

BUILDING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT - AN OVERVIEW

Part 2: Approval of Construction Work Etc.

Section 8: Building warrants

36. *Subsections (1) and (2)* set out when a building warrant is required and make it an offence not to have one when it is required or to deviate from the work authorised by the warrant. *Subsection (3)* sets out the persons who may be guilty of such an offence. *Subsections (4), (5) and (6)* provide defences in criminal proceedings for such an offence. Where building work etc. is carried out without a building warrant and the owner or person on whose behalf the work etc. is being carried out gave the person carrying the work etc. out reasonable cause to believe that a warrant had been granted before the work commenced, the person carrying the work etc. out has a defence. Where work deviates from a warrant, the owner of the building or person on whose behalf the work etc. is being carried out has a defence where they did not know, and had no reasonable cause to know, that the work was being carried out otherwise than in accordance with the warrant. Where building work etc. is carried out without a building warrant, the owner has a defence where they did not know or had no reasonable cause to know that work etc. was being carried out. *Subsection (7)* provides that, if sufficient evidence is led to raise the question whether the accused has a defence under subsection (4),(5) or (6), then the accused is taken to have established the defence unless the prosecution proves the contrary beyond reasonable doubt.
37. *Subsection (8)* makes provision for building regulations to specify cases where building warrants are not required. *Subsection (9)* provides that a building warrant is granted in respect of the building work etc. to which it applies and not the person. Therefore where, for example, a building changes ownership after a building warrant is granted, the warrant is still valid.