULE 4 **S**

*(introduced by section 39)*

### POWERS OF ENTRY, INSPECTION AND TESTING: FURTHER PROVISION

- 1 (1) Entry into any premises by virtue of section 39(1) or (3) may be demanded only at a reasonable time.
- (2) The Scottish Ministers or, as the case may be, the local authority must give 3 days' notice of the intended entry to the occupier and, if the owner is known, the owner of the premises.
- (3) Sub-paragraphs (1) and (2) do not apply where the case is one of urgency.
- 2 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—
- (a) there are reasonable grounds for the exercise in relation to any premises of a power conferred by section 39(1) or (3), and
  - (b) one or more of the conditions specified in sub-paragraph (2) is fulfilled in relation to those premises,
- the sheriff or justice may by warrant authorise the Scottish Ministers or, as the case may be, the local authority and any person authorised by them or it for the purpose to exercise the power in relation to those premises in accordance with the warrant and, if need be, by force.

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- (2) The conditions mentioned in sub-paragraph (1) are—
- (a) that the exercise of the power in relation to the premises has been refused,
  - (b) that such a refusal is reasonably apprehended,
  - (c) that the premises are unoccupied,
  - (d) that the occupier is temporarily absent from the premises,
  - (e) that the case is one of urgency,
  - (f) that an application for admission to the premises would defeat the object of the proposed entry.
- (3) A sheriff or justice must not issue a warrant under this schedule by virtue only of being satisfied that a condition specified in sub-paragraph (2)(a) or (b) is fulfilled unless the sheriff or justice is also satisfied—
- (a) that notice of the intention to apply for the warrant has been given to the occupier of the premises, or
  - (b) that the giving of such notice would defeat the object of the proposed entry.
- (4) A warrant under this schedule continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

3 A person entitled to exercise any power conferred by section 39(1) or (3) must, if required to do so, produce written evidence of that entitlement.

4 A person who enters any premises in the exercise of any power conferred by section 39(1) or (3) is entitled, subject in the case of a power exercisable under a warrant to the terms of the warrant, to take on to the premises such other persons and such equipment as may be necessary.

5 A person who enters any premises in the exercise of any power conferred by section 39(1) or (3) must leave the premises as effectually secured against unauthorised entry as that person found them.

6 A person who enters any premises in the exercise of any power conferred by section 39(1) or (3) and who makes use of or discloses any information obtained by that person on those premises with regard to any manufacturing process or trade secret is guilty of an offence.

VALID FROM 01/05/2005

**SCHEDULE 5** **S**  
*(introduced by section 42)*

EVACUATION OF BUILDINGS

1 This schedule applies for the purpose of securing the removal from a building of any occupant who has failed to remove from a building following a requirement under section 42 to do so.

2 The local authority may apply to the sheriff—

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- (a) where the requirement was made under subsection (1) or (2) of section 42, at any time,
  - (b) where the requirement was made under subsection (3) or (4) of that section, on the expiry of the period specified in the requirement,
- for a warrant for the ejection of any occupants who have not removed from the building.

3 Such an application must be accompanied by a certificate signed by the local authority and certifying—

- (a) where removal was required under subsection (1) of section 42, that the occupants of the building (whether the dangerous building or an adjacent building) are endangered by the state of the dangerous building,
- (b) where removal was required under subsection (2)(a) of that section, that the local authority intends to demolish the building,
- (c) where removal was required under subsection (2)(b) of that section, that the local authority intends to carry out work under section 29(2) or (3) and considers that the occupants may be endangered by the carrying out of the work,
- (d) where removal was required under subsection (3) of that section, that the building is to be demolished in pursuance of a dangerous building notice,
- (e) where removal was required under subsection (4) of that section, that the local authority intends to carry out work under a provision specified in paragraph (a) of that subsection and considers that the occupants may be endangered by the carrying out of that work.

4 On such an application, the sheriff may require—

- (a) in a case referred to in paragraph 2(a), the service of notice,
  - (b) in a case referred to in paragraph 2(b), the service of additional notice,
- on the occupants.

5 Except in a case where removal was required under section 42(4), the sheriff must, within the period of 7 days from the date of the application or, if notice (or, as the case may be, additional notice) was required under paragraph 4, the date of service of that notice, grant warrant of ejection.

6 On an application in a case where removal was required under section 42(4), the sheriff may, if satisfied that it is reasonable to do so, grant warrant of ejection.

7 The decision of the sheriff on the application is final.

8 In proceedings under this schedule a certificate—

- (a) referred to in paragraph 3, or
  - (b) signed by the local authority and certifying that any notice required by section 42(5), or any notice or additional notice required under paragraph 4, has been given to all known occupants of the building,
- is sufficient evidence of the facts stated in the certificate.

9 If a person removing from a building in compliance with a requirement under section 42 or ejected from a building under this schedule is a tenant of the building the tenancy, if the tenant so chooses, is to be taken not to have terminated, varied or altered by reason of the removal or ejection.

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- 10 But the tenant is not liable for rent in respect of any period for which the tenant is not in lawful occupation of the building (or the part of it which the tenant previously occupied).
- 11 If the tenant resumes lawful occupation, the same terms and conditions apply (except so far as otherwise agreed) in respect of that occupation as applied in respect of the previous occupation.
- 12 In paragraphs 10 and 11, “lawful” occupation means occupation which is not an offence under section 43(1).

VALID FROM 01/05/2005

SCHEDULE 6 **S**  
(introduced by section 58)

MODIFICATION OF ENACTMENTS

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**Status:**

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**Changes to legislation:**

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