

BUILDING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT - AN OVERVIEW

Part 2: Approval of Construction Work Etc.

Section 7: Verifiers and certifiers

29. *Subsection (1)* makes provision for the Scottish Ministers to appoint verifiers, approved certifiers of design and approved certifiers of construction.
30. *Subsection (2)* provides that members of approved schemes run by bodies outwith the Scottish Executive may exercise the functions of approved certifiers of design or of construction. *Subsection (3)* gives the Scottish Ministers the power to approve such schemes subject to limitations, e.g. they may approve a scheme only in relation to a particular geographical area or type of building. Under this subsection they may also withdraw approval of such schemes.
31. Under *subsections (4) to (6)* Ministers must keep lists of verifiers and certifiers and hold information on which functions they are allowed to carry out, including any restrictions or limitations on the exercise of those functions. The lists must be made available for public inspection at reasonable times.
32. Under *subsection (7)* Ministers may carry out the role of verifier to the extent and in the circumstances specified in a direction issued by them. This would enable them, for example, to act as verifiers in relation to buildings of a particular description, or a particular building.
33. *Subsection (8)* provides for Ministers to direct a verifier to refer to them certain building warrant applications and submitted completion certificates. This power may be exercised after a verifier has begun the verification process for a particular job i.e. where a building warrant has been applied for but not approved or where a completion certificate has been submitted but not accepted or rejected by the verifier. *Subsection (9)* stipulates the circumstances under which Ministers may exercise this power. Those are where a verifier requests that Ministers take the job over or where Ministers consider that a verifier is incapable, for whatever reason, of exercising its function in a particular case. A verifier might, for example, request Ministers to take over its role in relation to verifying the compliance with building regulations of a unique building (e.g., an air traffic control centre) which it lacks the competence to verify. Ministers might also exercise the power where a verifier is not acting competently in relation to the verification of a particular project or series of projects.
34. *Subsections (10) and (11)* provide that Ministers may give verifiers directions as to the exercise of their functions under the Act and that these directions may apply to all verifiers, particular verifiers or verifiers of a particular description. For example, a direction under subsection (10) might stipulate the frequency of site inspections required to fulfil the verification role or might require a particular verifier to pay particular attention to a specified aspect e.g. checking the maintenance of a Sustainable Urban Drainage Systems following a flood.

35. **Schedule 2** makes further provision about verifiers and certifiers.

Section 8: Building warrants

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

Section 9: Building warrants: grant and amendments

38. *Subsections (1) and (2)* provide that verifiers must grant a building warrant or an amendment to a building warrant if, but only if, they are satisfied that the work will be carried out in accordance with building regulations and, when completed, will comply with the regulations. In the case of a conversion of part of a building the part being converted must comply with building regulations. *Subsections (3) and (4)* provide for building warrants to permit work on a building to be carried out in stages, each of which may require specific permission. This is the equivalent of the “staged warrant” system under the 1959 Act.
39. *Subsections (5) and (6)* make provision for a warrant to be amended by a verifier to permits deviations from the original plans etc.
40. *Subsection (7)(a) and (8)* provide that where a non-local authority verifier grants a building warrant or an amendment to a building warrant, that verifier must send a copy of that warrant or amendment, a copy of any continuing requirements imposed under section 22 and any other necessary documents to the local authority for registration in the building standards register. *Subsection (7)(b)* provides that all verifiers must notify the owner of the granting of the warrant, amendment to warrant or imposition of continuing requirements under section 22, unless the owner is the person who applied for the warrant or amendment.
41. *Subsection (9)* provides that, in relation to sections 9 to 14 (with the exception of section 14(4)), when an application for a building warrant or for an amendment to a building warrant is made, the building regulations which apply are those in force at the time of the application for the building warrant i.e. not any earlier version and, in the case of an application for an amendment to a warrant, not any later version incorporating changes made since the original application for the warrant. However, any relaxation or dispensation which may have been issued in relation to a building regulation after a building warrant has been granted will apply to that building warrant provided the applicant applies for an amendment to the warrant.

42. *Subsection (10)* provides that the provisions in sections 9 and 10 do not prevent a local authority from refusing to grant a building warrant under provisions in any other enactment.

Section 10: Building warrants: extension, alteration and conversion

43. This section sets out further grounds for refusal of an application for a building warrant or amendment to a building warrant where the application relates to the extension to a building, or alteration or conversion of all or part of a building. The first ground for refusal, specified in *subsection (2)*, is that a whole building which complied with building regulations at the time of the application will, in the verifier's opinion, fail to comply with the regulations as a result of the extension, alteration or conversion. An example might be where an extension to be added to a hotel would block the fire escapes i.e. the extension on its own might comply with building regulations but the hotel no longer would as a result of the extension.
44. The second ground, specified in *subsection (3)*, is that a whole building which failed to comply with building regulations at the time of the application will fail to comply to a *greater degree* as a result of the extension, alteration or conversion. An example might be a building which has an inadequate number of toilets and for which an extension, with no additional toilets, is proposed. The result of building the extension would be that the building would fail to meet the requirements for toilet provision to a greater degree than it did previously.

Section 11: Building warrants: certification of design

45. This section enables a certificate from an approved certifier of design (appointed under section 7) to be submitted with an application for a building warrant or amendment to a building warrant. It provides that a verifier must accept the validity of the facts that are being certified by the certificate. Such a certificate might, for example, certify that an innovative design for the conservation of fuel and power or in relation to the usability and accessibility of a building for all potential users fulfils the requirements of building regulations. *Subsection (4)* creates an offence in relation to the issuing of a certificate of design by any approved certifier of design. These approved certifiers must not knowingly or recklessly issue such certification containing a statement which is false or misleading.

Section 12: Building warrants: reference to Ministers

46. This section makes provision for verifiers or applicants to refer matters to the Scottish Ministers where there is doubt as to whether proposals in a building warrant application comply with building regulations or whether it is necessary to impose continuing requirements under section 22. Ministers may express a view on the matter and verifiers must have regard to such views.

Section 13: Building warrants: further provisions

47. *Subsection (1)* imposes standard conditions to which every building warrant is subject. Under *subsection (1)(a)*, the work etc. authorised by the warrant must be carried out in accordance the warrant and building regulations. Under *subsection (1)(b)*, any conditions specified in any relevant direction under section 3 dispensing with or relaxing building regulations must be observed.
48. *Subsection (2)* provides that demolition works must be completed within the period stated in the building warrant.

Section 14: Building warrants: limited life buildings

49. *Subsection (1)* makes provision in relation to buildings intended to have a limited life. Under paragraph 3 of schedule 1, building regulations may make special provision

for buildings intended to have a limited life. Subsection (1)(a) provides that building warrants for buildings with limited lives must state the intended lifespan of the building and that this intended lifespan must not exceed the limit specified in building regulations for that type of building. Under subsection (1)(b), the building must be demolished by the end of the period stated in the application. A separate building warrant is needed to demolish the building.

50. *Subsections (2) and (3)* provide that owners may apply to extend the life of such a building if the application is made before the expiry of the period specified in the warrant. Further extensions may also be sought. The verifier may grant an extension if satisfied that is appropriate, taking any special provisions of building regulations into account. *Subsection (4)* provides, however, that any particular extension by a verifier of the period stated in the building warrant must not exceed that stated in any special provision of building regulations in force at the time of the application to extend the life of the limited life building. This means that when considering the application to extend, the period of the extension must not exceed any period specified in the building regulations current when the extension is applied for (and not any period specified when the building was built).
51. *Subsection (5)* creates an offence where an owner has failed to demolish a limited life building at the end of the period specified in the warrant. *Subsection (6)* creates an offence for anyone who occupies or uses such a building after the period specified in the warrant where the person knows or has no regard to whether the period has expired. *Subsection (7)* specifies the penalty applicable for the offence in subsection (6). *Subsections (8) to (10)* create powers for local authorities to seek to prevent or restrain occupation of such buildings by applying to the civil court for an interdict. This may be either to the sheriff court or the Court of Session.

Section 15: Building warrants: late applications

52. This section provides for late applications for building warrants to be made. They can be made at any time where work for which a warrant is required has commenced, but before a completion certificate has been accepted. Under section 9(9), the version of building regulations which applies for the purposes of the late application is the version at the time of the application, not the version at the time the warrant should have been applied for. An application for a building warrant under this section does not affect any liability under section 8(2).

Section 16: Applications and grants: offences

53. This section creates offences in relation to applications for building warrants and in relation to verifiers granting or amending a warrant. In making applications, owners must not knowingly make false or misleading statements or make such statements recklessly. Verifiers must not grant warrants or amendments knowing that a statement contained in either of these is false.

Section 17: Completion certificates

54. This section makes provision for procedures to be followed by the relevant person (defined in *subsection (10)*) on completion of work or of a conversion for which a building warrant has been granted. *Subsections (1) and (2)* provide that the relevant person must submit a completion certificate certifying that any work or conversion has been carried out in accordance with the building warrant. The certificate must also certify that following any work, conversion or provision of services, fittings or equipment, buildings comply with building regulations. In the case of a conversion of part of a building, it is the part which was converted which must comply with building regulations. *Subsection (3)* provides that it is the building regulations in force at the time of the building warrant application which apply, i.e. not any later version in force when the completion certificate is submitted.

55. *Subsection (4)* provides that, in relation to any work or conversion which is complete and has been carried out without a building warrant, the relevant person must still submit a completion certificate. *Subsection (5)* provides that the certificate in such a case must certify that the work or conversion was carried out in accordance with building regulations and that the result complies with building regulations. *Subsection (6)* provides that in such a case it is the building regulations in force at the time the completion certificate is submitted which apply i.e. not those in force at the time the building work etc. was carried out, if different. The submission of a completion certificate under these provisions does not affect any liability incurred under section 8(2).
56. *Subsection (7)* provides that in relation to work carried out in implement of various notices under Parts 3 and 4 of the Act, owners must submit completion certificates. The certificates must certify that work has been carried out in accordance with the requirements of the notice in question.
57. *Subsection (8)* provides that where local authorities carry out work to comply with the notices referred to in the subsection, the owner does not have to submit a completion certificate to a verifier.
58. *Subsection (9)* provides that where a building warrant enforcement notice served under section 27 in relation to a building constructed without a building warrant requires the owner to submit a completion certificate, the certificate must certify that the building conforms to building regulations as they are in force when the completion certificate is submitted, i.e. not the version in force when the building was constructed.
59. *Subsection (10)* defines the relevant person for the purposes of section 17.

Section 18: Completion certificates: acceptance and rejection

60. This section makes provision for the acceptance or rejection of completion certificates by a verifier. *Subsection (2)* requires a verifier to undertake reasonable inquiry before accepting a completion certificate. In particular cases, procedure regulations under section 33 may require a verifier to consult specified persons before accepting a certificate (*subsection (3)*). Under *subsection (4)* a verifier must send a copy of the completion certificate, whether accepted or rejected, to the local authority for registration in the building standards register (unless the verifier is the local authority – *subsection (5)*). This must be accompanied by the documentation set out in this section. The owner must also be informed of the acceptance or rejection of the certificate and of any continuing requirements imposed under section 22.

Section 19: Certification of construction

61. *Subsection (1)* makes provision for the submission to a verifier of a certificate issued by an approved certifier of construction. This would certify that an element of construction, such as the plumbing or electrical work, complies with the appropriate building regulations. *Subsection (2)* defines the reference to building regulations for the purposes of subsection (1). The certificate would be submitted with a completion certificate and under *subsection (3)* the verifier is obliged to accept facts certified in the certificate from the approved certifier of construction. *Subsection (5)* defines the terms “certificate” and “construction” as they apply in this section. The latter definition is broader than the general definition of “construction” in section 56(1).
62. *Subsection (4)* creates an offence in relation to an approved certifier of construction who knowingly or recklessly issues a certificate of construction which contains a statement which is false or misleading in a particular.

Section 20: Completion certificates: offences

63. This section creates offences in relation to persons submitting completion certificates and verifiers accepting completion certificates. A person submitting a completion certificate must not knowingly make false or misleading statements or make such statements recklessly. Verifiers must not grant a completion certificate knowing that a statement contained in it is false.

Section 21: Occupation or use without completion certificates

64. This section contains provision to prevent occupation or use of a building where a construction or conversion of the building requiring a building warrant is being or has been carried out, and no completion certificate has been accepted.
65. *Subsections (3) and (4)* make provision for a verifier to grant and extend permission for temporary occupation of such a building on application by the owner or person on whose behalf the work is carried out. Copies of such permissions must be sent to the local authority.
66. *Subsections (5) and (6)* create an offence of occupying or using a building in respect of which a completion certificate has not been accepted. The offence does not apply where there is a temporary permission under subsection (3) or to occupation of the building in connection with the construction or conversion. The offence applies only to occupation or use where the person either knows that a completion certificate has not been accepted or pays no regard to whether one has been accepted.
67. *Subsections (7) to (9)* make provision for a local authority to seek, by interdict, to prevent occupation or use of such a building and for a court to grant such an interdict.

Section 22: Imposition of continuing requirements by verifiers

68. **Section 22** provides for a verifier to impose continuing requirements where the verifier grants or makes an amendment to a building warrant, or accepts a completion certificate for work which did not have a necessary building warrant. As with section 2, which permits continuing requirements to be imposed by building regulations, the purpose of imposing the requirements is to secure that the purposes of building regulations are not frustrated. Where verifiers consider it necessary to impose such requirements for this purpose, they must do so. Any such requirements imposed under this section must state the provision of building regulations to which they relate.

Section 23: Discharge and variation of continuing requirements imposed by verifiers

69. **Section 23** provides for verifiers to vary or discharge a continuing requirement which was imposed by a verifier. (The verifier cannot vary or discharge continuing requirements imposed in building regulations.) They must discharge a requirement on application if they are satisfied that the building complies with the building regulations that apply when the application is made, and (a) in the case of the discharge of a continuing requirement, the requirement is no longer necessary, or (b) in the case of the variation of a continuing requirement, the variation will not result in the purposes of building regulations being frustrated. The section also provides that continuing requirements imposed by verifiers cease to have effect if a subsequent building warrant is granted or a completion certificate is submitted under section 17(4) (i.e. where no building warrant was applied for in relation to the relevant building or work). *Subsection (4)* provides that any such subsequent building warrant or completion certificate can contain further continuing requirements.

Section 24: Building standards registers

70. *Subsection (1)* places a duty on local authorities to maintain registers for their areas with information about applications for building warrants, completion certificates and other matters required by regulations. *Subsections (2) and (3)* make provision for regulations about the content of registers and the form and manner in which they are to be kept. *Subsection (4)* states that the register must be available for public inspection at all reasonable times.