



Building (Scotland) Act 2003

2003 asp 8

PART 5

GENERAL

Building Standards Advisory Committee

^{F1}31 **Building Standards Advisory Committee**

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Textual Amendments

- F1** S. 31 repealed (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), ss. **6(2)(c)**, 134(7); S.S.I. 2010/221, art. 3(2), Sch.

Functions of Ministers, local authorities, verifiers and certifiers

32 Exercise of local authority functions

- (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—

Status: Point in time view as at 24/01/2015.

Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5. (See end of Document for details)

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

Commencement Information

II S. 32 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

33 Procedure regulations

- (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.

Status: Point in time view as at 24/01/2015.

Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5. (See end of Document for details)

Commencement Information

- I2** S. 33 in force at 22.9.2004 for specified purposes and 1.5.2005 in so far as not already in force by [S.S.I. 2004/404](#), [art. 2\(1\)\(2\)](#), [Sch. 1](#)

34 Reports and information

- (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.
- (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.

Commencement Information

- I3** S. 34 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

Scheduled monuments, listed buildings etc.

35 Scheduled monuments, listed buildings etc.

- (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—

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- (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.

Commencement Information

I4 S. 35 in force at 1.5.2005 by [S.I. 2004/404](#), [art. 2\(1\)](#)

Documents

36 Forms

- (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.

Commencement Information

I5 S. 36 in force at 22.9.2004 for specified purposes and 1.5.2005 in so far as not already in force by [S.I. 2004/404](#), [art. 2\(1\)\(2\)](#), [Sch. 1](#)

37 Service of notices etc.

- (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

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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,

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

Commencement Information

16 S. 37 in force at 1.5.2005 by [S.S.I. 2004/404, art. 2\(1\)](#)

Fees and charges

38 Fees and charges

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.

Commencement Information

17 S. 38 in force at 22.9.2004 for specified purposes and 1.5.2005 in so far as not already in force by [S.S.I. 2004/404, art. 2\(1\)\(2\), Sch. 1](#)

Entry, inspection and tests

39 Powers of entry, inspection and testing

- (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).

Status: Point in time view as at 24/01/2015.

Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5. (See end of Document for details)

- (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 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.

Commencement Information

18 S. 39 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

40 Work required by notice: right of entry

- (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).

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- (4) That right applies despite any term to the contrary in any lease or other contract.

Commencement Information

I9 S. 40 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

41 Tests of materials

- (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.

Commencement Information

I10 S. 41 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

Evacuation of buildings

42 Evacuation of buildings

- (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—

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- (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.

Commencement Information

I11 S. 42 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

43 Unlawful occupation of evacuated buildings

- (1) Any person who—
- (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.

Commencement Information

I12 S. 43 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

Status: Point in time view as at 24/01/2015.

Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5. (See end of Document for details)

Execution of work

44 Expenses

- (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) [^{F2}or makes a charging order under section 46A].
- (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 [^{F3} or the whole of the repayable amount due under the charging order],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.

Textual Amendments

- F2** Words in s. 44(1) inserted (24.1.2015) by [Buildings \(Recovery of Expenses\) \(Scotland\) Act 2014 \(asp 13\)](#), [ss. 1\(a\)\(i\)](#), 3(2)
- F3** Words in s. 44(2)(b) inserted (24.1.2015) by [Buildings \(Recovery of Expenses\) \(Scotland\) Act 2014 \(asp 13\)](#), [ss. 1\(a\)\(ii\)](#), 3(2)

Commencement Information

- I13** S. 44 in force at 1.5.2005 by [S.S.I. 2004/404](#) , [art. 2\(1\)](#)

45 Compulsory purchase where owner cannot be found

- (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.
- (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.

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Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5. (See end of Document for details)

- (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.

Commencement Information

I14 S. 45 in force at 1.5.2005 by [S.S.I. 2004/404](#) , [art. 2\(1\)](#)

46 Sale of materials from demolished buildings

- (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.

Commencement Information

I15 S. 46 in force at 1.5.2005 by [S.S.I. 2004/404](#) , [art. 2\(1\)](#)

F⁴ Charging orders

Textual Amendments

F4 Ss. 46A-46H and preceding cross-heading inserted (24.1.2015) by [Buildings \(Recovery of Expenses\) \(Scotland\) Act 2014 \(asp 13\)](#) , [ss. 1\(b\)](#) , [3\(2\)](#)

46A Charging orders

- (1) A local authority entitled to recover any expenses under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b) that are qualifying expenses may make in favour of itself an order (a “charging order”)—
- (a) specifying the building concerned and the repayable amount calculated in accordance with section 46C, and
 - (b) providing that the building concerned is charged with the repayable amount.
- (2) A charging order, and a discharge of a charging order, are to be in the form prescribed under section 36.

46B Qualifying expenses

- (1) Qualifying expenses are expenses recoverable by a local authority under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b) and which relate to—
- (a) a building regulations compliance notice under section 25(3) served after the commencement of this section,

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Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5. (See end of Document for details)

- (b) a continuing requirement enforcement notice under section 26(2) served after such commencement,
 - (c) a building warrant enforcement notice under section 27(2) relating to a building served on the owner of the building after such commencement,
 - (d) a defective building notice under section 28(1) or, as the case may be, a dangerous building notice under section 29(6), in either case served after such commencement, or
 - (e) notice under section 29(3) or, as the case may be, works under that section without notice, in either case given or carried out after such commencement.
- (2) Where a charging order is made in respect of expenses incurred by a local authority in demolishing a building, references in this section, section 46A and sections 46C to 46G to a building are to be read as references to the site of the demolished building.

46C Repayable amount

- (1) The repayable amount is the lower of—
- (a) the total of the qualifying expenses and any sum recoverable under subsection (2), and
 - (b) any amount determined by the local authority.
- (2) A local authority may, in addition to any qualifying expenses, recover from the owner of the building concerned—
- (a) the amount of any fee payable in respect of registering a charging order or the discharge of a charging order,
 - (b) any administrative or other expenses incurred by it in connection with the charging order or discharge, and
 - (c) interest, at such reasonable rate as it may from time to time determine, from the date when a demand for payment is served until the whole amount is paid.
- (3) The local authority must determine—
- (a) the number of annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid, and
 - (b) the date in each year on which the instalment becomes due.

46D Charging order provision and early repayment

- (1) A charging order must provide—
- (a) that the repayable amount is payable in the number of annual instalments and on the date in each year determined under section 46C(3),
 - (b) that in default of such payment each instalment, together with any amount recoverable in respect of that instalment under section 46C(2)(a) or (b), is to be separately recoverable as a debt, and
 - (c) that if immediately after the final instalment falls due any balance of the repayable amount remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.
- (2) The owner of any building subject to a charging order may at any time redeem the repayable amount early by paying to the local authority the repayable amount in full or such lower sum as the owner may agree with the local authority.

Status: Point in time view as at 24/01/2015.

Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5. (See end of Document for details)

46E Registration

- (1) The local authority must register a charging order in the appropriate land register.
- (2) A charging order may be registered in any period during which the order is of no effect by virtue of section 47(4).
- (3) On the registration of a charging order, the charge specified in the order is created in respect of the building specified in it.
- (4) A registered charging order is enforceable at the instance of the local authority against the owner of the charged building (but subject to section 46F).
- (5) The local authority must register a discharge of a charging order in the appropriate land register as soon as reasonably practicable after it has received—
 - (a) payment in full of the repayable amount, or
 - (b) a sum redeeming the repayable amount under section 46D(2).
- (6) On the registration of the discharge of a charging order, the charge specified in the order is discharged.

46F Liability of new owner

- (1) Subsection (2) applies where—
 - (a) a charging order is registered in respect of a building, and
 - (b) the order was registered at least 14 days before the date on which a person (the “new owner”) acquires right to the building.
- (2) The new owner is severally liable with any former owner of the building for the repayable amount for which the former owner is liable.

46G Continuing liability of former owner

- (1) An owner of a building who is liable for the repayable amount does not, by virtue only of ceasing to be such an owner, cease to be liable for the repayable amount.
- (2) Where, in relation to a building, a new owner (within the meaning of section 46F(1)(b)) pays the repayable amount, or any part of it, for which a former owner of the building is liable, the new owner may recover the amount, or the part of it, so paid from the former owner.
- (3) A person who is entitled to recover an amount under subsection (2) does not, by virtue only of ceasing to be the owner of the building, cease to be entitled to recover that amount.

46H “Register” and “appropriate land register”

- (1) In sections 46C to 46F, “register”, in relation to a charging order or a discharge of a charging order, means register the information contained in the order or discharge in the Land Register of Scotland or, as appropriate, record the order or discharge in question in the Register of Sasines; and “registered” and other related expressions are to be read accordingly.
- (2) In section 46E, “appropriate land register” means the Land Register of Scotland or the Register of Sasines.]

Status: Point in time view as at 24/01/2015.

Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5. (See end of Document for details)

Appeals

47 Appeals

- (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.
- [^{F5}(h) any charging order made under section 46A.]
- (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,
 - (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[^{F6}, notice or order] to which subsection (1) applies may, by summary application made within 21 days of the date of the decision[^{F6}, notice or order], appeal to the sheriff.
- [^{F7}(3A) On any appeal made by virtue of subsection (3) in relation to a charging order made under section 46A, no question may be raised which might have been raised on an appeal against the original notice or decision requiring the execution of the works to which the charging order relates.]
- (4) A decision[^{F8}, notice or order] 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

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- (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.

Textual Amendments

- F5** S. 47(1)(h) inserted (24.1.2015) by [Buildings \(Recovery of Expenses\) \(Scotland\) Act 2014 \(asp 13\)](#), [ss. 1\(c\)\(i\)](#), 3(2)
- F6** Words in s. 47(3) substituted (24.1.2015) by [Buildings \(Recovery of Expenses\) \(Scotland\) Act 2014 \(asp 13\)](#), [ss. 1\(c\)\(ii\)](#), 3(2)
- F7** S. 47(3A) inserted (24.1.2015) by [Buildings \(Recovery of Expenses\) \(Scotland\) Act 2014 \(asp 13\)](#), [ss. 1\(c\)\(iii\)](#), 3(2)
- F8** Words in s. 47(4) substituted (24.1.2015) by [Buildings \(Recovery of Expenses\) \(Scotland\) Act 2014 \(asp 13\)](#), [ss. 1\(c\)\(iv\)](#), 3(2)

Commencement Information

- I16** S. 47 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

Offences and liability

48 Penalties for offences

- (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.

Commencement Information

- I17** S. 48 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

49 Offences by bodies corporate etc.

- (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 director, manager, secretary, member or other similar officer of the body corporate, or
 - 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—

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- (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.

Commencement Information

118 S. 49 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

50 Criminal liability of trustees etc.

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.

Commencement Information

119 S. 50 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

51 Civil liability

- (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

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arises in relation to the conversion, alteration, demolition, repair, maintenance or fitting of such a building.

- (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).

Commencement Information

I20 S. 51 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

Inquiries

52 Inquiries

- (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.

Commencement Information

I21 S. 52 in force at 1.5.2005 by [S.S.I. 2004/404](#), [art. 2\(1\)](#)

Crown application

53 Crown application

- (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,

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- (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 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.

Commencement Information

I22 S. 53 in force at 1.5.2009 by [S.S.I. 2009/150](#), [art. 2](#) (with [art. 3](#))

Orders and regulations

54 Orders and regulations

- (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.

Interpretation

55 Meaning of “building”

- (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),

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- (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),
 - (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.

Commencement Information

I23 S. 55 in force at 22.9.2004 by [S.S.I. 2004/404](#), art. 2(2), [Sch. 1](#)

56 Interpretation

- (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 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,

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“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),

“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.

Textual Amendments

- F9** Words in s. 56(1) repealed (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 6(2)(d)**, 134(7); [S.S.I. 2010/221](#), art. 3(2), Sch.

Commencement Information

- I24** S. 56 in force at 22.9.2004 by [S.S.I. 2004/404](#), art. 2(2), **Sch. 1**

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 5.