



# Building (Scotland) Act 1959 (repealed)

1959 CHAPTER 24 7 and 8 Eliz 2

## PART II

### BUILDING STANDARDS AND BUILDING OPERATIONS

#### 3 Building standards regulations.

- (1) For the purposes of this Act the [<sup>F1</sup>Scottish Ministers] may (subject to the subsequent provisions of this Act) by regulations prescribe standards (expressed in terms of performance, types of material, methods of construction or otherwise) in relation to any or all of the matters specified in the Fourth Schedule to this Act, and such other matters relating to buildings as appear to him after consultation with the Building Standards Advisory Committee to be relevant to the said purposes.

Regulations made under this subsection are in this Act referred to as “building standards regulations”, and references to the building standards regulations in relation to a building of any particular class are references to so much of the regulations as apply to a building of that class.

- (2) The standards prescribed under the foregoing subsection shall be such as in the opinion of the [<sup>F1</sup>Scottish Ministers] can reasonably be expected to be attained in buildings of the classes to which they relate, having regard to the need for securing the health, safety [<sup>F2</sup>welfare] and convenience of the persons who will inhabit or frequent such buildings and the safety of the public generally [<sup>F3</sup>and for furthering the conservation of fuel and power.]
- (3) Without prejudice to the generality of the foregoing provisions of this section building standards regulations may—
- (a) prescribe different standards for buildings of different classes;
  - (b) make special provision for buildings intended to have a life not exceeding such period, being a period of ten years or less, as may be specified in the regulations;
  - (c) provide for buildings constructed with materials of such types or by such methods of construction as may be specified in the regulations to be deemed

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to satisfy such standards as may be so specified in relation to those types of material, or, as the case may be, those methods of construction.

[<sup>F4</sup>(d) be framed to any extent by reference to a document published by or on behalf of the [<sup>F1</sup>Scottish Ministers] or any other person.]

- (4) Building standards regulations shall not apply to—
- (a) buildings belonging to, or in the occupation of, the United Kingdom Atomic Energy Authority, being buildings other than dwelling houses or offices; or
  - (b) buildings of such other classes as may be specified in the regulations as exempted classes [<sup>F5</sup>, to such extent as may be specified in the regulations].
- (5) For the purposes of this Act and any regulations made thereunder buildings may be classified by reference to size, description, design, purpose, location or any other characteristic whatsoever.

[<sup>F6</sup>(6) Before making regulations under this section (except regulations to be made for the purpose only of consolidating other regulations revoked thereby) the [<sup>F1</sup>Scottish Ministers] shall consult the Building Standards Advisory Committee and such other bodies as appear to him to be representative of the interests concerned.]

[<sup>F7</sup>(7) The [<sup>F1</sup>Scottish Ministers] may by order made by statutory instrument repeal or modify any enactment to which this subsection applies if it appears to him that the enactment is inconsistent with, or is unnecessary or requires alteration in consequence of, any provision contained in the building standards regulations.

This subsection applies to any enactment contained in any Act passed before or in the same Session as the <sup>M1</sup>Health and Safety at Work etc. Act 1974 other than an enactment contained in the Building (Scotland) Act 1959.]

#### Textual Amendments

- F1** Words in Act substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 29(2)**
- F2** Words inserted by Health and Safety at Work etc. Act 1974 (c. 37), **Sch. 7 para. 6**
- F3** Words added by Health and Safety at Work etc. Act 1974 (c. 37), **Sch. 7 para. 1(a)**
- F4** S. 3(3)(d) added by Health and Safety at Work etc. Act 1974 (c. 37), **Sch. 7 para. 1(b)**
- F5** Words inserted by Housing (Scotland) Act 1986 (c. 65, SIF 61), **s. 19(2)**
- F6** S. 3(6) substituted by Building (Scotland) Act 1970 (c. 38), **s. 1**
- F7** S. 3(7) added by Health and Safety at Work etc. Act 1974 (c. 37), **Sch. 7 para. 1(c)**

#### Modifications etc. (not altering text)

- C1** S. 3(3)(b) amended (1.4.1991) by S.I. 1990/2179, **reg. 5**

#### Marginal Citations

- M1** 1974 c. 37.

#### [<sup>F8</sup>4 Relaxation of building standards regulations.

- (1) Subject to the provisions of this section, if in relation to any particular building or any class of building it appears to the [<sup>F9</sup>Scottish Ministers] that it is unreasonable that any provision of the building standards regulations (being a provision which apart from this section applies, or by reason of a proposed change of use will apply, to that building or class of building) should apply to the building or class of building, or should so apply without relaxation, he may—

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- (a) in the case of a particular building, on an application made to him in that behalf give a direction dispensing with or relaxing that provision in relation to that building;
  - (b) in the case of a class of building, either on an application made to him in that behalf or of his own accord give a direction dispensing with or relaxing that provision generally in relation to that class of building.
- (2) If the [<sup>F9</sup>Scottish Ministers] by regulations so provides as regards any provision of the building standards regulations, the power to dispense with or relax that provision under subsection (1)(a) above shall be exercisable by buildings authorities instead of by the [<sup>F9</sup>Scottish Ministers]:  
Provided that any regulations made by virtue of this subsection [<sup>F10</sup>may except applications of any description.]
- (3) A direction under this section shall not be given in respect of any provision of the building standards regulations which is described in those regulations as not being subject to a direction under this section.
- (4) Subject to subsection (5) below, a direction under this section may be given either unconditionally or subject to such conditions specified in the direction as appear to the [<sup>F9</sup>Scottish Ministers] or, as the case may be, the buildings authority to be required as a direct result of the dispensation or relaxation, not being conditions by virtue of which the direction is to cease to have effect in whole or in part, or an obligation to carry out any operations is to arise for any person, either—
- (a) on a fixed date, or
  - (b) on, or on a date fixed by reference to, the occurrence of any event.
- [ A direction under subsection (1)(b) above—
- <sup>F11</sup>(5) (a) shall, if it so provides, cease to have effect at the end of such period as may be specified in the direction;
- (b) may be varied or revoked by a subsequent direction of the [<sup>F9</sup>Scottish Ministers].
- (5A) If at any time a direction under subsection (1)(b) above ceases to have effect by virtue of subsection (5)(a) above or is varied or revoked under subsection (5)(b) above, that fact shall not affect the continued operation of the direction (with any conditions specified therein) in any case in which before that time an application for a warrant in connection with the construction or change of use of a building, part or all of which is of the class to which the direction relates, was, in accordance with regulations made under section 2 of this Act, lodged with a buildings authority.]
- (6) Before giving a direction under subsection (1)(b) [<sup>F12</sup>or (5)(b)] above the [<sup>F9</sup>Scottish Ministers] shall consult the Building Standards Advisory Committee.
- (7) The [<sup>F9</sup>Scottish Ministers] shall notify all [<sup>F13</sup>local authorities] of the giving of a direction under subsection (1)(b) [<sup>F12</sup>or (5)(b)] above and shall at the request of any [<sup>F13</sup>local authority] make available to the authority a copy of any such direction without charge.
- [ A person making an application under subsection (1)(b) above shall pay to the
- <sup>F14</sup>(7A) [<sup>F9</sup>Scottish Ministers] such fee as may be prescribed; and regulations made by virtue of this subsection may prescribe different fees for different cases:  
Provided that the [<sup>F9</sup>Scottish Ministers] may in any particular case remit the whole or part of any fee payable by virtue of this subsection.]

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- (8) The [<sup>F9</sup>Scottish Ministers] may make regulations with respect to the procedure to be followed in connection with applications and directions under this section and with appeals under section 4A of this Act.
- (9) Unless the context otherwise requires, references in this or any other enactment (whether passed or made before or after the passing of this Act) to building standards regulations shall, in relation to any building or class of building with respect to which a direction under this section or section 4A(3) of this Act is for the time being in force, be construed as references to the said regulations as, subject to that direction, they apply to that building or class of building.]

#### Textual Amendments

- F8** Ss. 4, 4A substituted for s. 4 by [Building \(Scotland\) Act 1970 \(c. 38\), s. 2](#)
- F9** Words in Act substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. I para. 29\(2\)](#)
- F10** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 4](#)
- F11** S. 4(5), (5A) substituted for s. 4(5) by Health and Safety at Work etc. Act 1974 (c. 37), [Sch. 7 para. 2\(a\)](#)
- F12** Words inserted by Health and Safety at Work etc. Act 1974 (c. 37), [Sch. 7 para. 2\(b\)](#)
- F13** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 1](#)
- F14** S. 4(7A) added (prosp.) by Health and Safety at Work etc. Act 1974 (c. 37), s. 85(2), [Sch. 7 para. 2\(c\)](#)

#### **4A Appeal against decision of [<sup>F15</sup>local authority] in application for relaxation of building standards regulations.**

- (1) If a [<sup>F15</sup>local authority]—
- (a) refuse an application to dispense with or relax any provision of the building standards regulations which they have power to dispense with or relax, or
  - (b) grant such an application subject to conditions,
- the applicant may, within such period from the date on which the [<sup>F15</sup>local authority] notify him of their decision as may be prescribed by regulations made under section 4(8) of this Act, appeal to the [<sup>F16</sup>Scottish Ministers] against the refusal or, as the case may be, against any of the said conditions.
- (2) If within such period as may be prescribed by regulations made under the said section 4(8), or within such extended period as may at any time be agreed in writing between the applicant and the [<sup>F15</sup>local authority], the [<sup>F15</sup>local authority] do not notify the applicant of their decision on the application, subsection (1) above shall apply in relation to the application as if the [<sup>F15</sup>local authority] had refused the application and notified the applicant of their decision on the last day of the said period.
- (3) On any appeal under this section, the [<sup>F16</sup>Scottish Ministers] may either—
- (a) confirm the decision of the [<sup>F15</sup>local authority], or
  - (b) substitute for that decision such other decision as seems to him proper, and for that purpose give any such direction as he might have given if the [<sup>F15</sup>local authority] had not had power to dispense with or relax the provision in question and the application had been made to him under section 4(1)(a) of this Act.

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### Textual Amendments

**F15** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 1](#)

**F16** Words in Act substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. I para. 29\(2\)](#)

### [<sup>F17</sup>4B] Class warrants.

- (1) The following provisions of this section shall have effect with a view to enabling the [<sup>F18</sup>Scottish Ministers], on an application being made to him under this section, to issue a certificate (to be known as a “class warrant”) that a particular design (including specification of materials) of building conforms, either generally or in any class of case, to particular provisions of the building standards regulations.
- (2) A person intending to apply for a class warrant under this section shall send a copy of the prospective application in the prescribed manner to a body designated by the [<sup>F18</sup>Scottish Ministers] which, if it is satisfied that the design in respect of which the warrant is sought conforms to the building standards regulations, shall recommend that the class warrant be issued.
- (3) An application to the [<sup>F18</sup>Scottish Ministers] for a class warrant under this section shall be made in the prescribed manner and shall be accompanied by a relevant recommendation made under subsection (2) above.
- (4) The [<sup>F18</sup>Scottish Ministers] may, where a recommendation under subsection (2) above is made in respect of a design of building, issue a class warrant in respect of that design; and a class warrant so issued shall be accepted by a local authority as conclusive of the matters stated therein.
- (5) A body designated under subsection (2) above may charge such a fee for considering a design in respect of which a copy application has been sent to it under that subsection as may be agreed between the applicant and the body.
- (6) A class warrant shall, if it so provides, cease to have effect at the end of such period as may be specified in it.
- (7) The [Scottish Ministers] may at any time vary or revoke a class warrant; but before doing so he shall give the person on whose application it was issued reasonable notice that he proposes so to do.
- (8) Where the [<sup>F18</sup>Scottish Ministers] varies or revokes a class warrant he shall publish notice of that fact in such manner as he thinks fit.
- (9) There may be prescribed—
  - (a) the type, part or parts of building to which the provisions of this section shall apply;
  - (b) the terms and conditions on which a class warrant may be issued;
  - (c) procedures incidental to any provisions of this section;
  - (d) the fee, if any, to be charged for issuing a class warrant;
  - (e) any variations in the design of building which will be permitted.
- (10) Where a fee is chargeable by virtue of subsection (9)(d) above, the regulations under which it is chargeable may make different provision (which, without prejudice to the generality of this subsection, may include provision for remission of the fee in whole or in part) for—

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- (a) different cases or classes of case; or
  - (b) different circumstances or classes of circumstances,
- (difference being determined by reference to any factor or factors whatsoever).]

#### Textual Amendments

**F17** S. 4B substituted by [Housing \(Scotland\) Act 1986 \(c. 65, SIF 61\), s. 19\(3\)](#)

**F18** Words in Act substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2 Pt. I para. 29\(2\)](#)

## 5 Building operations regulations.

- (1) The [<sup>F19</sup>Scottish Ministers] may make such regulations (in this Act referred to as “building operations regulations”) for the conduct of operations for the construction, repair, maintenance or demolition of buildings as he considers expedient to secure the safety of the public; and regulations under this subsection may make different provision for different classes of operations.
- (2) Any person who contravenes any provision of the building operations regulations shall be guilty of an offence against this Act.

#### Textual Amendments

**F19** Words in Act substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2 Pt. I para. 29\(2\)](#)

## 6 Application of building standards regulations and building operations regulations to construction or demolition, and to change of use, of buildings.

- (1) No person shall—
  - (a) in any place conduct any operations for the construction or demolition of a building of a class to which the building standards regulations apply, or
  - (b) change the use of any building.

unless there has been obtained from the [<sup>F20</sup>local authority] a warrant for the construction, demolition or change of use, as the case may be, and any person who contravenes this subsection shall be guilty of an offence against this Act:  
 Provided that nothing in this subsection shall apply to any operations for the alteration of a building which consist solely of the fitting of a fixture of any such kind as may be prescribed for the purposes of this subsection.
- (2) A [<sup>F20</sup>local authority] shall, subject to subsection (8) of this section, [<sup>F21</sup>and to section 6A of this Act] grant a warrant such as is mentioned in the foregoing subsection on application being made therefor in the prescribed manner—
  - (a) in the case of a warrant for the construction or demolition of a building, if, but only if, they are satisfied that the operations involved will be conducted in accordance with the building operations regulations, and (in the case of operations for the construction of a building) that nothing in any plan, specification or other information submitted with the application shows that the building when constructed will fail to conform to the building standards regulations; and
  - (b) in the case of a warrant for the change of use of a building, if, but only if, they are satisfied that after the change of use the building will conform to so much

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of the building standards regulations as will become applicable, or will apply more onerously, to the building by reason of the change of use.

- (3) A warrant for the construction of a building shall be subject to the condition that the building shall be constructed as described in the warrant (including any relative plans and specifications) and in accordance with the building standards regulations, and, in a case where a direction has been given [F22]under—
- (a) section 4 or 4A(3) of this Act, subject also to the condition that such conditions, if any, as are specified in the direction are observed;
  - (b) section 6A(7) of this Act, subject also to the condition that such requirements as are specified in the direction are complied with.]

[F23(3A) Notwithstanding that a [F20]local authority] are not satisfied that the information submitted to them with an application for a warrant for the construction of a building is sufficient in respect of such stage in the construction as may be prescribed to show that the building when constructed will not fail to conform to the building standards regulations, they may grant a warrant for the construction of the building but subject to the condition that work on such prescribed stage shall not be proceeded with until such further information relating to that stage as they may require is submitted to them and until they have made an amendment to the terms of the warrant authorising such work to proceed:

Provided that they shall, subject to subsection (8) of this section, make such an amendment on application being made therefor in the prescribed manner only if they are satisfied that nothing in the information submitted to them in respect of the prescribed stage shows that that stage when constructed will fail to conform to the building standards regulations.]

- (4) In relation to a building to be constructed in accordance with any special provisions of the building standards regulations relating to buildings intended to have a limited life (as mentioned in paragraph (b) of subsection (3) of section three of this Act) any application for a warrant shall state the period of intended life of the building (being not greater than that specified in the said provisions of the building standards regulations) and, without prejudice to the last foregoing subsection and subject to the next following subsection, the warrant shall be subject to the condition that the building will be demolished on or before the expiration of the period so stated.
- (5) Where a warrant contains such a condition as is mentioned in the last foregoing subsection application may be made to the [F20]local authority], before the expiration of the period specified in the warrant, for an extension of the said period and the authority may, if they are satisfied that it is proper to do so, having regard to the special provisions mentioned in the last foregoing subsection, extend the period, and further extend it from time to time, so however that no such extension by itself shall exceed the period for the time being specified in the said provisions in the building standards regulations.
- (6) A warrant for the demolition of a building shall be subject to the condition that the demolition shall be completed within such period from the commencement of the operations for the demolition as may be specified in the warrant.
- (7) If, after a warrant has been granted for the construction of a building and before any certificate of completion has been granted in respect of the building, the person holding the warrant desires to deviate from any plans or specifications to which he is required by the warrant to adhere he may apply to the [F20]local authority] for an amendment of the terms of the warrant to cover the proposed deviation, and that authority shall then

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(subject to the next following subsection) make the amendment if, but only if, they are satisfied that the proposed deviation is in conformity with the building standards regulations.

(8) Notwithstanding anything in this section it shall be competent for—

- (a) . . . . .<sup>F24</sup>
- [<sup>F25</sup>(b) any [<sup>F20</sup>local authority] to refuse to grant a warrant (or an amendment of the terms of a warrant) if the application for it has not been duly made in the prescribed manner, or
- (c) any [<sup>F20</sup>local authority] to refuse to grant a warrant (or an amendment of the terms of a warrant), where the application relates to an extension to, or alteration of, a building, if they consider—
  - (i) in the case of a building which at the time of the application conformed to the building standards regulations, that as a direct result of the extension or, as the case may be, the alteration the building as extended or altered will fail to conform to the said regulations, or
  - (ii) in the case of a building which at the time of the application failed to conform to the building standards regulations, that as a direct result of the extension or, as the case may be, the alteration, the building as extended or altered will fail to conform to the said regulations to a greater degree than that to which it failed to conform at the time of the application.]

and nothing in this section shall be taken to prejudice the operation of . . . .<sup>F26</sup>[<sup>F27</sup>section 33 of the <sup>M2</sup>Civil Defence Act 1939, section 10 of the <sup>M3</sup>Clean Air Act 1956] or sections two, three, or six of the <sup>M4</sup>Thermal Insulation (Industrial Buildings) Act 1957 (which sections in their application to Scotland relate to the power of [<sup>F20</sup>local authorities] to refuse to grant warrants in certain circumstances).

(9) Where under any provision of this Act or any other enactment a person is required or authorised—

- (a) by a [<sup>F20</sup>local authority] to carry out any operations for the construction or demolition of any building, . . . .<sup>F28</sup>
- (b) . . . . .<sup>F24</sup>

a warrant shall be deemed to have been granted in respect of the construction or, as the case may be, the demolition.

(10) For avoidance of doubt it is hereby declared that, in respect of any building, subsection (1) of this section applies to any such deviation as is mentioned in subsection (7) of this section as it applies to the construction of the building.

#### Textual Amendments

- F20** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 1](#)
- F21** Words inserted by [Building \(Scotland\) Act 1970 \(c. 38\), Sch. 1 Pt. I para. 1\(a\)](#)
- F22** Words substituted by [Building \(Scotland\) Act 1970 \(c. 38\), Sch. 1 Pt. I para. 1\(b\)](#)
- F23** [S. 6\(3A\) added by Health and Safety at Work etc. Act 1974 \(c. 37\), Sch. 7, para. 4\(a\)](#)
- F24** [Ss. 1, 2\(1\)—\(3\), 6\(8\)\(a\)\(9\)\(b\), 9\(7\)\(8\), 18\(2\), 21, 27, 29\(6\)\(7\)\(9\), Schs. 1, 2, 8, 9 paras. 2, 3 repealed by Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)
- F25** [S. 6\(8\)\(b\)\(c\) substituted for s. 6\(8\)\(b\) by Building \(Scotland\) Act 1970 \(c. 38\), s. 3](#)
- F26** Words repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\), s. 1\(1\), Sch. 1 Pt. VII](#)
- F27** Words inserted by [Building \(Scotland\) Act 1970 \(c. 38\), Sch. 1 Pt. I para. 1\(c\)](#)
- F28** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)



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#### Modifications etc. (not altering text)

- C2 S. 6 applied with modification by [Control of Pollution Act 1974 \(c. 40\), s. 61\(2\)](#)  
C3 The proviso to section 6(1) amended (1.4.1991) by S.I. 1990/2179, [reg. 4](#)

#### Marginal Citations

- M2 1939 c. 31.  
M3 1956 c. 52.  
M4 1957 c. 40.

### [<sup>F29</sup>6AA Self-certification of design.

- (1) On making an application for a warrant under section 6 of this Act, an applicant may submit a certificate issued under this section certifying that the design (including the specification of material to be used) of the building complies with building standards regulations prescribed under paragraph (a) of subsection (2) below; and in determining whether to issue the warrant, the local authority shall accept the certificate as conclusive of the facts to which it relates.
- (2) There may be prescribed—
  - (a) the part or parts of the building standards regulations in relation to which a certificate under this section may be submitted and different provision may be made in respect of different parts of the regulations and in respect of different types of building;
  - (b) whether or not by reference to specific criteria, such person or persons as shall be entitled to issue such certificate;
  - (c) the form of such certificate;
  - (d) the drawings, plans, specifications or other material which shall be submitted with the certificate.]

#### Textual Amendments

- F29 S. 6AA inserted after s. 6 by [Housing \(Scotland\) Act 1986 \(c. 65, SIF 61\), s. 19\(4\)](#)

### [<sup>F30</sup>6A Reference to [<sup>F31</sup>Scottish Ministers] of applications for warrant under s. 6.

- (1) The [<sup>F31</sup>Scottish Ministers] may give directions [requiring applications under section 6 of this Act for a warrant for the construction or change of use of a building, or for the amendment of the terms of a warrant for the construction of a building, to be referred to him.
- (2) A direction under subsection (1) above—
  - (a) may be given either to a particular [<sup>F32</sup>local authority] or to [<sup>F32</sup>local authorities] generally, and
  - (b) may relate either to a particular application or to applications of a class specified in the direction.
- (3) Any application to which a direction under subsection (1) above relates shall be referred to the [<sup>F31</sup>Scottish Ministers] accordingly:  
Provided that, if any such application has not been duly made in the prescribed manner, the [<sup>F32</sup>local authority] may refuse the application without referring it to the [<sup>F31</sup>Scottish

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Ministers], and for the purposes of section 6(8)(b) of this Act any application referred to the [<sup>F31</sup>Scottish Ministers] under this subsection shall be deemed to have been duly made in the prescribed manner.

- (4) Where an application is referred to the [<sup>F31</sup>Scottish Ministers] under subsection (3) above he shall give notice to the [<sup>F32</sup>local authority] either—
- (a) that he does not propose to deal with the application, in which case it shall be considered and decided by the [<sup>F32</sup>local authority] in accordance with the provisions of section 6 of this Act; or
  - (b) that he proposes to consider and determine, in relation to the application, such of the questions mentioned in subsection (5) below as he may specify in the notice, in which case the application shall, subject to subsection (6) below, be considered and decided by the [<sup>F32</sup>local authority] as aforesaid; or
  - (c) that he proposes to consider the question whether, having regard to the need to secure the health or safety of the persons who will inhabit or frequent the building to which the application relates or the safety of the public generally, it is reasonable to impose in relation to that building requirements additional to or more onerous than those contained in the building standards regulations, in which case the application shall, subject to subsection (7) below, be considered and decided by the [<sup>F32</sup>local authority] as aforesaid; or
  - (d) to the effect mentioned in paragraph (b) above and also to the effect mentioned in paragraph (c) above, in which case the application shall, subject to subsections (6) and (7) below, be considered and decided by the [<sup>F32</sup>local authority] as aforesaid.
- (5) The questions referred to in subsection (4) above are—
- (a) in the case of an application for a warrant for the construction of a building or for the amendment of the terms of such a warrant, the question whether anything in any plans, specifications or other information submitted with the application shows that the building when constructed will fail to conform to the building standards regulations or to such part of those regulations as the [<sup>F31</sup>Scottish Ministers] may specify in the notice given by him under subsection (4) above in relation to that application;
  - (b) where such an application as is mentioned in paragraph (a) above relates to an extension to, or alteration of, a building, the following additional questions, namely—
    - (i) whether at the time of the application the building conformed to the building standards regulations or to such part of those regulations as the [<sup>F31</sup>Scottish Ministers] may specify as aforesaid;
    - (ii) if the building so conformed, whether as a direct result of the extension or, as the case may be, the alteration the building as extended or altered will fail to conform to the building standards regulations or, as the case may be, to the part thereof so specified;
    - (iii) if the building failed to conform as mentioned in sub-paragraph (i) above, whether as a direct result of the extension or, as the case may be, the alteration the building as extended or altered will fail to conform to the building standards regulations or, as the case may be, to the part thereof so specified to a greater degree than that to which it failed to conform at the time of the application;
  - (c) in the case of an application for a warrant for the change of use of a building, the question whether after the change of use the building will conform to so much of the building standards regulations, or to so much of such part of

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those regulations as the [<sup>F31</sup>Scottish Ministers] may specify as aforesaid, as will become applicable, or as will apply more onerously, to the building by reason of the change of use.

- (6) Where in pursuance of paragraph (b) or paragraph (d) of subsection (4) above, the [<sup>F31</sup>Scottish Ministers] gives to a [<sup>F32</sup>local authority] a notice to the effect mentioned in the said paragraph (b), he shall consider and determine, in relation to the application to which the notice relates, the questions specified in the notice and shall intimate his determination to the [<sup>F32</sup>local authority], and in considering the application the [<sup>F32</sup>local authority] shall treat that determination as conclusive of the said questions and shall decide the application accordingly under section 6 of this Act:

Provided that, for the purposes of such a decision, subsection (8) of the said section 6 shall have effect as if it imposed a duty on the [<sup>F32</sup>local authority] to refuse to grant a warrant in the circumstances mentioned in paragraph (c) of that subsection.

- (7) Where in pursuance of paragraph (c) or paragraph (d) of subsection (4) above, the [<sup>F31</sup>Scottish Ministers] gives to a [<sup>F32</sup>local authority] a notice to the effect mentioned in the said paragraph (c), he shall consider the question mentioned in the said paragraph (c), and if after consulting the Building Standards Advisory Committee and such other persons as may be specified in regulations made under section 6B(3) of this Act he considers that it is reasonable to impose in relation to the building to which the application relates requirements additional to or more onerous than those contained in the building standards regulations, he shall give a direction that, if the warrant applied for is granted, that warrant shall be subject to the condition that such additional or more onerous requirements as may be specified in the direction are complied with, and shall intimate that direction to the [<sup>F32</sup>local authority.]

- (8) The [<sup>F31</sup>Scottish Ministers] may give directions requiring applications under section 6(5) of this Act for an extension of the period specified in a warrant for the construction of a building intended to have a limited life to be referred to him; and where any such application is so referred to him, the [<sup>F31</sup>Scottish Ministers] shall—

- (a) consider and determine the question whether, having regard to the special provisions of the building standards regulations mentioned in section 6(4) of this Act, it is proper to extend the said period and, if so, by how much, and  
(b) intimate his determination to the [<sup>F32</sup>local authority,]

and the [<sup>F32</sup>local authority] in deciding the application shall give effect to that determination.

Subsections (2) and (3) above shall apply for the purposes of this subsection as if directions under this subsection were directions under subsection (1) above.]

#### Textual Amendments

**F30** Ss. 6A, 6B added by Building (Scotland) Act 1970 (c. 38), s. 4

**F31** Words in Act substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 29(2)

**F32** Words substituted by Local Government (Scotland) Act 1973 (c. 65), Sch. 15 para. 1

#### [<sup>F33</sup>6B Provisions supplementary to s. 6A.

- (1) Where an application is referred to the [<sup>F34</sup>Scottish Ministers] under section 6A(3) of this Act, the power to give a direction under section 4(1)(a) of this Act dispensing with or relaxing any provision of the building standards regulations in relation to the

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building to which the said application relates shall be exercisable by the [F34Scottish Ministers]—

- (a) either on an application made to him in that behalf or of his own accord;
- (b) notwithstanding that the power to dispense with or relax that provision under the said section 4(1)(a) is for the time being exercisable by the [F35local authority] by virtue of regulations made under section 4(2) of this Act.

(2) It shall not be competent to appeal—

- (a) under section 16(1)(a) of this Act against a decision of a [F35local authority] refusing to grant a warrant for the construction or change of use of a building, in so far as the reasons for that decision include a determination intimated to the authority by the [F34Scottish Ministers] in pursuance of section 6A(6) of this Act;
- (b) under section 16(1)(b) of this Act against a decision of a [F35local authority] refusing to extend a period relating to a building intended to have a limited life, if the reason for that decision is a determination intimated to the authority by the [F34Scottish Ministers] in pursuance of section 6A(8) of this Act.

(3) The [F34Scottish Ministers] may make regulations with respect to the procedure to be followed in connection with the reference to him of applications by virtue of section 6A of this Act and the consideration and disposal of applications so referred.]

**Textual Amendments**

**F33** Ss. 6A, 6B added by [Building \(Scotland\) Act 1970 \(c. 38\), s. 4](#)

**F34** Words in Act substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. I para. 29\(2\)](#)

**F35** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 1](#)

7 ..... F36

**Textual Amendments**

**F36** S. 7 repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 237\(1\), Sch. 29](#)

8 ..... F37

**Textual Amendments**

**F37** S. 8 repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\), s. 156\(3\), Sch. 11](#)

**9 Certificates of completion.**

(1) After the completion of the construction of any building in respect of which a warrant has been granted by a [F38local authority] any person having an interest to do so may apply to the [F38local authority] for a certificate under this section (in this Act referred to as a “certificate of completion”), and within such period as may be prescribed the [F38local authority] shall, in accordance with the following provisions of this section, either grant the certificate or notify the applicant of their refusal to do so.

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- (2) A buildings authority shall grant a certificate of completion in respect of any building if, <sup>F39</sup>so far as they are able to ascertain after taking all reasonable steps in that behalf,] the building complies with the conditions on which the relative warrant was granted.
- <sup>F40</sup>(2A) Where the <sup>F41</sup>Scottish Ministers] has issued a relevant class warrant, a local authority shall grant a certificate of completion in respect of any building unless—
- (i) the approved design (or an approved variation) has not been complied with whether by reason of faulty workmanship or otherwise; or
  - (ii) the building standards regulations in relation to any part of the building to which section 4B of this Act does not apply have not been complied with.]
- (3) In respect of so much of a building as consists of an electrical installation a building authority shall not <sup>F39</sup>grant a certificate of completion] unless there is produced to them a certificate granted by the person who installed the installation certifying that the installation complies with such of the said conditions as relate to it:  
Provided that this subsection shall not apply in a case where it is shown to the satisfaction of the <sup>F38</sup>local authority] that for some reasonable cause such a certificate cannot be produced.
- <sup>F42</sup>(3A) In respect of so much of a building as consists of such an installation as may be prescribed, not being an electrical installation, a <sup>F38</sup>local authority] shall not grant a certificate of completion unless there is produced to them a certificate granted by a person of such class as may be prescribed certifying that the installation complies with such of the said conditions as relate to it:  
Provided that this subsection shall not apply in a case where it is shown to the satisfaction of the <sup>F38</sup>local authority] that for some reasonable cause such a certificate cannot be produced.]
- (4) If any person, for the purpose of procuring the grant of a certificate of completion, grants or produces under <sup>F43</sup>subsection (3) or (3A) above] a certificate which he knows to be false or misleading in a material particular, or recklessly grants or produces such a certificate which is false or misleading in a material particular, he shall be guilty of an offence against this Act.
- (5) Subject to the next following subsection, no person shall occupy or use a building (being a building which has been constructed by virtue of a warrant granted under this Act) before a certificate of completion in respect of the building has been issued by the <sup>F38</sup>local authority], and any person who wilfully contravenes this subsection shall be guilty of an offence against this Act:  
Provided that nothing in this subsection shall apply to any occupation or use which is solely for the purpose of the construction of the building.
- (6) Where on application made to them it appears to a <sup>F38</sup>local authority] that, because of exceptional circumstances, it is reasonable that a building to which the last foregoing subsection applies should be temporarily occupied or used before a certificate of completion in respect of it has been issued they may (whether or not the construction of the building has been completed) grant written permission for such occupation or use during such period as may be specified in the permission (which period may be extended from time to time by a like permission); and while any permission under this subsection is in force in relation to any building the last foregoing subsection shall not have effect in relation to that building.
- (7) . . . . . <sup>F44</sup>

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*Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 1959 (repealed), Part II. (See end of Document for details)*

(8) ..... F44

#### Textual Amendments

- F38** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 15 para. 1](#)
- F39** Words substituted by Health and Safety at [Work etc. Act 1974 \(c. 37\)](#), [Sch. 7 para. 5\(a\)\(b\)](#)
- F40** [S. 9\(2A\)](#) inserted by [Housing \(Scotland\) Act 1986 \(c. 65, SIF 61\)](#), [s. 19\(5\)](#)
- F41** Words in Act substituted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 29\(2\)](#)
- F42** [S. 9\(3A\)](#) added by Health and Safety at [Work etc. Act 1974 \(c. 37\)](#), [Sch. 7 para. 5\(c\)](#)
- F43** Words substituted by Health and Safety at [Work etc. Act 1974 \(c. 37\)](#), [Sch. 7 para. 5\(d\)](#)
- F44** [Ss. 1, 2\(1\)–\(3\), 6\(8\)\(a\)\(9\)\(b\), 9\(7\)\(8\), 18\(2\), 21, 27, 29\(6\)\(7\)\(9\)](#), [Schs. 1, 2, 8, 9 paras. 2, 3](#) repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 29](#)

## 10 Powers in relation to buildings constructed without warrant or in contravention of conditions of warrant, and buildings whose life has expired.

(1) If it appears to the [<sup>F45</sup>local authority] that any building of a class to which the building standards regulations apply—

- (a) has been or is being constructed without a warrant in respect of the construction having been obtained, or in contravention of the conditions on which a warrant was obtained, or
- (b) remains in existence after the expiration of any period limited for it by the conditions on which the warrant for its construction was obtained,

[<sup>F46</sup>they] may serve upon—

- (i) the person by whom, or on whose behalf, the building has been or is being constructed, or
- (ii) if that person no longer has an interest in the building, any other person who at the material time is entitled to the interest in the building which that person formerly had, or, if at the material time there is no such other person, the owner of the building,

a notice requiring him within such period as may be specified in the notice, being a period of not less than twenty-one days from the service of the notice, to show cause to the [<sup>F47</sup>local authority] why he should not be required to execute such operations as may be specified in the notice, being operations for the removal of the building or operations necessary to make the building conform to the building standards regulations . . . <sup>F48</sup>

[<sup>F49</sup>(1A)] In any case falling within paragraph (a) of subsection (1) above, if within the period specified in the notice mentioned in that subsection the person upon whom that notice was served applies for a direction under section 4 of this Act in respect of the building and (if the application is made to the [<sup>F50</sup>Scottish Ministers]) notifies the [<sup>F47</sup>local authority] that he has done so, the said period shall be deemed to be extended so as to expire—

- (a) where the direction applied for is given, at the end of the period of twenty-one days from the date of the giving of the direction;
- (b) where the direction is refused by the [<sup>F50</sup>Scottish Ministers], at the end of the period of twenty-one days from the date of the refusal to give the direction;
- (c) where the direction is refused by the [<sup>F47</sup>local authority] or is granted by the authority subject to conditions—

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- (i) if no appeal is made within the period within which an appeal can be made to the [F50Scottish Ministers] under section 4A of this Act, at the end of that period,
- (ii) if an appeal is made to the [F50Scottish Ministers] under the said section 4A, at the end of the period of twenty-one days from the date on which the appeal is determined or abandoned;

and any reference in the following provisions of this section to the operations specified in the notice shall, in a case where the building standards regulations are relaxed by any such direction, be construed as a reference to those operations in so far as they are necessary to make the building conform to the said regulations as so relaxed.

- (1B) If within the period specified in the notice mentioned in subsection (1) above (or, in a case falling within subsection (1A) above, that period as extended by virtue of that subsection) the person upon whom the notice has been served fails to show cause to the satisfaction of the [F47local authority] why he should not be required to execute the operations specified in the notice, the [F47local authority] may order him within such period as may be specified in the order, being a period of not less than twenty-eight days from the date when the order becomes operative, to execute the operations aforesaid or such other operations for the same purpose as may be specified in the order.]
- (2) Subject to the provisions of section seventeen of this Act, if on the expiration of the period specified in the order mentioned in [F51subsection (1B) above] the person against whom the order has been made has not complied therewith, he shall be guilty of an offence against this Act, and the [F52local authority may] execute the operations which the said person has failed to execute; . . . F53 and any expenses thereby incurred by them shall be recoverable from the said person as a debt.
- (3) The provisions of the Sixth Schedule to this Act shall have effect for the purpose of securing the recovery by a local authority of any expenses recoverable by them under the last foregoing subsection from any person, if that person is the owner of the building.
- (4) An order served under [F54subsection (1B)] of this section shall become operative only in accordance with subsection (4) of section sixteen of this Act.
- (5) A [F45local authority] may include in a notice served by [F55them] under subsection (1) of this section in respect of a building which is being constructed a requirement that the person on whom the notice is served shall cause the work thereon to be suspended until the matters raised in the notice have been determined, or until the expiration of the period of one month from the date of service of the notice, whichever first occurs.
- (6) References in this section to the period limited for a building by the conditions on which the warrant for its construction was obtained are references to that period together with any extension thereof authorised by virtue of subsection (5) of section six of this Act.
- (7) This section shall apply in relation to a part of a building, being a fixture the fitting of which is excluded from the operation of subsection (1) of section six of this Act by virtue of the proviso thereto, which—
  - (a) has been fitted, and
  - (b) either in itself or in the manner of its fitting fails to conform to the building standards regulations,

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as it applies to a building which has been constructed as mentioned in paragraph (a) of subsection (1) of this section.

- (8) For avoidance of doubt it is hereby declared that, in respect of any building, this section applies to any such deviation as is mentioned in subsection (7) of section six of this Act as it applies to the construction of the building.

#### **Textual Amendments**

- F45** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 9\(a\)](#)  
**F46** Word substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 9\(a\)](#)  
**F47** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 1](#)  
**F48** Words repealed by [Building \(Scotland\) Act 1970 \(c. 38\), Sch. 2](#)  
**F49** [S. 10\(1A\)\(1B\)](#) added by [Building \(Scotland\) Act 1970 \(c. 38\), Sch. 1 Pt. I para. 3\(b\)](#)  
**F50** Words in Act substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. I para. 29\(2\)](#)  
**F51** Words substituted by [Building \(Scotland\) Act 1970 \(c. 38\), Sch. 1 Pt. I para. 3\(c\)](#)  
**F52** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), sch. 15 para. 9\(b\)](#)  
**F53** Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)  
**F54** Words substituted by [Building \(Scotland\) Act 1970 \(c. 38\), Sch. 1 Pt. I para. 3\(d\)](#)  
**F55** Word substituted by virtue of [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 15 para. 9\(a\)](#)

## **11 Power of local authorities to require buildings to conform to building standards regulations.**

- (1) The following provisions of this section shall have effect in relation to a building in the area of a local authority, being a building of a class to which the building standards regulations apply, where—
- (a) the building does not conform to a provision of the building standards regulations;
  - (b) the local authority consider that the building ought, having regard to the need for securing the health, safety [<sup>F56</sup>welfare] and convenience of the persons who will inhabit or frequent it and the safety of the public generally [<sup>F56</sup>and for furthering the conservation of fuel and power], to be made to conform to that provision; and
  - (c) it is reasonably practicable to make the building conform to that provision.
- (2) The local authority may serve on the owner of the building a notice specifying the provision to which they consider that the building ought to conform (in this section referred to as “the specified provision”) and requiring the owner within such period as may be specified in the notice, being a period of not less than twenty-eight days from the service of the notice, to show cause why the building should not conform to the specified provision.
- (3) If within the period specified in the notice mentioned in the last foregoing subsection the owner of the building applies . . . <sup>F57</sup> for a direction under section four of this Act in respect of the building and notifies the local authority that he has done so, the said period shall be deemed to be extended so as to expire
- <sup>F58</sup>(a) where the direction applied for is given, at the end of the period of twenty-eight days from the date of the giving of the direction;
  - (b) where the direction is refused by the [<sup>F59</sup>Scottish Ministers], at the end of the period of twenty-eight days from the date of the refusal to give the direction;



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- (c) where the direction is refused by the [F60]local authority] or is granted by the [F60]local authority] subject to conditions—
- (i) if no appeal is made within the period within which an appeal can be made to the [F59]Scottish Ministers] under section 4A of this Act, at the end of that period,
  - (ii) if an appeal is made to the [F59]Scottish Ministers] under the said section 4A, at the end of the period of twenty-eight days from the date on which the appeal is determined or abandoned;
- and any reference in the subsequent provisions of this section to the specified provision shall, in a case where the specified provision is relaxed by any such direction, be construed as a reference to the specified provision as so relaxed.]
- (4) If within the period specified in the notice mentioned in subsection (2) of this section (or, in a case falling within the last foregoing subsection, that period as extended by virtue of that subsection) the owner fails to show cause to the satisfaction of the local authority why the building should not be made to conform to the specified provision, the local authority may order the owner to make the building conform to the specified provision within such period as may be specified in the order, being a period of not less than twenty-eight days from the date when the order becomes operative.
- (5) Subject to the provisions of section seventeen of this Act, if on the expiration of the period specified in the order mentioned in the last foregoing subsection the owner of the building has not complied therewith, he shall be guilty of an offence against this Act, and the local authority may themselves execute the operations necessary to make the building conform to the specified provision; and any expenses thereby incurred by them shall be recoverable from the owner of the building as a debt.
- (6) The provisions of the Sixth Schedule to this Act shall have effect for the purpose of securing the recovery by a local authority of any expenses recoverable by them under the last foregoing subsection.
- (7) No notice served under this section shall specify any provision of the building standards regulations which is described in the regulations as not being subject to specification in such a notice.
- (8) An order under subsection (4) of this section shall not become operative—
- (a) except in accordance with subsection (4) of section sixteen of this Act;
  - (b) before the disposal of any application for a warrant in respect of the operations which are the subject of the order, including the disposal of any appeal under section sixteen of this Act against a decision of the [F60]local authority] refusing to grant a warrant.
- (9) In this section “reasonably practicable” means reasonably practicable having regard to all the circumstances, including the expense involved in executing the operations necessary to make the building conform to the specified provision.

#### Textual Amendments

- F56** Words inserted by Health and Safety at Work etc. Act 1974 (c. 37), **Sch. 7 para. 6**
- F57** Words repealed by Building (Scotland) Act 1970 (c. 38), **Sch. 2**
- F58** Words substituted by Building (Scotland) Act 1970 (c. 38), **Sch. 1 Pt. I para. 4(b)**
- F59** Words in Act substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 29(2)**
- F60** Words substituted by Local Government (Scotland) Act 1973 (c. 65), **Sch. 15 para. 1**

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## 12 Building Standards Advisory Committee.

- (1) The [<sup>F61</sup>Scottish Ministers] shall, after consultation with such bodies as appear to him to be representative of the interests concerned, appoint a committee, in this Act referred to as the Building Standards Advisory Committee, for the purpose of—
- (a) advising the [<sup>F61</sup>Scottish Ministers] on the exercise of his functions under section three of this Act;
  - (b) keeping under review the operation of, and making to the [<sup>F61</sup>Scottish Ministers] such recommendations as they think desirable in connection with, the building standards regulations; and
  - (c) advising the [<sup>F61</sup>Scottish Ministers] on any question relating to any of his functions under this Part of this Act which he may refer to them.
- (2) The [<sup>F61</sup>Scottish Ministers] may by regulations make provision with respect to the constitution and procedure of the Building Standards Advisory Committee and for the submission to him at intervals of not more than five years of reports from the Committee as to the exercise of thier functions under paragraph (b) of subsection (1) of this section.
- (3) The [<sup>F61</sup>Scottish Ministers] may pay to the members of the Building Standards Advisory Committee, and to persons attending meetings at the request of the Committee, such allowances as he may, <sup>F62</sup> . . . determine in respect of travelling and subsistence expenses and in respect of other expenses (if any) necessarily incurred by them for the purpose of enabling them to discharge their functions as members of the Committee, or to attend such meetings, as the case may be.

### Textual Amendments

**F61** Words in Act substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 29(2)**

**F62** Words in s. 12(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 29(3), Pt. IV**

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the *Building (Scotland) Act 1959 (repealed)*, Part II.