



# Building (Scotland) Act 2003

## 2003 asp 8

### PART 1

#### BUILDING REGULATIONS

##### *Power to make building regulations*

#### **1 Building regulations**

- (1) The Scottish Ministers may, for any of the purposes of—
  - (a) securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings,
  - (b) furthering the conservation of fuel and power, and
  - (c) furthering the achievement of sustainable development,make regulations (“building regulations”) with respect to the design, construction, demolition and conversion of buildings and the provision of services, fittings and equipment in or in connection with buildings.
- (2) Before making regulations under subsection (1) (except regulations consolidating other regulations) or an order under subsection (4) the Scottish Ministers must consult—
  - (a) the Building Standards Advisory Committee, and
  - (b) such other persons as appear to them to be representative of the interests concerned.
- (3) Schedule 1 makes further provision about the matters as to which building regulations may provide.
- (4) The Scottish Ministers may by order modify paragraph 5(2) of that schedule.
- (5) The Scottish Ministers may by order modify any enactment if it appears to them that the enactment is inconsistent with, or is unnecessary or requires alteration in consequence of, any provision of building regulations.

*Status: Point in time view as at 22/09/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, Part 1. (See end of Document for details)*

#### Commencement Information

- II** S. 1 in force at 22.9.2004 for specified purposes and 1.5.2005 in so far as not already in force by S.S.I. 2004/404, art. 2(1)(2), Sch. 1

## 2 Continuing requirements

- (1) Building regulations may impose on owners of buildings to which such regulations apply such continuing requirements as the Scottish Ministers consider appropriate for securing that the purposes of any designated provision of the regulations are not frustrated.
- (2) In subsection (1), “designated provision” means a provision designated in the regulations as one to which the continuing requirements relate.
- (3) A continuing requirement imposed by virtue of subsection (1) does not apply in relation to a building unless a provision of the regulations designated in relation to that requirement applies to the building.
- (4) Continuing requirements may by virtue of subsection (1) be imposed on owners of buildings of such description as the regulations may specify (whenever erected, and whether or not any building regulations were applicable to them at the time of their erection).

#### Commencement Information

- I2** S. 2 in force at 22.9.2004 for specified purposes and 1.5.2005 in so far as not already in force by S.S.I. 2004/404, art. 2(1)(2), Sch. 1

VALID FROM 01/05/2005

### *Relaxation of building regulations*

## 3 Relaxation of building regulations

- (1) This section applies where the Scottish Ministers consider that it is unreasonable that any provision of building regulations which would, apart from this section, apply in relation to any building or description of building should so apply, or should so apply without relaxation.
- (2) Where this section applies the Scottish Ministers may—
  - (a) on an application made to them by any person, give a direction dispensing with or relaxing the provision in question in relation to the building,
  - (b) whether or not on an application made to them, give a direction dispensing with or relaxing the provision in question generally in relation to a description of building.
- (3) No direction may be given under subsection (2) in relation to a provision of building regulations specified in the regulations as one in relation to which such a direction is not competent.

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- (4) A direction under subsection (2)—
  - (a) may be given unconditionally or subject to such conditions as the direction may specify,
  - (b) ceases to have effect on such date (if any) as the direction may specify,
  - (c) may be varied or revoked by a further direction.
- (5) Before giving a direction under subsection (2)(b) or a direction under subsection (4) (c) varying or revoking such a direction the Scottish Ministers must consult—
  - (a) the Building Standards Advisory Committee, and
  - (b) such other persons as appear to them to be representative of the interests concerned.
- (6) The Scottish Ministers must send a copy of any direction under subsection (2)(a) and any direction under subsection (4)(c) varying or revoking such a direction to—
  - (a) the local authority, and
  - (b) every verifier authorised to exercise functions under this Act in relation to the building in question or other buildings of that description in the area of the local authority.
- (7) The Scottish Ministers must send a copy of any direction under subsection (2)(b) and any direction under subsection (4)(c) varying or revoking such a direction to—
  - (a) every verifier, and
  - (b) every local authority which is not a verifier.
- (8) Where—
  - (a) an application for a building warrant is made to a verifier,
  - (b) all or part of the building to which the application relates is of a description to which a direction under subsection (2)(b) relates, and
  - (c) after the application is lodged, the direction ceases to have effect by virtue of subsection (4)(b) or is varied or revoked under subsection (4)(c),the direction (with any conditions specified in it) continues to have effect in relation to the application.
- (9) Unless the context otherwise requires, references in this Act or any other enactment to building regulations are, in relation to any building or description of building in relation to which a direction under this section is in force, to the regulations as, subject to that direction, they apply to that building or description of building.

### *Guidance documents*

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

- (1) The Scottish Ministers may issue guidance documents for the purpose of providing practical guidance with respect to the requirements of any provision of building regulations and may issue revisions of the whole or any part of any guidance document.
- (2) A guidance document or revision issued under subsection (1) takes effect in accordance with a notice issued by the Scottish Ministers—
  - (a) identifying the guidance document or, as the case may be, the revision,

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- (b) stating the date on which the document or revision is to take effect, and
  - (c) specifying the provisions of building regulations for the purpose of which the document or revision is issued.
- (3) The Scottish Ministers may withdraw guidance documents.
- (4) A withdrawal of a guidance document under subsection (3) takes effect in accordance with a notice issued by the Scottish Ministers—
- (a) identifying the document in question, and
  - (b) stating the date on which the document is to cease to have effect.
- (5) In subsections (3) and (4) of this section and section 5—
- “guidance document” means a document issued under subsection (1) of this section subject to any revision issued under that subsection,
- “document” includes part of a document.

#### **Commencement Information**

- I3** S. 4 in force at 22.9.2004 for specified purposes and 1.5.2005 in so far as not already in force by [S.S.I. 2004/404, art. 2\(1\)\(2\)](#), [Sch. 1](#)

VALID FROM 01/05/2005

## **5 Compliance with guidance documents**

- (1) Failure to comply with a guidance document does not render a person liable to civil or criminal proceedings.
- (2) But proof of compliance with such a document may be relied on in any proceedings (whether civil or criminal) as tending to negative liability for an alleged contravention of building regulations.
- (3) In any proceedings (whether civil or criminal)—
- (a) a document purporting to be a notice issued under section 4(2) or (4) is to be taken to be such a notice unless the contrary is proved,
  - (b) a document which appears to the court to be the guidance document to which such a notice refers is to be taken to be that guidance document unless the contrary is proved.

PROSPECTIVE

### *Building standards assessments*

## **6 Building standards assessments**

- (1) A local authority must, if requested to do so by the owner of a building, carry out a building standards assessment.

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- (2) A building standards assessment is an assessment of the extent to which the authority considers that—
  - (a) the building complies with building regulations as the regulations apply to the building at the time of the assessment,
  - (b) any work which has been carried out in relation to the building was carried out without any authorisation required by or under any enactment,
  - (c) any continuing requirement which applies in relation to the building is being and has been complied with,
  - (d) the building has defects which entitle the authority to serve on the owner a defective building notice.
  
- (3) The Scottish Ministers may by regulations make further provision as to the matters to be assessed in a building standards assessment including, in particular, provision as to—
  - (a) the period to which an assessment in pursuance of subsection (2)(b) is to relate,
  - (b) circumstances in which an assessment is to be made in relation to part only of a building or, where a building forms part of a larger building, in relation to that larger building,
  - (c) matters which are not to be included in an assessment in any particular case or description of case.

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