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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 188**

**BUILDING AND BUILDINGS**

The Building (Miscellaneous  
Amendments) (Scotland) Regulations 2017

<i>Made</i>	- - - -	<i>31st May 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>2nd June 2017</i>
<i>Coming into force</i>	- -	<i>1st July 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1, 8(8), 33, 36, 38 and 54(2) of the Building (Scotland) Act 2003<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 1(2) of that Act<sup>(2)</sup> they have consulted such persons as appeared to them to be representative of the interests concerned.

**Citation and commencement**

1. These Regulations may be cited as the Building (Miscellaneous Amendments) (Scotland) Regulations 2017 and come into force on 1st July 2017.

**Amendment of the Building (Procedure) (Scotland) Regulations 2004**

2.—(1) The Building (Procedure) (Scotland) Regulations 2004<sup>(3)</sup> are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (interpretation) omit paragraphs (3) to (5).

(3) After regulation 2 insert—

**“Electronic communication**

2A.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communication and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are that—

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(1) 2003 asp 8.

(2) Section 1(2) was amended by section 6(2) of the Public Services Reform (Scotland) Act 2010 (asp 8).

(3) S.S.I. 2004/428. To which there are amendments not relevant to these Regulations.

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
  - (b) the document sent by the electronic communication is—
    - (i) capable of being accessed by the recipient;
    - (ii) legible in all material respects; and
    - (iii) sufficiently permanent to be used for subsequent reference.
- (3) Any person sending a document using electronic communication is deemed to have agreed—
- (a) to the use of such communication for all purposes under these Regulations which are capable of being carried out electronically; and
  - (b) that the address for the purpose of such communication is the address incorporated into, or otherwise logically associated with, that communication.
- (4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.
- (5) Notice of withdrawal of consent to the use of electronic communication or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than 7 days after the date on which the notice is given.
- (6) Any requirement in these Regulations for a document to be signed is satisfied by an electronic signature, and “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000(4).
- (7) In this regulation—
- “address” includes any number or address used for the purpose of such communication or storage;
  - “document” includes any notice, consent, application, decision, direction, representation, statement, list, report, form, plan, certificate or other information or communication;
  - “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(5);
  - “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if or given by means of a document in printed form; and
  - “sent” includes, submitted, notified or given and cognate expressions are to be construed accordingly.”.
- (4) In regulation 56 (decisions of verifiers and local authorities)—
- (a) in paragraph (5) after “submitted” insert “, other than those submitted by the use of electronic communication,”; and
  - (b) after paragraph (5) insert—
    - “(6) The requirement in paragraph (4) to send a building warrant and a copy of the relevant plans (“the documents”) to the applicant may be satisfied by sending that applicant a notice—
      - (a) stating that the documents are available for viewing and downloading on a website;

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(4) 2000 c.7. Section 7(2) was amended by S.I. 2016/696.

(5) The definition of “electronic communication” was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

- (b) specifying the address of that website together with any password necessary to view and download the documents from that site; and
  - (c) containing a statement that the person to whom notice is sent may request a hard copy of the documents and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.
- (7) Where a notice under paragraph (6) is sent, the documents must—
- (a) be available on the website for a period of no less than 42 days beginning with the date on which the notice was sent; and
  - (b) be in such a format as to enable them to be downloaded from the website within a reasonable time of an electronic request being made for them to be downloaded.”.
- (5) In Schedule 2 (information to be submitted with specific applications) in—
- (a) section B (application for warrant to extend a building), in paragraph 3(2) omit “be coloured or shaded to the extent necessary to”; and
  - (b) section C (application for warrant to alter or convert a building or to provide services, fittings and equipment in or in connection with a building), in paragraph 4(2) omit “be coloured or shaded to the extent necessary to”.

#### **Amendment of the Building (Scotland) Regulations 2004**

**3.—**(1) The Building (Scotland) Regulations 2004(6) are amended in accordance with paragraphs (2) and (3).

(2) For regulation 9 (building standards – construction) substitute—

“**9.—**(1) Subject to paragraph (2), construction must be carried out so that the work complies with the applicable requirements of schedule 5(7).

(2) Only the requirements of the standards set out in paragraphs 1.1, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22 and 4.4 of schedule 5 apply in the case of the construction of a building of the type described in paragraph 23A of schedule 3.”.

(3) In schedule 3(8) (descriptions of building and work not requiring a warrant), after paragraph 23 insert—

“**AA.** On condition that this type in all respects and/or in the manner of their fitting meet the requirements of standards 1.1, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22 and 4.4 of schedule 5.

**23A.** A detached single-storey building used for shelter or sleeping in connection with recreation. **Except-** A dwelling. A building having an area exceeding 30 square metres. A building ancillary to another building. A building within 6 metres of a boundary of another building. Any wastewater disposal system serving a building of this type. A building containing a gallery or galleries unless the gallery, or where there is more than one gallery, the galleries together, occupy an area not more than—

- (a) 8 square metres; or
- (b) one-half of the area of the room or space in which the gallery is, or galleries are, situated,

whichever is the lesser.

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(6) S.S.I. 2004/406.

(7) Schedule 5 was substituted by S.S.I. 2006/534. There are other amendments not relevant to these Regulations.

(8) Schedule 3 was substituted by S.S.I. 2006/534. There are other amendments not relevant to these Regulations.

### **Interpretation of paragraph 23A**

In paragraph 23A, “gallery” means a raised floor or platform which is open to the room or space into which it projects and is not enclosed below.”.

### **Amendment of the Building (Fees) (Scotland) Regulations 2004**

4.—(1) The Building (Fees) (Scotland) Regulations 2004<sup>(9)</sup> are amended in accordance with paragraphs (2) to (9).

(2) In regulation 2 (interpretation)—

(a) after the definition of “the Act” insert—

““certificate of construction” means a certificate (within the meaning of section 19(5) of the Act) issued by an approved certifier of construction certifying that the construction of a building, or such aspect of the construction of a building as is specified in the certificate, complies with building regulations;

“certificate of design” means a certificate (within the meaning of section 11(5) of the Act) issued by an approved certifier of design certifying that the design of a building, or such part of a building as is specified in the certificate, complies with building regulations;”;

(b) after the definition of “dwelling” insert—

““section certificate” means a certificate of design which covers the whole of any section set out in schedule 5 of the Building (Scotland) Regulations 2004;

“single item certificate” means a certificate of design which covers a single item of any section set out in schedule 5 of the Building (Scotland) Regulations 2004;”.

(3) In regulation 3(1) (fees for applications for building warrants and completion certificates) for “4, 5 and 6” substitute “4 to 6A”.

(4) For regulation 5<sup>(10)</sup> (discounts – certificates of design) and the associated cross heading substitute—

#### **“Discount of fee payable under regulation 3(1)(a) – certificates of design**

5.—(1) Subject to paragraphs (6) and (7), where this regulation applies the fee which would otherwise be payable under regulation 3(1)(a) is discounted by an amount calculated in accordance with paragraphs (3) to (5).

(2) This regulation applies where, when submitting an application for a building warrant or an application for amendment of a building warrant, the applicant—

(a) submits one or more certificates of design to the verifier in connection with the application; or

(b) informs the verifier in writing—

(i) that the applicant intends subsequently to submit one or more certificates of design to the verifier in connection with the application; and

(ii) how many of such certificates of design are to be section certificates and how many are to be single item certificates.

(3) The discount is—

(a) for each section certificate submitted, or to be submitted, the amount calculated in accordance with paragraph 9 of Part 3 of the schedule; and

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<sup>(9)</sup> S.S.I. 2004/508 as amended by S.S.I. 2007/169 and S.S.I. 2008/397.

<sup>(10)</sup> Regulation 5 was substituted by S.S.I. 2008/397.

(b) for each single item certificate submitted, or to be submitted, 1% of the full fee.

(4) Where more than 5 single item certificates cover, or are to cover, the same section set out in schedule 5 of the Building (Scotland) Regulations 2004, the maximum amount of discount attributable to such single item certificates by virtue of paragraph (3)(b) is 5% of the full fee.

(5) In no case shall the combined discounts applicable by virtue of this regulation exceed 60% of the full fee.

(6) The fee payable in respect of an application for amendment of a building warrant may only be discounted where the estimated value of the additional work exceeds £5000.

(7) Where the fee for an application has been discounted by virtue of this regulation and the applicant subsequently informs the verifier in writing—

(a) that the applicant no longer intends to submit one or more certificates of design to the verifier in connection with the application; and

(b) how many of such certificates of design are section certificates and how many are single item certificates,

the amount by which the full fee is discounted is reduced by the amount of the discount attributable to such certificates and the unpaid balance of the full fee after deduction of the reduced discount is payable.

(8) In this regulation and in regulation 5A “full fee” means the fee payable under regulation 3(1)(a) before applying any discount in terms of this regulation or regulation 5A.

#### **Discount of fee payable under regulation 3(1)(a) – certificates of construction**

**5A.—**(1) Subject to paragraphs (7) and (8), where this regulation applies the fee which would otherwise be payable under regulation 3(1)(a) is discounted by an amount calculated in accordance with paragraphs (3) to (6).

(2) This regulation applies where, when submitting an application for a building warrant or an application for amendment of a building warrant, the applicant informs the verifier in writing that the applicant intends to submit one or more certificates of construction to the verifier with the completion certificate.

(3) Where one or more certificates of construction to be submitted is to cover only an aspect of the work to which the building warrant is to relate, the discount is the amount calculated in accordance with paragraph 13 of Part 4 of the schedule for each certificate of construction to be submitted which is to cover a different aspect of the work.

(4) Where—

(a) the application for a building warrant relates to more than one building;

(b) the applicant intends to submit separate completion certificates for one or more of the buildings covered by the building warrant; and

(c) two or more certificates of construction are to be submitted which are to cover the same aspect of the work (but in respect of different buildings),

only one certificate of construction in respect of that aspect of the work is to be taken into account for the purpose of calculating the discount.

(5) Where one certificate of construction is to be submitted which is to cover all aspects of the work to which the building warrant is to relate the amount of the discount is 20% of the full fee.

(6) In no case shall the combined discounts applicable by virtue of this regulation exceed 20% of the full fee.

(7) The fee payable in respect of an application for amendment of a building warrant may only be discounted where the estimated value of the additional work exceeds £5000.

(8) Where the fee for an application has been discounted by virtue of this regulation but one or more certificates of construction are not subsequently submitted with the completion certificate, the amount by which the full fee is discounted is reduced by the amount of the discount attributable to such certificates and the unpaid balance of the full fee after deduction of the reduced discount is payable.”.

(5) For regulation 6 (discounts – certificates of construction) and the associated cross heading substitute—

**“Discounts of fee payable under regulation 3(1)(b) – certificates of design**

6.—(1) The fee which would otherwise be payable under regulation 3(1)(b) is discounted by an amount calculated in accordance with paragraphs (2) to (5) where the submission of the completion certificate is accompanied by one or more certificates of design relative to that completion certificate.

(2) Where one certificate of design is submitted which covers the entirety of the work to which the completion certificate relates, the discount is 60% of the fee which would otherwise be payable under regulation 3(1)(b).

(3) Where one or more certificates of design are submitted which cover only part of the work to which the completion certificate relates, the discount is—

- (a) for each section certificate submitted, the amount calculated in accordance with paragraph 9 of Part 3 of the schedule; and
- (b) for each single item certificate submitted, 1% of the fee which would otherwise be payable.

(4) Where more than 5 single item certificates cover the same section set out in schedule 5 of the Building (Scotland) Regulations 2004, the maximum amount of discount attributable to such single item certificates by virtue of paragraph (3)(b) is 5% of the fee which would otherwise be payable.

(5) In no case shall the discount applicable by virtue of this regulation exceed 60% of the fee which would otherwise be payable under regulation 3(1)(b).

**Discounts of fee payable under regulation 3(1)(b) – certificates of construction**

6A.—(1) The fee which would otherwise be payable under regulation 3(1)(b) is discounted by an amount calculated in accordance with paragraphs (2) to (3) where the submission of the completion certificate is accompanied by one or more certificates of construction relative to that completion certificate.

(2) The discount is—

- (a) where one certificate of construction is submitted which covers all aspects of the work to which the completion certificate relates, 20% of the fee which would otherwise be payable under regulation 3(1)(b); or
- (b) where one or more certificates of construction is submitted which cover only an aspect of the work to which the completion certificate relates, the amount calculated in accordance with paragraph 13 of Part 4 of the schedule for each certificate of construction submitted which covers a different aspect of the work.

(3) In no case shall the discount applicable by virtue of this regulation exceed 20% of the fee which would otherwise be payable under regulation 3(1)(b).”.

(6) For the table in Part 1 of the schedule substitute—

## “PART 1

<b>Where work has not already started</b>	
<b>1.</b> Application for warrant (including issue of warrant) for the construction of a building or the provision of services, fittings or equipment in connection with a building (whether or not combined with an application for conversion or an application for demolition)	
(a) where the estimated value of the work does not exceed £5,000—	£150
(b) where the estimated value of the work exceeds £5,000 but does not exceed £10,000	
(i) the sum of	£150
plus (ii) for every additional £500 or part thereof exceeding £5,000	£19
(c) where the estimated value of the work exceeds £10,000 but does not exceed £20,000—	
(i) the sum of	£340
plus (ii) for every additional £1,000 or part thereof exceeding £10,000	£19
(d) where the estimated value of the work exceeds £20,000 but does not exceed £100,000—	
(i) the sum of	£530
plus (ii) for every additional £10,000 or part thereof exceeding £20,000	£63
(e) where the estimated value of the work exceeds £100,000 but does not exceed £500,000—	
(i) the sum of	£1,034
plus (ii) for every additional £20,000 or part thereof exceeding £100,000	£103
(f) where the estimated value of the work exceeds £500,000 but does not exceed £1,000,000—	
(i) the sum of	£3,094
plus (ii) for every additional £50,000 or part thereof exceeding £500,000	£178
(g) where the estimated value of the work exceeds £1,000,000—	
(i) the sum of	£4,874
plus (ii) for every additional £100,000 or part thereof exceeding £1,000,000	£253
<b>2.</b> Application for warrant for conversion only	£150
<b>3.</b> Application for warrant for demolition only	£150
<b>4.</b> Application for amendment of warrant—	

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(a) for additional work whose estimated value exceeds £5,000	The fee calculated in accordance with paragraph 1 but in respect of the additional estimated value of that work only
(b) for additional work where no additional estimated value is involved, the estimated value decreases or the increase in the estimated value does not exceed £5,000	£100
5. Application for an amendment to warrant for demolition only or conversion only.	£100
6. Application for an extension to warrant.	£100
<b>After work has already started</b>	
7. Application (after work has already started) for—	
(a) a warrant (including issue of warrant) for the construction of a building or the provision of services, fittings or equipment in connection with the erection of a building (whether or not combined with an application for demolition)	200% of the fee calculated in accordance with paragraph 1
(b) a warrant for demolition only	£200”

(7) For the table in Part 2 of the schedule substitute—

## “PART 2

<b>Submission of a completion certificate where no warrant granted</b>	
8. Submission of a completion certificate where no warrant granted for—	
(a) the construction of a building or the provision of services, fittings or equipment (whether or not combined with an application for conversion or for demolition )	300% of the fee calculated in accordance with paragraph 1 of Part 1
(b) the demolition of a building only	£300
(c) the conversion of a building only	£300
(d) work carried out by a local authority where it has done so in respect of—	
(i) a building regulations compliance notice in terms of section 25(8) of the Act;	nil
(ii) a continuing requirement enforcement notice in terms of section 26(3) of the Act;	nil
(iii) a building warrant enforcement notice in terms of section 27(7) of the Act;	nil
(iv) a defective building in terms of section 28(11) of the Act;	nil

(v) a dangerous building in terms of section 30(5) of the Act	nil”
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(8) After the table in Part 2 of the schedule (table of fees) insert—

### “PART 3

<b>Discounts under regulation 5(3)(a) and 6(3)(a)</b>	
<b>9.</b> Application for warrant, application for amendment of a building warrant and submission of a completion certificate where no building warrant granted—	
(a) where the estimated value of the work does not exceed £5,000	£30
(b) where the estimated value of the work exceeds £5,000 but does not exceed £10,000	£40
(c) where the estimated value of the work exceeds £10,000 but does not exceed £15,000	£50
(d) where the estimated value of the work exceeds £15,000 but does not exceed £20,000	£60
(e) where the estimated value of the work exceeds £20,000 but does not exceed £50,000	£80
(f) where the estimated value of the work exceeds £50,000 but does not exceed £100,000	£100
(g) where the estimated value of the work exceeds £100,000	10% of the fee calculated in accordance with paragraph 1 of Part 1
<b>10.</b> Application for warrant for conversion only	nil
<b>11.</b> Application for warrant for demolition only	nil
<b>12.</b> Application for amendment to warrant for demolition only or conversion only	nil”

(9) After Part 3 of the schedule insert—

### “PART 4

<b>Discounts under regulation 5A(3) and 6A(2)(b)</b>	
<b>13.</b> Application for warrant, application for amendment of a building warrant and submission of a completion certificate where no building warrant granted—	
(a) where the estimated value of the work does not exceed £5,000	£15

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(b) where the estimated value of the work exceeds £5,000 but does not exceed £10,000	£15
(c) where the estimated value of the work exceeds £10,000 but does not exceed £15,000	£20
(d) where the estimated value of the work exceeds £15,000 but does not exceed £20,000	£25
(e) where the estimated value of the work exceeds £20,000 but does not exceed £50,000	£30
(f) where the estimated value of the work exceeds £50,000 but does not exceed £100,000	£35
(g) where the estimated value of the work exceeds £100,000	3% of the fee calculated in accordance with paragraph 1 of Part 1
14. Application for warrant for conversion only.	nil
15. Application for warrant for demolition only.	nil
16. Application or amendment to warrant for demolition only or conversion only.	nil"

### **Amendment of the Building (Forms) (Scotland) Regulations 2005**

5.—(1) The schedule of the Building (Forms) (Scotland) Regulations 2005(11) is amended in accordance with paragraphs (2) to (8).

(2) In Form 1 (building warrant)—

(a) in the paragraph headed “Security matters”, after “approval” insert—

“(where appropriate, such approval may be by electronic communication)”; and

(b) after that paragraph for “A copy of the agreed plans is returned” substitute—

“A copy of the agreed plans [is returned]/[can be obtained]\*[where applicable state how a copy of the plans can be obtained]”.

(3) In Form 2 (amendment to building warrant)—

(a) in the paragraph headed “Amendment(s) to building warrant” for “A copy of the plans showing this amendment are enclosed” substitute “A copy of the plans showing this amendment [are enclosed]/[can be obtained]\*[where applicable state how a copy of the plans can be obtained]; and

(b) below “Dated” and above “NOTE” insert “\*Delete as appropriate”.

(4) In Form 5 (completion certificate – submission)—

(a) in Annex 1—

(i) omit “original” where it first occurs; and

(ii) omit “original documents,”.

(5) In Form 6 (completion certificate where no building warrant obtained – submission)—

(a) in Note 2, for “inspection, or from copying unless the owner has given consent in writing” substitute “disclosure, or from copying”; and

(11) S.S.I. 2005/172 as amended by S.S.I. 2006/163, S.S.I. 2007/168, S.S.I. 2011/120 and S.S.I. 2013/143.

- (b) in Annex 2—
  - (i) omit “original” where it first occurs; and
  - (ii) omit “original documents”.
- (6) In Note 1 of Form 14 (authority to enter premises)—
  - (a) for “Scottish Building Standards Agency (SBSA)” substitute “Scottish Government Building Standards Division”; and
  - (b) for the last sentence substitute—

“A copy of the procedural handbook can be viewed on the Scottish Government website and obtained from the Scottish Government.”.
- (7) In Form 15 (certificate to accompany application for warrant to exercise powers of entry, inspection or testing) for “Council” where it appears on its own, to the end substitute—

“Council/Scottish Ministers  
[address including postcode, and name, telephone and e-mail of a contact]”.
- (8) In Form 16 (notice to remove from a building)—
  - (a) in Note 2 for “Scottish Building Standards Agency (SBSA)” substitute “Scottish Government Building Standards Division”; and
  - (b) for the last sentence substitute—

“A copy of the procedural handbook can be viewed on the Scottish Government website and obtained from the Scottish Government.”.

St Andrew’s House,  
Edinburgh  
31st May 2017

*KEVIN STEWART*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Building (Procedure) (Scotland) Regulations 2004 (“the Procedure Regulations”), the Building (Scotland) Regulations 2004 (“the Building Regulations”), the Building (Fees) (Scotland) Regulations 2004 (“the Fees Regulations”) and the Building (Forms) (Scotland) Regulations 2005 (“the Forms Regulations”).

Regulation 2(2) and (3) amends regulation 2 (interpretation) of the Procedure Regulations and insert a new regulation 2A to make it clear (where certain criteria are met) that documents required in terms of those Regulations may be transmitted by electronic communications.

Regulation 2(4) amends regulation 56 (decisions of verifiers and local authorities) of the Procedure Regulations to provide that the requirement to send a building warrant to the applicant can be met by making the warrant available for viewing and downloading on a website (subject to certain conditions).

Regulation 3 amends regulation 9 and schedule 3 of the Building Regulations to provide that a detached single-storey building used in connection with recreation will not require a building warrant. There are some specified exceptions to this. This type of building is also exempt from particular prescribed building standards as set out in regulations 9 to 12 and schedule 5.

Regulation 4 makes changes to the building warrant application fees, and discounts. A change is made to discounts in connection with the timing of the presenting of certificates of design in a similar way to that for certificates of construction.

Regulation 4(4) substitutes new tables for those in the schedule to the Fees Regulations specifying the increased fees and discounts.

Regulation 5 updates the Forms Regulations.