

BUILDING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT - AN OVERVIEW

Part 3: Compliance and Enforcement

Section 25: Building regulations compliance

71. *Subsection (2)* makes provision for the Scottish Ministers to direct local authorities to secure that buildings of a particular description comply with a particular provision of the building regulations. They may issue such directions for the purposes set out in *subsection (1)* (which are the same as the purposes in section 1(1) in relation to the making of building regulations). To comply with a direction, local authorities may serve a building regulations compliance notice, and must do so if the direction so requires (*subsection (3)*). Except where a direction is mandatory, local authorities are free to decide how to comply with the direction. They could, for example, choose to encourage owners of the type of building in question to improve their buildings voluntarily, perhaps by offering financial incentive schemes.
72. *Subsection (4)* provides that a building warrant is required for work to comply with a building regulations compliance notice if it would normally be required for that work under section 8. *Subsection (5)* provides that where the local authority issuing such a notice is a verifier, the notice may require any relevant building warrant application or completion certificate to be submitted to that local authority, as opposed to any other verifier. *Subsection (6)* provides that a later date for complying with the notice may be substituted once a building warrant application has been made.
73. *Subsection (7)* creates an offence where the owner has not complied with the notice by the set date and in such cases allows local authorities to carry out the work specified in the notice and to recover the costs from the owner of carrying out that work.
74. *Subsection (8)* provides that a local authority does not have to apply for a building warrant where it is carrying out work to comply with a building regulations compliance notice because the owner has not done so by the set date. The authority must, however, register a completion certificate in the building standards register to certify that the building complies with the provision of the building regulations specified in the notice.
75. *Subsection (9)* makes provision for a local authority to withdraw or amend a building regulations compliance notice before or after it has taken effect. *Subsection (10)* provides that a local authority may issue a further such notice even if it has already withdrawn one.

Section 26: Continuing requirement enforcement notices

76. This section provides for a local authority to take enforcement action where an owner appears to be failing to comply with a continuing requirement imposed under section 2 or by a verifier under section 22. The local authority may serve a continuing requirement enforcement notice as set out in *subsection (2)*.

77. *Subsection (3)* creates an offence where the owner has not complied with the notice by the set date and in such cases allows local authorities to carry out the work specified in the notice and to recover the costs from the owner of carrying out that work. Where the local authority has carried out such work, *subsection (4)* provides that the authority must register a completion certificate in the building standards register to certify that the work has been completed in accordance with the notice in question.
78. *Subsection (5)* makes provision for a local authority to withdraw or amend a continuing requirement enforcement notice before or after it has taken effect. *Subsection (6)* provides that a local authority may issue a further such notice even if it has already withdrawn one.

Section 27: Building warrant enforcement notices

79. This section makes provision for local authorities to take enforcement action where it appears to them that work in respect of a building has been carried out without a warrant or not in accordance with a warrant or where a building with a limited lifespan has not been demolished by the due date (*subsection (1)*).
80. Under *subsection (2)* a local authority may serve a notice requiring the relevant person, as appropriate, to obtain a building warrant, obtain acceptance of a completion certificate, secure that the work conforms to a warrant or obtain an amendment to a warrant, or demolish the building. Such notices can be served only in the circumstances set out in subsection (1). The obtaining of a building warrant or an amendment to a building warrant, or the submission of a completion certificate, in compliance with the notice does not affect any liability incurred under section 8(2).
81. *Subsection (3)* defines *the relevant person* for the purposes of section 27.
82. *Subsection (4)* provides that where the local authority issuing such a notice is a verifier, the notice may require any relevant building warrant application or completion certificate to be submitted to that local authority, as opposed to any other verifier.
83. *Subsection (5)* sets out the information which must or may be contained in such notices. *Subsection (6)* makes allowance for the timescales for compliance to be altered if an application is made under section 3 for a direction dispensing with or relaxing building regulations.
84. *Subsection (7)* creates an offence where the person on whom the notice is served has not complied with the notice by the set date and in such cases allows local authorities to carry out the work specified in the notice or to secure that the work complies with building regulations and to recover the costs from the person of carrying out that work.
85. *Subsection (8)* provides that a local authority does not have to apply for a building warrant where it is carrying out work to comply with a building warrant enforcement notice because the owner has not done so by the set date. The authority must, however, register a completion certificate in the building standards register to certify that the work complies with the building regulations, or that the necessary work has been carried out.
86. *Subsection (9)* makes provision for a local authority to withdraw or amend a building warrant enforcement notice before or after it has taken effect. *Subsection (10)* provides that a local authority may issue a further such notice even if it has already withdrawn one.