



Building (Scotland) Act 2003

2003 asp 8

PART 2

APPROVAL OF CONSTRUCTION WORK ETC.

Verifiers and certifiers

7 Verifiers and certifiers

- (1) For the purposes of this Act the Scottish Ministers may appoint persons (whether individuals or bodies corporate or unincorporate and including public bodies and office-holders) as—
 - (a) verifiers,
 - (b) approved certifiers of design,
 - (c) approved certifiers of construction.
- (2) The Scottish Ministers may approve schemes in accordance with which persons (whether individuals or bodies corporate or unincorporate) who are for the time being members of the schemes are entitled to exercise for the purposes of this Act the functions of (either or both)—
 - (a) an approved certifier of design,
 - (b) an approved certifier of construction,and references in this Act to approved certifiers of design or approved certifiers of construction include (unless the context requires otherwise) any persons who are by virtue of their membership of any such scheme entitled to exercise the functions of such certifiers.
- (3) The Scottish Ministers may—
 - (a) approve any such scheme subject to such limitations as they may impose, which may be framed by reference to area, description of building, cost of building or building work or any other factor whatsoever,
 - (b) withdraw any approval given under subsection (2).
- (4) The Scottish Ministers must keep lists of verifiers, approved certifiers of design and approved certifiers of construction.

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- (5) Such lists must, in relation to each verifier, approved certifier of design and approved certifier of construction, contain details of the matters in respect of which that verifier or certifier is authorised to exercise functions under this Act (including details of any limitations imposed on that verifier’s or certifier’s appointment under paragraph 2 of schedule 2 and, in the case of a certifier referred to in paragraph 4 of that schedule, any limitations referred to in that paragraph).
- (6) The Scottish Ministers must make the lists available for public inspection at all reasonable times.
- (7) The Scottish Ministers may exercise the functions of a verifier under this Act to the extent, and in the circumstances, specified in a direction given by them; and references in this Act (other than schedule 2) to a verifier are to be construed accordingly.
- (8) The Scottish Ministers may, in any of the circumstances specified in subsection (9), direct a verifier to refer to them—
 - (a) any application specified in the direction, being an application made to the verifier under section 9 for a building warrant or an amendment to a building warrant and not determined by the verifier as at the date of the direction,
 - (b) any completion certificate specified in the direction, being a completion certificate submitted to the verifier under section 17 and not accepted or rejected by the verifier as at that date,
 and the Scottish Ministers, instead of the verifier, may exercise the functions of a verifier under this Act in relation to any such application or certificate.
- (9) The circumstances referred to in subsection (8) are where—
 - (a) the verifier requests the Scottish Ministers to issue the direction, or
 - (b) the Scottish Ministers consider that the verifier is incapable for any reason of exercising the functions of a verifier under this Act in relation to the application or, as the case may be, completion certificate specified in the direction.
- (10) The Scottish Ministers may give verifiers directions of a general or specific character as to the exercise of their functions under this Act.
- (11) Such directions may be given to all verifiers, to a particular verifier or to verifiers of a particular description.
- (12) Schedule 2 makes further provision about verifiers, approved certifiers of design and approved certifiers of construction.

Building warrants

8 Building warrants

- (1) A warrant granted under section 9 (a “building warrant”) is required for—
 - (a) any work for—
 - (i) the construction or demolition of, or
 - (ii) the provision of services, fittings or equipment in or in connection with,
 a building of a description to which building regulations apply,
 - (b) any conversion of a building.

- (2) Where such work is carried out, or such a conversion is made—
 - (a) without a building warrant, or
 - (b) in a case where a building warrant has been granted, otherwise than in accordance with the warrant,the persons specified in subsection (3) are guilty of an offence.
- (3) Those persons are—
 - (a) any person carrying out the work or, as the case may be, making the conversion,
 - (b) any person on whose behalf the work is being carried out or, as the case may be, the conversion is being made,
 - (c) if the owner of the building does not fall within paragraph (a) or (b), the owner.
- (4) In any proceedings against a person referred to in subsection (3)(a) for an offence under subsection (2)(a), it is a defence for the accused to show that before the work was carried out or the conversion was made a person referred to in subsection (3)(b) or (c) had given the accused reasonable cause to believe that a building warrant had been granted for the work or the conversion.
- (5) In any proceedings against a person referred to in subsection (3)(b) or (c) for an offence under subsection (2)(b), it is a defence for the accused to show that at the time of the alleged commission of the offence the accused did not know, and had no reasonable cause to know, that the work was being carried out or the conversion made otherwise than in accordance with the warrant.
- (6) In any proceedings against a person referred to in subsection (3)(c) for an offence under subsection (2)(a), it is a defence for the accused to show that at the time of the alleged commission of the offence the accused did not know, and had no reasonable cause to know, that the work was being carried out or the conversion made.
- (7) The accused is to be taken to have shown the fact specified in subsection (4) or, as the case may be, (5) or (6) if—
 - (a) sufficient evidence is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (8) Subsection (1) does not apply in relation to—
 - (a) such work or conversions,
 - (b) such buildings or descriptions of building,
 - (c) such services, fittings or equipment,as building regulations may specify.
- (9) A building warrant has effect for the benefit of the building to which it relates and of all persons for the time being having an interest in it.

9 Building warrants: grant and amendment

- (1) A verifier must, on an application for a building warrant made to it, grant a building warrant if, but only if, it is satisfied as to the matters specified in subsection (2).
- (2) Those matters are—
 - (a) so far as the application is for a warrant for the construction or demolition of a building—

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- (i) that the work involved will be carried out in accordance with building regulations, and
 - (ii) where the work is for the construction of a building, that nothing in any plan, specification or other information submitted with the application indicates that the building when constructed will fail to comply with building regulations,
 - (b) so far as the application is for a warrant for the provision of services, fittings or equipment in or in connection with a building—
 - (i) that the work involved will be carried out in accordance with building regulations, and
 - (ii) that nothing in any plan, specification or other information submitted with the application indicates that the services, fittings or equipment will fail to comply with building regulations,
 - (c) so far as the application is for a warrant for conversion of a building, that after the conversion the building as converted will comply with building regulations.
- (3) Subsection (4) applies where, on an application for a building warrant for the construction or demolition of a building, the verifier is not satisfied that the information submitted with the application is sufficient, in relation to a stage in the construction or demolition specified in procedure regulations, to show that the building when constructed or the demolition will comply with building regulations.
- (4) Where this subsection applies, the verifier may grant a building warrant for the construction or demolition of the building subject to the condition that work on the stage in question is not to be proceeded with until—
 - (a) such further information relating to that stage as the verifier may require is submitted to it,
 - (b) it is satisfied, on the basis of that information, as to the matter specified in subsection (3), and
 - (c) it has made an amendment to the warrant authorising the work to proceed.
- (5) Subsection (6) applies where—
 - (a) a building warrant has been granted, and
 - (b) before any completion certificate has been accepted in relation to the building in respect of the work or conversion, an application is made to the verifier for an amendment to the warrant.
- (6) Where this subsection applies, the verifier must make the amendment if, but only if, it continues to be satisfied as to the matters specified in subsection (2), taking into account the proposed amendment and any plan, specification or other information submitted with the application for the amendment.
- (7) Where a verifier grants, or makes an amendment to, a building warrant under this section the verifier must—
 - (a) send a copy of the warrant or amendment, together with—
 - (i) a copy of any continuing requirements imposed under section 22, and
 - (ii) such other documents and information as may be specified in procedure regulations,
 to the local authority for registration in the building standards register, and
 - (b) notify the owner of the building of the granting of the warrant or the making of the amendment and of the imposition of any continuing requirements under

section 22, unless the owner is the person who applied for the warrant or amendment.

- (8) Subsection (7)(a) does not apply where the verifier is the local authority.
- (9) References in this section and sections 10 to 14 (other than section 14(4)) to building regulations are to those regulations as they have effect at the time of the application under subsection (1) for the building warrant in question but subject, in relation to an application for an amendment to a warrant, to any later direction under section 3(2) in force in relation to the building in question or buildings of the same description.
- (10) This section and section 10 are without prejudice to any enactment (other than this Act) conferring power on a local authority to refuse to grant a building warrant in particular circumstances.

10 Building warrants: extension, alteration and conversion

- (1) Despite section 9, a verifier must refuse to grant a building warrant (or an amendment to the terms of a warrant) under that section if the application relates to an extension to a building or alteration or conversion of all or part of a building and subsection (2) or (3) of this section is satisfied.
- (2) This subsection is satisfied if—
 - (a) the whole building, at the time of the application, complied with building regulations, and
 - (b) the verifier considers that, as a result of the extension, alteration or conversion, the whole building as extended, altered or converted will fail to comply with building regulations.
- (3) This subsection is satisfied if—
 - (a) the whole building, at the time of the application, failed to comply with building regulations, and
 - (b) the verifier considers that, as a result of the extension, alteration or conversion, the whole building as extended, altered or converted will fail to comply with building regulations to a greater degree.

11 Building warrants: certification of design

- (1) On making an application under section 9 for a building warrant or for amendment of a warrant, the applicant may submit to the verifier a certificate issued by an approved certifier of design certifying (either or both)—
 - (a) that the design of the building, or of such part of it as is specified in the certificate, complies with building regulations,
 - (b) in relation to work for construction or demolition or for provision of services, fittings or equipment, that the proposed method of working, or any part of it, complies with building regulations.
- (2) In subsection (1), “design” includes the specification of the material to be used.
- (3) In determining the application, the verifier must accept the certificate as conclusive of the facts to which it relates.
- (4) Any approved certifier of design who—

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- (a) issues a certificate under subsection (1) containing a statement which the certifier knows to be false or misleading in a material particular, or
 - (b) recklessly issues a certificate under subsection (1) which is false or misleading in a material particular,
- is guilty of an offence.

- (5) In this section, “certificate” means a certificate which the approved certifier of design is authorised to issue—
- (a) in the case of such a certifier appointed under section 7(1), by the terms of the certifier’s appointment,
 - (b) in the case of a person who is such a certifier by virtue of membership of a scheme approved under section 7(2), by the scheme as approved.

12 Building warrants: reference to Ministers

- (1) Where, in relation to an application under section 9 for a building warrant, the verifier or the applicant considers that there is doubt about—
- (a) the extent to which the proposals in the application comply with any provision of building regulations, or
 - (b) whether it is necessary to impose continuing requirements under section 22,
- the verifier or, as the case may be, the applicant may refer the matter to the Scottish Ministers.
- (2) On a reference under subsection (1) the Scottish Ministers may, if they think fit, express a view on the matter referred to them and must intimate any such view to both the verifier and the applicant.
- (3) In determining the application or, as the case may be, considering whether it is necessary to impose continuing requirements under section 22, the verifier must have regard to any view expressed under subsection (2).

13 Building warrants: further provisions

- (1) A building warrant is subject to the following conditions—
- (a) that the work or conversion in respect of which the warrant was granted is carried out or, as the case may be, made as described in the warrant (including any related plans and specifications) and in accordance with building regulations, and
 - (b) where a direction has been given under section 3, that any conditions specified in the direction are observed.
- (2) A building warrant for the demolition of a building is subject to the condition that the demolition is completed within such period as is specified in the warrant.

14 Building warrants: limited life buildings

- (1) In relation to a building to be constructed in accordance with any special provisions of building regulations made by virtue of paragraph 3 of schedule 1—
- (a) an application for a building warrant must state the period of the intended life of the building, which must not exceed the period specified in the regulations in relation to the special provisions, and

- (b) the warrant is subject to the condition that the building is demolished by the expiry of the period stated in the application, but does not constitute a warrant for the demolition.
- (2) Where a warrant is subject to the condition specified in subsection (1)(b), the owner of the building may, before the expiry of the period specified in the warrant, or that period as extended under subsection (3), make an application to the verifier to extend, or further extend, the period.
 - (3) On such an application the verifier, if it is satisfied having regard to the special provisions referred to in subsection (1) that it is proper to do so, may extend or, as the case may be, further extend the period.
 - (4) The period of any such extension or further extension must not exceed the period specified in building regulations (as they have effect at the time of the application under subsection (2)) in relation to the special provisions.
 - (5) Where—
 - (a) a warrant is subject to the condition specified in subsection (1)(b), and
 - (b) the owner of the building fails to demolish the building by the expiry of the period specified in the warrant (or, if that period has been extended or further extended under subsection (3), the period as so extended or further extended),the owner is guilty of an offence.
 - (6) Any person who, after the expiry of the period specified in a warrant by virtue of subsection (1)(b) (or, if that period has been extended or further extended under subsection (3), the period as so extended or further extended), occupies or uses the building to which the warrant relates (other than solely for the purposes of its demolition)—
 - (a) knowing that the period has expired, or
 - (b) without any regard for whether the period has expired,is guilty of an offence.
 - (7) A person guilty of an offence under subsection (6) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
 - (8) Whether or not a local authority has exercised or proposes to exercise any of its other powers under this Act the authority may, by means of an application for interdict, seek to restrain or prevent any actual or apprehended occupation or use of a building which constitutes, or would constitute, an offence under subsection (6).
 - (9) On such an application the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the occupation or use.
 - (10) In subsection (9), “the court” means the Court of Session or the sheriff.

15 Building warrants: late applications

Where work for which a building warrant is required under section 8 has commenced without a warrant, an application under section 9 for a warrant may be made at any time before a completion certificate has been accepted in respect of the building in question.

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16 Applications and grants: offences

- (1) Any person who—
 - (a) makes an application under section 9 for a building warrant or an amendment to a warrant containing a statement which that person knows to be false or misleading in a material particular, or
 - (b) recklessly makes such an application containing a statement which is false or misleading in a material particular,
 is guilty of an offence.
- (2) Any verifier who grants a building warrant, or makes an amendment to a warrant, under that section knowing that the application for the warrant or amendment contains a statement which is false in a material particular is guilty of an offence.

Completion certificates

17 Completion certificates

- (1) After the completion of the work or conversion in respect of which a building warrant has been granted, the relevant person must submit to the verifier a completion certificate certifying the matters specified in subsection (2).
- (2) Those matters are—
 - (a) that the work was carried out or, as the case may be, the conversion was made in accordance with the building warrant, and
 - (b) that—
 - (i) in the case of work for the construction of a building, the building as constructed complies with building regulations,
 - (ii) in the case of work for the provision of services, fittings or equipment in or in connection with a building, the services, fittings or equipment provided comply with building regulations,
 - (iii) in the case of conversion of a building, the building as converted complies with building regulations.
- (3) In subsection (2), the references to building regulations are to those regulations as they applied for the purposes of the building warrant.
- (4) Where—
 - (a) work for which a building warrant is required under section 8 has been carried out, or
 - (b) a conversion of a building for which a building warrant is required under that section has been made,
 without a building warrant, the relevant person must submit to a verifier a completion certificate certifying the matters specified in subsection (5).
- (5) Those matters are—
 - (a) that the work was carried out or, as the case may be, the conversion was made in accordance with building regulations, and
 - (b) that—
 - (i) in the case of work for the construction of a building, the building as constructed complies with building regulations,

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- (ii) in the case of work for the provision of services, fittings or equipment in or in connection with a building, the services, fittings or equipment comply with building regulations,
 - (iii) in the case of conversion of a building, the building as converted complies with building regulations.
- (6) In subsection (5), the references to building regulations are to those regulations as they have effect on the date on which the completion certificate is submitted under subsection (4).
- (7) After the completion of the work required by—
 - (a) a building regulations compliance notice or a defective building notice, in a case where no building warrant is required,
 - (b) a continuing requirement enforcement notice, or
 - (c) a dangerous building notice,the owner of the building in question must submit to a verifier a completion certificate certifying that the work has been completed in accordance with the requirements of the notice.
- (8) Subsection (7) does not apply in relation to work carried out by a local authority under section 25(7)(b), 26(3)(b), 28(10)(b) or 30(4)(b).
- (9) A completion certificate submitted to a verifier in pursuance of a building warrant enforcement notice under section 27(2)(a) must certify that the building in question complies with building regulations as those regulations have effect on the date on which the certificate is submitted.
- (10) In this section, the relevant person, in relation to a building, is—
 - (a) where the work was carried out, or the conversion made, otherwise than on behalf of another person, the person who carried out the work or made the conversion,
 - (b) where the work was carried out, or the conversion made, by a person on behalf of another person, that other person,
 - (c) if the owner of the building does not fall within paragraph (a) or (b) and the person required by those paragraphs to submit the completion certificate has failed to do so, the owner.

18 Completion certificates: acceptance and rejection

- (1) A verifier must accept or reject a completion certificate submitted to it under this Act.
- (2) The verifier must accept the certificate if, but only if, after reasonable inquiry, it is satisfied as to the matters certified in the certificate.
- (3) Before accepting a completion certificate—
 - (a) relating to a building, or
 - (b) in respect of work or a conversion,of such description as procedure regulations may specify, the verifier must consult such persons as may be so specified.
- (4) Where a verifier accepts or rejects a completion certificate the verifier must—
 - (a) send a copy of the certificate, together with—

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- (i) in the case of an accepted certificate, a copy of any continuing requirements imposed under section 22, and
 - (ii) such other documents and information as may be specified in procedure regulations,
- to the local authority for registration in the building standards register, and
- (b) notify the owner of the building of—
 - (i) the acceptance or rejection of the certificate, and
 - (ii) in the case of an acceptance, the imposition of any continuing requirements under section 22,
 unless the owner is the person who submitted the certificate.
- (5) Subsection (4)(a) does not apply where the verifier is the local authority.

19 **Completion certificates: certification of construction**

- (1) On submitting a completion certificate to a verifier under this Act, the person submitting the completion certificate may submit to the verifier a certificate issued by an approved certifier of construction certifying in relation to the building in question that such construction as is specified in the certificate complies with building regulations.
- (2) In subsection (1), the reference to building regulations is—
- (a) in relation to a completion certificate submitted under subsection (1) of section 17, to those regulations as they applied for the purposes of the building warrant,
 - (b) in relation to a completion certificate submitted under subsection (4) of that section, to those regulations as they have effect on the date on which the completion certificate is submitted.
- (3) In determining whether or not to accept the completion certificate, the verifier must accept the certificate of the approved certifier of construction as conclusive of the facts to which it relates.
- (4) Any approved certifier of construction who—
- (a) issues a certificate under subsection (1) containing a statement which the certifier knows to be false or misleading in a material particular, or
 - (b) recklessly issues a certificate under subsection (1) which is false or misleading in a material particular,
- is guilty of an offence.
- (5) In this section—
- “certificate”, in relation to construction, means a certificate which the approved certifier of construction is authorised to issue—
- (a) in the case of such a certifier appointed under section 7(1), by the terms of the certifier’s appointment,
 - (b) in the case of a person who is such a certifier by virtue of membership of a scheme approved under section 7(2), by the scheme as approved,
- “construction” includes any building or work in relation to a building and includes services, equipment and fittings provided in or in connection with a building.

20 Completion certificates: offences

- (1) Any person who, under this Act—
 - (a) submits to a verifier a completion certificate containing a statement which that person knows to be false or misleading in a material particular, or
 - (b) recklessly submits to a verifier a completion certificate containing a statement which is false or misleading in a material particular,is guilty of an offence.
- (2) Any verifier who accepts a completion certificate submitted to it under this Act knowing that the certificate contains a statement which is false in a material particular is guilty of an offence.

21 Occupation or use without completion certificates

- (1) This section applies to a building which is being, or has been, constructed or converted—
 - (a) by virtue of a building warrant or,
 - (b) in a case where such a warrant is required under section 8, without such a warrant,if the condition specified in subsection (2) is satisfied.
- (2) That condition is that no completion certificate has been accepted in respect of the construction or conversion under section 18(1).
- (3) On an application made to the verifier—
 - (a) where the construction or conversion is being, or has been, carried out otherwise than on behalf of another person, by the person carrying out, or who carried out, the construction or conversion,
 - (b) where the construction or conversion is being, or has been, carried out by a person on behalf of another person, by that other person,
 - (c) in any case, by the owner of the building in question,the verifier may grant permission for the temporary occupation or use of the building during such period as is specified in the permission and must, where it does so, send a copy of the permission to the local authority (unless the verifier is the local authority).
- (4) The period specified in a permission under subsection (3) may be extended from time to time on a further application under that subsection.
- (5) Any person who occupies or uses a building to which this section applies (other than solely for the purpose of its construction or conversion)—
 - (a) knowing that no completion certificate has been accepted under section 18(1) in respect of the construction or conversion, or
 - (b) without any regard for whether a completion certificate has been so accepted,is guilty of an offence unless the occupation or use is authorised by a permission granted under subsection (3).
- (6) A person guilty of an offence under subsection (5) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.

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- (7) Whether or not a local authority has exercised or proposes to exercise any of its other powers under this Act the authority may, by means of an application for interdict, seek to restrain or prevent any actual or apprehended occupation or use of a building which constitutes, or would constitute, an offence under subsection (5).
- (8) On such an application the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the occupation or use.
- (9) In subsection (8), “the court” means the Court of Session or the sheriff.
- (10) In the application of this section to a building which is being or has been converted, references to occupation or use of the building are to the changed occupation or use.
- (11) In this section, references to construction do not include alteration.

Imposition of continuing requirements by verifiers

22 Imposition of continuing requirements by verifiers

- (1) Subsection (2) applies where a verifier—
 - (a) grants, or makes an amendment to, a building warrant (other than a warrant for demolition), or
 - (b) accepts a completion certificate submitted under section 17(4),
 in respect of any building.
- (2) Where the verifier considers it necessary to do so for securing that the purposes of any provision of building regulations are not frustrated, the verifier must, on granting or making the amendment to the building warrant or, as the case may be, accepting the completion certificate, impose on the owner of the building such continuing requirements (in addition to any imposed by virtue of section 2) in relation to the building as the verifier considers necessary for securing that matter.
- (3) Continuing requirements imposed under this section must state the provision of building regulations to which they relate.

23 Discharge and variation of continuing requirements imposed by verifiers

- (1) A verifier must—
 - (a) on an application made to it for discharge of a continuing requirement imposed under section 22, discharge the continuing requirement if satisfied that—
 - (i) the building in relation to which the requirement was imposed complies with building regulations (as they apply at the time of the application), and
 - (ii) the requirement is no longer necessary for securing that the purposes of the provision of building regulations to which it relates are not frustrated,
 - (b) on an application made to it for variation of a continuing requirement imposed under that section, make the variation if satisfied that—
 - (i) the building in relation to which the requirement was imposed complies with building regulations (as they apply at the time of the application), and

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- (ii) the variation will not result in the purposes of the provision of building regulations to which the requirement relates being frustrated.
- (2) References in this Act to continuing requirements imposed under section 22 include such requirements as varied under this section.
- (3) Continuing requirements imposed in relation to a building under section 22 cease to have effect if—
 - (a) a building warrant is granted in respect of the building, or
 - (b) a completion certificate submitted under section 17(4) in respect of the building is accepted.
- (4) Subsection (3) does not affect the power of the verifier to impose further continuing requirements in relation to the building under section 22 on granting the building warrant or, as the case may be, accepting the completion certificate referred to in subsection (3).

Building standards registers

24 Building standards registers

- (1) Every local authority must keep a register (a “building standards register”) for the area of the authority containing information in relation to—
 - (a) applications for building warrants and amendments to building warrants,
 - (b) the manner in which such applications have been dealt with, and
 - (c) completion certificates and their acceptance or rejection.
- (2) The Scottish Ministers may by regulations make provision as to—
 - (a) matters, in addition to those specified in subsection (1)(a) to (c), in relation to which building standards registers are to contain information,
 - (b) the information which such registers are to contain,
 - (c) the form and manner in which such registers are to be kept.
- (3) Regulations under subsection (2) may also make provision for—
 - (a) building standards registers to include copies of plans, specifications, estimates of costs, certificates issued by certifiers and other documents,
 - (b) the removal from such registers of all or part of entries relating to applications, and things relating to them.
- (4) Building standards registers must be kept open for public inspection at all reasonable times.