

The Scottish Building Standards

PROCEDURAL HANDBOOK
Second Edition



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1 General

1.1 Introduction

1.1.1 This handbook explains the procedures set up by the Building (Scotland) Act 2003 and the Building (Procedure) (Scotland) Regulations 2004. The procedures are for building work to which the Scottish building regulations apply and for other matters covered by the Act, in particular those dealing with dangerous and defective buildings. (Chapter 2 of this handbook explains the application of the building regulations, and chapters 10 and 11 cover dangerous and defective buildings).

1.1.2 Any references within this handbook to the Building (Procedure) (Scotland) Regulations 2004, the Building (Scotland) Regulations 2004, the Building (Forms) (Scotland) Regulations 2005 or the Building (Fees) (Scotland) Regulations 2004 should be read as including amendments in force on 1st May 2007.

1.1.3 The purpose of the handbook is to clarify the intent of the procedure regulations and expand on the procedures set up by the Act. Unlike the Technical Handbooks and most other guidance documents issued by Scottish Ministers to support the building regulations, this procedural handbook has no specific legal status, but is designed to aid the practical operation of the procedures.

1.2 The building standards system in Scotland

1.2.1 The building standards system in Scotland is established by the Building (Scotland) Act 2003. The Act gives powers to Scottish Ministers to make building regulations, procedure regulations, fees regulations and other supporting legislation as necessary, to fulfil the purposes of the Act. The purposes include setting building standards and dealing with dangerous and defective buildings. The various regulations are made by Scottish Ministers, but must be approved by the Scottish Parliament before coming into force.

1.2.2 The system is intended to ensure that building work on both new and existing buildings results in buildings that meet reasonable standards. The standards are set out in the building regulations, which are, in the terms of the Act, intended to:

- secure the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings,
- further the conservation of fuel and power, and
- further the achievement of sustainable development.

1.2.3 The building regulations, and the supporting guidance documents on how to meet the regulations, are subject to scrutiny by the European Commission and the member states of the European Economic Area. This check is intended to ensure that where the regulations and guidance documents use technical specifications to describe materials or constructions, no barriers to trade in construction products are being created. This scrutiny procedure supports the EC Construction Products Directive, which requires references to materials and construction methods in our regulations and guidance documents to be made in the terms used in European Standards for products and test methods. (The Directive allows for the 'harmonization' of standards before they must be used. It took ten years or so for member states to agree the first harmonized standards but these are now being regularly produced).

1.3 Purpose of the building standards system

1.3.1 The purpose of the building standards system is to protect the public interest. It is not intended to provide protection to a client in a contract with a builder. The system, therefore, does not so much control building as set out the essential standards to be met when building work or a conversion takes place, and only to the extent necessary to meet the building regulations.

1.3.2 The system is pre-emptive, designed to check that the proposed building work meets the standards. Inspections during construction and on completion are limited to the minimum necessary to discourage avoidance of the legislation. The inspections do not provide a system to control work on site, that is a matter for the contracts and arrangements put in place between the client and builder.

1.3.3 The roles established to operate the system are explained in detail below. The role of checking compliance rests with verifiers and, in prescribed ways, approved certifiers. Enforcement is by local authorities. Updating is by the Scottish Building Standards Agency, advised by the Building Standards Advisory Committee. The agency is an executive agency of the Scottish Executive, which means it is an integral part of the Scottish Executive and answers directly to the responsible Scottish Minister.

1.4 Scottish Building Standards Agency

1.4.1 The agency was established in June 2004 to fulfil the duties placed on Scottish Ministers by the 2003 Act. The agency prepares and updates building standards legislation and guidance documents, conducting any necessary research and consulting on changes as the Act requires. It provides the secretariat for the Building Standards Advisory Committee (see paragraphs at 1.5 below). The agency, on behalf of Scottish Ministers, gives views (see paragraphs at 4.2 below) to help verifiers make decisions in particular cases, and deals with applications to relax standards for particular matters. It also approves verifiers, and certifiers of design and construction (see paragraphs at 1.9 below) and it checks how verifiers (including local authorities) and certification scheme providers are operating the system. It will be responsible for implementing Crown building verification when the relevant section of the Act is brought into force. Finally, should it be necessary, Scottish Ministers can, through the agency, take over the enforcement role of a local authority.

1.5 Building Standards Advisory Committee

1.5.1 This committee, established under the previous Scottish Building Act, has been continued by the 2003 Act, but given a wider remit. It is required to report to Scottish Ministers on aspects of the building standards system that may need attention. It considers developments in the industry, changes in public expectations or particular problems that arise. It must also be consulted on all proposed amendments to legislation or guidance documents. The secretariat to the committee is provided by the agency.

1.5.2 The intention of the committee is to provide expert advice. The members are not selected to represent particular interests, but for the experience and knowledge they can bring to the committee. The selection is made from responses to public advertisement and from nominations sought from a wide variety of bodies interested in the process of building. The expertise selected will reflect the future workload of the agency. An assessor, independent of the Scottish Executive, oversees the process at each stage.

1.6 Scottish Association of Building Standards Managers

1.6.1 The agency also works closely with the Scottish Association of Building Standards Managers (principal officers from the Scottish local authorities), including formal meetings throughout the year. Any problems or issues arising from the legislation and procedures or from common building practices are discussed at these meetings. Agreed guidance is produced, where possible, to aid common understanding and to encourage the effective operation of the building standards system.

1.7 Verifiers

1.7.1 The role of the verifier is to protect the public interest by providing an independent check of applications for building warrants to construct or demolish buildings, to provide services, fittings or equipment in buildings, or to convert buildings. Verifiers are appointed by Scottish Ministers.

1.7.2 The Act provides for a variety of verifiers should this be required, but at present the only appointed verifiers are the 32 Scottish local authorities, each covering their own geographical area. How the agency will cover the verifier role for Crown buildings will be decided when the Act is applied to them. If Scottish Ministers at some future date decide to appoint private verifiers, the regulations and procedural guidance will be amended.

1.8 Local authorities enforcement role

1.8.1 It is considered necessary to have an ongoing, independent body to enforce building legislation, with local knowledge and resources. The Act therefore provides for enforcement to be the responsibility of the local authority for the area in which the building work is taking or has taken place. This is the case no matter who has undertaken the verification role and will apply to Crown buildings when the Act is applied to them.

1.8.2 Any local authority choosing to contract out building standards work under the 'best value' regime must consider the technical work involved in enforcement. The local authority must be capable of dealing with the duties in part 3 of the Act relating to compliance and enforcement and in part 4 on defective and dangerous buildings.

1.9 Approved certifiers

1.9.1 The Act establishes a role for suitably qualified people, businesses or other bodies, when appointed by Scottish Ministers, to certify that certain design or construction work complies with the building regulations.

Two roles are designated, approved certifiers of design and approved certifiers of construction, both of which certify compliance with the building regulations, as laid down in the scope of the certification scheme run by the scheme provider. Further information on certification schemes may be found in the SBSA "Certification Handbook", which is available at www.sbsa.gov.uk.

1.9.2 Approved certifiers of design are responsible for specified aspects of the design of buildings such as the structure. If satisfied that the proposed design meets the requirements of the building regulations, an approved certifier of design may issue a certificate for submission with the application for building warrant. Certifiers must have due regard for compliance with the full range of relevant building standards requirements, not just those of immediate relevance to the particular aspect. For instance, design of a central heating and hot water system should take into account requirements for accessibility and for fire separation and acoustic insulation of separating walls and floors as well as those for energy efficiency and hot water storage. As the certificate of design is taken as proof of what it purports to cover, the verifier does not check those matters. A verifier must, however, check that the person signing (the approved certifier) is suitably qualified to issue the certificate of design in relation to the matters certified and that the counter-signing firm (the approved body) is approved to co-ordinate the certification of those aspects. These checks are made using the on-line certification register (see 13.4).

1.9.3 Approved certifiers of construction are responsible for the construction or installation of specified parts of a building, such as the electrical installation. Again, certifiers must have due regard for compliance with the full range of building standards, not just those applicable to the part of the building covered. If satisfied that the construction has been completed in accordance with the building regulations as they applied at the time of the application for the building warrant, an approved certifier of construction may issue a certificate for submission with a completion certificate. The certificate of construction is taken as proof of what it purports to cover and the verifier does not check those matters. A verifier must, however, check that the person signing (the approved certifier) is suitably qualified to issue the certificate of construction in relation to the matters certified and that the counter-signing firm (the approved body) is approved to co-ordinate the certification of those aspects. These checks are made using the on-line certification register (see 13.4).

2 APPLICATION OF THE BUILDING REGULATIONS

2.1 Building (Scotland) Regulations 2004

2.1.1 The Scottish building regulations are made under the powers in section 1 of the Act. The regulations apply to the design, construction or demolition of a building, the provision of services, fittings or equipment in or in connection with a building, and the conversion of a building. "Construction" applies widely and includes alteration and extension as well as new building. Conversion however is restricted to prescribed changes of intended use or occupation (see schedule 2 of the building regulations). Where such a conversion is to be made, building work will have to be done so that all the relevant standards will be met, to the extent specified in schedule 6 of the building regulations.

2.1.2 Other than in relation to a prescribed conversion, the building regulations do not generally require existing buildings to be the subject of work or alteration until and unless the owner intends to do building work. However, there are ways that the regulations can require work when it is really necessary. One way is for continuing requirements to apply. A building owner can accept them as a condition when a building warrant is granted (section 22 of the Act), for example, a requirement to ensure continued access to allow the operation of a safety or maintenance device, such as a mobile platform to clean windows. Also, Scottish Ministers can impose continuing requirements on a particular class of building (section 2 of the Act), for example, requiring all public buildings to display certain information about energy use (see paragraphs at 7.3 and 7.4 below).

2.1.3 A second way is for Scottish Ministers to require all existing buildings of a particular type to comply with a provision of the current regulations (section 25 of the Act). Local authorities will be directed to serve notices on the owners of all such buildings. This power is expected to be used rarely but can be used if particular problems come to light.

2.2 Guidance documents and compliance with the building regulations

2.2.1 The building regulations are expressed in terms of 'functional standards'. These standards are statements of functions the completed building must fulfil or allow. For example, 'every building must be designed and constructed in such a way that there will not be a threat to the building or the health of the occupants as a result of moisture penetration from the ground'. The intention is to permit a variety of ways of complying. In the above example, the standard does not specify, for example, 'the floor must have a damp proof membrane', as this may not always be relevant. What is needed for compliance depends on the materials chosen, the site conditions, and the use of the building.

2.2.2 To give guidance on possible ways of complying, Scottish Ministers issue guidance documents through the agency. The principal documents are the Technical Handbooks, one for domestic buildings and one for non-domestic. Proof of compliance with such a document may be relied on in any legal dispute as 'tending to negate liability' for an alleged contravention of building regulations. For most situations therefore it is expected that designing in accordance with the Technical Handbooks will be the usual way of showing that the functional standards are going to be met.

However the verifier or certifier is judging against the functional standard and has the power to decide whether other solutions fulfil the requirement. This also allows judgement of where local site conditions, as mentioned in paragraph 2.2.1 above, or the construction or historical relevance of an existing building, may affect what is a reasonable way of fulfilling the standards (see paragraphs at 3.7 below).

2.2.3 One important alternative is the acceptance of solutions based on the growing number of European Standards and on technical specifications recognised in other member states of the European Economic Area where these provide equivalent or better standards of protection or performance. The functional standards are arranged in the same sections as the 'essential requirements' published by the European Commission to support the Construction Products Directive. This arrangement should assist in the evaluation of different standards for construction materials, tests and assemblies. It is, however, the applicant that must convince the verifier and must provide the verifier with translations of documents if necessary.

2.2.4 The agency has also published a specialised guidance document to assist in the design of conservatories to which the building regulations apply. This document, entitled "Conservatory Guidance", may be purchased from the agency or is also available on the SBSA's web site (www.sbsa.gov.uk). The advice contained within it may be applied to the entire structure or a single element or aspect.

2.2.5 Additional documents are available on the SBSA's web site for use in support of a building warrant application, covering such matters as details showing methods of complying with Section 6 (Energy) of the Technical Standards. Unlike the conservatory guidance, these documents are not available to purchase in hard copy.

2.3 Exempt work

2.3.1 The procedures in this handbook do not apply in any way to building work and structures that are excluded from the definition of building in the Act (see section 55).

2.3.2 However, work on buildings, services, fittings and equipment that is listed as 'exempt' in Schedule 1 of the building regulations is exempt only from regulations 8 to 12, i.e. those regulations imposing standards. Thus, such work, while neither required to meet a particular standard nor subject to warrant procedures, is still subject to the regulations about protective works or, under the Act, to the provisions for dangerous or defective buildings.

2.4 Work not requiring a warrant

2.4.1 The procedures for obtaining a warrant and submitting a completion certificate also do not apply to certain other defined types of work. Schedule 3 of the building regulations lists buildings and building work, including the provision of services, fittings and equipment that do not require a warrant.

2.4.2 The important difference from 'exempt work' is that this 'work not requiring a warrant' must still comply with the building standards set in the building regulations. Note, however, that Schedule 3 work is in two parts. The work listed in part A must meet the standards in full but the work listed in part B need only be done in such a way that the completed result does not make the relevant part of the building worse in relation to the standards. These works should also consist solely of operations falling into one or more of types 1 to 26 of Schedule 3. If it is intended to carry out additional works that require warrant approval at the same time as works specified in

Schedule 3, the latter should also be included in the warrant application. The building warrant fee should be calculated taking all work into account.

2.4.3 Within Schedule 3, types 1 and 2 relate to certain building types, whereas types 3 to 26 are applicable to all building types, unless otherwise stated in the type description:

- Type 1 covers any work to or in a house with a storey height not exceeding 4.5m but only if the exceptions do not apply.
- Type 2 covers any work to or in a non-residential building that members of the public do not have access to, with a storey height not exceeding 7.5m but only if the exceptions do not apply.

In both cases the exceptions include, but are not limited to, structural work, work to a separating wall and alterations to roofs or external walls.

- Types 3 to 23 are wider and permit the specific item in every building, unless specifically indicated to the contrary in an exception. Therefore, types 3 – 23 can apply to a house which is not covered by type 1 because it has a storey above 4.5 metres.

Where the exception in type 1 says “work, not being work of types 3 to 26 below, to a house having a storey, or creating a storey, at a height of more than 4.5 metres” it means you can do any work allowed by type 1 in houses with no storey above 4.5 metres and anything in types 3 to 26 in any house.

Where the exception in type 2 says “work, not being work of types 3 to 26 below, to a building having a storey, or creating a storey, at a height of more than 7.5 metres” it means you can do any work allowed by type 2 in a non-residential building to which the public do not have access with no storey above 7.5 metres and anything in types 3 to 26 in any such building.

The phrase “and, without prejudice to the generality of types 1 and 2 above” preceding types 3 to 23 means that, even if something is not permitted by an exception in types 3 to 23, it may still be permitted by type 1 or 2.

The following gives examples of how these two qualifications work:

- Type 14 allows a stairlift to be fitted in any dwelling, without a restriction on storey height.
- Type 11 does not allow the installation of a WC without a building warrant but type 1 or type 2 do, though only in a house with no storey above 4.5 metres or in a non-residential building to which the public do not have access with no storey above 7.5 metres respectively.
- Types 24 to 26 (Part B) apply to all building types and cover work closer to repair and maintenance than new work. It includes the replacement of fittings or services and partial replacement (not involving replacing the frame) of doors, windows or rooflights. This work is allowed without first obtaining building warrant approval because it is likely to form part of a repair contract and repairs are not subject to the requirement to obtain warrant, provided the replacement materials are of the same general type as the existing.

2.4.4 It is intended that the agency will issue separate guidance to assist those preparing work for which warrant may not be required. Should owners seek further reassurance, it is not the intention that they should be able to apply for a warrant, as this could affect the efficiency of the system. Verifiers may consider issuing a letter to confirm that, on the information available to them, the work does not require a warrant. Additionally, if owners are seeking advice on whether the proposed work “not requiring a warrant” does meet the standards, verifiers may choose to offer such a service. This will be distinct from the warrant system and it will be for the provider of the service to determine reasonable charges. Other types of provider may also offer such a service (for example, see paragraph 13.2.5 below).

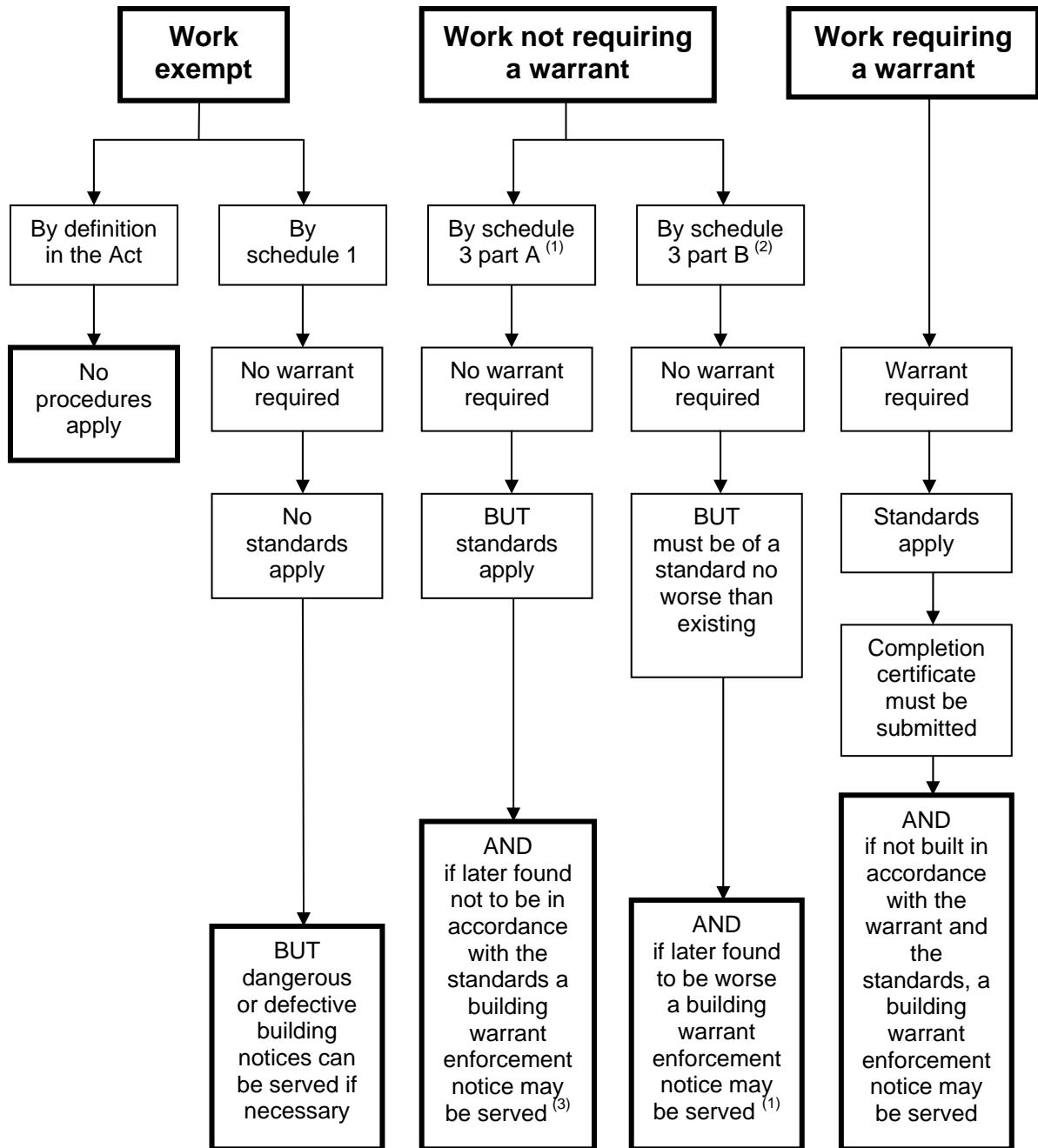
2.4.5 Although Schedule 3 allows more minor works to be done without a warrant than previous legislation did, one effect of the 2004 regulations is to move certain building work from being completely exempt to being controlled by Schedule 3. That is, this building work must now meet the regulation standards, but does not require a warrant. Transitional arrangements allowed such work, which was small buildings and garages of 8 to 30 square metres and replacement windows (i.e. work falling within types 3 to 5 and 20 of Schedule 3) to be completed without meeting the standards provided construction was commenced on or before 1st June 2005, and was completed on or before 2nd September 2005.

2.5 Crown buildings

2.5.1 The Act binds the Crown but the secondary legislation can differentiate as to which procedures apply. It is intended to provide a separate handbook for Crown buildings when the section of the Act binding the Crown comes into force. At that time either the procedure regulations will be amended or separate procedure regulations will be made.

2.5.2 Determining the ‘ownership’ of a Crown building is done by reference to subsection 53(5) of the Act and the final decision as to who is the owner lies with Scottish Ministers.

PROCEDURES APPLYING TO DIFFERENT TYPES OF BUILDING WORK



Notes:

- (1) A building warrant is not required for this work on condition that it meets the standards. If it does not meet the standards, a building warrant should have been obtained; therefore, a building warrant enforcement notice can be served.
- (2) A building warrant is not required for this work on condition that it is no worse than existing. If it is worse a building warrant should have been obtained, therefore, a building warrant enforcement notice can be issued.
- (3) A dangerous building notice may also be served if the works render the building dangerous to persons using or frequenting it or to adjacent buildings.

3 BUILDING WARRANTS TO BUILD, CONVERT OR DEMOLISH

3.1 When a building warrant is required

3.1.1 A warrant is required for all building work to which the regulations apply, with the following exception. Building regulation 5 allows work to be done without a warrant if it is work listed in schedule 3 of the building regulations. This work, described in the paragraphs at 2.4 above, must still meet any relevant requirements of the building regulations.

3.1.2 Except for 'work not requiring a warrant', it is an offence for anyone to carry out work to which the building regulations apply without a building warrant. The Act in sub-section 8(3) indicates who is guilty of an offence if a warrant is not obtained before work is done. These people are:

- any person carrying out the work; that is a self build owner or tenant, a developer who is a builder, or a builder, and
- any person for whom the work is to be done; that is an owner, tenant or developer who is not doing the work but has engaged a builder to do it, and
- the owner; if the owner is different from the persons above.

For any one project, therefore, a variety of people may have committed an offence. These can include the owners, tenants or developers who order the work to be done, any person doing the work (including the builder) and the owner (when not one of the above). The ways of dealing with this are to report the offence to the Procurator Fiscal or, more normally, to issue a building warrant enforcement notice. Such a notice can only be issued on the relevant person as defined in section 27 of the Act. Although a builder can be reported for committing an offence, if the builder is carrying out the work on behalf of a client then the builder can not be served with such a notice (see paragraph 7.2 below).

3.1.3 The verifier will agree with the applicant what drawings (if any), specifications and other information are required to enable the check for compliance with the regulations, based on the paragraphs at 3.2 below. A fee is payable at the time of application (see the separate fees regulations, and guidance at paragraphs 3.13 and 3.14 below, for details).

3.1.4 A building warrant is also required for a conversion, as defined in schedule 2 of the building regulations, even if it is not proposed that building work is to be undertaken. (see paragraphs 3.7.5 and 3.7.6 below).

3.1.5 An amendment to a building warrant is required before work starts on areas of construction that do not follow the proposals in the original approved drawings and/or specifications. If changes are made during construction without an amendment to warrant these could be subject to a building warrant enforcement notice (see paragraphs at 7.2 below).

3.2 How to apply for a building warrant

3.2.1 Applications for building warrant should be made on forms available from verifiers. At present the verifier is the local authority for the area where the proposed work is to be carried out. The application may be made on paper or by electronic means where the verifier has this facility. The accompanying information can be on paper, in an electronic format or in a combination, as agreed with the verifier. If in paper form, two sets of drawings and one of other accompanying information are normally required but 1 or 2 additional copies may be requested by the verifier. Note that durable copies on linen or plastic film are no longer required but drawings should be indelible or read-only format if electronic. The verifier will record the date of receipt of the application for both paper and electronic submissions.

3.2.2 A warrant application may be made and signed by anyone wishing to do building work or this may be done through an agent. Electronic signatures are acceptable when the verifier has the facilities to accept electronic applications.

3.2.3 Schedule 2 of the procedure regulations sets out the information which should accompany an application for a building warrant. This information will normally be provided on drawings but written schedules can also be used where appropriate. Large projects require extensive information but for small or very simple work the verifier may agree to accept less information. Details of the kind of drawings which may be required are given at paragraph 3.2.10 below. The drawings no longer have to be signed but each drawing in an application must have a different reference number. Advice on details of presentation, including colouring of drawings, will be available from verifiers.

3.2.4 There is an alternative to providing the verifier with all of the detailed information described above. An approved certifier of design can provide a certificate saying that particular aspects of the work will comply with the building regulations. Less detail is provided for that aspect (see paragraph 3.2.5 below) as a verifier is required to accept this certificate, so long as it has been issued in accordance with the conditions which apply to the certifier. For example, a verifier presented with a certificate of design for structure checks that the person signing the certificate is on the approved certification register. The verifier must also check that the counter-signing body is approved to co-ordinate the certification of structure. These certificates form part of the warrant application and must be signed and dated by an approved certifier and counter-signed and dated by the certification co-ordinator of an approved body. If a warrant is granted on information which includes certified design, any application for amendment to warrant that affects the certified matters should be accompanied by a new certificate of design. Further information on certification of design may be found in the Certification Handbook.

3.2.5 The information provided must allow the verifier to clearly identify the scope of the certified work and allow consultation with other authorities when necessary (see chapter 14 below). The information on the certificate of design should match that provided on the building warrant application form in respect of:

- the location of the project
- the description of works
- the description of the stage of work (if applicable) (see 3.4).

The applicant must also provide enough information on the certified work to assist any site inspections the verifier wishes to make. Using structural certification as an example, the approved certifier of design may have to provide the applicant with

details of beam sizes, bearings, etc., for the verifier, even where the design has been certified by an approved certifier of design for structure. On some projects a specialist contractor may be providing a structural element. This could delay the ability to certify the whole building and obtain a warrant until the contractor designed details have been completed. To accommodate this, the structural certification scheme permits the certification of specific details to be undertaken some time after the certification of the general structural arrangement has been completed and a warrant (or staged warrant) has been granted. The design certificate must be accompanied by a schedule (known as schedule 1) listing any structural items or details which the certificate does not cover in detail and, once the details have been finalised, the approved certifier issues the finalisation notice (known as Model Form Q). If an approved certifier is used they must retain, in their own records, not just the information submitted but all the details relevant to the project. It should be noted that certificates of design or construction should only be issued in respect of works for which building warrant approval is required. That is to say, they should not be issued on works that are exempt from building regulations under schedule 1 or works not requiring a warrant under schedule 3.

3.2.6 If the application is for alteration or extension of an existing building, enough information on the existing building must be provided to demonstrate that it is not being adversely affected. For example, subdivision might result in the means of escape in the remaining part having to be checked, so these should be shown. There may also be related repair work, which is not subject to the requirement for warrant, but which should be shown on warrant drawings where it results in, or affects, work that requires a warrant. For example a damaged plasterboard lining may have to be replaced, which could affect the sound resistance or thermal insulation of a wall. The requirement to show the existing building may also apply to work done to meet the requirements of a warrant to convert. It may even be applicable when the warrant for conversion does not entail building work or demolition associated with the conversion. (see paragraphs at 3.7 below for more detail of application of regulations to existing buildings).

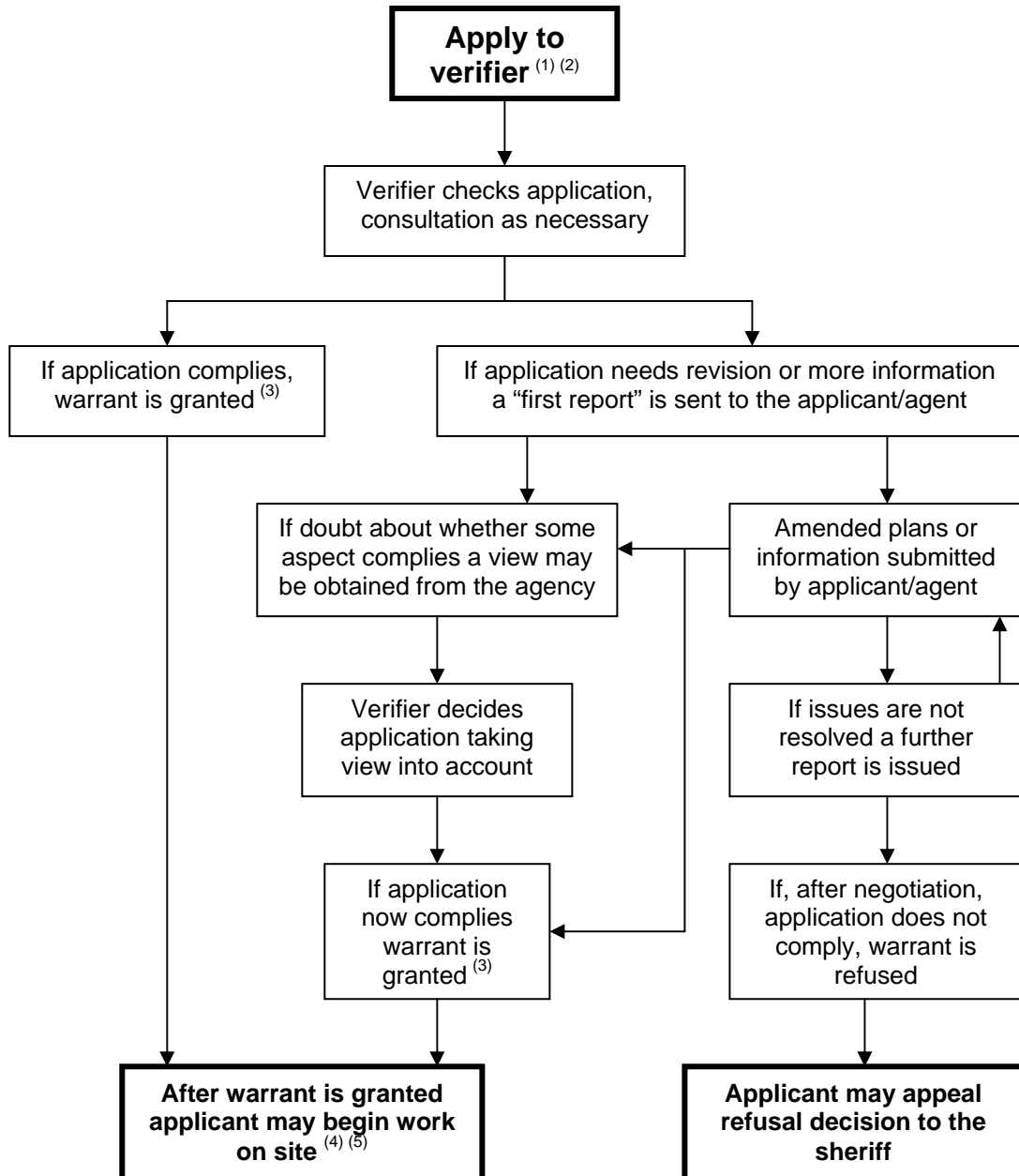
3.2.7 Where a relaxation of the regulations relating to the application is obtained (see paragraphs at 4.3 below) this must either form part of the application or, if obtained after the application is made, be added to it. Any additional information required by the verifier also becomes part of the application when submitted.

3.2.8 In most cases, the first response to an application will include a request for further detail drawings and specification. When planning a project, the time allowed to obtain a warrant should include time for providing such information as well as processing by the verifier.

3.2.9 If a warrant application is submitted without the appropriate fee it should not be processed by the verifier. If a warrant application is submitted with the appropriate fee but without the specified drawings it can either be accepted unconditionally when the information submitted appears to the verifier to be sufficient or can be accepted with the condition that the applicant submits adequate drawings within 42 days from the date of receipt. If the requested drawings are not submitted within 42 days, the verifier may consider the application withdrawn and return the application and fee to the applicant. The amount of the fee, which is related to the 'value of the works' is set by separate fees regulations (see paragraphs at 3.13 and 3.14 below for details of the current fees). The fee is subject to a discount where certificates of design form part of the application. Note however to qualify for the discount the certificate must be provided as part of the application, either for warrant or for amendment of warrant.

3.2.10 The intention of the system is that certificates of design should accompany the warrant application, at which point they attract a discount on the warrant fee. If an applicant wishes to submit a certificate at a later date, this should be accepted by the verifier as additional information; however, such a submission would not attract a discount on the warrant fee, as the verifier may already have commenced the verification process.

PROCESS OF OBTAINING A BUILDING WARRANT



Notes:

- (1) At present the verifier is the local authority for the area where the work is to be carried out.
- (2) Applications should be made on the application form with fee, plans and information on materials, etc. Include any certificate(s) from certifier(s) of design.
- (3) Warrant may be granted subject to conditions or continuing requirements.
- (4) Applicant must notify verifier, in writing, within 7 days of the commencement of work on site.
- (5) Applicant must give verifier details of any work that they intend to cover with a certificate of construction prior to works commencing to the affected part on site.

3.2.11 An application for warrant or amendment to warrant should be accompanied by the information listed below. (This is an expansion of schedule 2 of the procedure regulations). Note however that the verifier has discretion over the extent to which the information must be provided, so that minor work can be treated more simply.

A) List for application for warrant to erect

1 General arrangement drawings comprising:

- a plan of the foundations, each floor and any roof
- sections through the building
- an elevation of each face of the building.

all to be at a scale not less than 1:100 (1:50 preferred), with drawings to a larger scale as necessary to show the particulars needed to determine the application and to show the relevant particulars set out below -

For all buildings (but see notes 1, 2 and 3 below):

- the level of the site of the building, lowest floor and adjacent ground (including any road), all in relation to one another and some known datum.
- the position, materials and dimensions of foundations, walls, windows (including opening area and direction of opening), doors (including direction of opening), floors, roofs, chimneys and flues, ventilators and ventilation ducts, stairs, landings and balconies, protective barriers and such other parts of the building as the verifier requests.
- details of construction including any frame and size and position of reinforcing material.
- details of calculation of loading and strength.
- indication of compartment and separating walls and floors and details of fire stopping.
- position, materials and dimensions, including gauge or weight, of any damp proof course or other moisture barrier.
- position of any sanitary facility or other built in equipment.
- position, materials, dimensions and form of any drainage or ventilation pipe (including the line, depth and inclination and means of ventilation of every drain and the relationship to any sewer, sewage treatment works or other outlet into which drains are to discharge).
- position, materials, dimensions and form of any traps, manholes and access openings.
- such particulars as are necessary to show that the works involved will be conducted in accordance with building regulations 13, 14, 15 and 17.
- the position and dimensions of any lift well, lift car, machine room and platform lift.
- the escape routes available as means of escape from fire including dimensions.

- the position of any ground hydrants, fire mains and fire appliance access.
- any supplementary information, as requested by a verifier, so as to allow an application to be properly considered, such as ground condition or fire engineering reports.

In addition, for buildings having sleeping accommodation:

- the position and number of socket outlets and smoke alarms in dwellings.
- the position of automatic fire detection in residential buildings.
- the position of automatic life safety fire suppression systems in residential care buildings.

Notes:

- a) Some of the above may be presented in a written specification as the verifier may agree or may not be required where an approved certifier of design is covering aspects such as the details of calculation of loading and strength. However, for complex buildings strategy diagrams for structure and fire may be required even where an approved certifier of design is used.
- b) Full structural design specifications and/or calculations will not normally be required where the verifier has been advised on the application form that the Small Buildings Structural Guidance has been complied with. However, sufficient information should be provided to allow the checking process to be properly carried out by the verifier.
- c) Each drawing must have a unique reference number, to identify the drawing.

2 A block plan to a scale not less than 1:1250 (1:500 preferred) to show:

- the size and position of the building, and any adjoining building as it affects the proposal.
- a north point.
- the position, width and level (in relation to some known datum) of any road, court or footway adjoining the building or from which there is access to the building.
- the boundaries with land in different occupation and any notional boundaries needed to determine compliance with the standards.

3 Where the site is not identifiable from the block plan referred to above, a location plan to show:

- the position of the site, to a scale not less than 1:2500 (1:1250 preferred), and a north point.

B) List for application for warrant to extend

Plans and specifications, as detailed in **A** above, of the extension and of the building so far as it is affected by the extension. The drawings must, if the verifier requires, be coloured or shaded to the extent necessary to identify new work, materials used, dountakings etc.

C) List for application for warrant to alter, to convert, or to provide services, fittings or equipment

Plans and specifications, as detailed in **A** above, but only so far as is necessary to show that the building after the proposed alteration, conversion or fixture will comply with the building regulations.

The drawings must, if the verifier requires, be coloured or shaded to the extent necessary to identify new work, materials used, downtakings etc.

An assessment of the existing structure may be required if the proposed work is reliant on it for compliance e.g. if loads are significantly changed.

In the case of certified self-contained projects to install particular services, the details to be provided may be specified in the scheme.

D) List for application for warrant to demolish

- a block plan, to a scale not less than 1:500, showing the size and position of the building to be demolished and its relationship to adjoining buildings and boundaries with land in different occupation.
- a statement of the method by which the building is to be demolished.
- a statement providing information on the construction of the building to be demolished (this may be a section of the building to be demolished, but photographs of the existing, or original as-built drawings, may provide enough information – to be agreed with the verifier).
- particulars appropriate to show that the work involved will meet the requirements of building regulations 10 and 13 to 15.
- if the building is not to be demolished in a continuous operation, the dismantled stages in which it will be left.

E) List for application to amend any warrant under section 9(4) or 9(5) of the 2003 Act

Plans and specifications, as detailed in **A** above, but only so far as is necessary to show the further information required or the proposed amendment.

In the case of an amendment to a previously certified design (see paragraph 3.9.11 below), the information supplied should be sufficient to allow the verifier to clearly identify the scope of any certified work, to allow any necessary consultation with other authorities (see chapter 14 below) and to assist any site inspection the verifier may wish to make.

F) Directions

Relaxations are covered in detail in chapter 4 below.

G) Supplementary information

This part of the schedule covers details such as requiring dimensions to be figured, plans to be drawn in a clear and intelligible manner and the requirement for plans to have a reference number.

3.3 Late application for building warrant

3.3.1 Where work for which a building warrant is required has started without a warrant an offence has been committed. However, to deal with these cases where work has started without a warrant, perhaps through ignorance of the law, a way of regularising the situation is needed. The Act, therefore, allows a late application for warrant to be submitted at any time before the works on site are complete. If the works are complete a late completion certificate may be submitted (see 5.3).

3.3.2 Importantly, the standards that apply to a late application are those at the time of application, not when the building started, so changes may be required even to parts of the project that have been completed if it does not meet the relevant standards.

Full drawings are required, as for a normal application. If the construction is well advanced the verifier may request parts to be exposed so that adequate checks can be made and a higher fee is charged to cover such difficulties. These disadvantages to starting work before obtaining a warrant are not designed as a penalty, which would arise from any action taken in relation to the offence, but are necessary to allow proper consideration of the work. (Note, the requirements relating to late applications, such as the need to meet the standards applying at the date of application, do not apply to applications for amendment of warrant).

3.3.3 If, before a building warrant application is approved, it is discovered that works started on site prior to the submission of the application, the application form has been completed fraudulently. In such instances the verifier should arrange for the application form to be altered or replaced to indicate that the works have commenced and the higher fee (125%) charged. It should be noted that, where works commence on site after the submission of the building warrant, the application should not be treated as a late warrant and the higher fee can not be charged.

3.3.4 The Act and procedure regulations permit certification of design and construction in late applications but certification schemes may discourage certification of work started without a warrant, except in particular cases defined in the schemes.

3.4 Staged warrants

3.4.1 In some projects, particularly for commercial buildings, a building cannot be fully designed until the eventual occupant is identified. Specialist sub-contractors, who are often needed to complete the detailed design of parts of the building, may also not be identifiable at the outset. The Act allows for warrants to be granted in such cases, in the following ways.

3.4.2 The applicant has to agree with the verifier which later stages of work can not commence until details of those stages are provided. The warrant for the whole project is then granted with a condition that work on the identified stages does not start until the necessary information has been submitted and an amendment of warrant for the next stage(s) granted. Thus work on piling or foundations can start before the rest of the design is finalised. It is the responsibility of the applicant or his agent to apply for the amendment of warrant in good time to allow checking and approval so that site work can continue smoothly.

3.4.3 An application for a staged warrant as described above may include a certificate from an approved certifier of design if that is applicable to the stage in question. If the certificate covers the whole of a particular aspect of design, for example the structure, then subsequent application(s) for amendment will have to include updated certificate(s) which relate to the stage in question and must also take responsibility for the work up to that point.

3.4.4 The fee for a staged warrant is payable in full at the time of the initial application, based on the estimated total value of the project. A discount is available for any certificate of design presented. For the later amendments the fee will be as in paragraph 3.14.4. No discount is available for updated certificates of design covering the same section of the Technical Handbooks but any certificate covering a new aspect of design could attract a discount on the fee payable for the amendment. Any other arrangement for collecting the fee payable, for example a phased payment rather than all with the original application, is at the discretion of the verifier.

3.4.5 The principle of staged warrants can be applied to work on existing buildings, for example, where a specialist piece of work may only be fully designed after work has progressed to a stage where full dimensions are available. For example a metal stair may only be finally detailed when alterations to floors are completed.

3.4.6 A completion certificate will not normally be accepted until all stages are complete; however, there are occasions when a completion certificate can be accepted before all works covered by a staged building warrant are complete. For example, individual certificates would be accepted in relation to a phased housing development where additional buildings are to be the subject of further stage(s). It is not possible in a staged warrant application to have separate completion certificates for shell and for fit out. If an applicant wishes, perhaps for contractual arrangements, to split a shell from fit out work, separate warrant applications can be made for each and individual completion certificates accepted for each. However, as a completion certificate has to certify the building complies with the building regulations as well as the warrant drawings, a warrant granted for a shell should include a continuing requirement that effectively prevents occupation of the completed shell until the fit out is completed. Such a continuing requirement should quote the provisions of the regulations which the fit out has still to satisfy.

3.5 Duration of warrant

3.5.1 A building warrant is valid for three years, commencing the day it is granted. The applicant must either finish the work within that period or apply for an extension of the warrant. An application for extension is required to be made before the expiry of the warrant, although verifiers have the power to accept late applications in cases of hardship. If the verifier agrees to extend the warrant, the first extension will be for nine months. There is no legal limit to the number of extensions but they are at the verifier's discretion and the need for further extensions will have to be very clearly justified, for example, by the size or complexity of the project. To prevent misuse of extensions of time, verifiers have the power to insist that work done after the expiry of the original warrant must meet the building regulations in force on the date of the application to extend the expired warrant. This is, however, only likely to be appropriate where little work has been commenced.

3.5.2 It should be noted that an amendment of warrant does not alter the period for which the original warrant is valid. A specific application as in paragraph 3.5.1 above is necessary if more time is needed.

3.5.3 Although a building warrant is granted to a particular applicant, if a building is sold while under construction the effect of the warrant transfers to the new owner or indeed all the persons having an interest in the building. In other words construction may continue and on completion the new owner must submit the completion certificate (see chapter 5 below for details of submitting completion certificates).

3.6 Limited life warrants

3.6.1 Where a building is intended to be used for a limited period of time it may not be necessary to apply all the standards for a permanent building. The Act allows building regulations to specify which of the standards should not apply and lets the procedure regulations set a time limit. This limit is currently five years for a 'limited-life warrant' and is measured from the date of acceptance of the completion certificate for the building or, if applicable, the date of any permission for temporary occupation or use.

3.6.2 It is important to stress that this type of warrant is intended for buildings that will be removed by the end of the time limit and removal is a condition of the warrant. An application to demolish is required at least 3 months before the limit is reached, unless otherwise agreed with the verifier. It is possible for the owner to apply for an extension of the limit but this is at the discretion of the verifier. It is an offence to fail to demolish (or otherwise remove) by the time limit set in the warrant unless an extension of time has been granted (not just applied for). Continued occupation of such a building after the time limit can be prevented by the Courts.

3.7 Application of regulations to existing buildings

3.7.1 Extensions to existing buildings must be constructed in such a way that the extension complies with all current standards that are relevant to the construction and use of the extension. In addition, the whole building must not, as a result of the extension, fail to comply with building regulations if it complied originally or fail to a greater degree if it failed to comply originally. If either of those conditions is not met the verifier is required to refuse a warrant and certifiers of design must not certify such an extension.

3.7.2 Alterations to existing buildings also attract the full current standards relevant to the alteration work. In addition, the whole building must not, as a result of the alteration, fail to comply with building regulations if it complied originally, or fail to a greater degree if it failed to comply originally. Again there should be no certification of design and the warrant application must be refused if these conditions are not met. Note, however, that alterations to an existing building which are part of a conversion in terms of the Act have to be taken further, so that the building being converted complies more fully (see paragraph 3.7.5 below).

3.7.3 The definition of building in the Act (section 55) makes it clear that in relation to the extension, alteration or conversion of a building, references to building are to so much of the building as is comprised in the extension or is the subject of the alteration or conversion. Section 10 of the Act, therefore, protects the whole building from the effects of the extension, alteration or conversion of part of a building. However, the intention is to prevent the creation of a worse situation rather than to require other parts of the building to be upgraded to remove existing deficiencies. Therefore, the existing building requires to be sufficiently detailed on the submission drawings to demonstrate that it is not being adversely affected by the proposals.

3.7.4 In the light of that intention, failure or failure to a greater degree, as a result of the proposed work is considered to mean the existing building is deemed to comply unless some aspect is actually altered by the work. The consequence of this for conversions is set out in paragraphs 3.7.5 and 3.7.6 below. For alterations and extensions is set out in the following examples:

- When an existing building is altered internally and access to the entrance is not affected, there is no requirement to provide access for disabled people.
- Where a building is extended, there is no requirement to provide an accessible entrance for disabled people to the extension but if there is suitable access to the existing building it should continue into the extension.
- If a lift is added to a building, which might allow access for disabled people to an upper floor, there is no requirement to alter existing door or corridor widths on that floor, nor to add refuges on an escape stair.
- In a dwelling, if an accessible WC is available on the entrance level there is no requirement for any new WC to meet the access standard but the accessible WC cannot be removed and replaced by one on say the first floor.
- In a dwelling, if there is a WC on the entrance floor but it does not comply, it can be moved to another floor as the dwelling is not failing to a greater degree (there is still not an accessible WC).

Note, however, that the above comments do not take account of obligations that might arise under any other legislation, such as that controlling the workplace or requiring equal access to services for people with disabilities.

3.7.5 Conversion of a building, if it is a conversion of a type set out in schedule 2 of the Building (Scotland) Regulations 2004, brings different requirements from those that apply to alterations. It is not just the planned work that must meet the standards; when converted the whole building is required to meet all the standards. There are two important qualifications to that requirement because few existing buildings can reasonably be altered to meet all aspects of current standards. Firstly, schedule 6 to regulation 12 lists those standards which can be met by improving a building to as close to the full requirement as is reasonably practicable (see paragraph 3.7.6 below). Secondly, it is important to remember that functional standards allow some flexibility in deciding what is acceptable (see paragraph 3.7.8 below). Historic buildings also require sensitive application of the standards (see paragraph 3.7.9 below).

3.7.6 The building regulations define 'reasonably practicable' as '...having regard to all the circumstances, including the expense involved in carrying out the building work'. The way to proceed is that an applicant has to show how any failure of the building, as it is proposed to be after conversion, is being addressed. Except for historic buildings (see 3.7.9 below), it is only in exceptional cases that it is likely that taking no action is acceptable but it will be normal for many of the identified standards that the full current requirements will not be met. The regulations do, however, require the building to be no worse than before, so the construction must either be left untouched or be altered in a way that is closer to compliance with the standards. The individual sections of the Technical Handbooks to the building regulations give guidance on what is likely to be an acceptable standard.

3.7.7 In other cases where the occupation or use of an existing building changes, i.e. cases which do not fall within the definition of conversion, there are no standards applied to it unless there is alteration or extension work done, in which case the guidance in paragraphs 3.7.1 to 3.7.4 above applies.

3.7.8 Notwithstanding all of the above, there will always be cases when working with existing buildings that adopting solutions based on whatever is in the Technical Handbooks or other guidance documents will not be suitable. Rather than deal with these cases by relaxations, as previously, it is now possible for the verifier to use judgement as to whether a standard is adequately met. In difficult cases it will be possible to obtain a formal view from the agency to assist the decision or where it is the functional standard itself that is not applicable a relaxation may be requested from the agency. The approach expected from verifiers is that where relaxation might have been accepted in the past it can be approved, if necessary with whatever compensating features that might previously have been requested under 'conditions of relaxation'. A similar approach applies to certifiers of design, although the option of a formal view is not available to them (see paragraph 4.2.6 below).

3.7.9 For historic buildings the judgement of what is reasonably practicable must be made in a wider context. Section 35 of the Act gives specific protection to certain historic buildings in relation to statutory notices. However, a wider range of buildings may need sympathetic consideration. Historic Scotland use the following definition – "Historic building – a building of special interest or significance. That interest or significance may be local or national and may be a consequence of, for example, the building's age, built form or location. It may result from its connection with a person or persons or with local or national events or industry; or from a combination of these or other factors. An historic building does not have to be listed by Scottish Ministers or lie within a conservation area to be deemed to have special interest or significance."

3.7.10 In applying the functional standards to work done to buildings covered by the above definition the particular matter that is significant or important should be considered. Also, the construction and materials of the existing building may have to be considered in light of the standards rather than the Technical Handbooks which assume current materials and construction techniques. Further advice is available in an Historic Scotland guide for practitioners entitled "Conversion of Traditional Buildings; Application of Building Standards".

3.7.11 It is the responsibility of the applicant to inform the verifier whether the building which is the subject of the application has any relevant historical significance in relation to either statutory protection or the wider definition above.

3.8 Demolitions

3.8.1 Warrants for demolition, while nominally valid for three years, are usually granted subject to time limits, i.e. a time period from the commencement of the demolition to the completion of works. This period should be set by the verifier in agreement with the applicant.

3.8.2 The information required on the existing building and on the method of demolition, is intended for the purpose of allowing a verifier to judge what is the appropriate provision of protective works to ensure the safety of the general public. Other details of any method statement prepared to meet Health and Safety at Work legislation need not be checked by the verifier. For building warrant approval only sufficient information is needed to ensure the requirements set in regulations 10 and 13 to 15 of the building regulations are met.

3.9 How a building warrant application is assessed, decided and issued

3.9.1 Receipt of an application for warrant should be recorded immediately if delivered by hand, electronically, or by post during the verifier's office hours. The date of receipt is otherwise the first working day after receipt. An application may only be rejected in certain circumstances, defined in regulation 8. An application is subject to a detailed procedural check shortly after receipt, with a technical check being carried out later. There is no normal time for this check, as the time taken can vary considerably depending on the complexity of the project, the quality of the application and the use of certificates of design. Verifiers do, however, publish target times for responding to and dealing with applications. There are also long stops in the legislation to prevent applications from lying indefinitely (see 3.9.8 below).

3.9.2 The application check involves two main parts:

First, a procedural check of the registered details of any person who has signed a certificate of design submitted in support of the warrant application using the certification register (see 3.14). The verifier may only accept a certificate if:

- the person is approved as a certifier of design on the date of signature and
- the firm is an approved body on the date of signature by the certification coordinator, and
- both are registered under the same scheme which is relevant to the work being certified.

The verifier should also check that the certificate relates to the warrant application, for example, building address, description of works and description of stages are consistent. Note that for certificates submitted just after a change in regulations, particularly where signed before the change, the verifier may wish confirmation that the certificate correctly relates to the standards applicable at the date of the application. If the register check shows that either the approved certifier or approved body were not approved at the date of signing the certificate, the verifier must inform the scheme provider using the certification register (see 3.9.10). In such a case, the verifier should allow the applicant to obtain certification from another approved certifier or from another approved body with the appropriate designation. Where this is not possible, the verifier may agree with the applicant to take responsibility for checking the design in return for the appropriate fee (payment of the discount given when the warrant application was made – see 3.14.10). The application must be adjusted to alter the details of the approved certifier.

Second, a detailed technical check of those aspects of work that are not certified is made, assessing the application against the relevant standards in the building regulations. The Technical Handbooks and other guidance documents issued by Scottish Ministers will assist verifiers to fulfil this duty.

3.9.3 The check may result in an immediate decision to issue a warrant but more usually a report, known as the "first report", will be produced indicating failures to comply or areas requiring further clarification. The report should provide a level of detail sufficient to identify clearly which standards must be addressed or what further information is required.

The report should not comment on work subject to certification but may cover the relationship of certified matters with the other parts of the building or aspects of the design which are outwith the certification. A verifier may also ask for such details of

the certified matters as are considered necessary to check the certified design on site (see paragraph 3.2.5 above). A verifier is required to respond to an application for building warrant within a period of three months from the date of receipt of the application. If a verifier has not responded within three months, or as otherwise extended, the building warrant application is deemed to be refused.

3.9.4 The applicant must make any necessary adjustments to the proposals and submit appropriate revised drawings and specifications until the verifier is satisfied that the work can be carried out:

- in accordance with the building regulations and
- when the warrant is for construction, demolition or the provision of services, fittings or equipment, that nothing on any plan or specification indicates the work when completed will result in a failure to comply with the building regulations.

If any aspect of the design is certified, the applicant must inform the certifier if the verifier requires any significant adjustment to be made to the proposals. The certifier must certify the revised drawings and specifications.

3.9.5 Before granting a warrant a verifier may require the applicant to consult other bodies, may offer the opportunity for consultation through issuing lists of applications or may consult directly. For details of the types of consultation appropriate for different situations see chapter 14 below.

3.9.6 The application for building warrant is based on a model form and includes certificates for all available certification schemes. When the warrant is issued one copy of the drawings and any specifications, as finally approved after any necessary amendment, are returned to the applicant, in the format in which they were received. The verifier will retain a copy of the warrant or amendment to warrant and any other copy of drawings or information requested, e.g. for use on site. When a warrant has been granted, a copy of the warrant or amendment, including any continuing requirement imposed, together with the principal set of plans and any certificates from approved certifiers, must be sent to the local authority for inclusion in the building standards register.

3.9.7 A warrant may be subject to conditions, in the following ways:

- A staged warrant (see paragraphs at 3.4 above) has conditions preventing work on later stages being carried out until an amendment of warrant has been issued.
- A relaxation (see paragraphs at 4.3 below) related to an application may have conditions that must be met.
- A warrant may be subject to continuing requirements (see paragraphs at 7.3 below and 3.4.6 above).
- A warrant may be granted subject to a limited-life condition (see paragraphs at 3.6 above).
- A warrant to demolish includes a condition setting a time period within which the demolition must be carried out.

Note that when a warrant is issued, there will be a requirement to inform the verifier when work starts on site, and at other stages the verifier deems necessary (see

paragraph 3.10.3 below). A verifier will also have to be informed when approved certifiers of construction are to be used. These requirements are not formal conditions of the warrant, which are limited by the Act, but are a requirement of the procedure regulations.

3.9.8 A building warrant application that has not been granted within 9 months of the date of the first report is automatically determined to be refused unless a longer period is agreed with the verifier. This prevents applications that have run into difficulties lying unfinished. A fresh application and fee are necessary if the application is to be reconsidered. The first report should give clear warning of this procedure to the applicant. The verifier may consider it prudent to issue a further letter closer to the “deemed refusal” date, reminding the applicant of the impending action and advising what options are available to them. If the warrant has not been granted within the statutory time period or the period has not been extended, the verifier may consider issuing formal notification of the “deemed refusal”. The time period is extended by any time taken to obtain a view or a relaxation from Scottish Ministers or a response to a consultation request or if there is agreement between verifier and applicant.

3.9.9 Where a warrant application is refused, the verifier ensures this information is sent to the local authority to be recorded in the building standards register. The principal plans and specifications, together with any amendments, including any certificates submitted in support of the application, are retained in the normal way but the remaining drawings and information are returned to the applicant in the format in which they were received, along with a formal refusal. An applicant or their duly authorised agent has the right to appeal to the Sheriff Court in respect of a verifier’s decision to refuse to grant a building warrant or if the warrant is deemed refused as in 3.9.3 or 3.9.9. This process is covered in Section 6.

3.9.10 Whether or not a warrant is refused, where an application includes certificates submitted by individuals who do not hold appropriate current designations or by bodies that are not currently approved to co-ordinate certification of such matters, the verifier should inform the Scottish Building Standards Agency.

3.9.11 Where an application for amendment of warrant affects work that has been certified, the certifier must reassess and recertify the work in question. Any arrangements that may become necessary to replace a certifier are a contractual matter but certification scheme providers are expected to offer assistance to identify alternative certifiers.

3.9.12 When a warrant has been granted, work may start on site. It should be noted however that a grant of warrant does not preclude the need to have any other legal requirements, such as planning permission, in place before starting work. There will be other considerations also, such as the position of existing services like gas pipes or power cables, which are outside the remit of the building standards system. It is the responsibility of those wishing to build to check with utility companies before work starts. The verifier should be informed when work is to start (see paragraph 3.9.7 above).

3.9.13 When an applicant decides to withdraw an application there is no refund of fee, and the entry remains on the building standards register.

3.10 Inspection and tests

3.10.1 The intention is that verifiers may inspect on-going works during construction, as they see fit. To help facilitate this the verifier must be notified in

writing of the commencement of works on site within 7 days of the start date. The need for and frequency of, inspections is assessed by the verifier, taking into account matters such as the type of work, quality of information submitted, etc. It must be stressed that the inspections are to protect the public interest in terms of compliance with building regulations, not to ensure that all the work is constructed as the person paying for the work would want it.

3.10.2 Should any verifier be actively prevented from undertaking inspections of work, the 'relevant person' (see paragraph 5.2.1 below) submitting a completion certificate for the work can expect to have it refused. Also, Section 27 of the Act gives a local authority power to issue enforcement notices (see chapter 7 below) where work is being done without a warrant or not in accordance with a warrant and powers to inspect work in progress. If necessary, a verifier (where not a local authority) could request an inspection be carried out by the local authority under these powers.

3.10.3 To assist verifiers in deciding when to inspect, applicants are required to inform verifiers when work commences, when drains are laid but not covered, when the drainage system is complete and when the building is complete. For particular projects verifiers may also require applicants to give notice when other stages of work are complete, such as when foundations are about to be laid or a roof structure has been erected. The nature and frequency of inspections carried out by a verifier may vary dependant on a risk assessed approach and the size and complexity of the project.

3.10.4 Applicants also need to inform verifiers of any work that is to be certified by an approved certifier of construction, before that work starts on site (or elsewhere, in the case of off-site prefabrication), if the refunds available at completion are to be claimed. Applicants should agree any such declarations with the certifiers identified to do the work, as if subsequently the work is not certified, it may result in the need for disruptive surveys and delay. A verifier should not inspect works on site that are the subject of a certificate of design.

3.10.5 A verifier may inspect a site or an existing building before issuing a warrant with the agreement of the applicant (and the owner if different). In practice early inspections can be helpful to applicants and verifiers and can assist assessment of an application. Applicants are encouraged to allow such preliminary inspections. Note, however, that where a local authority suspects building work is being done without a warrant it has powers to enter and inspect any premises. Where a building is to involve extensive off site fabrication, it may also assist assessment if inspection of the parts during fabrication could be agreed, although the practicality of such an arrangement will depend on the location of the fabricator.

3.10.6 Under section 41(2) of the Act, a verifier may request a 'materials test' if they consider it necessary. These tests are to establish whether an application for warrant should be granted or whether a building being constructed under a warrant is being constructed in accordance with the warrant (see also paragraph 5.5.3 in relation to tests to determine whether a completion certificate should be accepted). The Act explains that a 'materials test' means a test on individual materials or materials in combination or even of a whole building. The test is at the building warrant applicant's or relevant person's expense.

3.10.7 In the case of work covered by a certificate of design, a verifier may not request a materials test before granting a warrant. However if a local authority wishes to take enforcement action they may, under section 39(4) of the Act, carry out reasonable tests to determine the quality and strength of any material.

3.11 Discharge of continuing requirements

3.11.1 Verifiers must, if an application is made to them, discharge or vary continuing requirements that they have placed on a building (see paragraphs at 7.3 below) where the following criteria are met:

- for discharge, application is made showing that the building complies with the regulations at the time of the application and that the continuing requirement is not needed to secure that the purposes of the regulation will not be frustrated
- for variation, application is made showing that the building complies with the regulations at the time of the application and that the variation will not result in the purposes of the regulations being frustrated.

3.11.2 Continuing requirements also cease to have effect if a further building warrant is granted in respect of the building or a further completion certificate is accepted, although a verifier may re-impose or impose further, continuing requirements as it sees fit.

3.11.3 Verifiers do not have the power to discharge or vary a continuing requirement imposed by Scottish Ministers.

3.12 Maintenance of records

3.12.1 A local authority is required to maintain a register of the applications for warrant and amendments to warrant, including the plans, other documents and information submitted, together with the decisions taken on the applications (see chapter 8 below). When local authorities are acting as verifiers they do not need to keep other records. If in future other verifiers are appointed, the procedure regulations will be amended to require the relevant information to be sent to the relevant local authority to be recorded on the building standards register. The local authority and verifier where different, will have to check that the address given corresponds for any existing building. However, where a new building is to be erected the land parcel may not have a final address, this will have to be checked when the construction starts or, at the latest, when a completion certificate is submitted.

3.12.2 The local authority and verifier where different, should also take responsibility to describe as accurately as possible, the work for which the warrant is finally granted. The inclusion of key words and key descriptors to assist searches is strongly advised. The registration numbers of approved certifiers and bodies should be recorded in a form that allows searches. Verifiers should note the aspects of work for which they have accepted certificates from approved certifiers of design and the result of the checks on the certifier.

3.13 Fees regulations

3.13.1 The Building (Scotland) Fees Regulations 2004 set the fees that are charged by verifiers for building warrant submissions, including those for “late” completion certificates and building warrant submissions. The discounts and refunds applicable when certificates of design or construction, respectively, are correctly submitted (see 3.13.7) are also covered by these regulations. Details of the fees are set out in the table below, with the fees related to the ‘value of the works’. In calculating the value of the works the applicant must use the normal market costs rather than any discounted costs which they might be able to achieve. For example,

even if the labour was unpaid because it is a self-build project, the value of the building work should still include a fair assessment of the value of labour had commercial contractors undertaken the work. The cost of verifying compliance is the same in both cases, indeed it may even be higher in a self-build project, so it is considered equitable that the warrant fee should be calculated on the same basis.

3.13.2 The cost of works that do not require building warrant approval, for example, decoration, floor coverings, etc, do not require to be included in the estimated value of the works. However, temporary works and preliminaries relating to the permanent works required to comply with the building regulations should be included.

3.13.3 If the verifier feels the estimate of value provided by the applicant is incorrect, they may check the amount by reference to established indices of building costs, for example the RICS Building Cost Information Surveys of Tender Prices. This provides the mean, lowest and highest prices in £/m² for works of different character. It also provides a modifier which can be applied to reflect geographical variations throughout Scotland.

3.13.4 If the verifier believes the value of the works should be higher than stated, the verifier can refuse to consider a warrant application unless the value is increased and the appropriate fee paid.

3.13.5 The fee is set at zero for works to alter or extend a dwelling to improve its suitability for use by a disabled occupant. The relief, therefore, is not for disabled people in general, it relates specifically to works to provide facilities for disabled people as defined in the building standards. This definition is a person with a physical, hearing or sight impairment which affects their mobility or their use of buildings.

3.13.6 As the Disability Discrimination Act has come fully into force as regards the alteration of premises and non-domestic buildings will have to provide appropriate facilities for disabled people as a matter of course, the zero fee rating is now restricted to dwellings.

3.13.7 The fee is subject to a discount when certificates provided by approved certifiers of design are submitted with the warrant application and to a refund when a verifier has been informed of the use of certifiers of construction as part of the completion certificate that is to be submitted. The notification to a verifier that an approved certifier of construction is to be used must be sent to the verifier before works start on the certified part(s). The notification requires to be signed by the original applicant for warrant, the duly authorised agent or the person that will be submitting the completion certificate for the work. If a different certifier is then used, the verifier must be informed at the earliest opportunity. If a certifier is not subsequently employed, the verifier will have to inspect the work and may require disruptive surveys to ensure the construction is in accordance with the building warrant.

3.13.8 A late building warrant submission may be accompanied by certificate(s) of design and receive the appropriate discount on the warrant fee. A late completion certificate submission may be accompanied with certificate(s) of design and/or certificate(s) of construction and receive the relative discount or refund on the warrant fee. Such discounts and/or refunds to the fee are based on the increased fee payable for a late submission (see 3.3.2 and 5.3.2).

3.14 Table of fees

3.14.1 The fee (before discounts – see below) for building warrant (other than late warrants – see below) for the construction of a building or for the provision of services, fittings or equipment in connection with a building (whether or not combined with a warrant for conversion or an application for demolition) is as per the following table:

Value of works £	Warrant Fee £	Value of works £	Warrant Fee £
0-5,000	100	140,001-160,000	1180
5,001-5,500	115	160,001-180,000	1280
5,501-6,000	130	180,001-200,000	1380
6,001-6,500	145	200,001-220,000	1480
6,501-7,000	160	220,001-240,000	1580
7,001-7,500	175	240,001-260,000	1680
7,501-8,000	190	260,001-280,000	1780
8,001-8,500	205	280,001-300,000	1880
8,501-9,000	220	300,001-320,000	1980
9,001-9,500	235	320,001-340,000	2080
9,501-10,000	250	340,001-360,000	2180
10,001-11,000	265	360,001-380,000	2280
11,001-12,000	280	380,001-400,000	2380
12,001-13,000	295	400,001-420,000	2480
13,001-14,000	310	420,001-440,000	2580
14,001-15,000	325	440,001-460,000	2680
15,001-16,000	340	460,001-480,000	2780
16,001-17,000	355	480,001-500,000	2880
17,001-18,000	370	500,001-550,000	3055
18,001-19,000	385	550,001-600,000	3230
19,001-20,000	400	600,001-650,000	3405
20,001-30,000	460	650,001-700,000	3580
30,001-40,000	520	700,001-750,000	3755
40,001-50,000	580	750,001-800,000	3930
50,001-60,000	640	800,001-850,000	4105
60,001-70,000	700	850,001-900,000	4280
70,001-80,000	760	900,001-950,000	4455
80,001-90,000	820	950,001-1,000,000	4630
90,001-100,000	880	And for every 100,000 or part thereof over 1 million	Add 250
100,001-120,000	980		
120,001-140,000	1080		

3.14.2	Application for building warrant for conversion only, that is without any building work –	Fee is £100
3.14.3	Application for demolition only, that is where there are no immediate plans for rebuilding -	Fee is £100
3.14.4	Application for amendment of warrant -	Fee is £50
	a) where the new total estimated value is less than the original or is an increase of no more than £5,000 –	Fee is £50
	b) where the new total estimated value increases by more than £5,000 –	Fee is the amount for a building warrant of the same value as the increase. (That is, if the increase is £20,000, the fee will be £400).
3.14.5	Application for an amendment to warrant for demolition or conversion only –	Fee is £50
3.14.6	Application to extend the period of validity of a warrant –	Fee is £50
3.14.7	Where a late application for building warrant is made, or a completion certificate is submitted and there was no warrant obtained when there should have been, the fee is increased by 25% to cover the increased difficulty they will have in establishing whether work that is already underway or completed complies with the plans, specifications and other information provided. The resulting fees are detailed below.	
3.14.8	Application for late building warrant, i.e. where work is already started –	
	a) application for a building warrant for the construction of a building or the provision of services, fittings and equipment in connection with a building (whether or not combined with an application for demolition) -	Fee is 125% of the fee in table of fees above
	b) application for warrant for demolitions only -	Fee is £125
3.14.9	Submission of a completion certificate where no warrant was obtained for -	
	a) the construction of a building or the provision of services, fittings or equipment (whether or not combined with an application for conversion or for demolition) -	Fee is the same as for a late application for building warrant of the same value of works, that is 125% of the fee in table of fees above
	b) application for warrant for demolitions only or for conversion only -	Fee is £125

Note – There is no fee for completion certificates registered by a local authority in relation to enforcement notices, even though these are in effect late submissions without a warrant.

3.14.10 A warrant fee is discounted where one or more certificates from approved certifiers of design are presented with a warrant application, as below:

- 10% for each certificate that covers the whole of any section of the functional standards, and/or
- 1% for each certificate covering a single item in any such section, up to a maximum of 5% for any one section

all subject to a maximum discount of 60% of the warrant fee.

When a local agreement is in place between the verifier and the applicant for phased payment of the warrant fee, the discount should be due on all the payments, provided a certificate was submitted with the warrant application.

Note that the above discounts apply where a late application for warrant is made or a late completion certificate submitted, with the discount applied to the whole fee.

Discounts also apply to an application for amendment to warrant. This may be for a different design scheme or, in the case of staged warrants, may involve a new certificate. The discount is on the amendment fee (which will take into account any increased value or work) and not the original fee.

3.14.11 A partial refund of the original warrant fee (before any discounting) is payable where one or more certificates from an approved certifier of construction are presented with a completion certificate, as below:

- 1% for each certificate covering an approved scheme or
- 20 % for a single certificate covering the construction of the entire building

all subject to a maximum refund of 20% and a minimum refund of £20.

Except when accompanying a late completion certificate, a refund is only payable where a verifier has been informed of the intention to use the approved certifier of construction prior to works commencing on site to the affected parts. A warrant applicant is entitled to the above refunds(s) when submitting a completion certificate accompanied by a certificate of construction(s).

4 ROLE OF SCOTTISH MINISTERS

4.1 Interpretation

4.1.1 While definitive interpretation of regulations is the preserve of the Courts, Scottish Ministers have the power to give a view on the extent to which a proposed building or construction complies with the regulations. Also, most of the technical information related to the standards in the regulations is in the Technical Handbooks and other guidance documents issued by the Ministers and the SBSA can interpret these. Informal advice on the content of the handbooks is available by telephone or e-mail but for a formal view on the extent to which a proposal complies with the building regulation standards the following procedure must be followed.

4.2 Reference to Scottish Ministers for a view

4.2.1 To assist verifiers and applicants for warrant in cases where there is doubt on whether proposals satisfy the regulations or whether continuing requirements need to be imposed as conditions of the warrant, Scottish Ministers may give a view on the matter. Verifiers must have regard to any view given when determining the application. It should be noted that a formal view will not be given on matters certified by an approved certifier of design.

4.2.2 Either the applicant for warrant or the verifier may choose to request a view. However, a view is only given if, in the words of the Act, the agency (on behalf of Scottish Ministers) 'think fit'. It will be regarded as unusual to give a view if only one party seeks to approach the agency. The intention is not to act as an unofficial appeal mechanism but to assist where there is genuine doubt as to the extent to which a proposal meets the regulations.

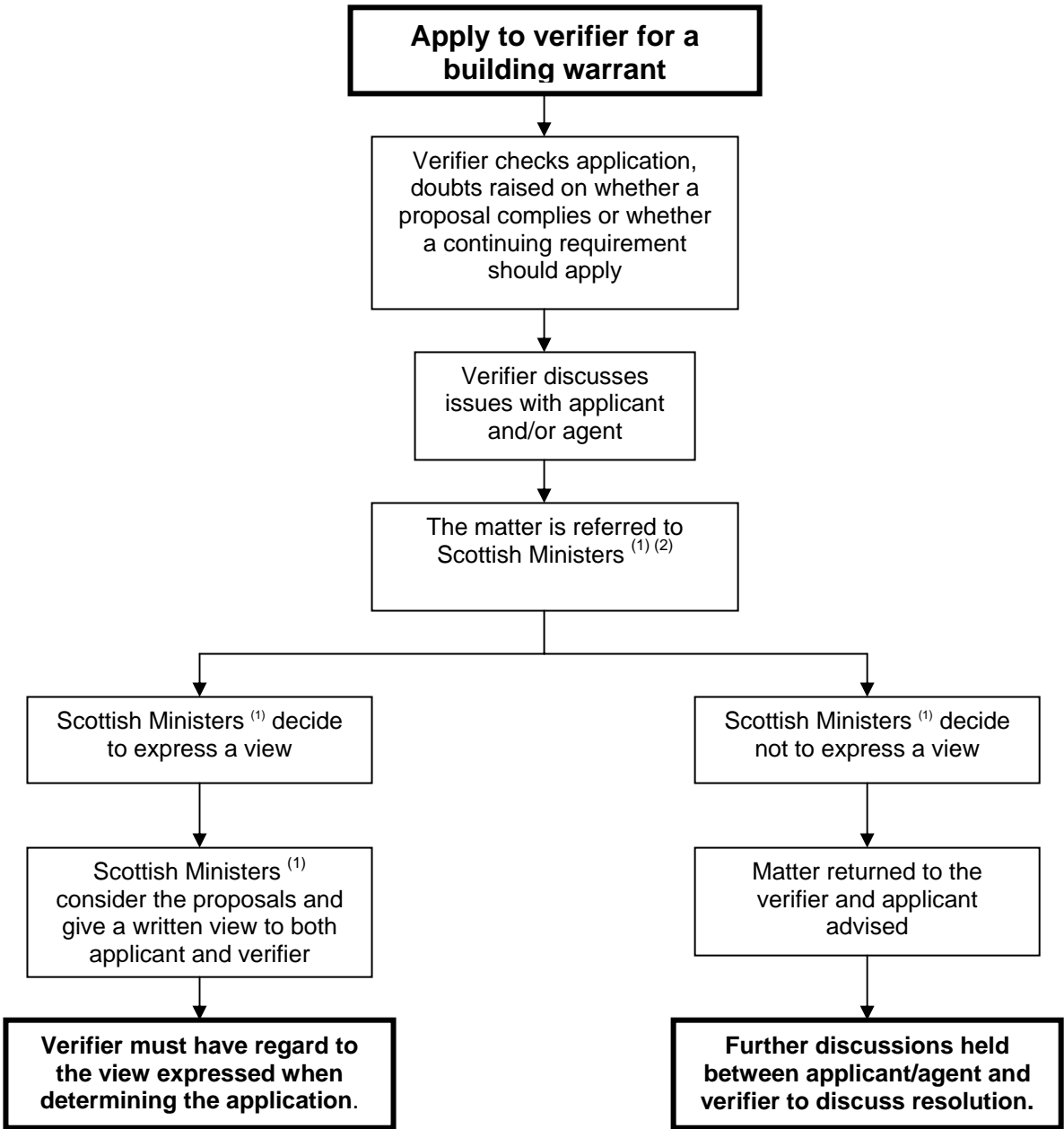
4.2.3 A referral for a view should be e-mailed, faxed or otherwise sent to the agency. A response is given within 48 hours, stating whether the agency is prepared to give a view, what the fee is and when a response will be given. The timing depends on the nature of the query and whether sufficient information accompanies the referral. Only the minimum information and drawings need accompany a referral but further details may be requested if thought necessary. Applicants must then confirm that they accept timescale and verifiers that they will pay the fee. The agency website will give details of the fee, which will vary on a case by case basis.

4.2.4 The agency does not normally consult on their view as it is intended to be a fast response service. Where the opinions of other parties, for example Historic Scotland, may be useful, consultation should take place before the agency view is sought. If the agency consider appropriate consultation has not taken place, the view can include a recommendation to the verifier or the warrant applicant to consult specifically on the matter.

4.2.5 A view is sent to both verifier and applicant and for the verifier will be accompanied by an invoice. Where the agency consider it may be useful, views are published more widely and can be found on the agency website – www.sbsa.gov.uk.

4.2.6 Where approved certifiers of design are seeking advice on the extent to which proposals satisfy the regulations in terms of either the matters to be certified or their relationship to other aspects of design, the agency may give advice but may charge a fee, depending on the extent of the work involved in considering the case. Unlike a view given by Scottish Ministers to a verifier and/or an applicant, a verifier is not required to have regard to this advice and a certifier is not obliged to present it.

PROCESS OF OBTAINING A VIEW FROM SCOTTISH MINISTERS



Notes:

- (1) In practice the Scottish Building Standards Agency will receive the reference and issue the view on behalf of Scottish Ministers.
- (2) Normally a reference will only be accepted if it comes from both parties.

4.3 Relaxations

4.3.1 For any particular building, a person may apply to Scottish Ministers for a direction to either relax or dispense with a provision of the building regulations. The building regulations designate certain provisions that may not be relaxed, although there is currently no designation in relation to the building standards themselves.

4.3.2 Where Scottish Ministers consider it unreasonable that the provision should apply to that building they may issue a direction. The direction may set conditions and a date for expiry. Any direction may also be revoked or varied by a further direction. There is no requirement to consult before issuing a direction in relation to a particular building but the fire service will normally be consulted for any question related to fire matters. If the application for relaxation relates to an existing warrant application and particularly where a warrant has been granted, the verifier will also normally be consulted.

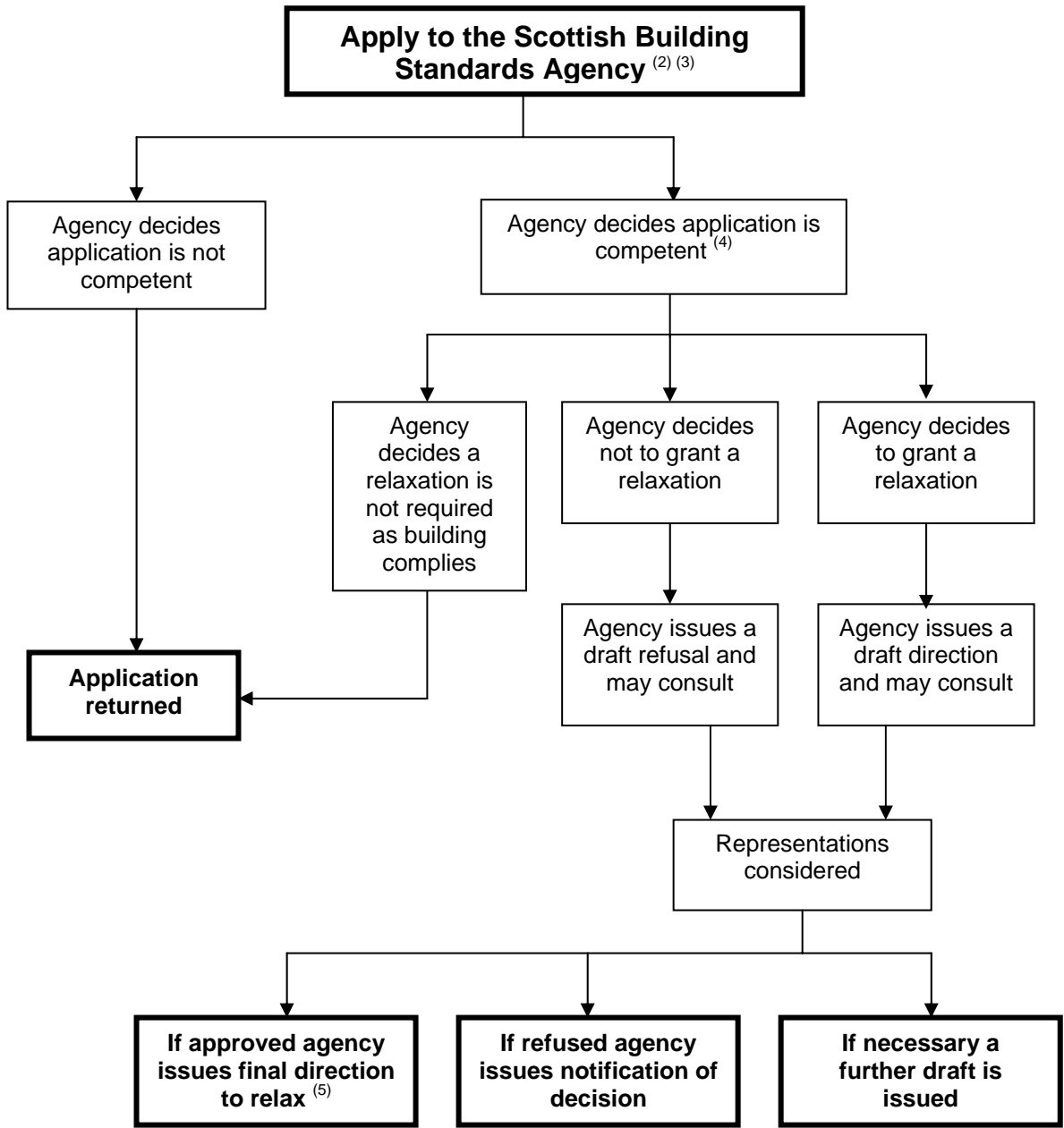
4.3.3 The application should be made on the model form (available from the agency or on-line at www.sbsa.gov.uk). One copy of sufficient drawings, specification and other information to fully explain the case should accompany the application. The precise provision of the regulations which the applicant considers is not appropriate for the application must be identified. If the agency requests, further information or test results (which the applicant must obtain at their own expense), should be submitted. With the agreement of the agency, supporting information may be submitted electronically. Where the agency consider it necessary, a copy of any related application for warrant must be forwarded by the relevant verifier. No fee is payable when making an application for a relaxation.

4.3.4 Normally a draft direction is sent to the interested parties, giving 21 days for representations against any aspect of the direction. A final direction is issued after consideration of the representations, if any, after the 21 day limit. Copies of the final direction are sent to the local authority. (Note, if alternative verifiers are introduced, every verifier authorised to deal with that type of building in that local authority area will receive a copy). Any other party that received the draft direction should also receive a copy of the final direction. The agency will normally report the background to the reasoning on the decision.

4.3.5 There are differences between relaxations under the 2003 Act and those previously given under the 1959 Act. The new form of expanded functional regulation gives more opportunity for flexibility and most cases can be decided by verifiers by interpretation of the requirements in schedule 5 of the building regulations. A relaxation or dispensation is for cases where a requirement is clearly, in whole or in part, unreasonable for a particular building. There is an appeal mechanism, as applicants may challenge a decision of the agency, in relation to relaxations, in the sheriff court.

4.3.6 Where a certifier of design applies for a relaxation, any direction given by Scottish Ministers must be submitted with the application for warrant or amendment to warrant. Where a certifier of construction applies for a relaxation, any direction given must be included with an application for an amendment of warrant.

**PROCESS OF OBTAINING A RELAXATION ⁽¹⁾
FOR A PARTICULAR BUILDING**



Notes:

- (1) "Relaxation" here includes complete dispensation of a standard.
- (2) Applications should be made on the model form.
- (3) The agency carries out this procedure on behalf of Scottish Ministers.
- (4) Competence depends on whether the agency considers the application relates to regulation that may be relaxed (the Act provides that some regulations may not be).
- (5) The direction may include conditions and/or continuing requirements.

4.4 Type relaxations

4.4.1 Scottish Ministers may also give a direction relaxing or dispensing with a provision of the building regulations for any description of building, i.e. a type relaxation. This can be given either on application by any person or by Scottish Ministers on their own behalf. The building regulations designate certain provisions that may not be relaxed, however, there is currently no such designation that affects the building standards. Before giving a direction the Building Standards Advisory Committee must be consulted, along with any other interested party. The consultation will normally include the fire authorities and must for any question related to fire matters. The Scottish Association of Building Standards Managers will also normally be consulted and verifiers and local authorities are also consulted.

4.4.2 The direction may set conditions and may set a date for expiry. Any direction may also be revoked or varied by a further direction, following consultation as in paragraph 4.4.1 above. Where an application for warrant has been made to which a type relaxation is applicable, the type relaxation continues to have effect for that application, even if the relaxation is revoked or ceases to have effect before the building warrant is issued or the building is completed. A type relaxation cannot automatically apply where a warrant application has already been made, but a verifier may take account of such a direction when deciding the application.

4.4.3 An application should be made on the model form available from the agency. (available on-line at www.sbsa.gov.uk.) One copy of sufficient drawings, specification and other information to fully explain the case should accompany the application. The provision of the regulations which the applicant considers is unreasonable for the type of building in question must be identified. If the agency request, further information or test results (which the applicant must obtain at their own expense) should be submitted. With the agreement of the agency supporting information may be submitted electronically. No fee is payable when making an application for a type relaxation.

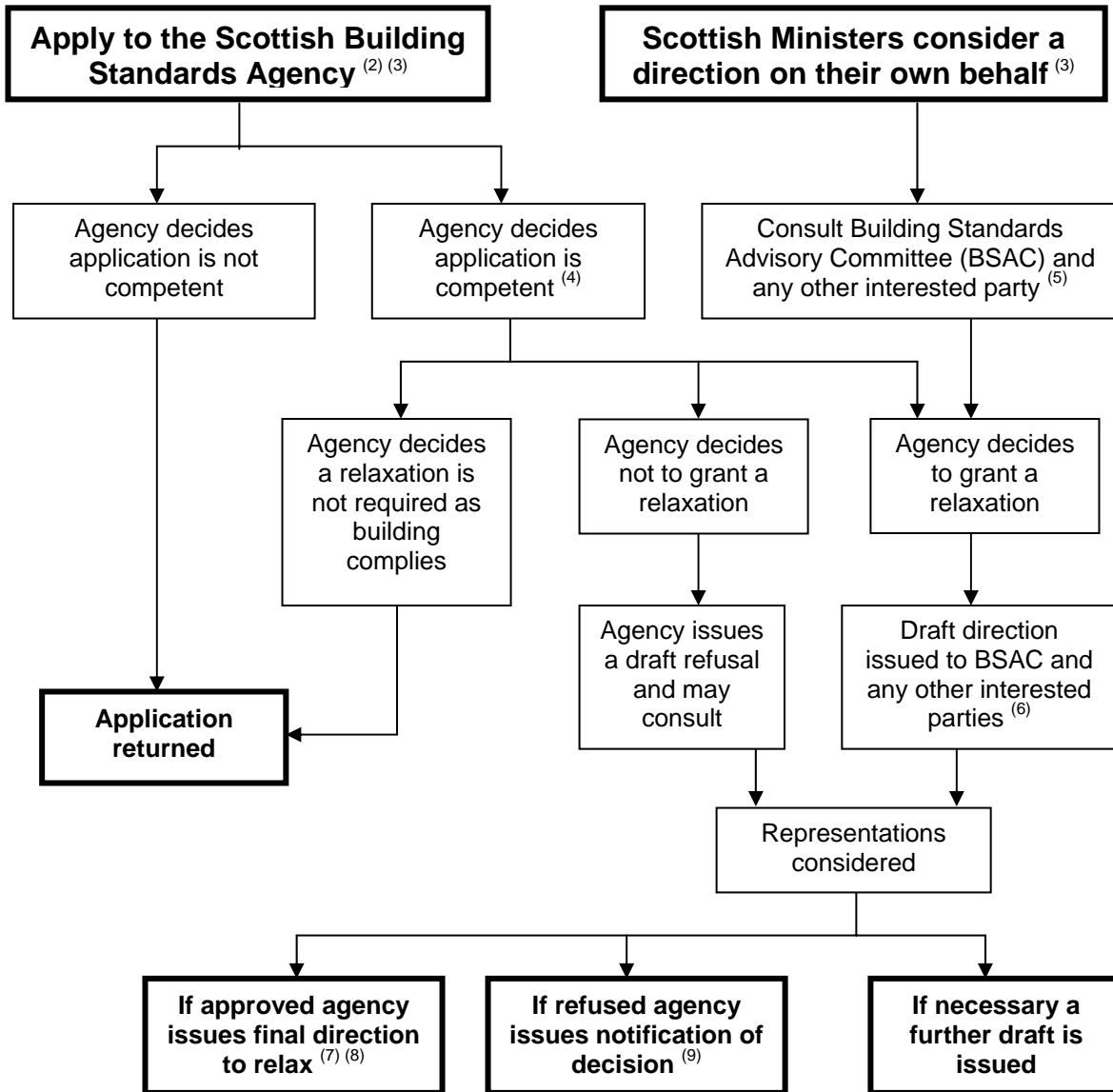
4.4.4 A draft direction is sent to the interested parties, giving 21 days for representations against any aspect of the direction. A final direction is issued after consideration of the representations, if any, or after the 21 day limit. Copies of the final direction are sent to every verifier. (Note, also sent to any local authority that is not a verifier, should that occur in the future). Any other party that received the draft direction should also receive a copy of the final direction. The agency will normally report the background to the reasoning on the decision.

4.5 Type approvals

4.5.1 The 2003 Act does not make provision for type approvals. However a Scottish Type Approval Scheme is provided by the Scottish Association of Building Standards Managers (SABSM), (previously the Scottish Association of Chief Building Control Officers – SACBCO). Anyone wishing to have a design approved for use on several sites, subject to checks on site specific matters such as foundations, can apply to SABSM. See the website at www.sabsm.co.uk.

4.5.2 This scheme allows more rapid and certain processing of applications by members of the scheme. At the time of publication, all local authorities are members and while this arrangement exists all local authorities approved as verifiers will recognise type approvals.

**PROCESS OF OBTAINING A RELAXATION ⁽¹⁾
FOR A PARTICULAR TYPE OF BUILDING**



Notes:

- (1) "Relaxation" here includes complete dispensation of a standard as it applies to a particular type of building.
- (2) Applications should be made on the model form (SBSA 2).
- (3) The agency carries out this procedure on behalf of Scottish Ministers.
- (4) Competence depends on whether the agency considers the application relates to regulation(s) that may be relaxed (the Act provides that some regulations may not be).
- (5) The process may be halted at this stage with no refusal notification issued.
- (6) "Interested parties" in relation to draft direction consultations include applicant or duly authorised agent (if any), every verifier and any other person they think fit.
- (7) The direction may include conditions and/or continuing requirements.
- (8) In the case of a "type relaxation" Scottish Ministers must send a copy of the direction to every verifier and local authority that is not a verifier.
- (9) A refusal would not be issued in the case of a relaxation initiated by Scottish Ministers.

5 COMPLETION

5.1 Why a completion certificate is needed

5.1.1 A completion certificate is needed to confirm that a building has been constructed, demolished or converted in accordance with the relevant building warrant and to comply with the building regulations. It is the responsibility of the relevant person (usually the owner or developer – see paragraph 5.2.1 below) to build correctly or to ensure building is done correctly, as verifiers cannot regularly or sufficiently monitor all construction work to check that the regulation requirements are being met. Consequently, the relevant person should ensure that adequate procedures are in place to allow the completion certificate to be properly submitted. This will include reminding any approved certifier of construction involved of the obligation of the relevant person to certify, when submitting a completion certificate, that the work has been both completed in accordance with the warrant and, more generally, in accordance with the building regulations. It is an offence to submit a completion certificate that is known to be false.

5.1.2 Further, it is an offence to occupy a new building, a conversion or an extension unless the relevant completion certificate has been accepted. It is, however, possible to obtain permission for temporary occupation or use, under section 21 of the Act, from the verifier. The application may be made by the relevant person (see paragraph 5.2.1 below). Note that the prevention of occupation does not apply to buildings subject to alterations but it is still a requirement of the regulations that a completion certificate for the alterations is submitted before expiry of the warrant.

5.2 How to submit a completion certificate

5.2.1 On completion of either work (which includes demolition) or conversion for which a warrant is required, the ‘relevant person’ must submit a completion certificate. The ‘relevant person’ is defined in the Act at section 17(10) but can be summarised as:

- the owner, tenant or developer doing the building work or conversion themselves; or
- the owner, tenant or developer who has employed a builder to do work for them; or
- the owner, where the tenant, developer or builder has not submitted the certificate when they should have done so.

Note that the owner must always be named on the completion certificate, as the procedure regulations require an owner to be notified when a completion certificate is accepted or rejected. The checks by verifiers and approved certifiers help to protect the public interest but do not remove the relevant person’s responsibility for ensuring compliance with the building regulations. A duly authorised agent may sign this completion certificate on behalf of the relevant person but this does not move the responsibility for compliance, which remains with the relevant person.

5.2.2 The submission must be made to the verifier, on a form provided by the verifier, either on paper or by electronic means (where the verifier has this facility). The accompanying information can be on paper, in an electronic format or in a combination as agreed with the verifier and, where required by technical standard 6.9, must include a copy of the energy performance certificate(s) for the building(s). A

loose-leaf sheet showing the preferred format for energy performance certificates, both for dwellings and non-domestic buildings, has been included in this document for information. The completion certificate form includes an annex that should be completed if any approved certifiers of construction have been used and the original, signed, certificate(s) should accompany the completion certificate.

5.2.3 It should be noted that where an approved certifier of construction intends to deviate from the approved warrant drawings, the applicant or the agent must submit an application for an amendment of warrant. This should be obtained before the work is done. This is necessary to allow the relevant person, when submitting the completion certificate, to state that the work has been done in accordance with both the building regulations and the building warrant.

5.2.4 Unlike the previous Building (Scotland) Act, the Act does not require a certificate to be submitted with the completion certificate by the electrical installer. Verifiers will, however, still seek proof that the installation is properly done. Unless the installation is covered by an approved certifier of construction, detailed evidence may be required.

5.2.5 Where there are several buildings covered by a warrant (excluding new dwellings or existing dwellings in different ownership), the regulations permit the submission of a completion certificate related to either, each building or to all buildings covered by the warrant. The 2007 amendments to the Building (Procedure) (Scotland) Regulations 2004 allow a single completion certificate to be submitted in the case of work to existing dwellings in the same ownership. It is intended that this will cover such work as the upgrading of an estate consisting of social housing where it may be more convenient to all involved to have a single completion certificate and acceptance for the entire project. For new dwellings, however, a completion certificate is required for each individual dwelling. On an estate of houses, a completion certificate must be submitted and accepted for each dwelling, provided the common services required by the building regulations for that dwelling have been completed. In other words, a completion certificate should not be accepted for a dwelling until it is connected to a suitable drainage system or until access to a suitable road is complete. (Note that matters not covered by a warrant, such as street lighting are, however, outside the scope of the certificate).

5.2.6 It should be noted that the final completion certificate for the last dwelling cannot be accepted until all the common items are complete.

5.2.7 In blocks of flats, the completion certificate for an individual flat cannot be accepted until the common areas affecting that flat are complete, including, for example, the access and facilities for fire-fighting. The completion certificate for the final flat cannot be accepted until works to all the common areas are complete. If an approved certifier of construction is used a certificate of construction should accompany each completion certificate submitted.

5.2.8 It is essential in all cases where submissions and/or acceptance cover only part of the warrant application and in particular in relation to groups of dwellings, that the buildings or dwellings involved are consistently and accurately designated on the completion certificate, the acceptance and the building standards register.

5.3 Late submission without a warrant

5.3.1 Where work has been carried out or a conversion made without a warrant when there should have been a warrant applied for, a completion certificate must still be submitted. However, in this case the certificate may only be accepted if it confirms that the work or conversion has been carried out in accordance with and now complies with, the building regulations applicable at the time of the submission of the completion certificate.

5.3.2 A submission where a warrant was not sought when it should have been must provide plans and specification details equivalent to those for a warrant application, so that the verifier can adequately assess whether to accept the certificate. There is also a fee to pay which is equivalent to a late application for building warrant. Discounts for certificates from approved certifiers of design and refunds related to certificates from approved certifiers of construction are allowed (see 3.13 and 3.14 above for details of fees).

5.3.3 There is no limit as to how long after the completion of the work a late completion certificate may be submitted but it is always the regulations at the time of submission that must be met. It therefore becomes increasingly unlikely that work carried out will comply with the current regulations and further work will have to be carried out before a completion certificate can be accepted. However, as the completion certificate is a late submission it will require to be accompanied by drawings and an appropriate fee and any extra work required to comply can be shown on or added to, the drawings as with a building warrant application. It should be noted, however, that if extensive additional works are required, a separate building warrant may need to be submitted.

5.3.4 A certificate from an approved certifier of either design or construction may be part of a completion certificate that has been submitted late but the certifier must assess the work against the regulations applying at the time of the submission of the completion certificate. It is an offence to issue a certificate that is false or misleading, so the certifier must be satisfied, if necessary by checks, inspection or tests, that the work is in compliance.

5.3.5 In the case of work covered by a certificate of construction, a verifier may not request a materials test before accepting the completion certificate. However if a local authority wishes to take enforcement action, they may under section 39(4) of the Act carry out reasonable tests to determine the quality and strength of any material.

5.4 Acceptance or rejection of completion certificate

5.4.1 A verifier must accept a completion certificate if, after reasonable enquiry, they are satisfied the work/conversion certified complies with the relevant warrant and building regulations. If the work/conversion does not comply the completion certificate must be rejected. The verifier must, in reaching this decision, accept that a certificate issued by an approved certifier of construction is 'conclusive of the facts to which it relates'. The verifier must, however, check that the approved certifier is registered, on the date on which the certificate of construction was signed, and that the certificate of construction is counter-signed by a body that is approved at that date to co-ordinate the certification of such matters. There is no requirement for a verifier to check that certifiers are still registered at either the date of submission or the date of acceptance of the completion certificate.

5.4.2 Reasonable enquiry would, in terms of the Act, include consultation with those specified in the procedure regulations in relation to the specified kinds of work. At present, consultation is not specified but guidance is given in chapter 14 below on when consultation will normally be required. It is also likely to include inspection (see paragraphs at 5.5 below).

5.4.3 The submitted completion certificate should be on a prescribed form which includes an annex to list any available certificates of construction. A small refund on the warrant fee will be due to the applicant of the original building warrant for each area of work certified, provided the verifier has been informed, before it is done, that the work is to be certified. See 5.3.2 regarding late completion certificates.

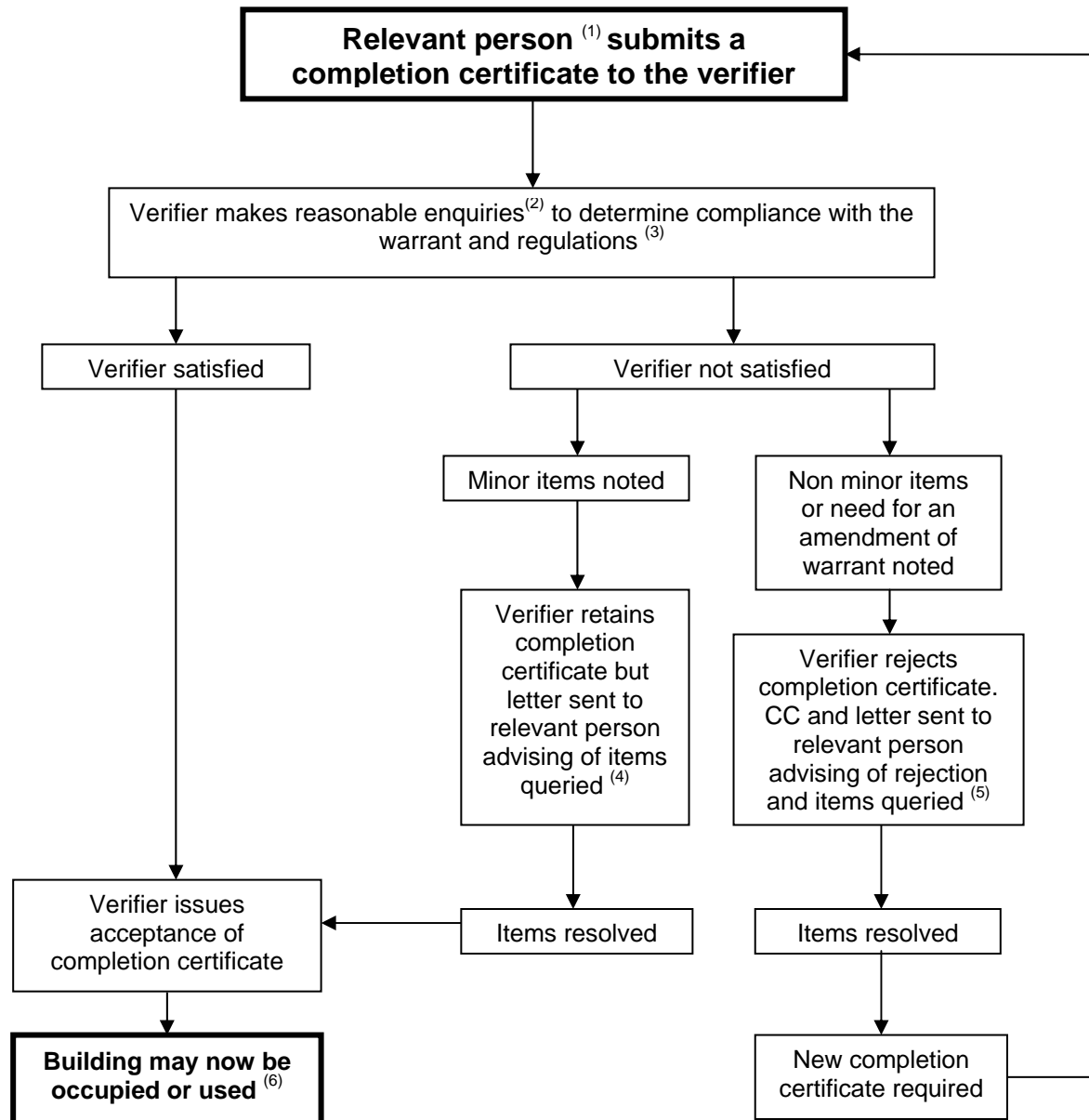
5.4.4 Some product certificates, such as those accepted by local authorities in the previous system in relation to intumescent products, may continue to be accepted as evidence of compliance. Such documents should not be confused with certificates from approved certifiers where there is considerable protection given to both clients and verifiers through the approval scheme.

5.4.5 Verifiers and those submitting completion certificates, should note that the Act does not provide for views by Scottish Ministers to be sought on whether completed building work may be accepted as meeting the regulations.

5.4.6 A verifier must provide a response as to whether a submitted completion certificate is acceptable within 14 days or such longer period as has been agreed with the person making the submission (but see 5.4.7 below). It will be normal to agree a longer period if remedial works are required to be carried out to allow the completion certificate to be accepted. If a submission is rejected the verifier must give that person the reasons for rejection. If a decision has not been taken within the 14 day period the application is deemed to have been rejected (but see 5.4.7 below). Where an amendment to warrant is required the completion certificate should be rejected and a new certificate submitted covering all the works once the amendment has been issued. Following a rejection, the person making the submission may appeal to the Sheriff against the decision.

5.4.7 There is one exception to the time limit in 5.4.6 above. Where a completion certificate has been submitted but no warrant was obtained when it should have been, the timings for the consideration are the same as for considering a warrant application (see 3.9 above).

PROCESS OF OBTAINING ACCEPTANCE OF A COMPLETION CERTIFICATE



Notes:

- (1) Relevant person defined in the Act and summarised at paragraph 5.2.1 above.
- (2) Reasonable enquiry may include:
 - Site inspection against the warrant drawings/functional standards
 - Checking validity of certificates from approved certifiers of construction.
- (3) A verifier must provide a response to a completion certificate submission within 14 days.
- (4) The verifier should also obtain agreement that the 14 day response period is to be extended.
- (5) Applicant/owner may appeal to sheriff against the decision to reject the completion certificate.
- (6) This applies to new build, extensions or conversion. Other alteration work need not prevent continued occupation.

5.5 Inspection and tests

5.5.1 Following the submission of a completion certificate, the verifier usually carries out a non-disruptive inspection of the work. However, as a verifier need only make 'reasonable enquiry' before acceptance of the certificate there can be circumstances where a site inspection may not be needed. For example, if the verifier has chosen to make previous inspections, these may have provided sufficient assurance to inform the verifier's decision.

5.5.2 Also, where the application relates to repetitive work over several buildings, such as the application of external insulation to blocks of flats, random inspections of say 30% of the dwellings may be sufficient if all inspections indicate compliance. If defects are found, more detailed inspections will be required, depending on the frequency and seriousness of the defects.

5.5.3 If they consider it necessary, under section 41(2) of the Act a verifier may require a 'materials test' to be completed or test results to be provided if tests have already been carried out. A 'materials test' can include a test of materials in combination, for example, a separating wall or even a whole building, as well as individual materials. The verifier may be prepared to carry out the test but in all cases the full costs of materials tests are to be borne by the relevant person unless the verifier chooses to reduce the cost.

5.5.4 In the case of work covered by a certificate of construction, a verifier may not request a materials test before accepting a completion certificate. However, if a local authority wishes to take enforcement action they may under section 39(4) of the Act carry out reasonable tests to determine the quality and strength of any material.

5.5.5 Disruptive inspections and tests are, however, permitted when applications for completion certificate are made without a warrant having been obtained when it should have been, unless the works are covered by a certificate of construction.

5.5.6 It should be noted that while the Act does not include an automatic right to enter a building to inspect, where entry is denied a verifier can refuse to accept a completion certificate. If appropriate, a verifier can ask the local authority to use the power in section 39(4) of the Act to inspect the building to ensure the work has been carried out in accordance with the warrant, in case a section 27 notice is necessary.

5.6 Continuing requirements

5.6.1 On occasion, in order to be satisfied that the purposes of the regulations will not be frustrated, for example, by some change that is liable to happen unless care is taken to prevent it, a verifier may impose some continuing requirement. For example, if glass cleaning depended on access being maintained to certain areas, a continuing requirement to keep access clear could be imposed and could be enforced later if any attempt to reduce the access was made. (See also paragraphs at 7.3 and 7.4 for further information on continuing requirements).

5.7 Maintenance of records

5.7.1 A local authority is required to record on the building standards register the completion certificates submitted, including any plans, specifications, certificates of construction and other relevant documents or information, together with the decisions made as to acceptance or rejection (see chapter 8 below). When local authorities are acting as verifiers they do not need to keep other records. If in future other verifiers

are appointed, the procedure regulations will be amended to require the relevant information to be sent to the relevant local authority for registering.

5.7.2 In relation to the certificates of construction, the registration numbers of the approved certifiers and bodies should be recorded. The verifier should also note the aspects of work for which they have accepted certificates and the results of the eligibility checks on the certifiers.

5.7.3 In the event that a verifier refuses to accept a completion certificate because certificates of construction are submitted by individuals who do not hold appropriate designations or bodies that are not currently approved, the verifier should provide written notification to the agency.

6 APPEALS

6.1 Matters subject to appeal

6.1.1 The Act permits appeals to the Sheriff Court on the following matters:

1. where Scottish Ministers refuse an application to relax or dispense with a provision of the building regulations
2. where a verifier refuses to grant or amend the terms of a warrant, including deemed refusals resulting when the verifier has not made a decision within the specified time limits
3. where a verifier refuses to extend the life of for a limited-life building, including deemed refusals resulting when the verifier has not made a decision within the specified time limits
4. where a verifier rejects a completion certificate, including deemed rejections resulting when the verifier has not made a decision within the specified time limits
5. where a verifier imposes continuing requirements
6. where a verifier refuses to discharge or vary a continuing requirement
7. where a local authority serves a notice (regarding building regulations compliance, continuing requirement enforcement, building warrant enforcement, defective or dangerous buildings).

6.2 Time limits

6.2.1 An appeal must be made within 21 days of a decision being issued or of a notice being served. Where a verifier has not made a decision in relation to items 2, 3, 4, or 6 above, a decision is deemed to have been made by the period specified in the procedure regulations.

6.2.2 For item 2 above, the period after which a decision is deemed to have been made is three months from the date of receipt of an application for warrant or amendment of warrant if no first report is issued, or 9 months after the date of issue of the first report. These periods may be extended by agreement or by time taken to obtain relaxations or views.

6.2.3 For item 3 above, the period for a deemed decision is one month from the date of receipt of the application is specified, for item 4 above, 14 days from the date of submission is specified (excluding submissions without a warrant having been obtained) and for item 6 above, the period is one month from the date of receipt of the application.

7 COMPLIANCE AND ENFORCEMENT

7.1 Building regulations compliance notices

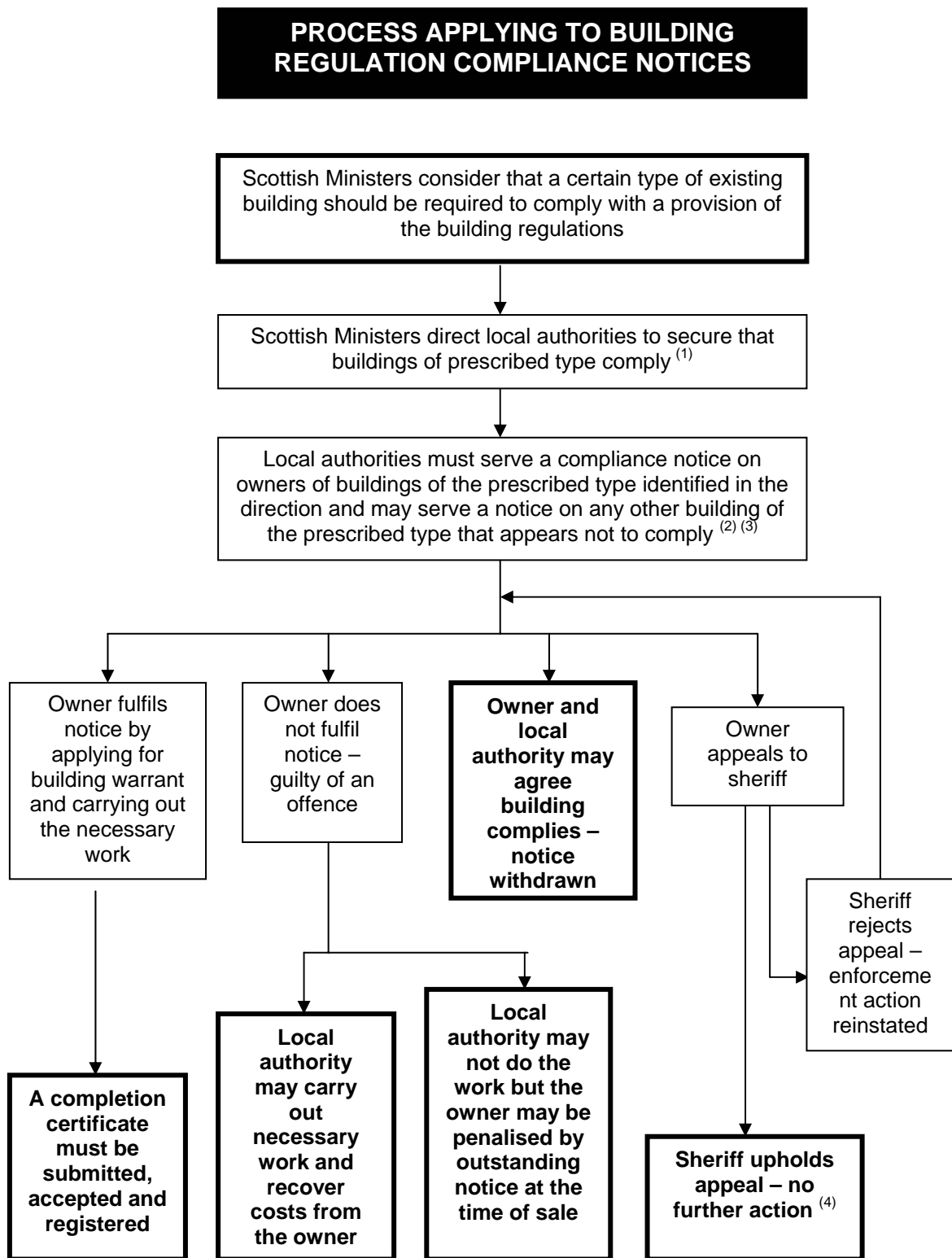
7.1.1 Where Scottish Ministers consider it essential that certain types of existing building should be required to comply with the current standards, they may direct local authorities to take action to secure that these buildings are made to comply. The local authorities must serve on the owners of identified buildings of the prescribed type a 'building regulations compliance notice' (see section 25 of Act). The local authorities may also serve a notice where it appears any other building of the prescribed type does not comply and this provision of the Act will apply if the initial identification was of specific buildings. This power is limited to the purposes specified in the Act for the building regulations and can be applied only to buildings of a type to which the building regulations apply.

7.1.2 The notice must specify the provision of the regulations to be met (usually specified by reference to a functional standard), a date (not less than 28 days after the notice takes effect) after which the building must comply, any particular steps that must be taken and the date of effect.

7.1.3 The issue of a building regulations compliance notice does not preclude the need to obtain building warrant approval if a warrant is required for the work. However, if the owner has applied for a warrant (and notified the local authority if in future the local authority is not the verifier) by the specified completion date, the local authority may alter the date by which the building must comply.

7.1.4 If, by the final specified completion date, the owner has not complied with the notice, the owner is guilty of an offence. The local authority may then carry out the necessary work to make the work comply with the specified provision and can recover the costs from the owner. A local authority does not need a warrant to do work carried out so as to enforce a notice but after completion the authority must register in the building standards register, a completion certificate.

7.1.5 A local authority may withdraw a notice or waive or relax any requirement of a notice or substitute a later date for completion, whenever it sees fit. Such a withdrawal does not, however, preclude the issue of a further notice.



Notes:

- (1) The agency will do this on behalf of Scottish Ministers.
- (2) Notices must be recorded on the Building Standards Register.
- (3) The Local Authority may withdraw a notice or waive or relax any requirement of a notice, or submit a later date for completion whenever it sees fit.
- (4) The particulars of the notice should be removed from the Building Standards Register.

7.2 Building warrant enforcement notices

7.2.1 In the following cases, where local authorities consider it necessary, a 'building warrant enforcement notice' may be served on the relevant person (see 7.2.3 below). The three cases are:

- that work requiring a warrant has been or is being done without a warrant,
- that work has been or is being done that is not in accordance with a warrant that has been granted or
- that a limited life building has not been demolished by the expiry of the period for which a warrant has been granted.

Note that work listed in schedule 3 of the building regulations as work not requiring a warrant may have a notice served if the work does not comply with any relevant requirement of the building regulations. This is because such work is only exempt if it does comply.

7.2.2 A building warrant enforcement notice may require:

- for ongoing work without a warrant, that a building warrant be obtained
- for completed work without a warrant, that a completion certificate be submitted and the verifiers acceptance obtained
- for work not carried out in accordance with the warrant, that the work be altered to comply or that an amendment of warrant covering the changes be obtained
- for a limited-life building that has not been demolished, that a warrant for the demolition be obtained and the building demolished

Note that in the case where a completion certificate is required to be submitted, it will be a late submission treated like a warrant application and, unlike a normal building warrant application, there will be time to negotiate changes on site to comply if necessary before acceptance is given.

Note also that Section 27(5) of the Act allows the local authority to suspend the work until the terms of the notice are met. The notice may also specify particular steps that must be taken to comply and that may include the removal of works that are unlikely to comply even after alteration.

7.2.3 The relevant person for the demolition of a limited-life building is the owner. For the other cases the relevant person will be either:

- the owner, tenant or developer doing the work or conversion themselves, or
- the owner, tenant or developer who has employed a builder to do the work for them.

In cases where the above relevant person cannot be found, or no longer has an interest in the building, the current owner.

7.2.4 The notice will specify a date by which these actions must be completed, although it will never be less than 28 days after the notice takes effect. The date of effect must also be specified on the notice. Copies of notices must be sent to the owner and/or occupier of a building if they are not the person receiving the notice. A copy should also be served on any other person with an interest as determined by the local authority.

7.2.5 In some cases, the local authority will specify particular steps that must be taken in complying with the notice. Where work that needs a warrant is being carried out without a warrant or not in accordance with a warrant, the local authority may specify on the notice that work is suspended (other than work for complying with the notice). To comply with the notice a warrant must be obtained, not just applied for, before works may start again.

7.2.6 If, before the completion date specified in the notice, the person on whom it is served applies for a relaxation and informs the local authority of the application, the completion date must be re-specified by the local authority. This date will now be not less than 28 days after the date of the decision on the application for a relaxation.

Note, however, that an appeal does not invalidate a stop notice unless the Sheriff chooses to quash it.

7.2.7 If, by the final specified completion date, the relevant person has not met the requirements of the notice, that person is guilty of an offence. The local authority may then carry out the necessary work to make the work comply and can recover the costs from the person. Compliance is with the building regulations when the work is done without a warrant and with the notice when the work is done not in accordance with a warrant. This can also apply to cases where a limited life building has not been demolished when specified. A local authority does not need a warrant to do work carried out to enforce a notice but after completion must register a completion certificate.

7.2.8 A local authority may withdraw a notice or waive or relax any requirement of a notice or substitute a later date for completion whenever it sees fit. Such a withdrawal does not, however, preclude the issue of a further notice.

7.2.9 Although verifiers must accept a certificate of design as conclusive of the facts to which it relates when determining the application for warrant, this does not prevent verifiers, when checking work on site, from reporting failures to build in accordance with the warrant. A local authority could then serve a building warrant enforcement notice.

7.2.10 An approved certifier of construction should note that, should they certify work that is not in accordance with the warrant, without an amendment to the warrant being sought, they are committing an offence and placing their client at risk of enforcement action. A certifier should not certify:

- work that is ongoing, or
- work that has been completed by another party,

without sufficient checks, inspection or tests to ensure compliance with the warrant as finally amended and with building regulations.

7.3 Continuing requirements imposed by verifiers

7.3.1 Under section 22 of the Act, when granting a warrant or accepting a completion certificate, a verifier may impose a continuing requirement. Such a requirement imposes on a building owner a duty that the verifier feels must be fulfilled after the completion of the building to ensure the purposes of the building regulations are not frustrated.

7.3.2 This is not intended to cover matters that always rely on adequate maintenance, such as the operation of lifts or the recoating of woodwork. Nor is it for matters under health and safety or fire precautions legislation, such as testing of alarms. In general, it is also not for matters that involve action on the part of the owner. It is for special cases where the arrangements agreed for complying with the functional standards might be frustrated by uncontrolled changes. A typical example would be acceptance of a moveable platform for cleaning windows subject to a continuing requirement that adequate access and hard surfaces are provided and then kept clear and properly surfaced thereafter.

7.3.3 Such continuing requirements, therefore, relate to activities or actions happening to a building element, not the building element in itself.

7.4 Continuing requirements imposed by Ministers

7.4.1 Section 2 of the Act allows Scottish Ministers to impose continuing requirements on building owners in a different way. Here Ministers can include in the regulations certain matters that apply after the warrant and completion certificate process is complete. Further, the requirements may be imposed on existing buildings, whenever built.

7.4.2 The intent of this regulation is to allow Scottish Ministers to impose continuing requirements nationally. For example, it could be used for assisting with the implementation of certain terms of European Directives.

7.4.3 This form of continuing requirement can only relate to a provision of the regulations which is designated in the Building (Scotland) Regulations 2004 (as amended) as one to which such requirements may apply. At present, only Regulation 17, which covers the maintenance of certain air conditioning system, is so designated.

7.5 Continuing requirement enforcement notice

7.5.1 The local authority for the geographical area in which a project or building is sited is responsible for the enforcement of the regulations. This applies irrespective of whoever carried out the verification role. In particular, the local authority has responsibility for enforcing continuing requirements, whether imposed by verifiers or by Scottish Ministers, where building owners have failed in their duty.

7.5.2 The local authority may serve a notice on the owner of a building requiring compliance (see section 26 of the Act for details). Where compliance is not achieved, the owner has committed an offence and the local authority can carry out any necessary works, register a completion certificate and recover costs from the owner.

7.6 Other offences and enforcement

7.6.1 The notices described above are designed to ensure work is done in accordance with the building warrant. There are other enforcement possibilities, relating to the other offences set out in the Act.

7.6.2 In relation to certificates of design, a verifier must accept certificates forming part of an application for warrant as conclusive of the facts to which they relate. If all other matters comply, a warrant must be granted.

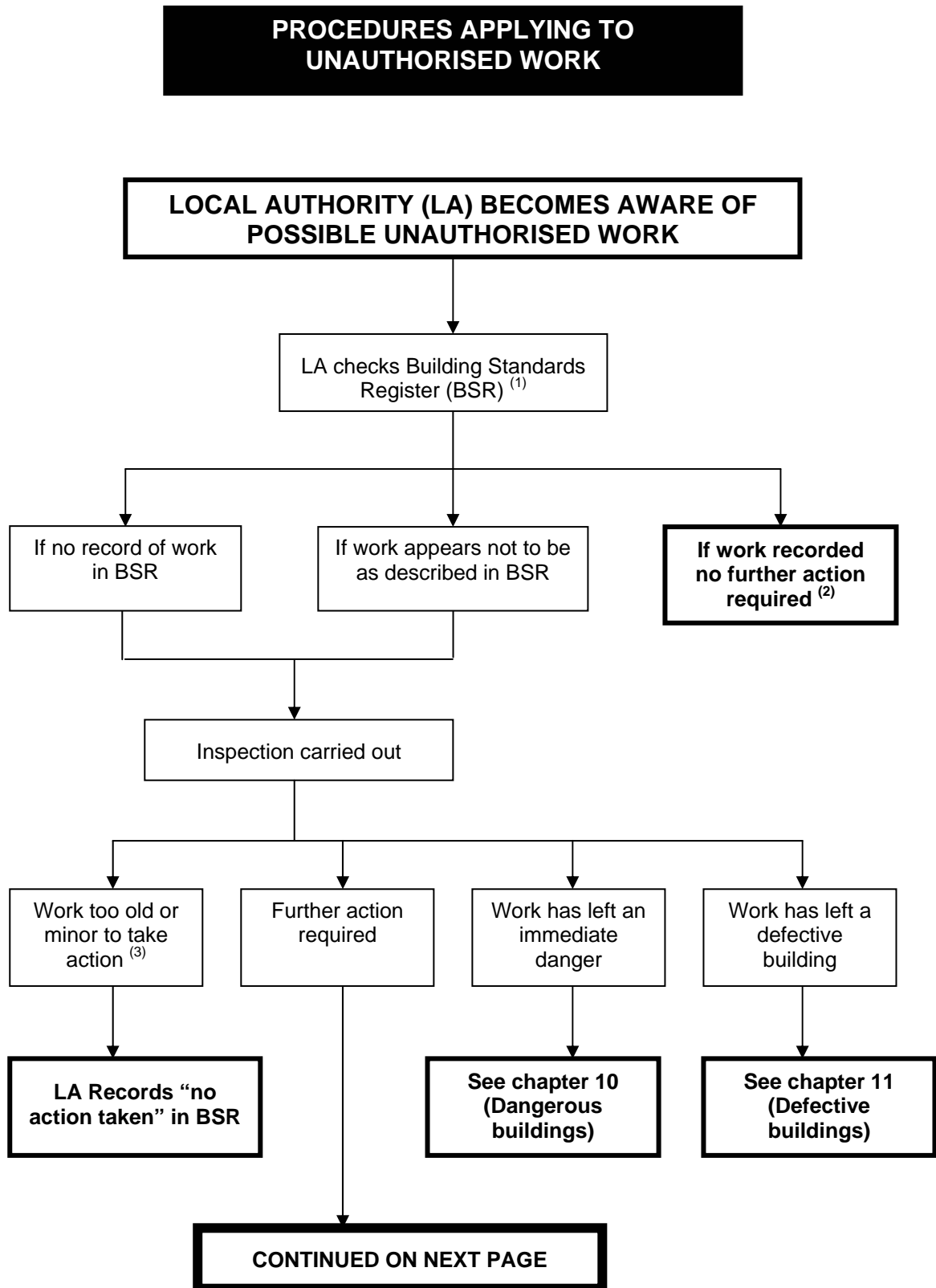
However, if a verifier considers that a certifier may have committed an offence under section 11(4) of the Act by issuing a false or misleading certificate, the verifier should report the matter to the procurator fiscal service.

7.6.3 Similarly, in relation to certificates of construction, a verifier must accept certificates forming part of a submitted completion certificate as conclusive of the facts to which they relate. If all other matters comply, a completion certificate must be accepted. However, if, after accepting a certificate, a verifier becomes aware that a certifier may have committed an offence under section 19(4) of the Act by issuing a false or misleading certificate, the verifier should report the matter to the procurator fiscal service.

7.6.4 Whenever an approved certifier is reported to the procurator fiscal service, the SBSA should also be informed.

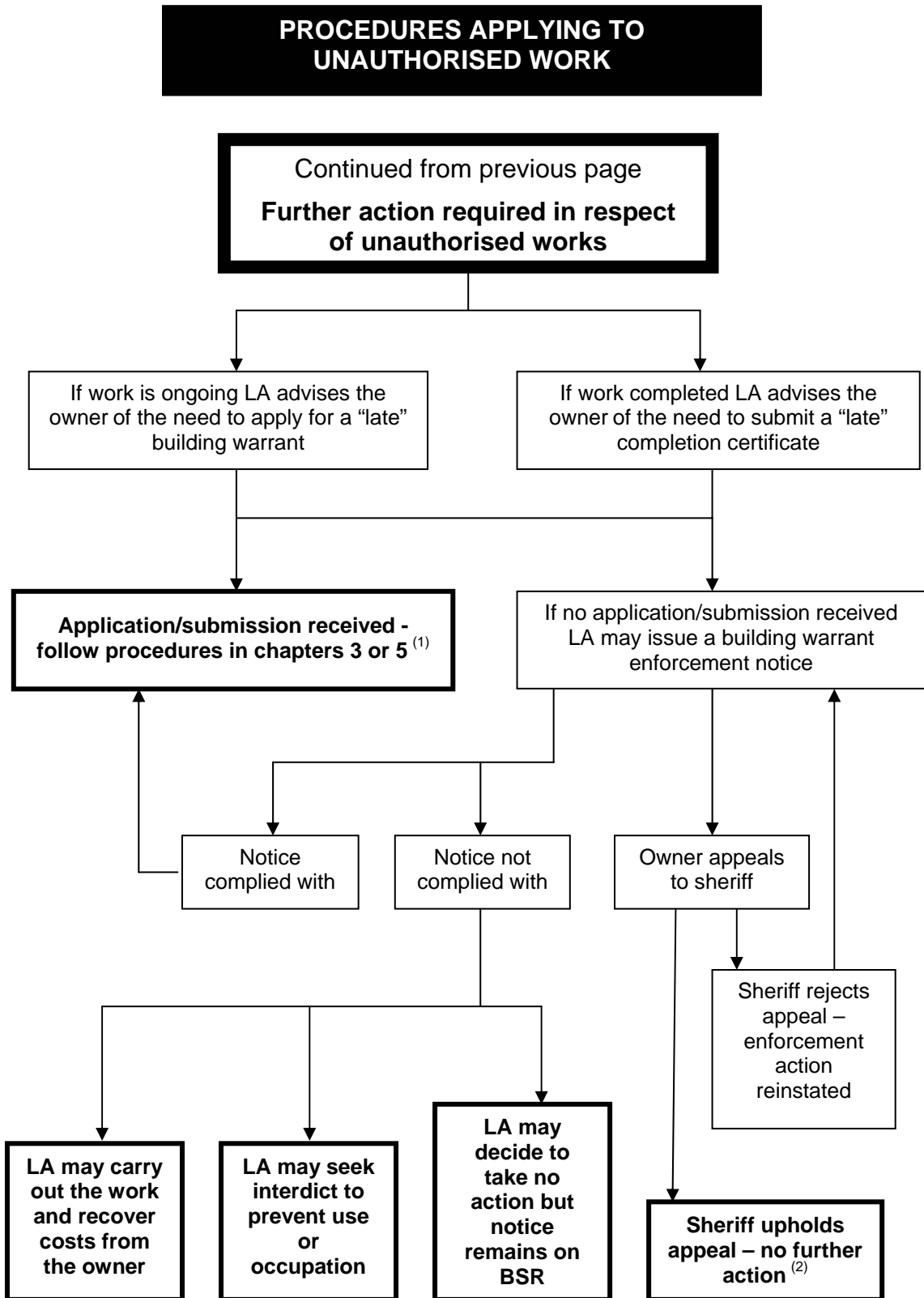
7.6.5 If a building is occupied without a completion certificate having been accepted or without permission for temporary occupation having been granted (see section 21 of the Act) the Court may restrain or prevent the occupation or use.

7.6.6 For enforcement related to dangerous or defective buildings, see chapters 10 and 11 below respectively.



Notes:

- (1) LA's would also check register of applications under the 1959 Act for works prior to 1/5/05.
- (2) Provided the record confirms that work is properly completed.
- (3) The local authority may offer a "letter of comfort" scheme for old or minor works. These schemes, where operated, are particularly relevant to the conveyancing process.



Notes:

- (1) Although it is possible to apply for a building warrant after work has commenced or submit a completion certificate without a warrant an offence will have been committed in both cases.
- (2) The particulars of the notice should be removed from the Building Standards Register.

7.7 Consultation and limitations for historic buildings

7.7.1 For the purposes of enforcement under the Act, the following are designated as historic buildings:

- scheduled ancient monuments,
- listed buildings,
- buildings subject to preservation orders, and
- those buildings in conservation areas subject to control of demolition.

Ancient monuments are those included in the schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979.

Listed buildings are those included in a list of buildings of special architectural or historic interest compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, preservation orders are under section 3 of that Act and control of demolition is under section 66 of that Act.

7.7.2 Before serving notices on historic buildings as defined in the Act there must be consultation with Scottish Ministers (through Historic Scotland), the planning authority (where this is not the local authority) and anyone else the local authority consider necessary. Where the planning authority is within the same authority there should still be a properly recorded consultation.

7.7.3 The only qualification of this requirement is that, in relation to a dangerous building notice or urgent work needed to remove a danger, consultation is required 'if reasonably practicable'. This is intended to cover problems requiring immediate action; in these instances the relevant authorities should be notified subsequently of any such action.

7.7.4 There is also an important limitation on the notices. Except in an urgent case as described above, the effect of the notices on a person required to do work in relation to any of the enforcement notices is restricted to work that is not inconsistent with any provisions of the legislation designating the historic buildings.

BUILDING STANDARDS REGISTER

8.1 Maintenance of records

8.1.1 Section 24 of the Act requires local authorities to keep a Building Standards Register for the geographical area of the authority. It consists of two parts, Part I containing data with Part II containing documents. The information includes:

- applications for warrant and amendments to warrants
- decisions on the applications
- submissions of completion certificates
- decisions on the submissions (acceptance or rejection)
- particulars of energy performance certificates
- particulars of notices

8.1.2 Part I should contain details of any certificates from approved certifiers of design or construction submitted with warrants and completion certificates, any conditions relating to grants of warrants, any enforcement notices when issued, altered or withdrawn and any continuing requirements imposed by warrant.

8.1.3 Part II of the register should contain:

- copies of warrants and completion certificates, including certificates from approved certifiers of design and construction
- the principal drawings and specifications
- any other documents submitted by verifiers for registration in connection with particular projects
- any copies of energy performance certificates
- copies of notices served under the Building (Scotland) Act 2003

Building standards assessments (when introduced) will not be recorded on the register but any notices resulting from an assessment visit will be recorded.

8.1.4 Further to the above requirements, there will also be a need for particulars and copies of any Housing (Scotland) Act 2006 notices, once the Act is enacted. These include works notices issued under Section 30, demolition notices served under Section 33 and HMO amenity notices (insofar as they relate to buildings) served under Section 146 of the Housing (Scotland) Act 2006.

8.1.5 Part I of the register is electronic, must be available on a web-site and be kept permanently. The documents in Part II are to be kept for 25 years normally but subject to the following guidance. Details of complex buildings should be kept, ideally until the building is demolished but at least for 50 years. The description 'complex' is intended to cover both occupancy and construction method. Thus records of large buildings with many different occupants, such as shopping malls or large blocks of flats; or buildings with unusual structures such as pre-stressed concrete structures or suspended roofs, should be kept beyond the 25 year cut-off. The local authority archivist and the building standards manager should agree which records are to be disposed of after 25 years, 50 years or at a later date as agreed. Apart from keeping details of the more important or unusual buildings, local authorities should consider the benefits of keeping certain records for longer periods. For example, records of drainage layouts, records of contaminated land treatments or records of sites

requiring special foundations. Local authorities should develop record keeping to match local circumstances and where changes in local authority boundary occur it is important that relevant information is not lost; authorities should co-operate to transfer the relevant records. The procedure regulations also require registers kept under previous legislation to be retained, although they will contain less detailed information.

8.1.6 To permit useful and accurate searching of the records, it is important to describe the work in a consistent and explicit way. The local authority, when recording applications for the register, should take care to include relevant key words and key descriptors, including the registration numbers of approved certifiers and bodies.

8.1.7 The general information to be contained on the building standards register is set out in the procedure regulations. However, for the web-based Part I of the register, the level of information needs to be consistent and allow local authorities to include additional details as they feel applicable. At the end of this chapter there are five tables expanding what should be on Part I with data fields for building warrants, completion certificates, notices and other matters such as energy performance certificates, together with an explanation of the data fields.

8.1.8 Local authorities, when publishing or allowing access to information, should ensure that their actions conform to the statutory requirements of the Data Protection Act 1998 and Copyright Designs and Patents Act 1988. Also, any advice from the Information Commissioner's office should be considered. However, in all cases local authorities should refer to their own legal advisers where clarification is required under the Freedom of Information Act, the Data Protection Act or other legislation, particularly concerning personal details.

8.2 Inspection of records

8.2.1 The building standards register must be kept open for public inspection at all reasonable times. The procedure regulations expand on this requirement by specifying that the basic information and decisions on Part I must be kept in electronic format, accessible by the internet. This should be designed to allow searches by name and registration number of approved certifier or body. The drawings, specifications, certificates and other information used to determine the application, such as soil tests, must be available for inspection during normal office hours.

8.2.2 Access to drawings and detailed information in Part II of the register is, however, subject to certain restrictions. For residential buildings (including individual dwellings), access is limited to anyone with an interest in the building, such as the current (or prospective) owner, occupier or tenant, known as an 'interested party'. This access is also extended to an 'interested party' of an adjoining building. For other types of building where there is a security concern, such as banks, access should only be permitted with the written permission of the owner.

8.2.3 Where access under the terms of the regulations is permitted, copies of documents should be made available on request but at a charge that recovers the local authority's costs. The copy drawings must be clearly stamped indicating that copyright restrictions must be observed.

8.2.4 Where changes of local authority boundary occur, authorities should co-operate to transfer the relevant records, drawings and information to enable continued access to the information recorded in the register.

Data Field Tables (see 8.1.8)

(i) Building Warrant

Field Name
BW Reference Number
Verifier
Earlier File Reference
Date Received
Date Valid
Decision
Decision Date
Expiry Date
Status
Applicant
Agent
Owner
Responsible Surveyor
Building/ Property Address
Proposed Use of Building
BW Type
Description
Relaxation Reference Number
Certificate of Design Number
Design Scheme

(ii) Completion Certificate

Field Name
CC Reference Number
Verifier
Earlier File Reference
Date Received
Date Valid
Decision
Decision Date
Expiry Date
-
Relevant Person
Agent
Owner
Responsible Surveyor
Building/ Property Address
Proposed Use of Building
-
Description
Relaxation Reference Number
Certificate of Construction Number
Construction Scheme

(iii) Notices

Field Name
Notices Reference N°
Earlier File Reference
legislation
Notice Date
Notice Effect
Revocation Date
Status
Relevant Person
Owner
Related Completion Certificate Ref
Building/ Property Address
Description
Building Regulation Provision
Relaxation Reference N°
Direction Reference N°

(iv) Other Matters

Field Name
Relevant Reference N°
Earlier File Reference
-
Verifier
Related Completion Certificate Ref
Date Received
Decision Date
Date of Variation
Date of Discharge
-
Building/ Property Address
Current Use of Building
Building Regulation Provision
Expiry date
-

(v) Energy Performance Certificates

Field Name
-
Earlier file reference
-
-
-
EPC date
CO ² emissions
CO ² A – G Rating
-
Building/ Property Address
-
-
-
-

Building Standards Register Part I – explanation of data fields (see 8.1.8)

Verifier	Person(s) appointed under S.7 Building (Scotland) Act 2003 with a principle role to provide an independent check of building warrants
Relevant Person	As described in S.17(10), completion certificates, of the Building (Scotland) Act 2003
Applicant	Person(s) submitting (or whose behalf is submitted) an application
Agent	Person(s) acting on behalf of others
Owner	Legal owner of property / building
Responsible surveyor	Surveyor dealing with building warrant, completion certificate
File Reference	Unique reference given to each Application, Submission or Notice by the Verifier or Local Authority e.g.: 06/00055/BW
Earlier Related File Reference No	Cross reference to the previous related file reference allocated by Verifier e.g. notice, building warrant, completion certificate
Related Completion Certificate Reference	Cross reference to Completion Certificate Reference(s) allocated by Verifier or Local Authority
Building / Property Address	Address of property that is subject of application, or notice / action relates to
Current Use of Building	Description of current main use e.g.: Shop Unit
Proposed Use of Building	Description of proposed main use e.g.: Dwelling
Building Warrant type	Various : Demolition / Construction / Services / Conversion / Limited Life / Staged
Description	Concise description of proposed works, required operations or other
Building Regulation Provision	Provision of regulations being relaxed under S.3 B(S)A 2003 or relevant to continuing requirements : S.2 & 22 B(S)A 2003
Security Matters	Yes / No identifier
Date Received	Date item / application received for processing
Date Valid	Date Application procedurally accepted
RLX Ref No	Reference identifier forming part of Relaxation as issued by Scottish Ministers B(S)A 2003 Section 3
Certificates of Design Ref No:	Unique number allocated to each valid certificate of design by the Scheme Provider or, in the case of directly appointed certifiers, the Approved Certifier
Design Schemes	Approved design certification scheme e.g.: Building Structures
Certificates of Construction Ref No:	Unique number allocated to each valid certificate of construction by the Certification Co-ordinator
Construction Schemes	Approved construction certification scheme e.g.: Electrical Installations to BS 7671
Decision	Type of decision - approval / refusal / withdrawn etc
Decision Date	Actual date of Verifier's approval or refusal etc of application
Date of Variation	Date variation made
Date of Discharge	Date Continuing Requirement(s) discharged
Legislation	Legislation relating to notice
Notice Date	Date notice / item or action issued to applicant / owner etc.
Expiry Date	Date item expires as determined
Revocation date	Date notice / action revoked as defined in Sections 32 & 148 of Housing (Scotland) Act 2006
Status	Reflection of an application / item standing or progression or outcome
EPC date	Date of issue of the Energy Performance Certificate
CO² emissions	Approx. CO ² emissions in kg/m ² of floor area at the date of certificate
CO² A – G Rating	Graphical indication of CO ² emissions over 7 bands labelled A - G

9 BUILDING STANDARDS ASSESSMENTS

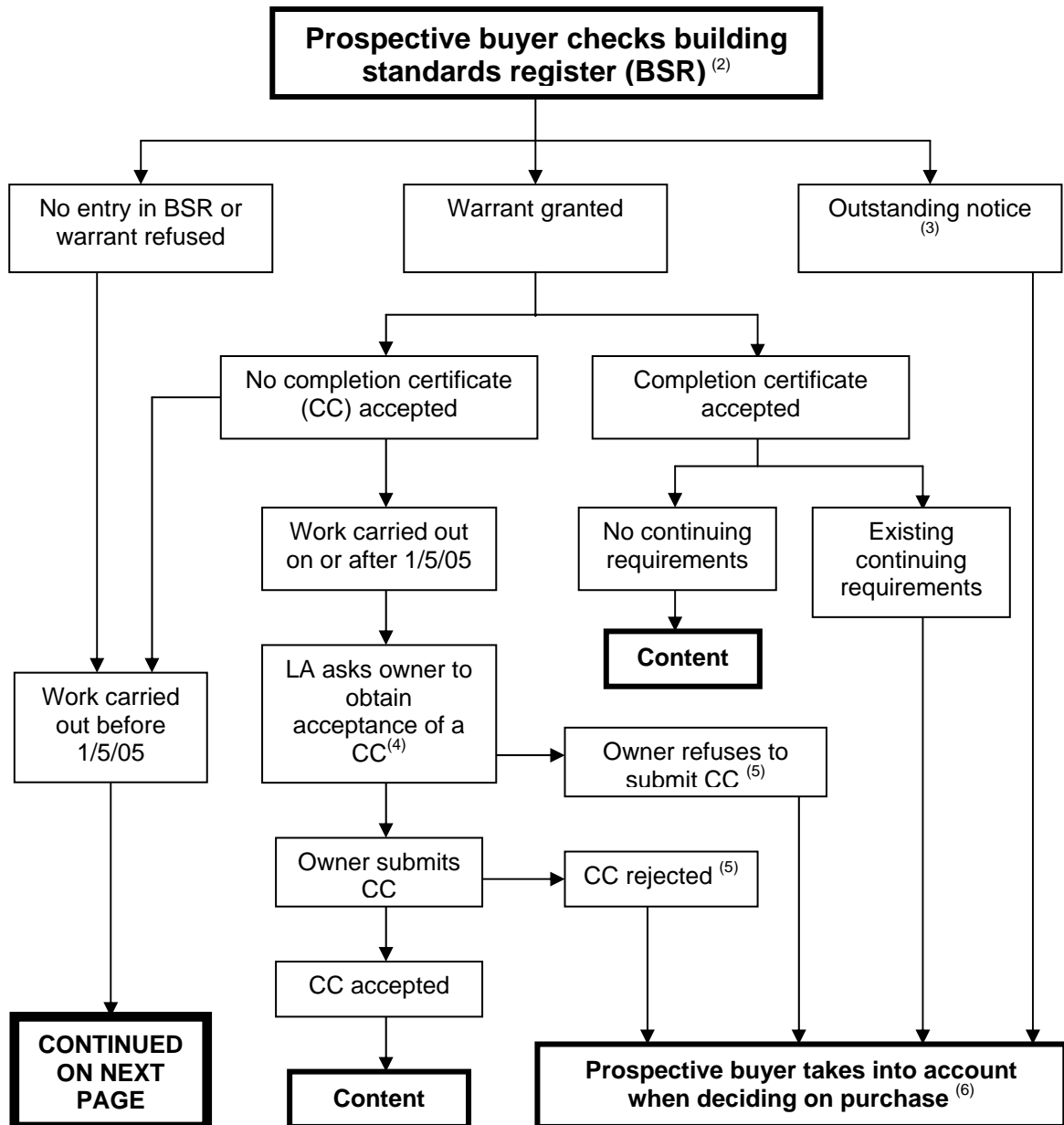
9.1 Purposes of a building standards assessment

9.1.1 This guidance will be issued when section 6 of the Act is brought into force. The matters to be provided for include period covered, circumstances, exclusions etc.

9.2 Property transfer

9.2.1 Until building standard assessments are introduced, the following flowcharts outline the procedures relevant to property transfers.

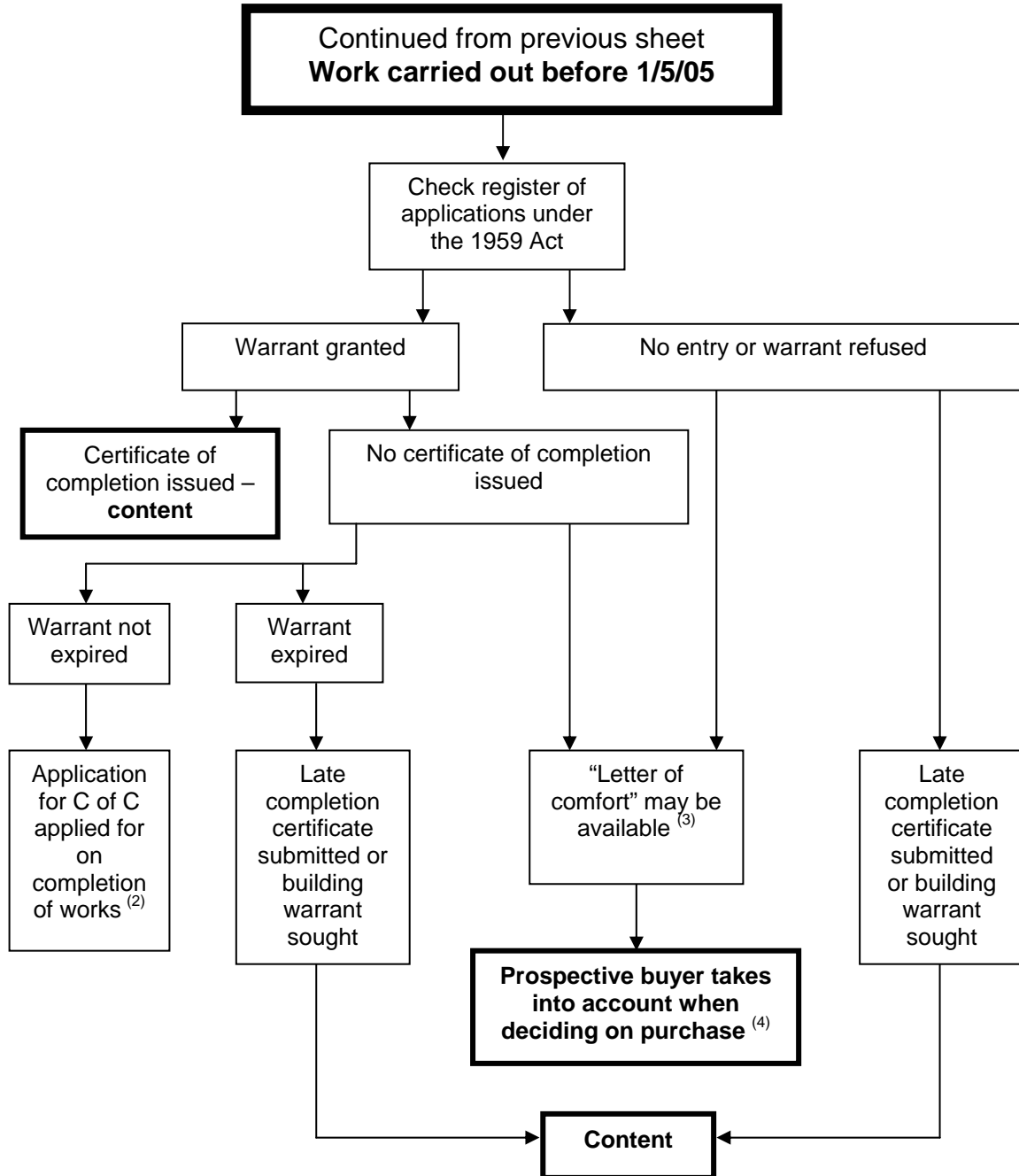
PROCEDURES APPLYING TO PROPERTY TRANSFER ⁽¹⁾



Notes:

- (1) This diagram applies until section 6 of the Act is brought into force and introduces building standards assessments.
- (2) The Building Standards Register only records works carried out on or after 1 May 2005.
- (3) For building regulation compliance, continuing requirement enforcement and building warrant enforcement see chapter 7. For dangerous buildings see chapter 10. For defective buildings see chapter 11.
- (4) CC - refer to chapter 5 for further information on completion certificate processes.
- (5) Local authority may take enforcement action under Section 27 (see 7.2).
- (6) Advised to seek professional advice on possible work needed to rectify. New owner may take action to obtain a completion certificate or remove a continuing requirement.

PROCEDURES APPLYING TO PROPERTY TRANSFER ⁽¹⁾



Notes:

- (1) This diagram applies until section 6 of the Act is brought into force and introduces building standards assessments.
- (2) The procedures under the Building (Scotland) Act 1959 and associated legislation should be followed.
- (3) The local authority may offer a "letter of comfort" scheme for older works. These schemes, where operated, are particularly relevant to the conveyancing process.
- (4) New owner may take action to obtain a completion certificate acceptance.

10 DANGEROUS BUILDINGS

10.1 Introduction

10.1.1 Building owners are responsible for preventing their buildings falling into a dangerous condition. The powers given to local authorities by the Act do not diminish this responsibility but are merely a 'safety net' that must be used to protect the public when it appears to a local authority that, for whatever reason, a building owner has failed in the duty to fulfil this responsibility.

10.1.2 The powers available to the local authority can be applied to any structure that meets the definition of building within the Act. Thus, for example, these powers can be used on a building that has not been subject to the building regulations or the building warrant process (such buildings are detailed in schedules 1 and 3 of the Building (Scotland) Regulations 2004) if that building has fallen into a dangerous state.

10.2 Duty to act

10.2.1 Should a local authority become aware of a building that constitutes a danger to persons in or about the building, to the public generally or to adjacent buildings or places, then it has a duty to act (see section 29 of the Act).

10.2.2 The local authority must carry out such work (including, if necessary, demolition) as it considers necessary to prevent access to the dangerous building and to any adjacent parts of any road or public place which appear to be dangerous because of the state of the building. Any other work considered necessary for the protection of the public and persons or property in places adjacent to the dangerous building must also be carried out. This covers such matters as installing any necessary temporary shoring. Reasonable expenses may be recovered from the owner(s).

10.2.3 Where the local authority considers that other urgent action is needed to reduce or remove the danger it may, after giving the owner such notice (if any) as the circumstances permit, carry out the necessary work and recover the costs from the owner. In most cases, however, the local authority will serve on the owner a notice to do the work (see paragraphs at 10.3 to 10.5 below). Satisfactory management of dangerous building incidents by local authorities is essentially the result of appropriate risk assessment. Each dangerous building case should be dealt with on its own merits, as the local authority considers necessary.

10.2.4 There are a considerable number of factors which can influence the approach to be taken:

- the nature and/or severity of the danger (structural decay or damage, fire damage, impact damage, missing building safety features, loose parts of building elements or building fixtures, sudden subsidence, etc.)
- the physical proportions and nature of the building (low-rise, medium-rise, high-rise, spire or tower, viaduct, etc.)
- the geographical location (city centre, rural, remote, etc.)
- the location of the danger (internal only, internal but could affect whole building, external affecting curtilage of building, external affecting a public area, ease of accessibility to do the emergency work etc.)

- the extent of the danger (several affected buildings, only one building or part of building affected, several parts of one building element, or just one part etc.)
- the persons at risk from the danger (general public passing by, building occupiers, unauthorised persons frequenting the building etc.)
- the time of year and/or day (school holidays, public holidays, night time, rush hour etc.)
- the building owner(s) (finding the owner(s), the number of owners, the owner's willingness to recognise danger and resolve matters, the financial/construction resources available to the owner etc.)
- the building occupier(s) (the occupier's willingness to recognise danger, need to temporarily re-house occupiers, disruption to occupier's business etc.)
- the attendance of other statutory bodies at or permanent surveillance of, the dangerous building (police, fire service, security guards, etc.)
- the availability of emergency contractors (demand for other emergency repairs, public holidays etc.)
- the local weather forecast (high winds, flooding, period of calm etc.).

This list is provided to identify the main issues which surround dangerous buildings but is not to be considered as being exhaustive. For example, consideration of the historic status of the building is needed (see paragraph 10.3.1 below).

10.2.5 It is expected that local authorities will respond immediately to a report of a dangerous building but they will have regard to the information that they are presented with at the time of the report. If a local authority considers that immediate access/entry to a dangerous building is essential due to the severity of the report received or after risk assessment that measures are required, no prior notice need be given to the owner(s) or occupier(s). If access/entry is refused or the property is vacant an authority may seek a warrant from a sheriff or justice of the peace to enter the premises. The authority when leaving must secure the premises against unauthorised access, to the same degree of security as prior to them gaining access. (It would also be an offence for any person who has gained entry to disclose or make use of any commercially confidential information).

10.3 Establishing the danger and taking action

10.3.1 If the building is of an historic nature (this information can usually be obtained from the planning section of the local authority) consultation must take place with:

- Scottish Ministers (Historic Scotland should be informed)
- the planning authority (particularly where the planning authority is not the local authority, such as in a national park)
- and such other persons as the local authority see fit

before serving a notice or carrying out work. There is a single qualification of this need to consult.

10.3.2 When serving a dangerous building notice or carrying out urgent work under section 29(3) of the Act, the consultation is required only if reasonably practicable. It is however still good practice to limit the action taken in relation to a historic building to the minimum needed to protect the public until the proper consultations have taken place.

10.3.3 In many instances the danger presented by a building is easily established. Depending on the degree of risk and the simplicity of remedial work it may be possible for the local authority to negotiate a solution with the building owner without taking formal action. For the local authority to consider such an arrangement it is imperative the owner agrees at once and confirms as appropriate to the local authority that they will immediately arrange to undertake the measures required. The advantage with this approach is an owner should be able to arrange either temporary or permanent solutions in the time it would take an authority to effect only emergency work, using the normal notice procedures etc. However, an owner that fails to achieve the negotiated solution can expect the local authority to take action swiftly.

10.3.4 In some cases the action of the local authority may involve the serving of a dangerous building notice (see paragraphs at 10.4 below) and no immediate action may be necessary e.g. where the building is unoccupied and adequately isolated from the public. In most instances however some emergency work will be needed to prevent access to the building, for example, security fencing, or to carry out temporary work, for example, shoring, and perhaps permanent work, for example, repairs to reduce/remove the danger. In some cases partial or total demolition work may be done by an authority where this is the only appropriate solution. Reasonable expenses incurred for any such work may be recovered from the building owner(s).

10.3.5 In some instances the degree of risk cannot be established except by instigating further exploratory work on the building, using either the resources of the local authority or subcontracting the work to a specialist. Enabling equipment or work will sometimes be necessary and again reasonable expenses incurred for this may be recovered from the building owner(s). Note that preliminary/investigative work can incur considerable expense where, for example, scaffolding or a mobile access platform is hired. Where possible such enabling work should be used to remove the danger, whether completely, partially or temporarily, as considered appropriate by the local authority.

10.3.6 Where there is to be a delay in establishing the extent of the danger, it is appropriate for the authority to undertake work to mitigate possible effects, for example, by erecting temporary barriers to restrict access. Again reasonable expenses may be recovered for such emergency work.

10.3.7 Where work is undertaken by a local authority (see 10.2.2 and 10.2.3 above) no warrant is required. Work undertaken by an owner in response to a notice also does not require a warrant, so a notice can therefore be an advantage in certain circumstances e.g. where a home owner has lost their home through no fault of their own, say in a gas explosion. In all cases, however, the work must be recorded in the building standards register held by the local authority. A local authority must also register a completion certificate when work is complete, even though a warrant was not required.

10.3.8 A notice is not required if the emergency work completely removes the danger with a long term solution, however, if a part of the building is still dangerous a notice must be served. If the building is merely defective after the emergency work however, a defective building notice may be sufficient (see chapter 11 below).

10.4 Dangerous building notices

10.4.1 The prescribed form 12 contained within The Building (Forms) (Scotland) Regulations 2005, as amended should be used. In cases where there are multiple owners of a building, each owner or set of joint owners must receive a notice. The notice contains the following information:

- the name and address of the owner
- the address of the dangerous building
- a list of any co-owners and their addresses
- the commencement date for remedial work (appropriate timescale set by authority)
- the completion date for remedial work (appropriate timescale set by authority)
- the dangerous aspects of the building
- the work necessary to comply with the notice, including any protective works and specialist supervision required and offering options where possible, for example, repair or demolish
- notes on right of appeal
- a warning on the consequences of failing to carry out the stipulated works.

10.4.2 Optional information might be:

- guidance notes for owners receiving a notice, including procedures for obtaining a building warrant if other work is to be done at the same time as the remedial work
- guidance on the follow-up procedures that will be adopted by the local authority
- location plan of the building.

10.4.3 Copy notices must be served on the occupiers of the building if they are not the owner(s). The local authority must also serve a copy notice on any other person appearing to have an interest in the building. Procedures for serving notices can be found in the Local Government (Scotland) Act 1973.

10.4.4 Where the local authority is the owner or a co-owner of a dangerous building, the notice should be served on the chief executive of the authority, as the representative of the owner.

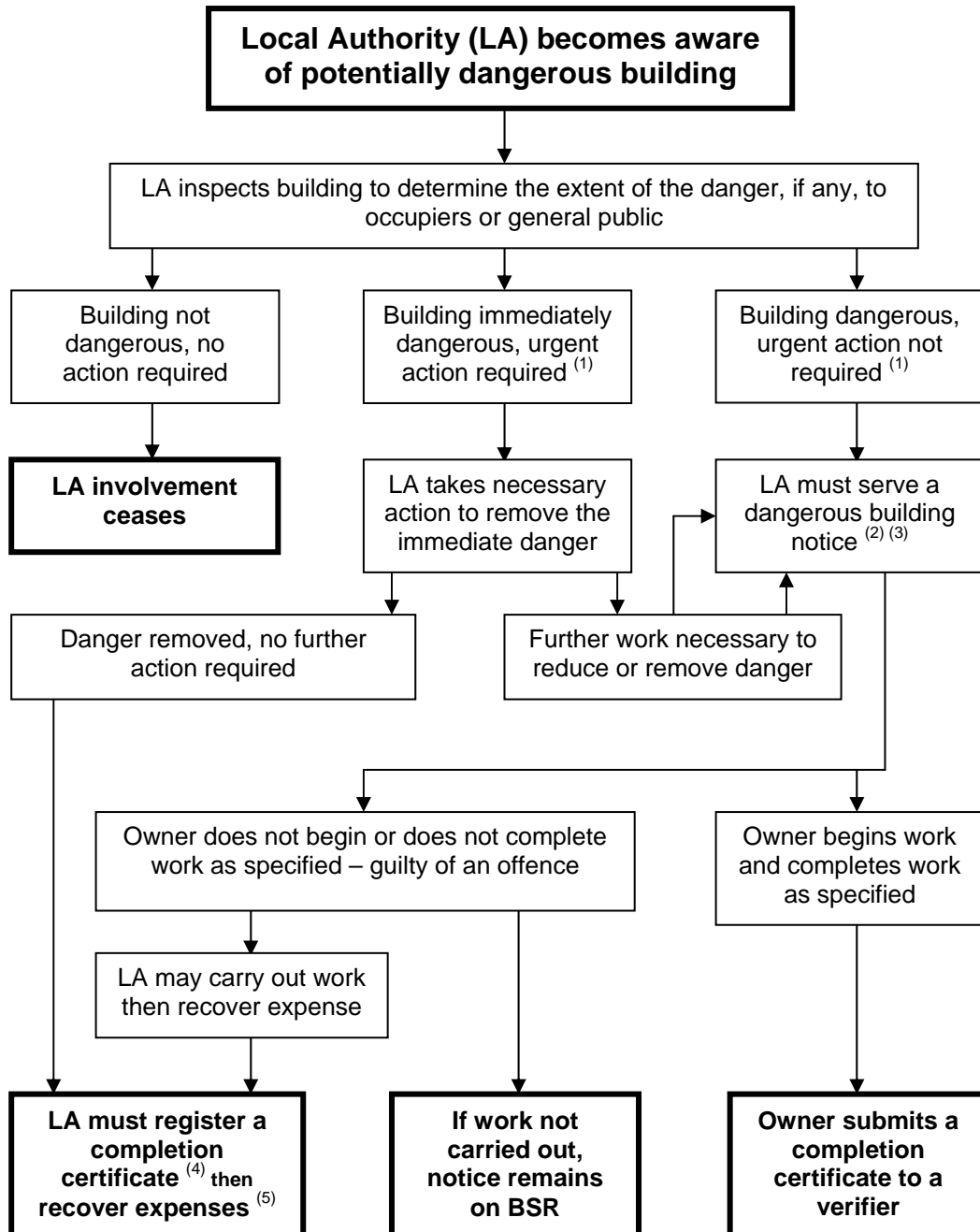
10.4.5 Consideration should also be given to advising the fire authority of the dangerous building. This is particularly important where the structure of the building has been weakened to the extent that the building would not behave as expected in a fire situation. Notification is not necessary when the fire authority has been involved in taking any emergency action in connection with the building.

10.4.6 An owner may appeal to the sheriff within 21 days of the date of the notice and this delays the effect of the notice. There is no further right of appeal against the decision of the sheriff.

10.4.7 If circumstances change after a notice has been served, for example, to a situation that requires urgent action, a notice may be withdrawn or any aspect waived or relaxed, allowing the authority to take urgent action. Notice of such a change is required before action only if reasonably practicable.

10.4.8 Although no warrant is required for work specified in the notice it must be recognised that any additional work may require a warrant. On completion, the work and any completion certificate required must be recorded in the building standards register.

PROCEDURES RELATING TO A DANGEROUS BUILDING



Notes:

- (1) If the building is of an historic nature Historic Scotland, the planning authority and any other persons that the LA thinks fit should be consulted (if time permits).
- (2) The dangerous building notice is served on the owner of the building and recorded in the building standards register.
- (3) Owner may appeal to the sheriff against the requirements of the notice.
- (4) Completion certificate is registered in the building standards register.
- (5) Local Authority may recover reasonable expenses from the owner or by compulsory purchase if the owner can not be found.

10.5 Failure to comply with a dangerous building notice

10.5.1 Where an owner has not fulfilled the requirements of a notice, the owner is guilty of an offence. In these circumstances the local authority can carry out or complete the necessary work and recover from the owner any expenses reasonably incurred. Most cases should, however, be dealt with to avoid this outcome.

10.5.2 There may be a variety of reasons why failure to comply is likely, particularly where a number of owners are involved. Although a prior notification before serving a notice is no longer required, in many cases it could be useful to indicate the intention to issue a notice. The owners could be given the opportunity to show why the notice might not be reasonable or how they intend to handle the situation. If representations are received, the owners may be invited to a meeting, which could involve building standards surveyors. Anyone with an interest in the dangerous building or adjacent buildings or that is an associate of the building owners, occupiers or other interested persons, should declare that interest at such a meeting.

10.5.3 A meeting is an opportunity to get the owner/mutual owners together to impress upon them both the reasons why action will be taken and that looking after the property is their (joint) responsibility. The meeting may result in a decision to give the owner(s) more time to do the work or the local authority may decide just to issue the notice. The authority may, at any time in the proceedings, withdraw the intention to serve the notice. If a notice is not served, the local authority has the power to issue a future notice.

10.5.4 If the notice, when served, is not complied with, the local authority may decide to carry out the work. The owners should be informed of the date when the contractor will start the work and of any matters that require to be addressed by the owners prior to the start, for example, removal of fittings to allow work to proceed unhindered.

10.5.5 Where the owner of a dangerous building does not occupy the property, the Act (section 40) gives the person on whom the notice was served the right to enter the property for the purpose of compliance with the terms of the notice. This right extends to any surrounding land held in connection with the building. Reasonable notice must be given before exercising this right of entry. Where access is needed to adjoining land owned by others, it will be necessary to negotiate legally such access. (This does not affect a local authority's right to enter any property to carry out emergency work).

10.6 Evacuation of dangerous buildings (including notice to remove)

10.6.1 There may be circumstances where it is not possible for the owner or the local authority to carry out emergency works sufficient to enable the occupants of a dangerous building or those of adjacent buildings to remain in occupation. In some instances the nature of the work may prevent the occupiers from remaining in the building, for example, demolition or stabilisation using tied-through scaffolding. Where this occurs the local authority must require the occupants to remove immediately and can apply to the sheriff for a warrant for ejection if the occupants refuse to remove or re-enter the building (see paragraphs 10.6.3 to 6 below).

10.6.2 The requirement to remove should be in writing and must state the reason for the requirement and the time by when the occupants must remove from the building. This applies in relation to work arising from a dangerous building notice as well as emergency work. A copy of the notice should be sent to the owner of the building where the owner is not also the occupier.

10.6.3 If an occupant fails to vacate a dangerous building or an adjacent building when required by the local authority a warrant may be sought from the sheriff for the ejection of the occupant. If the occupant is required to move immediately the warrant can be applied for at any time. If, however, the notice to remove specifies a time period, the warrant can only be applied for when that time period expires. The application to the sheriff must include a certificate (Form 15 of The Building (Forms) (Scotland) Regulations 2005) confirming that the occupant will be exposed to danger or has the potential to be exposed to danger, as a result of the dangerous building or the work proposed to the dangerous building (including demolition). The sheriff may require the service of a notice in terms of schedule 5(4) of the Act but this is in addition to any notice already served by a local authority in terms of section 42. A copy should be sent to the sheriff.

10.6.4 Where a local authority intends to carry out work to draw a dangerous building notice to a conclusion and they consider that the occupant may be endangered by such work, the sheriff may grant a warrant of ejection. In any other case the sheriff must grant a warrant for the ejection of the occupier within seven days of the application or if a notice is required under schedule 5(4), within seven days of the date of the notice. There is no right of appeal against the sheriff's decision.

10.6.5 Paragraph 8 of schedule 5 advises the sheriff that the information contained in the certificate accompanying the application for a warrant to eject is sufficient evidence of the facts in the certificate. Paragraphs 9 to 11 of the schedule give rights to tenants in relation to maintaining their tenancy agreement and non-payment of rent during the time that they have not been able to occupy the building.

10.6.6 Under section 43, it is an offence for a person who has been evacuated / ejected from a building in accordance with section 42 and/or schedule 5 to thereafter occupy the building. However when the need for occupants to vacate buildings has passed, the local authority must give notice, in writing, that occupation may resume.

10.7 Recovery of costs

10.7.1 A local authority may recover from the owner of a dangerous building any expenses reasonably incurred in carrying out work in relation to the building, except as explained in paragraphs 10.7.2 below. The normal methods of debt recovery apply, except as explained in paragraphs 10.7.3 and 4 below. (Note that the 2003 Act makes no provision for charging orders).

10.7.2 Where a demand for payment is made by a local authority in relation to work on a dangerous building, section 44 of the Act may limit the amount payable. It depends on both the interest that the person has in the building and the resources available but is limited to trustees, liquidators etc., as listed in section 44(2)(a). Section 44 also advises that summary application can be made to the sheriff where a person considers that costs incurred or to be incurred by a dangerous building notice should be borne to any degree by another person with an interest in the building. The sheriff may make an order and there is no right of appeal against the sheriff's decision.

10.7.3 A local authority may use section 45 of the Act if it has incurred expense but cannot find the owner to recover the costs. The local authority can seek authorisation from Scottish Ministers, via the agency, to compulsorily purchase the building and/or its site. The costs not recovered may be offset against the compensation that would normally be payable as a result of compulsory purchase.

10.7.4 Where a dangerous building is demolished by a local authority, section 46 of the Act permits the authority to sell the materials arising from the demolition. The local authority may offset the proceeds of the sale against the sum to be recovered. Any surplus must be accounted for to the owner or any other person having an interest in the building.

11 DEFECTIVE BUILDINGS

11.1 Defective buildings notice

11.1.1 Where a local authority considers that a building has defects that require to be dealt with to prevent significant deterioration, it can serve a notice on the owner of the building. The Act describes the defects that can be dealt with as those 'which require rectification in order to bring the building into a reasonable state of repair having regard to its age, type and location'. As with dangerous buildings notices, before serving a defective building notice it may be useful to call a meeting if the repairs are likely to be extensive or involve a variety of owners.

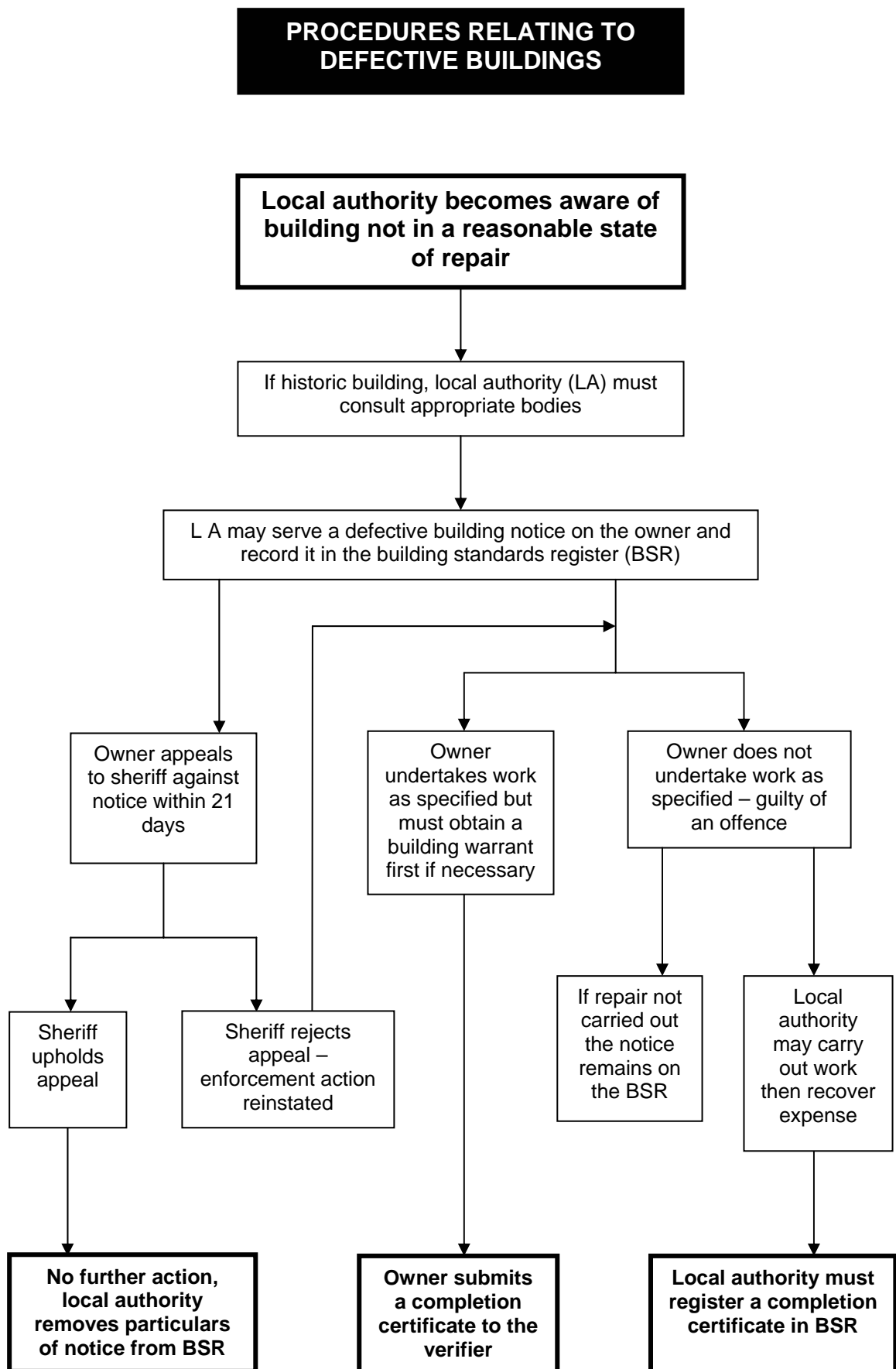
11.1.2 A defective buildings notice must specify a date, not less than 7 days after service of the notice, by which the owner must have begun the work specified. The work must be completed by a second specified date, which must be not less than 21 days after the specified commencement date. The notice may also specify particular steps which the owner must take in complying with the notice. The issue of a notice must be recorded in the building standards register (see 7.7 above for the consultation needed with Historic Scotland on historic buildings). The notice requires the owner to inform the local authority when work is completed and a completion certificate is required whether or not work is done under a warrant.

11.1.3 Should the work be of a nature that does require a warrant, then a warrant must be obtained before the work starts. To facilitate this, if a warrant has been applied for by the commencement date in the notice then a new commencement date is substituted, which is not less than 7 days after the verifier considering the warrant has decided the application.

11.1.4 It should be noted that where the local authority issuing the notice is also a verifier, it can require the application for a warrant and subsequent completion certificate to be submitted to them. This is to assist in the enforcement of the notice, because if an owner has not begun and completed the work by the specified dates the owner has committed an offence. The local authority also has the power to carry out the work necessary to fulfil the notice and to recover from the owner any expenses reasonably incurred in doing so. Where the local authority does the work no warrant is required but on completion a completion certificate must be registered in the building standards register.

11.1.5 It should be noted that, although the power to issue notices has been removed from section 87 of the Civic Government (Scotland) Act 1982 by the Building (Scotland) Act 2003, the other sub-sections are not repealed. For defective buildings therefore, the existing powers in the 1982 Act to rectify immediately and recover costs by charging order under section 108 remain. The link to entitlement to repairs grant in certain cases also remains. These latter matters will be updated by the next Housing Act.

11.1.6 The local authority has the power to withdraw a defective buildings notice at any time or waive or relax any requirement of the notice or substitute a later date for any date specified for commencement or completion. The withdrawal does not prevent a future notice being issued should the local authority deem it necessary. Where a notice is withdrawn, this should be recorded on the building standards register.



12 VERIFIERS

12.1 Appointment of verifiers

12.1.1 Scottish Ministers may appoint individuals or bodies, either public or private, to verify applications for building warrants and completion certificate submissions. At present the only bodies appointed as verifiers are the 32 Scottish local authorities, for all non Crown building work in their own area.

12.1.2 Verifiers are appointed on terms and for a period specified by Scottish Ministers. Whenever the appointment of a verifier is terminated Scottish Ministers must appoint another verifier to deal with warrant applications and completion certificate submissions still undetermined, including future completion certificate submissions related to warrants previously determined by the verifier.

12.1.3 Should it become necessary, Scottish Ministers may exercise the functions of a verifier. They may also direct a verifier to refer a warrant application or submission of a completion certificate to them, in the following circumstances:

- the verifier requests Scottish Ministers to deal with the case, or
- Scottish Ministers consider that the verifier is incapable for any reason of exercising the functions of a verifier in this case.

12.1.4 A verifier is not entitled to verify any application in relation to which they have an interest, unless specifically permitted to do so by direction. At present, Scottish Ministers have directed each local authority that it may act as verifier for projects in which the authority has an interest subject to certain conditions. Having an interest in a building is taken to be where the verifier is the owner, tenant or occupier of a building, including any prospective building, or is acting as the developer, or has taken a substantial share in the equity/ownership.

12.1.5 The direction from Scottish Ministers, under schedule 2, paragraph 9 of the Act, issued at the commencement of the new system, also requires local authorities to issue and record in the building standards register a warrant for any such projects as would normally require a warrant.

12.2 Performance criteria for verifiers

12.2.1 Scottish Ministers may give directions to verifiers, of either a general or specific nature, as to how the verifier should carry out their function. These directions may be to a particular verifier, or to some, or to all.

12.2.2 At present there is an agreement with verifiers that performance is measured in 5 key business areas: Public Interest, Private Customer, Internal Business, Continuous Improvement and Finance. These key areas of business are collectively referred to as 'the balanced scorecard'. Verifier's individual balanced scorecards contain a range of performance measures and areas for future service improvement.

12.3 Auditing of verifiers

12.3.1 The agency, on behalf of Scottish Ministers, conducts audits of the effectiveness of verifiers. The audit has regard to the individually agreed balanced scorecards and representations made to the agency by users of the system. Copies of verifier audit reports undertaken can be found on the agency website (www.sbsa.gov.uk).

12.4 Lists of verifiers

12.4.1 Scottish Ministers must keep lists of verifiers available for public inspection at all reasonable times. Details of verifiers and published balanced scorecards can be found on the agency website (www.sbsa.gov.uk).

13 CERTIFIERS

13.1 Appointment of certifiers

13.1.1 Scottish Ministers may appoint individuals or bodies, either public or private, as approved certifiers of design or construction. For full information on certification see the certification handbook, available on the agency website (www.sbsa.gov.uk).

13.1.2 Approved certifiers are directly appointed on specified terms for a period set at appointment. This period may be varied or the appointment terminated on the grounds of a breach of any terms of the appointment, a failure to retrain when building standards legislation changes, or following an unsatisfactory audit.

13.1.3 Scottish Ministers may also approve schemes whereby admission of individuals or bodies to the scheme confers approval as an approved certifier of design or construction, subject to limitations imposed by the agency on Scottish Ministers behalf. Each scheme is specific to an aspect of design or construction, and may be further limited by designations based on risk assessments or specialisations. Such designations limit the scope of work an approved certifier can cover, for instance with regard to the type of work, the use of the building, the intended occupancy, the area or volume of the building, or the adoption of particular construction techniques or materials.

13.1.4 Where the scheme provider is a professional body or trade association, or a subsidiary of such a body, it is not a requirement to take membership of such a body or association, although it is expected that the advantages in the support available to members will encourage membership.

13.1.5 Details of all current certification schemes and scheme providers appointed are contained on the agency website at (www.sbsa.gov.uk).

13.2 Performance criteria for certifiers

13.2.1 Scottish Ministers have developed general criteria for the approval of certifiers and certification scheme providers. The criteria can be found on the agency website at (www.sbsa.gov.uk). The general principles applied are listed in the procedure regulations.

13.2.2 Scottish Ministers may impose additional criteria specific to a type of certificate or scheme. Examples of such additional criteria are to be found under the certification scheme details on the agency website at www.sbsa.gov.uk. Approvals may be limited by designations that define the scope of work that may be certified. The scope of the work may also be designated by reference to the building standards or to building elements. Approvals may be varied at any time, to extend or reduce the scope, by agreement between the certification scheme provider and the agency.

13.2.3 Certification can only be undertaken by approved individuals and bodies that have demonstrated they meet the appropriate criteria. A body that is approved cannot undertake certification unless it employs at least 1 approved certifier holding any designation(s) appropriate to the scope of the scheme. Provided that an approved certifier meets the basic criteria for approval and the criteria for a particular description, the designation(s) may be varied at any time subject to the normal procedures for obtaining approval.

13.2.4 Any approved certifier that is employed by a verifier or an approved body that is part of an organisation that is also a verifier, is not entitled to issue any certificates that relate to an application it is verifying.

13.2.5 Certification is only applicable to work that requires a building warrant. However approved certifiers may wish to provide advice, to anyone seeking it, on whether work not requiring a warrant does comply with the regulations. It will be for certification scheme providers to decide if they wish to develop such a service, which may assist building owners in showing future purchasers that work has been properly done. If owners have used the SBSA certification register to identify approved bodies, the contractual arrangement under which the non-warrant work is done should be clarified by the approved body, as there are none of the normal building warrant checks.

13.3 Auditing of certifiers

13.3.1 Scottish Ministers require that approval of individuals, bodies and scheme providers is renewed at intervals to be set on the basis of a risk assessment. Renewals will be subject to auditing of the eligibility and the performance of the individual, body or scheme provider. Schemes to approve certifiers must include provisions to audit the performance of certifiers.

13.3.2 Approval of certifiers is subject to termination in the case of negligent certification or other poor performance. Approval of schemes is subject to termination in the case of negligent approvals, auditing or other poor performance.

13.4 Certification register

13.4.1 Scottish Ministers must keep lists of approved certifiers available for public inspection at all reasonable times. There are separate lists on the register of approved certifiers of design and of construction and of scheme providers. The register contains details of the matters which the certifiers are authorised to deal with. It also notes the dates of coming into effect of approvals and terminations of approval.

13.4.2 If an approved certifier chooses to cease to act as a certifier, they must send a letter of resignation to the relevant approval body. Any certificates issued prior to the date of the resignation letter will still be valid provided the certifier was appropriately registered at the date the certificate was signed. If the approved body chooses to cease operations they should advise the scheme provider. A directly appointed approved certifier should inform the SBSA if they choose to cease to act as a certifier.

13.4.3 The agency updates the register at regular intervals and at the time of any resignation or termination of approval. Scheme providers must inform the agency of approvals and renewals at regular intervals but must supply details of resignations and terminations of approval within two working days. The certification register can be found on the agency website at www.sbsa.gov.uk. and will continue to be updated as new schemes are approved and new approved certifiers and bodies are appointed.

14 RELATIONSHIPS WITH OTHER AUTHORITIES

14.1 General

14.1.1 At intervals of no more than seven days, each verifier submits (usually electronically) a list of warrant applications to the fire authority, planning authority, environmental health authority, highways authority, Scottish Environment Protection Agency (SEPA), Scottish Water and the council tax valuation assessor. The list contains the description of the work and is a way of sharing information and advising such bodies that building work in which they may have an interest may take place in the future. The bodies may then inspect any warrant applications they wish to see, at a time convenient to the verifier. Any observations or objections that these bodies might have are then given in writing to the applicant, copied to the verifier.

14.1.2 In addition to the above notifications, consultation in particular circumstances is either required or recommended – for details see the entries for the individual authorities below. The consultation is on the extent to which the proposal fulfils the requirements of the building standards in schedule 5 of the Building (Scotland) Regulations 2004. For example, where the proposals for access for fire appliances deviate from the guidance in the Technical Handbooks, consultation with the fire authority will help verifiers decide whether the building standard is being met. The verifier may either consult themselves or they may direct the applicant to obtain the views of the relevant consultee. In either case a reasonable time period for receipt of comments should be specified. Model form R should be used by either applicant or verifier when consulting. Verifiers take account of the opinions expressed by consultees but are not bound to follow them.

14.1.3 It is not expected that either of the above processes should delay the issue of a building warrant. Any requirements of these bodies outwith the scope of the building regulations cannot delay the issue of a warrant, as this must be granted if the requirements of the building regulations are met. Note, however, that any requirements intimated to the applicant after warrant is granted, that impact on the work approved in the warrant drawings and cause redesign, will mean the applicant must seek an amendment to warrant. The applicant or agent should, therefore, consider the complexity or situation of the project and decide whether to seek advice from the bodies prior to making the application for building warrant. See also 3.9.8.

14.1.4 Where amendments to warrant are applied for, verifiers should consult in cases where they consulted on the initial warrant or where the solution does not now follow the Technical Handbooks.

14.1.5 Applicants that elect to propose novel solutions to achieving compliance with the building standards must accept that the verifier may need more time to assess compliance, particularly where consultations have to take place.

14.1.6 When the view of Scottish Ministers is sought appropriate consultations should already have taken place. If they have not the view may include a requirement to consult. Scottish Ministers will not consult before giving a view (see paragraphs at 4.2).

14.1.7 When considering a relaxation Scottish Ministers will take appropriate advice. Although it is intended that the agency will include within its staffing individuals with direct experience of the Scottish fire service, relaxations with novel solutions will usually involve the fire authority for the area concerned.

14.2 Fire authorities

14.2.1 Consultation with the fire authorities is a requirement of the procedure regulations in the circumstances described in the following paragraphs. However, the consultation should not be confused with the fire authority's acceptance or rejection of the fire risk assessment required by the Fire (Scotland) Act 2005.

14.2.2 At application for warrant, verifiers will consult on:

- non-domestic residential buildings
- non-domestic, non-residential buildings where the design does not follow section 2: Fire of the non-domestic Technical Handbook approved by Scottish Ministers.
- domestic buildings with a storey at a height over 18m
- domestic buildings with a storey height over 7.5m but not over 18m where the design does not follow section 2: Fire of the domestic Technical Handbook approved by Scottish Ministers.

Consultation is also required where there is an application for amendment of warrant where there was consultation on the initial warrant, and where an amendment brings a building into the class of buildings listed above.

14.2.3 Where a completion certificate is submitted for a building where no warrant has been granted, the verifier should consult with the fire authority on those projects where consultation would have occurred if a warrant had been applied for. Once a completion certificate has been accepted this will be recorded in the building standards register held by the local authority.

14.2.4 Where permission is given to occupy a building before the completion certificate is accepted the verifier should inform the fire authority for buildings where the work concerned has been subject to consultation.

14.2.5 Where a verifier intends to impose continuing requirements on a completion certificate which relate to section 2, Fire in the Technical Handbooks then the verifier should consult the fire authority to:

- ensure that any continuing requirement does not duplicate or conflict with any fire legislation; and
- make the fire authority aware of the continuing requirement (if imposed).

14.3 Licensing boards of local authorities

14.3.1 Where the warrant application is for a type of building that will require a licence the applicant should be advised of the need to consult the relevant local authority department. These boards include liquor licensing, Houses in Multiple Occupation licensing, and entertainment licensing. A local authority building standards department will usually advise the licensing board on licensing applications, whether or not a building warrant is necessary or whether an warrant application has been decided or not.

14.3.2 Where a warrant application is for a type of building that will require a license and it appears that the board's permission has not been sought, it is usual for the local authority building standards department to advise both the warrant applicant of the need for this and also to appraise the clerk to the appropriate board of this situation. Note however such dialogue will not delay granting of the building warrant.

14.4 Highways department

14.4.1 Where the warrant application includes an access to a public road, the applicant should be advised of the need to consult the relevant department of the local authority. Matters to obtain permission for include road openings, pavements, crossings, and any temporary occupation of roads during construction.

14.4.2 Consultation requests to the highways department are less common than some of the other consultations in this chapter. The main reason is that highways are usually asked for comments when planning permission is sought. Building warrant applicants are advised, however, to consult highways when roads, road openings, pavements, crossings, etc. are to be constructed and also when any temporary occupation of roads/pavements is proposed during construction and/or demolition. Verifiers will specifically request consultation when work in accordance with the building regulations relies on the occupation or closure of a road to ensure the safety of the public.

14.5 Scottish Environment Protection Agency (SEPA)

14.5.1 SEPA may require an authorisation under the terms of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 for the following:

- discharges of sewage effluent whether to ground via an infiltration system or to a watercourse.
- discharges of surface water run-off

There are various levels of risk based authorisation required and reference to the SEPA document 'A Practical Guide to The Water Environment (Controlled Activities) (Scotland) Regulations 2005 provides advice.

14.5.2 Oil storage tanks with a capacity of 2,500 litres or more and/or serving a building, other than a dwelling, are required to comply with the requirements of The Water Environment (Oil Storage) (Scotland) Regulations 2006. Although authorisation is not required from SEPA, they may take enforcement action in the event of non-compliance. Unlike the building regulations, The Water Environment (Oil Storage) (Scotland) Regulations 2006 are not limited to the storage of heating fuel oil. For further information on the types of oil affected by these regulations, SEPA or their web site should be consulted.

14.5.3 Domestic oil storage tanks with a capacity of less than 2,500 litres and serving dwelling houses are exempt from the requirements of The Water Environment (Oil Storage) (Scotland) Regulations 2006, however, they will require to comply with the relevant Technical Standards.

14.6 Scottish Water

14.6.1 Prior to applying for building warrant, an applicant should consult with Scottish Water:

- where a private drain discharges into a public sewer
- where it is intended that a drain will be vested in Scottish Water
- on the design and construction of disconnecting manholes and disconnecting chambers
- and where it is intended to build over sewers

14.6.2 A verifier will specifically ask for consultation where the requirements of Scottish Water may adversely impact on compliance with the building regulations, for example, a request for attenuation of surface water discharge to a sewer by diminishing the bore of drainage pipes in the direction of flow.

14.7 Planning authorities

14.7.1 Where a warrant application is for work of a type which may require planning permission, a verifier may enquire as to whether this permission has been obtained. Again, such an enquiry will not delay the granting of the warrant.

14.8 Police

14.8.1 Police liaison officers are available in some areas to give advice on the security aspects of a development. A verifier will specifically ask for consultation where the security requirements of the "Secure by Design" initiative may adversely impact on compliance with the building regulations, for example, locking of external doors.

14.9 Historic Scotland

14.9.1 Where a warrant application is for work on a building that is designated an historic building in terms of section 35 of the Act, the applicant is advised of the need to obtain any necessary permissions and if necessary consult Historic Scotland. Note that the verifier may wish to check on the historic status of the building.

14.10 Access panels

14.10.1 For any application where there is public access to the building, the verifier may seek opinions from the local access panel on issues relating to access to and within buildings and the provision of facilities for disabled people, in particular if there are difficult issues associated with the conversion or alteration of an existing building.

14.11 Care Commission

14.11.1 Where a warrant application is for a building which will require to be registered by the Scottish Commission for the Regulation of Care, the applicant should consult the commission. The National Care Standards include some physical standards for premises that must be met.

14.12 Other permissions

14.12.1 Before commencing work it may be necessary to obtain other permissions not connected with the building warrant. For example, the waste collection authority may have special requirements for buildings like hospitals or consent from a landlord may be needed where the applicant does not own the building.

14.12.2 It is also important to remember that granting of a warrant does not depend on matters such as whether the applicant owns a property on which work is planned, or whether a mutual wall may be used for support, or whether foundations can be dug that may encroach on other property. Such matters are for applicants to agree through their own legal advisors.

15 FEEDBACK

15.1 To Scottish Building Standards Agency

15.1.1 Scottish Ministers hope that users of the system and members of the public using buildings will make their views known where it is felt the regulations are either inadequate or too onerous. Suggestions for improving any aspect of the system will always be given careful consideration. In particular the Agency would like to be informed of:

- conflicts between different standards
- instances in which apparent defects are blamed on inadequate regulation
- instances in which a standard is apparently no longer necessary
- ways in which an innovative solution is apparently being unnecessarily restricted.

15.1.2 In addition, problems arising between verifiers and certifiers should be reported to the agency. This is not a mechanism for resolution of a particular case but will inform future changes to regulations, standards, guidance and procedures.

15.1.3 If users of the system encounter problems with approved certifiers or approved bodies, they should make their views known to the relevant certification scheme provider, which is required to operate a complaints procedure. If users encounter problems with the scheme provider they should make their views known to the agency.

15.2 To Building Standards Advisory Committee

15.2.1 As the committee meets only three times a year, feedback should be limited to long term matters or those of national concern. The committee may consider these and make recommendations to Scottish Ministers but will not report to other bodies or conduct negotiations on these matters. That is the role of the agency. Any submission for consideration by BSAC must be submitted to the agency, which decides whether or not the submission should be considered by the committee or any sub-committee.