SCOTTISH STATUTORY INSTRUMENTS

2004 No. 428

BUILDING AND BUILDINGS

The Building (Procedure) (Scotland) Regulations 2004

Made - - - - 30th September 2004
Laid before the Scottish Parliament - - - - 1st October 2004
Coming into force in accordance with regulation 1

The Scottish Ministers, in exercise of the powers conferred by sections 9(3), 24(2), 33, 36, 38, 47(2), 54 of, and Schedules 2 and 3 to, the Building (Scotland) Act 2003(**1**), and of all other powers enabling them in that behalf, hereby make the following regulations:

PART I

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Building (Procedure) (Scotland) Regulations 2004.

(2) Subject to paragraph (3) below, these Regulations shall come into force on 1st May 2005.

(3) Part 1 of these Regulations and regulations 30, 31, 35, 36, 37 and 38 shall come into force on 4th November 2004.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

"the Act" means the Building (Scotland) Act 2003;

"application for a direction" means an application under section 3 of the Act to the Scottish Ministers for a direction;

"application for a building warrant" includes an application for amendment of a warrant;

"building regulations" means the Building (Scotland) Regulations 2004(**2**);

(**1**) 2003 asp 8.
(**2**) S.S.I. 2004/406.

"date of receipt" means the date of the day on which the application or other document is received except that when that day is not a working day the date of receipt shall be deemed to be the next working day after that date, and "working day" means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(**3**), a day appointed for public thanksgiving or mourning, or any other day which is a local or public holiday in an area where the application or other document is received;

"direction" means a direction under section 3 of the Act by the Scottish Ministers dispensing with or relaxing a provision of the building regulations, given either unconditionally or subject to such conditions specified in the direction and includes a direction given under section 3(4)(c) of the Act varying or revoking a direction under section 3(2) of the Act;

"draft direction" means a draft of any direction proposed to be given by the Scottish Ministers;

"fire authority" has the same meaning as in the Fire Services Act 1947(**4**);

"plan" includes section, elevation, drawing and block plan, and any specification or other written or figured statement submitted to the Scottish Ministers, a verifier or a local authority as relative to a plan, section, elevation or drawing;

"prescribed fee" means a fee prescribed by regulations made under section 38 of the Act;

"prescribed form" means a form prescribed by regulations made under section 36 of the Act.

(2) Any reference in these Regulations to a Part, regulation or Schedule shall, unless the context otherwise requires, be construed as a reference to a Part or regulation of or a Schedule to these Regulations.

(3) Any document which, by virtue of these Regulations, may, or must, be transmitted whether or not by means of submission may be transmitted by post or, where the condition set out in paragraph (4) below is satisfied, by electronic communication.

(4) That condition is that the person to whom the transmission is to be made has, in advance, indicated that transmission by electronic communication would be acceptable.

(5) Any reference in these Regulations to an application, certificate, statement or plan being signed shall where the application, certificate, statement or plan is being submitted by electronic communication include on the application, certificate, statement or plan the electronic signature of the applicant or a duly authorised agent provided the verifier, local authority or Scottish Ministers as the case may be have first confirmed that such is acceptable and "electronic communication" has the same meaning as in the Electronic Communications Act 2000(**5**).

PART II

APPLICATION TO A VERIFIER FOR BUILDING WARRANT

Application of this Part

3. The provisions of this Part shall apply to an application for a building warrant under section 9 of the Act.

Making of application for building warrant

4.—(1) Subject to paragraph (2) below, an application for a building warrant shall be made by submitting to the verifier–

(**3**) 1971 c. 80.
(**4**) 1947 c. 41.
(**5**) 2000 c. 7.

(a) an application in such form as shall be determined by the verifier containing the information specified in Schedule 1 to these Regulations signed by the applicant or a duly authorised agent;

(b) the principal, and where submission is by other than electronic communication, a copy of each of the plans specified in the case of–

(i) a building warrant to erect a building, in Section A of Schedule 2;

(ii) a building warrant to extend a building, in Section B of Schedule 2;

(iii) a building warrant to alter or convert a building or to provide services, fittings and equipment in or in connection with a building, in Section C of Schedule 2;

(iv) a building warrant to demolish a building, in Section D of Schedule 2;

(v) an amendment to a building warrant under section 9(4) or (5) of the Act, in Section E of Schedule 2,

which plans shall be to such scale (if any) as the verifier may require;

(c) details of any direction which has been given by the Scottish Ministers in relation to the particular building which is the subject of the application; and

(d) the prescribed fee, payment of which shall be made by such method or methods as the verifier may determine.

(2) Nothing in this regulation shall require the submission of the plans specified in Schedule 2–

(a) in the case of an application for a building warrant for the construction or demolition of a building, in so far as the said plans relate to such stage in the construction or demolition, as the verifier has determined in terms of section 9(4) of the Act is not to be proceeded with until the conditions under that subsection have been met; or

(b) in any other case of an application for a building warrant if the verifier is satisfied that the nature of the proposed works is sufficiently apparent from the application together with such plans as may accompany it.

(3) The applicant shall if required by the verifier at any stage submit to the verifier–

(a) such further information or additional plans; or

(b) such further copies (not exceeding two) of the application or of the plans submitted with the application;

as the verifier may direct.

(4) The provisions of paragraph 11 of Section G of Schedule 2 shall have effect for the purposes of this regulation.

(5) The verifier may reject an application for a building warrant if the verifier considers that the subjects to which the application relates are multiple and that it would be appropriate to submit a separate application in respect of each of those subjects.

Warrants granted where section 9(4) of the Act applies (staged warrants)

5.—(1) For the purposes of section 9(3) of the Act in its application to construction of a building (which empowers the verifier to grant a warrant for the construction of a building subject to further information being provided in respect of specified stages in the construction) there are specified the following stages–

(a) construction of foundations; or

(b) such other stages as the verifier considers appropriate having regard to any guidance issued by the Scottish Ministers.

(2) For the purposes of section 9(3) of the Act in its application to demolition of a building (which empowers the verifier to grant a warrant for the demolition of a building subject to further information being provided in respect of specified stages in the demolition) there are specified the following stages–

(a) isolation and removal of services, fixtures and fittings;

(b) isolation and protection of adjacent structures; or

(c) such other stages, appropriate to the method of demolition, as the verifier considers appropriate having regard to any guidance issued by the Scottish Ministers.

Building warrants: conversion

6. An application for a building warrant relating to the conversion of all or part of a building may be submitted–

(a) as a separate application; or

(b) as an accompanying application to–

(i) an application for a building warrant required for work under section 8(1)(a) of the Act; or

(ii) an application for an amendment to a building warrant.

Building warrants: late applications

7.—(1) This regulation applies where an application for a building warrant is made in the circumstances described in section 15 of the Act (Building Warrants: late applications).

(2) Before granting the application for a building warrant the verifier may require the exposure of such concealed parts of the structure of the building as are necessary to establish that the construction as built accords with the submitted plans.

(3) In determining the application the verifier shall apply the building regulations in force at the date of the application.

Building warrants: rejection of applications

8.—(1) An application shall not be treated as received unless the application has been submitted and the prescribed fee paid.

(2) Except where regulation 4(2) and Schedule 2, section G, paragraph 10 apply, in the event that an application is submitted without the specified plans, the verifier shall–

(a) advise the applicant that the specified plans are required; and

(b) accept the application form on condition that the applicant will submit the said plans within the period of 42 days beginning with the date of receipt of the advice referred to in paragraph (2)(a) after which time the verifier may consider the application withdrawn and return the papers relating to the application to the applicant together with the prescribed fee.

Determination of application

9.—(1) On receipt of an application the verifier shall proceed forthwith to consider the application; and

(a) if satisfied in accordance with section 9(1) of the Act and that the application complies with these regulations grant the application; or

(b) within the period of three months beginning with the date of receipt of the application prepare and send to the applicant or a duly authorised agent a report thereon ("the first report") identifying what further information is needed to assess the application, and anything which is not in accordance with section 9 (1) of the Act; or

(c) subject to paragraph (2) refuse the application; and

(d) within the period of 14 days beginning with the date of receipt of the application send a copy of the application or of its refusal as appropriate to the local authority for registration in the building standards register.

(2) The verifier shall not refuse the application on any ground without first giving the applicant notification of the proposed ground of refusal and an opportunity of being heard and of making written representations, and the verifier shall in any such case, before finally determining the application, consider any oral and written representations so made by the applicant or the applicant's duly authorised agent within the period of 14 days beginning with the date on which the notification was given.

(3) In the event that the verifier refuses an application the verifier shall give reasons therefor.

Consultation

10.—(1) The verifier may, if the verifier thinks fit–

(a) send to relevant consultees a copy of the application for building warrant inviting comments thereon; or

(b) direct the applicant to obtain the views of relevant consultees and report such views to the verifier,

and any comments thereon shall be taken into account in the determination of the application.

(2) The verifier shall at intervals of seven days notify the relevant consultees of all applications for a building warrant received within the last seven days.

(3) In this regulation "relevant consultees" means such persons as the verifier considers may have an interest in the application having regard to any guidance thereon issued by the Scottish Ministers.

Consultation – Fire Authority

11.—(1) The provisions of this regulation shall apply on receipt by the verifier of–

(a) an application for a building warrant–

(i) for a non domestic residential building;

(ii) for a non domestic, non residential building where the design is not in accordance with the guidance issued by the Scottish Ministers;

(iii) for a domestic building with a storey height over 18 metres; and

(iv) for a domestic building with a storey height over 7.5 metres up to 18 metres where the design is not in accordance with guidance issued by the Scottish Ministers;

(b) an application for an amendment to a building warrant where consultation was required in respect of that building warrant in accordance with this paragraph; and

(c) an application for an amendment to a building warrant where if that amendment is granted the design will not be in accordance with guidance issued by the Scottish Ministers and the amendment, if granted, will bring the building within the criteria specified in paragraph(1)(a).

(2) Where the provisions of this regulation apply the verifier shall consult the relevant fire authority in accordance with regulation 10(1).