

BUILDING (SCOTLAND) ACT 2003

EXPLANATORY NOTES

SCHEDULES

Schedule 1 (introduced by section 1): Building regulations

141. This schedule makes particular provisions in relation to the matters about which building regulations may make provision. *Paragraph 1* provides that the schedule does not restrict the interpretation of the purposes of building regulations as set out in section 1(1).
142. *Paragraph 2* enables building regulations to refer to a document published by or on behalf of the Scottish Ministers or some other person. An example might be where the regulations on the conservation of fuel and power include reference to an Executive policy document on the issue. It also enables specified persons to express their approval or satisfaction for the purpose of satisfying building regulations.
143. *Paragraph 3* enables special provisions to be made for buildings with a limited lifespan. An example might be temporary classrooms.
144. *Paragraph 4* enables building regulations to exempt from the requirements of the regulations, either completely or partly, particular types of building, work, conversions, services, fittings or equipment. Examples might be garden sheds, car ports or small porches.
145. *Paragraph 5(1)(a) and (2)* makes provision for various matters to be provided for in building regulations. As paragraph 1 states, however, this does not restrict the interpretation of the purposes of building regulations as stated in section 1(1).
146. *Paragraph 5(1)(b)* makes provision for building regulations to require that things are provided or done in connection with buildings and to make provision as to how those things are to be provided or done. An example of this might relate to providing for the maintenance of a sprinkler system and regulating the frequency of this maintenance.
147. *Paragraph 5(1)(c)* makes provision for building regulations to specify the manner in which work is to be carried out. Regulations might, for example, specify that workmanship must be of an adequate standard.

Schedule 2 (introduced by section 7): Verifiers and certifiers

148. *Paragraphs 1 to 3* make provision in connection with the appointment and removal of verifiers and certifiers, and the terms of their appointment. *Paragraph 4* provides that certifiers who are entitled to exercise such functions by virtue of membership of an approved scheme are subject to various limitations. *Paragraph 5* places a duty on the Scottish Ministers to appoint a successor verifier where a verifier's appointment has been terminated, and for the successor verifier to take over the unfinished matters in relation to building warrants and completion certificates which the previous verifier had been dealing with. *Paragraphs 6 to 10* make provision to avoid conflict of interest, either where a verifier is also a certifier or where a verifier has an interest in a building. *Paragraph 11* defines what an "interest" means for the purposes of this schedule.

Schedule 3 (introduced by section 33): Procedure regulations: particular matters

149. This schedule lists various matters which may be dealt with in procedure regulations under section 33. The schedule is not an exhaustive list of the matters for which procedure regulations may make provision.

Schedule 4 (introduced by section 39): Powers of entry, inspection and testing: further provision

150. The schedule makes further provision about the rights of entry, inspection and testing conferred on the Scottish Ministers and local authorities by section 39(1) and (3). *Paragraph 1* provides that entry may be demanded only at a reasonable time, and after 3 days' notice, unless the case is one of urgency.
151. *Paragraph 2* makes provision in relation to the granting by a sheriff or justice of the peace to Ministers or a local authority of a warrant for the exercise of powers of entry, inspection and testing. To grant a warrant a sheriff or justice of the peace must be satisfied not only that there are reasonable grounds for entry etc. but also that at least one of the conditions in *paragraph 2(2)* is satisfied. Those conditions include refusal or expected refusal of entry, the premises being unoccupied or the owner absent, urgency and the case where applying for admission to the premises would defeat the object of the entry.
152. Where entry to premises has been refused or a refusal is expected, notice of the intention to apply for a warrant for entry must be given to the occupier of the premises unless the sheriff or justice is satisfied that giving such notice would defeat the object of the entry (*paragraph 2(3)*).
153. *Paragraph 2(4)* sets the period for which a warrant continues in force.
154. *Paragraph 3* provides that anyone exercising a power of entry, inspection etc. must provide written evidence of the right to exercise that power if asked to do so.
155. *Paragraph 4* provides for any person exercising a power of entry, inspection etc. to take other people or equipment onto the premises as necessary, subject to the conditions of a warrant where one has been granted. An example might be where a person exercising a power of inspection takes a carpenter in order to lift the floorboards.
156. *Paragraph 5* provides that any person exercising a power of entry, inspection etc. must leave the premises as effectively secured as they were before the power of entry, inspection etc. was exercised.
157. *Paragraph 6* creates an offence where a person who enters a premises under section 39(1) or (3) makes use of or discloses information obtained by that person on those premises with regard to any manufacturing process or trade secret.

Schedule 5 (introduced by section 42): Evacuation of buildings

158. This schedule makes provision for the procedures to be followed for securing the removal from a building of any occupant who has failed to remove from a building following a requirement under section 42 on the evacuation of buildings. *Paragraphs 2 to 6* provide for the local authority to apply to the sheriff for a warrant for ejection and for the procedure to be followed. The sheriff's decision is final (*paragraph 7*). *Paragraph 8* makes provision in relation to evidence presented by local authorities in an application under this schedule. *Paragraphs 9 to 12* make provision, where a person removing from a building in compliance with a requirement under section 42 or ejected from a building under this schedule is a tenant of that building, for protecting their status and rights as a tenant.

*These notes relate to the Building (Scotland) Act 2003
(asp 8) which received Royal Assent on 26 March 2003*

Schedule 6 (introduced by section 58): Modification of enactments

159. This schedule amends and repeals provisions of various other Acts in consequence of the Act.