

BUILDING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT - AN OVERVIEW

Part 1: Building Regulations

Section 1: Building regulations

9. *Section 1* establishes the power of the Scottish Ministers to make building regulations. *Subsection (1)* sets out the broad purposes for which regulations may be made and also the matters for which the regulations may provide. Those purposes include, for example, accessibility and usability of buildings. Schedule 1 makes further provision about the matters for which building regulations may provide.
10. *Section 1* makes it easier for the Scottish Ministers to meet their obligations under the EC Construction Products Directive in relation to recognition of harmonised European standards. Under the 1959 Act, the technical standards (the equivalent of guidance documents under section 4 of the Act) which accompany building standards regulations also have mandatory force and this severely restricts the ability of Ministers to update regulations and technical standards as each new harmonised European standard is produced, within the timescales set out in the Directive. Under the 2003 Act, it is only building regulations which have mandatory force and not the guidance which might accompany them (see sections 4 and 5). This will enable European standards to be specified in the guidance without having to go through the formal procedures of consultation and parliamentary process for each new European standard required under the 1959 Act.
11. *Subsection (2)* places a duty on Ministers to consult before making building regulations or an order under subsection (4) modifying paragraph 5(2) of schedule 1. They must consult the Building Standards Advisory Committee, which was established by the 1959 Act and the continuation of which is provided for by section 31 of the Act. They must also consult other persons appearing to them to have an interest.
12. *Subsection (4)* gives Ministers the power by order to alter paragraph 5(2) of schedule 1, which lists particular matters for which building regulations may provide.
13. *Subsection (5)* gives Ministers the power to modify any enactment (whether in an Act or in subordinate legislation) which makes provisions which are inconsistent with a specific building regulation. Such enactments may also be modified if they become unnecessary or require alteration as a result of a building regulation.
14. The parliamentary procedures for building regulations and for orders under subsections (4) and (5) are set out in section 54.

Section 2: Continuing requirements

15. *Subsections (1) and (2)* give the Scottish Ministers the power to impose continuing requirements on building owners through building regulations, so that the purposes of

particular provisions of building regulations are not frustrated once work on a building has been completed and the completion certificate accepted.

16. *Subsection (3)* makes it clear that a continuing requirement cannot apply to a particular building unless the building regulation which the requirement is designed to protect applies to the building.
17. *Subsection (4)* provides that continuing requirements may be imposed by building regulations in relation to buildings of such description as the regulations may specify and to existing buildings, even where the relevant building regulations did not apply to them when they were built. An example of a continuing requirement might be that a sprinkler system must be tested and maintained periodically.

Section 3: Relaxation of building regulations

18. This section allows the Scottish Ministers to dispense with or relax any provision of building regulations in relation to a particular building or description of building where they think that its application is unreasonable. For example the requirement to provide access for a fire engine might be waived on a remote island where there is no fire engine.
19. *Subsection (2)(a)* provides that Ministers may give a direction dispensing with or relaxing building regulations in relation to a particular building where any person makes an application to them. Applications are not restricted to owners, so, for example, a prospective buyer may apply for such a direction. In this case, the direction applies only to the specific building. *Subsection (6)* provides that Ministers must send a copy of any such direction (or any direction varying or revoking such a direction) to the relevant local authority and to all verifiers authorised to exercise functions in relation to that building or other buildings of that description in the area of the relevant local authority.
20. Under *subsection (2)(b)*, even if an application has not been made, Ministers may give a direction. In this case, the direction applies to a description of building. This is the equivalent to the provisions of the 1959 Act allowing Ministers to grant class relaxations, which deal with products or building types which are suitable for general use but, for whatever reason, do not comply with the existing standards.
21. *Subsection (3)* provides for the possibility that regulations under the Act may restrict the Scottish Ministers' ability to give directions dispensing with or relaxing a provision of building regulations. Where such regulations state that, in relation to a provision of building regulations, a direction dispensing with or relaxing that provision is not competent, no such direction may be given.
22. Before giving, varying or revoking a direction in relation to a description of building, Ministers must consult the Building Standards Advisory Committee and other interested persons, e.g. fire authorities (*subsection (5)*). *Subsection (7)* provides that Ministers must provide a copy of such directions to all local authorities and all verifiers.
23. *Subsection (8)* makes provision for the case where a direction ceases to have effect, or is varied or revoked, while an application for a building warrant is pending.
24. *Subsection (9)* provides that when dealing with a building or description of buildings in relation to which regulations have been relaxed under this section, references in legislation to regulations mean the relaxed regulations.

Section 4: Guidance documents for purposes of building regulations

25. **Section 4** makes provision for the Scottish Ministers to issue, revise or withdraw guidance in relation to the requirements of building regulations. It also makes provision for the procedures to be followed in issuing, revising or withdrawing such documents.

Section 5: Compliance with guidance documents

26. As the documents referred to in section 4 have the status of guidance, they will not provide the sole means of meeting the requirements of building regulations. *Subsections (1) and (2)* clarify that failure to comply with guidance documents does not in itself render a person liable to civil or criminal proceedings, though proof of compliance with them may be relied on in any proceedings as evidence that building regulations have not been contravened. *Subsection (3)* provides that notices issuing, revising or withdrawing guidance, and documents appearing to be guidance documents, are to be accepted as such during any legal proceedings unless the contrary is proved.

Section 6: Building standards assessments

27. This section places a duty on local authorities to carry out a building standards assessment when requested to do so by the owner of a building. The owner of a building might, for example, request such an assessment at the request of someone intending to purchase the building.
28. *Subsection (2)* defines a building standards assessment and *subsection (3)* provides for the Scottish Ministers, by regulations, to make further provision as to the matters to be assessed in a building standards assessment.