

# **BUILDING (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **THE ACT - AN OVERVIEW**

7. The Act retains the general framework of the 1959 Act though some of the procedures involved in the building standards process are changed to make them simpler and to reflect existing practice. The hierarchy of building regulations is amended to simplify compliance with European obligations as described below. Local authorities' powers in relation to entry and inspection are altered with a view to making the identification of dangerous buildings easier. Provision is made for more information to be made available publicly on building warrant applications and completion certificates in relation to specific buildings. The Act provides for approved designers and approved persons or bodies involved in the construction process to certify that elements of a building do or will comply with building regulations. Ministers are given power to appoint bodies other than local authorities to undertake the role of verifying compliance with building regulations.
8. The Act is in six parts:
  - Part 1: Building regulations
  - Part 2: Approval of construction work etc.
  - Part 3: Compliance and enforcement
  - Part 4: Defective and dangerous buildings
  - Part 5: General
  - Part 6: Supplementary

### **Part 1: Building Regulations**

#### ***Section 1: Building regulations***

9. **Section 1** establishes the power of the Scottish Ministers to make building regulations. *Subsection (1)* sets out the broad purposes for which regulations may be made and also the matters for which the regulations may provide. Those purposes include, for example, accessibility and usability of buildings. Schedule 1 makes further provision about the matters for which building regulations may provide.
10. **Section 1** makes it easier for the Scottish Ministers to meet their obligations under the EC Construction Products Directive in relation to recognition of harmonised European standards. Under the 1959 Act, the technical standards (the equivalent of guidance documents under section 4 of the Act) which accompany building standards regulations also have mandatory force and this severely restricts the ability of Ministers to update regulations and technical standards as each new harmonised European standard is produced, within the timescales set out in the Directive. Under the 2003 Act, it is only building regulations which have mandatory force and not the guidance which might accompany them (see sections 4 and 5). This will enable European standards

to be specified in the guidance without having to go through the formal procedures of consultation and parliamentary process for each new European standard required under the 1959 Act.

11. *Subsection (2)* places a duty on Ministers to consult before making building regulations or an order under subsection (4) modifying paragraph 5(2) of schedule 1. They must consult the Building Standards Advisory Committee, which was established by the 1959 Act and the continuation of which is provided for by section 31 of the Act. They must also consult other persons appearing to them to have an interest.
12. *Subsection (4)* gives Ministers the power by order to alter paragraph 5(2) of schedule 1, which lists particular matters for which building regulations may provide.
13. *Subsection (5)* gives Ministers the power to modify any enactment (whether in an Act or in subordinate legislation) which makes provisions which are inconsistent with a specific building regulation. Such enactments may also be modified if they become unnecessary or require alteration as a result of a building regulation.
14. The parliamentary procedures for building regulations and for orders under subsections (4) and (5) are set out in section 54.

### ***Section 2: Continuing requirements***

15. *Subsections (1) and (2)* give the Scottish Ministers the power to impose continuing requirements on building owners through building regulations, so that the purposes of particular provisions of building regulations are not frustrated once work on a building has been completed and the completion certificate accepted.
16. *Subsection (3)* makes it clear that a continuing requirement cannot apply to a particular building unless the building regulation which the requirement is designed to protect applies to the building.
17. *Subsection (4)* provides that continuing requirements may be imposed by building regulations in relation to buildings of such description as the regulations may specify and to existing buildings, even where the relevant building regulations did not apply to them when they were built. An example of a continuing requirement might be that a sprinkler system must be tested and maintained periodically.

### ***Section 3: Relaxation of building regulations***

18. This section allows the Scottish Ministers to dispense with or relax any provision of building regulations in relation to a particular building or description of building where they think that its application is unreasonable. For example the requirement to provide access for a fire engine might be waived on a remote island where there is no fire engine.
19. *Subsection (2)(a)* provides that Ministers may give a direction dispensing with or relaxing building regulations in relation to a particular building where any person makes an application to them. Applications are not restricted to owners, so, for example, a prospective buyer may apply for such a direction. In this case, the direction applies only to the specific building. Subsection (6) provides that Ministers must send a copy of any such direction (or any direction varying or revoking such a direction) to the relevant local authority and to all verifiers authorised to exercise functions in relation to that building or other buildings of that description in the area of the relevant local authority.
20. Under *subsection (2)(b)*, even if an application has not been made, Ministers may give a direction. In this case, the direction applies to a description of building. This is the equivalent to the provisions of the 1959 Act allowing Ministers to grant class relaxations, which deal with products or building types which are suitable for general use but, for whatever reason, do not comply with the existing standards.

21. *Subsection (3)* provides for the possibility that regulations under the Act may restrict the Scottish Ministers' ability to give directions dispensing with or relaxing a provision of building regulations. Where such regulations state that, in relation to a provision of building regulations, a direction dispensing with or relaxing that provision is not competent, no such direction may be given.
22. Before giving, varying or revoking a direction in relation to a description of building, Ministers must consult the Building Standards Advisory Committee and other interested persons, e.g. fire authorities (*subsection (5)*). *Subsection (7)* provides that Ministers must provide a copy of such directions to all local authorities and all verifiers.
23. *Subsection (8)* makes provision for the case where a direction ceases to have effect, or is varied or revoked, while an application for a building warrant is pending.
24. *Subsection (9)* provides that when dealing with a building or description of buildings in relation to which regulations have been relaxed under this section, references in legislation to regulations mean the relaxed regulations.

#### ***Section 4: Guidance documents for purposes of building regulations***

25. **Section 4** makes provision for the Scottish Ministers to issue, revise or withdraw guidance in relation to the requirements of building regulations. It also makes provision for the procedures to be followed in issuing, revising or withdrawing such documents.

#### ***Section 5: Compliance with guidance documents***

26. As the documents referred to in section 4 have the status of guidance, they will not provide the sole means of meeting the requirements of building regulations. *Subsections (1) and (2)* clarify that failure to comply with guidance documents does not in itself render a person liable to civil or criminal proceedings, though proof of compliance with them may be relied on in any proceedings as evidence that building regulations have not been contravened. *Subsection (3)* provides that notices issuing, revising or withdrawing guidance, and documents appearing to be guidance documents, are to be accepted as such during any legal proceedings unless the contrary is proved.

#### ***Section 6: Building standards assessments***

27. This section places a duty on local authorities to carry out a building standards assessment when requested to do so by the owner of a building. The owner of a building might, for example, request such an assessment at the request of someone intending to purchase the building.
28. *Subsection (2)* defines a building standards assessment and *subsection (3)* provides for the Scottish Ministers, by regulations, to make further provision as to the matters to be assessed in a building standards assessment.

### **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.

**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.

## **Part 4: Defective and Dangerous Buildings**

### ***Section 28: Defective buildings***

87. This section makes provision for local authorities to serve a notice on an owner of a building to rectify defects in order to bring the building into a reasonable state of repair, having regard to its age, type and location. This power replaces that in section 87(1) of the Civic Government (Scotland) Act 1982. It might be used, for example, in the case where a leaking roof risked damaging the structure of a building, to require the owner to make it resistant to moisture.
88. Under *subsections (3) and (4)* a local authority must specify in a defective building notice the dates by which works must be started and completed and may specify particular steps which the owner must take to comply with the notice.
89. *Subsection (5)* 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 (6)* provides that where the local authority issuing the 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. *Subsections (7) and (8)* provide that the dates by which work to comply with a notice must start and be completed may be amended when a building warrant application is made in respect of the work.
90. *Subsections (9) and (10)* create an offence where an owner has either not started or not completed work by the relevant specified dates and in such cases permits local authorities to carry out the required work and to recover expenses incurred by it from the owner.
91. *Subsection (11)* provides that a local authority does not have to apply for a building warrant where it is carrying out work to comply with a defective building notice because the owner has not failed to do so. The authority must, however, register a completion certificate in the building standards register to certify that the necessary work has been carried out.
92. *Subsection (12)* makes provision for a local authority to withdraw or amend a defective building notice before or after it has taken effect. *Subsection (13)* provides that a local authority may issue a further such notice even if it has already withdrawn one.

### ***Section 29: Dangerous buildings***

93. This section places duties on a local authority where it appears to it that a building presents a danger to people in or about that building, to the public generally, or to adjacent buildings or places. Under *subsection (2)* the authority must carry out work to prevent access to the dangerous building and adjacent places and to protect the public. *Subsections (3) and (4)* give a local authority power, where it considers that urgent action is necessary to remove or reduce a danger, to carry out the necessary work, including demolition. In cases of urgency, the subsection recognises that it may not be possible to give prior notice to the owner.
94. *Subsection (5)* provides that a local authority does not require a building warrant for work carried out in relation to dangerous buildings under subsections (2) and (3) but must register in the building standards register a completion certificate certifying that the work has been carried out.
95. Unless work carried out under subsection (3) removes the danger, the local authority must serve a dangerous building notice on the owner (*subsection (6)*).

### ***Section 30: Dangerous buildings notices***

96. *Subsections (1) and (2)* set out the purpose of a dangerous building notice and provide for the notice to specify dates by which work to comply with the notice must be started and completed. *Subsection (4)* creates an offence where an owner has either not started or not completed work by the specified dates and in such cases permits the local authority to carry out the required work and to recover expenses incurred by it from the owner. *Subsection (5)* provides that no building warrant is required for work to comply with a dangerous building notice and that any work which a local authority may carry out in order to comply with the notice does not require a building warrant, although where the authority carries out the work, it must register in the building standards register a completion certificate certifying that the work has been carried out in accordance with the notice.
97. *Subsection (6)* makes provision for a local authority to withdraw or amend a dangerous building notice before or after it has taken effect. *Subsection (7)* provides that a local authority may issue a further such notice even if it has already withdrawn one.

## **Part 5: General**

### ***Section 31: Building Standards Advisory Committee***

98. This section makes provision for the continuation of the Building Standards Advisory Committee, established under the 1959 Act. It sets out the purpose of the committee and places a duty on the Scottish Ministers to consult relevant interests before appointing members to it. It also makes provision for Ministers to make regulations with regards to specific aspects of the committee and for Ministers to pay members remuneration and allowances.

### ***Section 32: Exercise of local authority functions***

99. Under *subsections (1) to (3)* the Scottish Ministers may give directions to local authorities about their functions under the Act. Under *subsections (4) and (5)* Ministers may, if they so direct, exercise local authority functions under Parts 3 and 4 of the Act in place of that local authority. Ministers could, for example, use this provision to compel a local authority to repair one of its own buildings (e.g. the city chambers) where it refuses to do so.

**Section 33: Procedure regulations**

100. This section sets out the power of the Scottish Ministers to make regulations relating to procedures to be followed in connection with various matters under the Act including applications, completion certificates, the issue of certificates by certifiers, functions of local authorities under Parts 3 and 4 of the Act and the appointment, removal and exercise of functions of verifiers and certifiers. In addition to the general matters listed in *subsection (1)*, *subsection (2)* provides for the regulations to deal with the specific matters set out in schedule 3.
101. *Subsections (3) and (4)* make provision for the possibility of combining applications under the Act and planning applications in a single application. This would allow for a joint building warrant and planning application.

**Section 34: Reports and information**

102. *Subsection (1)* places a duty on local authorities, verifiers and certifiers to provide the Scottish Ministers with reports or information on their functions under the Act. Ministers might, for example, require information in relation to performance measures set by them.
103. *Subsection (2)* creates an offence where any local authority, verifier or certifier knowingly or recklessly provides information under *subsection (1)* which is false or misleading.

**Section 35: Scheduled monuments, listed buildings etc.**

104. *Subsection (2)* places a duty on local authorities to consult before serving notices under Parts 3 and 4 of the Act on persons in relation to the types of buildings listed in *subsection (1)* or carrying out work to a dangerous building of any of those types. For example, where a listed building presents a danger to the public, a local authority must consult the Scottish Ministers (which would ensure that Historic Scotland was consulted), the planning authority and any other body which they think fit, before the authority can serve a dangerous building notice on the owner. In the case of a dangerous building, consultation is required only if it is reasonably practicable. *Subsection (4)* provides that a requirement in a notice under Part 3 or 4 of the Act to carry out work in relation to buildings listed in *subsection (1)* has effect only where it is consistent with the Acts specified in that subsection e.g. a notice served on a listed building must be consistent with the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

**Section 36: Forms**

105. This section makes provision for the Scottish Ministers to make regulations setting out the form and content of any document used under the Act. Such regulations could, for example, provide that building warrants are to have the same appearance across Scotland and are to include the same information.

**Section 37: Service of notices etc.**

106. *Subsection (1)* provides that where a local authority serves a notice under sections 25 to 29, it must also serve a copy on the owner, occupier and any other person having an interest in the building.
107. *Subsection (2)* applies the provisions in relation to notices under section 192(1)-(4) of the Local Government (Scotland) Act 1973 to notices etc. served under the Act.
108. For the purpose of enabling any notice to be served, *subsection (3)* requires the persons specified in the subsection to provide information on those who have an interest in the relevant building. *Subsection (4)* creates an offence of refusing or failing to give

this information or deliberately or recklessly making false or misleading statements in respect of it. Level 3 on the standard scale is currently £1,000.

### ***Section 38: Fees and charges***

109. This section enables Ministers to make regulations setting fees and charges in respect of functions performed under the Act.

### ***Section 39: Powers of entry, inspection and testing***

110. This section gives the Scottish Ministers and local authorities powers to enter and inspect buildings and premises and carry out tests on materials in relation to certain functions under the Act. Ministers' powers in this regard are restricted to their function under section 3 of granting a direction dispensing with or relaxing a building regulation (*subsections (1) and (2)*). Local authorities may exercise these powers in relation to their powers in Parts 3 and 4 (*subsections (3) and (4)*).
111. *Subsection (5)* requires owners and occupiers of premises to provide the relevant authority with such assistance and information as may reasonably be required with regard to the authority's powers of entry, inspection and testing. *Subsection (6)* creates an offence of not complying with a requirement in subsection (5) and of intentionally obstructing a person exercising such powers. Level 3 on the standard scale is currently £1,000.
112. [Schedule 4](#) makes further provision on the exercise of powers under this section.

### ***Section 40: Work required by notice: owner's right of entry***

113. *Subsections (1) and (2)* establish the right of a person required to carry out work for the purposes of complying with the notices specified in subsection (1) to enter the building or adjacent land. The person must give the occupier reasonable notice first (*subsection (3)*). This section might apply where, for example, a landlord wishes to enter a flat which he or she owns for the purposes of carrying out repairs to comply with a defective building notice.
114. *Subsection (4)* makes clear that this right of entry prevails over any term to the contrary in any lease or contract. For example, under the terms of a lease, a tenant may be able to require a long period of notice for the landlord to gain entry to a premises. The right conferred by this section would override this.

### ***Section 41: Tests of materials***

115. Materials tests may be required to be carried out to establish the quality and strength of a material to confirm that it is suitable for compliance with building regulations. This section makes provision for verifiers and the Scottish Ministers to require specified persons to carry out a test of materials in specified circumstances. Ministers may require such tests to be carried out only after an application has been made to them under section 3 for a direction dispensing with or relaxing a building regulation. Verifiers may require such tests to be carried out by those who have applied for a building warrant under section 9, by those who have submitted a completion certificate under section 17 and by those who are constructing a building in pursuance of a building warrant.

### ***Section 42: Evacuation of buildings***

116. *Subsection (1)* provides that a local authority must require the evacuation of occupants of a dangerous building (or occupants of any adjacent building) where it considers they are endangered by the state of the building. *Subsections (2) to (4)* provide for an authority to require the removal of the occupants of a dangerous building which is to be demolished or where the occupants may be endangered by certain work which it intends to carry out on the building. *Subsections (6) and (7)* provide that an authority must inform persons

removed from a building where it believes the reason for removing them no longer exists. Schedule 5 makes provision about the evacuation of buildings for the purposes of section 42.

#### ***Section 43: Unlawful occupation of evacuated buildings***

117. **Section 43** creates an offence in relation to persons who have been removed from a building under section 42, or have been ejected under schedule 5, and thereafter occupy the building without having been given notice under section 42(7) (that the danger is no longer there).

#### ***Section 44: Expenses***

118. This section deals with the liability of persons from whom a local authority has demanded payment of expenses in relation to work carried out by that local authority to secure compliance with notices under Parts 3 and 4. For example, where a dangerous building notice requires that a building be demolished and an owner has failed to carry out the demolition, the local authority may have to carry out the demolition itself and therefore claim the expenses it has incurred from the owner. *Subsections (2) to (5)* make provision for liability for expenses to be restricted or transferred.

#### ***Section 45: Compulsory purchase where owner cannot be found***

119. This section provides for local authorities to compulsorily purchase a building and its site, where they have carried out work specified in *subsection (1)(a)* in relation to a dangerous building and have not been able to recover the cost of doing so because the owner cannot be found. The authorisation of the Scottish Ministers is required for the compulsory purchase (*subsection (2)*). *Subsection (3)* provides for the procedure to be followed in relation to a compulsory purchase.
120. *Subsection (4)* provides that, where a compulsory purchase has been made under this section, the local authority may deduct from the compensation payable the outstanding expenses in relation to the work specified in this section carried out by it on a dangerous building.

#### ***Section 46: Sale of materials from demolished buildings***

121. This section allows a local authority to sell any materials from a demolition carried out by it where the owner or person on whom the notice is served has failed to comply with a building warrant enforcement notice under section 27 or the demolition of a dangerous building under the authority's powers in section 29 and 30. The authority may offset any proceeds against other sums owed to the authority by the owner or any other person in respect of work under Parts 3 and 4 of the Act.

#### ***Section 47: Appeals***

122. *Subsection (3)* gives a right of appeal to the sheriff against the decisions and notices listed in *subsection (1)*.
123. *Subsection (2)* allows procedure regulations to specify periods within which certain specified initial (i.e. pre-appeal) decisions should be made. Where such decisions are not taken within the specified period, the decision is to be treated, for the purposes of appeals only, as a refusal or rejection as appropriate. For example, if an owner applies for a warrant under section 8 and a verifier does not make a decision within the specified period on whether to grant one, then in order to allow the appeal procedure to start, the decision is to be taken as a refusal.
124. *Subsection (4)* provides that the effect of a decision or notice listed in *subsection (1)* is suspended until the period allowed for an appeal has elapsed or the appeal is withdrawn or finally determined.

125. *Subsection (5)* creates an exception to the general rule in subsection (4). Where a building warrant enforcement notice under section 27 requires construction work to be suspended, that requirement takes effect as soon as the notice is served and continues to have effect, unless quashed by an order of a sheriff, until the notice is complied with.
126. *Subsection (7)* provides that a sheriff's decision on an appeal under this section is final.

#### ***Section 48: Penalties for offences***

127. *Subsection (2)* sets out the penalties which apply to offences under the Act, with the exception of the offences mentioned in *subsection (1)*. Level 5 on the standard scale is currently £5,000.

#### ***Section 49: Offences by bodies corporate etc.***

128. This section makes special provision in relation to offences committed by bodies corporate, local authorities, partnerships and unincorporated associations (e.g. members' clubs). Specified responsible individuals within these bodies may be liable to prosecution and punishment in addition to the body in question.

#### ***Section 50: Criminal liability of trustees etc.***

129. This section creates a defence for certain individuals such as trustees or liquidators in proceedings for not complying with various notices. The defence applies where the trustee, liquidator etc. has no other interest in a building and that person does not have sufficient funds in that capacity to incur the expense of complying with the notice. The defence would only apply where the person could prove the matters specified in paragraphs (a) and (b) of the section.

#### ***Section 51: Civil liability***

130. This section provides for the liability of anyone who breaches duties under building regulations and by doing so causes damage, including the death, injury etc. of any person. Under *subsection (2)*, building regulations may create defences in any action for a breach of such duties. *Subsection (3)* provides for certain exemptions for buildings which exist before the section comes into force.

#### ***Section 52: Inquiries***

131. This section makes provision for the holding of public inquiries for the purpose of any functions of the Scottish Ministers under the Act and for the procedures applicable to inquiries under the Local Government (Scotland) Act 1973 to apply in any such inquiry.

#### ***Section 53: Crown application***

132. *Subsection (1)* makes provision for the Act to apply to the Crown (including Crown bodies). Subordinate legislation under the Act, however, may or may not apply to the Crown (*subsection (2)*). *Subsection (3)* restricts the liability of the Crown for contravention of any provision of the Act or subordinate legislation made under it. The Crown may not be held criminally liable, though the Court of Session may declare unlawful any act or omission of the Crown which contravenes any provision of the Act.
133. However, *subsection (4)* provides that persons in public service of the Crown (such as employees of Crown bodies) will be liable like other persons.
134. *Subsection (5)* defines the term "owner" in the application of the Act to the Crown.

#### ***Section 54: Orders and regulations***

135. This section sets out the procedures and scope of powers to make orders and regulations under the Act.



***Section 55: Meaning of “building”***

136. This section defines the use of the term “building” in the Act and how buildings may be classified for the purposes of the Act and any orders and regulations made under it.

***Section 56: Interpretation***

137. This section defines terms used in the Act. It also clarifies how a building which is in the area of two or more local authorities should be treated for the purposes of the Act.

**Part 6: Supplementary**

***Section 57: Ancillary provision***

138. This section enables the Scottish Ministers by order to make incidental and other ancillary provision for the purposes of the Act or in consequence of it. The power could, for example, be used to make consequential amendments to other legislation which are required because of the replacement of the 1959 Act by the Act.

***Section 58: Modification of enactments***

139. This section introduces schedule 6, which makes amendments to other legislation as a result of the Act.

***Section 59: Commencement and short title***

140. Under *subsection (1)* the provisions of the Act, apart from those specified (which relate to powers to make orders), come into force on a date or dates appointed by the Scottish Ministers.