

*Changes to legislation: There are currently no known outstanding effects for the Building (Scotland) Act 2003, SCHEDULE 5. (See end of Document for details)*

## SCHEDULE 5

(introduced by section 42)

### EVACUATION OF BUILDINGS

- 1 This schedule applies for the purpose of securing the removal from a building of any occupant who has failed to remove from a building following a requirement under section 42 to do so.

#### Commencement Information

**I1** Sch. 5 para. 1 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 2 The local authority may apply to the sheriff—
- (a) where the requirement was made under subsection (1) or (2) of section 42, at any time,
  - (b) where the requirement was made under subsection (3) or (4) of that section, on the expiry of the period specified in the requirement,
- for a warrant for the ejection of any occupants who have not removed from the building.

#### Commencement Information

**I2** Sch. 5 para. 2 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 3 Such an application must be accompanied by a certificate signed by the local authority and certifying—
- (a) where removal was required under subsection (1) of section 42, that the occupants of the building (whether the dangerous building or an adjacent building) are endangered by the state of the dangerous building,
  - (b) where removal was required under subsection (2)(a) of that section, that the local authority intends to demolish the building,
  - (c) where removal was required under subsection (2)(b) of that section, that the local authority intends to carry out work under section 29(2) or (3) and considers that the occupants may be endangered by the carrying out of the work,
  - (d) where removal was required under subsection (3) of that section, that the building is to be demolished in pursuance of a dangerous building notice,
  - (e) where removal was required under subsection (4) of that section, that the local authority intends to carry out work under a provision specified in paragraph (a) of that subsection and considers that the occupants may be endangered by the carrying out of that work.

#### Commencement Information

**I3** Sch. 5 para. 3 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 4 On such an application, the sheriff may require—
- (a) in a case referred to in paragraph 2(a), the service of notice,
  - (b) in a case referred to in paragraph 2(b), the service of additional notice, on the occupants.

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#### Commencement Information

**I4** Sch. 5 para. 4 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 5 Except in a case where removal was required under section 42(4), the sheriff must, within the period of 7 days from the date of the application or, if notice (or, as the case may be, additional notice) was required under paragraph 4, the date of service of that notice, grant warrant of ejection.

#### Commencement Information

**I5** Sch. 5 para. 5 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 6 On an application in a case where removal was required under section 42(4), the sheriff may, if satisfied that it is reasonable to do so, grant warrant of ejection.

#### Commencement Information

**I6** Sch. 5 para. 6 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 7 The decision of the sheriff on the application is final.

#### Commencement Information

**I7** Sch. 5 para. 7 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 8 In proceedings under this schedule a certificate—  
 (a) referred to in paragraph 3, or  
 (b) signed by the local authority and certifying that any notice required by section 42(5), or any notice or additional notice required under paragraph 4, has been given to all known occupants of the building,  
 is sufficient evidence of the facts stated in the certificate.

#### Commencement Information

**I8** Sch. 5 para. 8 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 9 If 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 the building the tenancy, if the tenant so chooses, is to be taken not to have terminated, varied or altered by reason of the removal or ejection.

#### Commencement Information

**I9** Sch. 5 para. 9 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 10 But the tenant is not liable for rent in respect of any period for which the tenant is not in lawful occupation of the building (or the part of it which the tenant previously occupied).

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**Commencement Information**

**I10** Sch. 5 para. 10 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 11 If the tenant resumes lawful occupation, the same terms and conditions apply (except so far as otherwise agreed) in respect of that occupation as applied in respect of the previous occupation.

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**Commencement Information**

**I11** Sch. 5 para. 11 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

- 12 In paragraphs 10 and 11, “lawful” occupation means occupation which is not an offence under section 43(1).

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**Commencement Information**

**I12** Sch. 5 para. 12 in force at 1.5.2005 by S.S.I. 2004/404, art. 2(1)

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