



Building (Scotland) Act 2003

2003 asp 8

PART 2

APPROVAL OF CONSTRUCTION WORK ETC.

Building warrants

8 Building warrants

- (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.

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- (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—
 - (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

- (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

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- 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
 - (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

- (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

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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
 - (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

- (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

- (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).

13 Building warrants: further provisions

- (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

- (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

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- (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.
- (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

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

- (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.