



# Building (Scotland) Act 2003

## 2003 asp 8

### PART 5

#### GENERAL

##### *Entry, inspection and tests*

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

- (1) For the purposes of the exercise of their functions under section 3, the Scottish Ministers may exercise the powers specified in subsection (2).
- (2) Those powers are—
  - (a) power to enter any premises for the purpose of exercising a power specified in paragraph (b) or (c),
  - (b) power to inspect any building, or the site of any building, in respect of which an application has been made under section 3,
  - (c) power to carry out reasonable tests to determine the quality and strength of any material used or proposed to be used in the construction of a building referred to in paragraph (b).
- (3) For the purposes of the exercise of the functions of a local authority under sections 25 to 30, the authority may exercise the powers specified in subsection (4).
- (4) Those powers are—
  - (a) power to enter any premises for the purpose of—
    - (i) exercising a power specified in paragraph (b) or (c),
    - (ii) carrying out work under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b),
  - (b) power to inspect any building, or the site of any building, in connection with the authority's functions under sections 25 to 30,
  - (c) power to carry out reasonable tests to determine the quality and strength of any material used or proposed to be used in the construction of a building which the authority is entitled to inspect under paragraph (b).

- (5) The owner and occupier of any premises in relation to which the powers specified in subsections (2) and (4) are exercised, and any person on the premises when those powers are being exercised must give the Scottish Ministers or, as the case may be, the local authority such assistance, and provide such information, as they or it may reasonably require.
- (6) A person who—
- (a) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (5), or
  - (b) intentionally obstructs a person acting in the exercise of any power conferred by subsection (1) or (3),
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Schedule 4 makes further provision about the exercise of the powers conferred by subsections (1) and (3); and references in this section and that schedule to a power conferred by either of those subsections include references to such a power exercisable by virtue of a warrant under that schedule.
- (8) In this section and that schedule “premises” includes sites and buildings.

#### **40 Work required by notice: right of entry**

- (1) This section applies where a person is required by a building regulations compliance notice, a continuing requirement enforcement notice, a building warrant enforcement notice, a defective building notice or a dangerous building notice to carry out any work (including demolition) in relation to a building.
- (2) The person, if not in occupation of the building, is entitled to enter the building and any land adjacent to it and held in connection with it for the purpose of complying with the requirement.
- (3) The person must give the occupier reasonable notice before exercising the right conferred by subsection (2).
- (4) That right applies despite any term to the contrary in any lease or other contract.

#### **41 Tests of materials**

- (1) The Scottish Ministers may require any person who has made an application to them under section 3(2) to carry out a materials test.
- (2) A verifier may require any person—
- (a) who has under section 9 applied to the verifier for a building warrant or for an amendment to a building warrant,
  - (b) by whom a building is being or has been constructed in pursuance of a building warrant, or
  - (c) who has under section 17 submitted to the verifier a completion certificate, to carry out a materials test.
- (3) A materials test is such reasonable test as the requirement may specify of materials—
- (a) forming part of, or
  - (b) used or proposed to be used in the construction of,

the building in question and includes a test of such materials in combination with other such materials and a test of the building as a whole.