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periods of continuous employment by such a body or in that service) for the purpose of securing that employment as an employment medical adviser by an authority other than the Secretary of State is similarly treated for those purposes.

An order under this subsection may be varied or revoked by a subsequent order thereunder.

(4) References to the chief employment medical adviser or a deputy chief employment medical adviser in any provision of an enactment or instrument made under an enactment shall be read as references to a person appointed for the purposes of that provision by the authority responsible for maintaining the employment medical advisory service.

1972 c. 28.

(5) The following provisions of the Employment Medical Advisory Service Act 1972 (which are superseded by the preceding provisions of this Part or rendered unnecessary by provisions contained in Part I), namely sections 1 and 6 and Schedule 1, shall cease to have effect; but—

- (a) in so far as anything done under or by virtue of the said section 1 or Schedule 1 could have been done under or by virtue of a corresponding provision of Part I or this Part, it shall not be invalidated by the repeal of that section and Schedule by this Act but shall have effect as if done under or by virtue of that corresponding provision; and
- (b) any order made under the said section 6 which is in force immediately before the repeal of that section by this Act shall remain in force notwithstanding that repeal, but may be revoked or varied by regulations under section 43(2) or 57, as if it were an instrument containing regulations made under section 43(2) or 57, as the case may require.

(6) Where any Act (whether passed before, or in the same Session as, this Act) or any document refers, either expressly or by implication, to or to any enactment contained in any of the provisions of the said Act of 1972 which are mentioned in the preceding subsection, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision of this Act.

1889 c. 63.

(7) Nothing in subsection (5) or (6) above shall be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

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BUILDING REGULATIONS, AND AMENDMENT OF
BUILDING (SCOTLAND) ACT 1959

1959 c. 24.

61.—(1) For sections 61 and 62 of the 1936 Act (power to make building regulations, and their application to existing buildings) there shall be substituted the following sections—

“ Power to make building regulations.

61.—(1) Subject to the provisions of Part II of the Public Health Act 1961, the Secretary of State shall have power, for any of the purposes mentioned in subsection (2) below, to make regulations with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings.

Regulations under this subsection shall be known as building regulations.

(2) The purposes referred to in the preceding subsection are the following, that is to say—

- (a) securing 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;
- (b) furthering the conservation of fuel and power; and
- (c) preventing waste, undue consumption, misuse or contamination of water.

(3) Buildings regulations may—

- (a) provide for particular requirements of the regulations to be deemed to be complied with where prescribed methods of construction, prescribed types of materials or other prescribed means are used or in connection with buildings;
- (b) be framed to any extent by reference to a document published by or on behalf of the Secretary of State or any other person or any body, or by reference to the approval or satisfaction of any prescribed person or body.

(4) Building regulations may include provision as to—

- (a) the giving of notices;
- (b) the deposit of plans of proposed work or work already executed (including provision as to the number of copies to be deposited);

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- (c) the retention by local authorities of copies of plans deposited with them in accordance with the regulations ;
- (d) the inspection and testing of work ;
- (e) the taking of samples.

(5) Building regulations may exempt from all or any of the provisions of building regulations any prescribed class of buildings, services, fittings or equipment.

(6) The Secretary of State may by direction exempt from all or any of the provisions of building regulations any particular building or, as regards any particular location, buildings of any particular class thereat, and may in either case do so either unconditionally or subject to compliance with any conditions specified in the direction.

(7) A person who contravenes any condition specified in a direction given under the preceding subsection or permits any such condition to be contravened shall be liable to a fine not exceeding £400 and to a further fine not exceeding £50 for each day on which the offence continues after he is convicted.

(8) For the purposes of building regulations and of any direction given or instrument made with reference to building regulations, buildings may be classified by reference to size, description, design, purpose, location or any other characteristic whatsoever.

62.—(1) Building regulations may be made with respect to—

- (a) alterations and extensions of buildings and of services, fittings and equipment in or in connection with buildings ;
- (b) new services, fittings, or equipment provided in or in connection with buildings ;
- (c) buildings and services, fittings and equipment in or in connection with buildings, so far as affected by—
 - (i) alterations or extensions of buildings ; or
 - (ii) new, altered or extended services, fittings or equipment in or in connection with buildings ;

Application of building regulations to existing buildings etc.

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(d) the whole of any building, together with any services, fittings or equipment provided in or in connection therewith, in respect of which there are or are proposed to be carried out any operations which by virtue of section 74(1)(c) of the Health and Safety at Work etc. Act 1974 constitute the construction of a building for the purposes of this section ;

(e) buildings or parts of buildings, together with any services, fittings or equipment provided in or in connection therewith, in cases where the purposes for which or the manner or circumstances in which a building or part of a building is used change or changes in a way that constitutes a material change of use of the building or part within the meaning of the expression 'material change of use' as defined for the purposes of this paragraph by building regulations.

(2) So far as they relate to matters mentioned in the preceding subsection, building regulations may be made to apply to or in connection with buildings erected before the date on which the regulations came into force but, except as aforesaid (and subject to section 65(2) of the Health and Safety at Work etc. Act 1974) shall not apply to buildings erected before that date."

(2) Without prejudice to the generality of subsection (1) of section 61 of the 1936 Act as substituted by this section, building regulations may for any of the purposes mentioned in subsection (2) of that section make provision with respect to any of the matters mentioned in Schedule 5, may require things to be provided or done in or in connection with buildings (as well as regulating the provision or doing of things in or in connection with buildings), and may prescribe the manner in which work is to be carried out.

(3) The enactments relating to building regulations shall have effect subject to the further amendments provided for in Part I of Schedule 6.

(4) Section 65 of the 1936 Act and sections 4, 6 and 7 of the 1961 Act, as they will have effect after the coming into force of the preceding subsection, are set out in Part II of the said Schedule 6.

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(5) Section 71 of the 1936 Act (exemption of certain buildings from building regulations) shall cease to have effect.

(6) Any regulations under section 4 of the 1961 Act which are in force immediately before the repeal of subsection (1) of that section by this Act shall not be invalidated by that repeal, but shall have effect as if made under section 61(1) of the 1936 Act as substituted by this section.

Further matters for which building regulations may provide.

62.—(1) Building regulations may make provision for requiring local authorities in such circumstances as may be prescribed to consult any prescribed person before taking any prescribed step in connection with any work or other matter to which building regulations are applicable.

(2) Building regulations—

(a) may authorise local authorities to accept, as evidence that the requirements of building regulations as to matters of any prescribed description are or would be satisfied, certificates to that effect by persons of any class or description prescribed in relation to those matters or by a person nominated in writing by the Secretary of State in any particular case ;

(b) may provide for the issue by local authorities of certificates to the effect that, so far as the authority concerned have been able to ascertain after taking all reasonable steps in that behalf, the requirements of building regulations as to matters of any prescribed description are satisfied in any particular case, and for such certificates to be evidence (but not conclusive evidence) of compliance with the regulations ;

(c) may make provision—

(i) for prohibiting, in prescribed circumstances, the carrying out of proposed work of any prescribed class involving matters of any prescribed description unless there has been deposited with the prescribed authority as regards those matters a certificate such as is mentioned in paragraph (a) above ;

(ii) for enabling, in cases where such a certificate is required by virtue of the preceding sub-paragraph, any dispute as to whether a certificate ought to be issued to be referred to the Secretary of State ; and

(iii) for enabling the Secretary of State, on any such reference, to give such directions as he thinks fit.

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(3) Building regulations may authorise local authorities to charge prescribed fees for or in connection with the performance of prescribed functions of theirs relating to building regulations.

(4) Building regulations may make a prescribed person or class of persons responsible (instead of local authorities) for performing prescribed functions of local authorities under or in connection with building regulations, and for that purpose may provide for any prescribed enactment relating to building regulations and any prescribed provision of such regulations to apply (with any prescribed modifications) in relation to a prescribed person or a person of a prescribed class as that enactment or provision applies in relation to a local authority.

(5) Building regulations may repeal or modify any enactment to which this subsection applies if it appears to the Secretary of State that the enactment is inconsistent with, or is unnecessary or requires alteration in consequence of, any provision contained in or made under any enactment relating to building regulations.

This subsection applies to any enactment contained in this Act or in any other Act passed before or in the same Session as this Act, other than sections 61 to 71 of the 1936 Act, sections 4 to 11 of, and Schedule 1 to, the 1961 Act, and this Part.

63.—(1) A local authority with whom plans of any proposed work are deposited in accordance with building regulations may in prescribed cases pass them by stages in accordance with the regulations and, where a local authority pass any such plans to a limited extent at any stage,—

(a) they shall impose conditions as to the depositing of further plans in connection with the proposed work ; and

(b) they may impose conditions for securing that, pending the deposit of such of the further plans as they may indicate, the proposed work will not be proceeded with except to such extent as they may in accordance with the regulations authorise.

(2) A person who contravenes any condition imposed by a local authority under subsection (1) above other than a condition as to the depositing of further plans, or permits any such condition to be contravened, shall be liable to a fine not exceeding £400 and to a further fine not exceeding £50 for each day on which the offence continues after he is convicted.

(3) A local authority with whom plans of any proposed work are deposited in accordance with building regulations may, notwithstanding that the plans are defective or show that the work

Miscellaneous provisions as to the approval of plans.

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would contravene any of the building regulations, pass the plans provisionally, that is to say, subject to any modifications which they think necessary for remedying the defect or avoiding the contravention, indicating the modifications in the notice of approval and—

(a) if, within a prescribed time and in a prescribed manner so indicated, the person by or on behalf of whom the plans were deposited notifies the authority that he agrees to the modifications, the plans shall be treated as having been passed subject to those modifications; and

(b) if not, the plans shall be treated as having been rejected.

(4) In cases where by virtue of subsection (1) or (3) above plans are passed by stages or provisionally, the provisions of section 64(1) to (3) of the 1936 Act shall have effect subject to such modifications as may be prescribed.

(5) Where plans of any proposed work have been passed under section 64 of the 1936 Act by a local authority, the person by or on behalf of whom the plans were in accordance with building regulations deposited with the authority may, and in such cases as may be prescribed shall, for the purpose of obtaining the approval of the authority to any proposed departure or deviation from the plans as passed, deposit plans of any such departure or deviation; and that section shall apply in relation to plans deposited under this subsection as it applies in relation to the plans originally deposited.

(6) Where in accordance with any existing enactment (however framed or worded) plans of a proposed building of any prescribed class are submitted to a Minister of the Crown for his approval—

(a) plans of the proposed building shall not be required to be deposited with the local authority for the purposes of section 64 of the 1936 Act in pursuance of building regulations;

(b) the Minister shall not approve the plans unless he is satisfied that, so far as applicable, the substantive requirements of building regulations will be complied with by and in connection with the proposed building;

(c) the approval of the plans by the Minister shall operate, for such purposes as may be prescribed, in the same way as the passing of them by the local authority would have operated;

(d) the Minister may exercise in connection with the proposed building the like powers of dispensing with or relaxing requirements of building regulations as are

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conferred on the Secretary of State and local authorities by virtue of section 6 of the 1961 Act (other than a power excepted by subsection (7) below), subject however to the like requirements as to consultation (if any) as apply by virtue of section 62(1) in the case of a local authority (but not to the requirements in the said section 6 as to consultation with the local authority) and to the like requirements as in the case of the Secretary of State apply by virtue of section 8 of the 1961 Act (opportunity to make representations about proposal to relax building regulations).

(7) In the preceding subsection "existing enactment" means an enactment passed before the coming into force of that subsection, other than an enactment relating to town and country planning; and the power excepted from paragraph (d) of that subsection is one which by virtue of section 62(4) is exercisable otherwise than by a local authority.

64.—(1) This section applies—

(a) to any work consisting of a part of a building, being a part of the construction of which there is used any material or component of a type which, in relation to a part of that description, is prescribed for the purposes of this paragraph under subsection (2) below; and

(b) to any work provided in or in connection with a building, being work consisting of a service, fitting or item of equipment of a type so prescribed for the purposes of this paragraph.

(2) The Secretary of State may by building regulations—

(a) prescribe a type of material or component for the purposes of subsection (1)(a) above if in his opinion materials or components of that type are likely to be unsuitable for use in the construction of a particular part of a permanent building in the absence of conditions with respect to the use of the building or with respect to any material or component of that type used in the construction of a part of that description;

(b) prescribe a type of service, fitting or equipment for the purposes of subsection (1)(b) above if in his opinion services, fittings or equipment of that type are likely to be unsuitable for provision in or in connection with a permanent building in the absence of conditions with respect to the use of the building or with respect to any service, fitting or equipment of that type so provided.

Special provisions as to materials etc. unsuitable for permanent buildings.

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(3) Where plans of any proposed work are, in accordance with building regulations, deposited with a local authority and the plans show that the proposed work would include or consist of work to which this section applies, the authority may, notwithstanding that the plans conform with the regulations—

- (a) reject the plans ; or
- (b) in passing the plans fix a period on the expiration of which the work to which this section applies or the relevant building (as the authority may in passing the plans direct) must be removed and, if they think fit, impose with respect to the use of the relevant building or with respect to the work to which this section applies such reasonable conditions, if any, as they consider appropriate, so however that no condition as to the use of the relevant building shall be imposed which conflicts with any condition imposed or having effect as if imposed under Part III or IV of the Town and Country Planning Act 1971.

1971 c. 78.

(4) If, in the case of any work in respect of which plans ought by virtue of building regulations to have been deposited with a local authority but have not been so deposited, the work appears to the authority to include or consist of work to which this section applies, the authority, without prejudice to their right to take proceedings in respect of any contravention of the regulations, may fix a period on the expiration of which the work to which this section applies or the relevant building (as the authority may in fixing the period direct) must be removed and, if they think fit, impose any conditions that might have been imposed under the preceding subsection in passing plans for the first-mentioned work and, where they fix such a period, shall forthwith give notice thereof, and of any conditions imposed, to the owner of the relevant building

(5) If, in the case of any work appearing to the local authority to fall within subsection (1)(b) above, plans of the work were not required by building regulations to be deposited with the authority, and were not so deposited, the authority may at any time within twelve months from the date of completion of the work fix a period on the expiration of which the work must be removed and, if they think fit, impose any conditions which, if plans of the work had been required to be, and had been, so deposited, might have been imposed under subsection (3) above in passing the plans and, where they fix such a period, shall forthwith give notice thereof, and of any conditions imposed, to the owner of the relevant building.

(6) A local authority may from time to time extend any period fixed, or vary any conditions imposed, under this section, but so that, unless an application in that behalf is made to them

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by the owner of the relevant building, they shall not exercise their power of varying conditions so imposed except when granting an extension or further extension of the period fixed with respect to the work or building, as the case may be.

(7) Any person aggrieved by the action of a local authority under this section in rejecting plans, or in fixing or refusing to extend any period, or in imposing or refusing to vary any conditions, may appeal to the Secretary of State within the prescribed time and in the prescribed manner.

(8) Where a period has been fixed under this section with respect to any work to which this section applies or with respect to the relevant building, the owner of that building shall on the expiration of that period or, as the case may be, of that period as extended, remove the work or building with respect to which the period was fixed ; and if he fails to do so, the local authority may remove that work or building, as the case may be, and may recover from him the expenses reasonably incurred by them in doing so.

(9) A person who—

- (a) contravenes any condition imposed under this section or permits any such condition to be contravened ; or
- (b) contravenes subsection (8) above ;

shall be liable to a fine not exceeding £400 and to a further fine not exceeding £50 for each day on which the offence continues or, as the case may be, on which the work or building is allowed to remain, after he is convicted ; but this subsection shall not be construed as prejudicing a local authority's rights under subsection (8) above.

(10) In this section "the relevant building" means, in any particular case, the building mentioned in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above

(11) Section 53 of the 1936 Act (which is superseded by the preceding provisions of this section) shall cease to have effect, but—

- (a) any building regulations made, period fixed, condition imposed or other thing done by virtue of that section shall be deemed to have been made, fixed, imposed or done by virtue of this section ; and
- (b) anything begun under that section may be continued under this Act as if begun under this section, so however that any appeal under subsection (4) of that section which is pending at the time when that section ceases to have effect, and any proceedings arising out of such appeal, shall proceed as if that section were still in force.

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Continuing
requirements.

65.—(1) Building regulations may impose on owners and occupiers of buildings to which building regulations are applicable such continuing requirements as the Secretary of State considers appropriate for securing, with respect to any provision of building regulations designated in the regulations as a provision to which those requirements relate, that the purposes of that provision are not frustrated; but a continuing requirement imposed by virtue of this subsection shall not apply in relation to a building unless a provision of building regulations so designated as one to which the requirement relates applies to that building.

(2) Building regulations may impose on owners and occupiers of buildings of any prescribed class (whenever erected, and whether or not any building regulations were applicable to them at the time of their erection) continuing requirements with respect to all or any of the following matters, namely—

- (a) the conditions subject to which any services, fittings or equipment provided in or in connection with any building of that class may be used;
- (b) the inspection and maintenance of any services, fittings or equipment so provided; and
- (c) the making of reports to any prescribed authority on the condition of any services, fittings or equipment so provided;

and so much of section 62 of the 1936 Act as restricts the application of building regulations shall not apply to regulations made by virtue of this subsection.

(3) If a person contravenes a continuing requirement imposed by virtue of this section, the local authority, without prejudice to their right to take proceedings for a fine in respect of the contravention, may execute any work or take any other action required to remedy the contravention, and may recover from that person the expenses reasonably incurred by them in so doing.

(4) Where a local authority have power under the preceding subsection to execute any work or take any other action they may, instead of exercising that power, by notice require the owner or the occupier of the building to which the contravention referred to in that subsection relates to execute that work or take that action.

The provisions of Part XII of the 1936 Act with respect to appeals against, and the enforcement of, notices requiring the execution of works shall apply in relation to any notice given

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under this section, subject however to the modification that in those provisions references to the execution of works shall be construed as references to the execution of work or the taking of other action, and references to work shall be construed accordingly.

(5) The provisions of sections 6, 7 and 8 of the 1961 Act (power to dispense with or relax requirements in building regulations, and related provisions) shall have effect in relation to continuing requirements imposed by virtue of this section subject to the following modifications, that is to say—

- (a) a direction under the said section 6 shall, if it so provides, cease to have effect at the end of such period as may be specified in the direction; and
- (b) in subsection (1) of the said section 7 (as amended by this Act), the reference to granting an application subject to conditions shall be read as including a reference to granting an application for a limited period.

66.—(1) If the Secretary of State considers that the operation of any requirement of building regulations would be unreasonable in relation to any particular type of building matter, he may, either on an application made to him or of his own accord, give a direction dispensing with or relaxing that requirement generally in relation to that type of building matter, either unconditionally or subject to compliance with any conditions specified in the direction, being conditions with respect to matters directly connected with the dispensation or relaxation.

Type
relaxation of
building
regulations.

(2) A direction under subsection (1) above—

- (a) shall, if it so provides, cease to have effect at the end of such period as may be specified in the direction;
- (b) may be varied or revoked by a subsequent direction of the Secretary of State.

(3) Building regulations may require a person making an application under subsection (1) above to pay the Secretary of State the prescribed fee; and, without prejudice to section 4(2) of the 1961 Act, regulations made by virtue of this subsection may prescribe different fees for different cases:

Provided that the Secretary of State may in any particular case remit the whole or part of any fee payable by virtue of this subsection.

(4) Before giving a direction under this section the Secretary of State shall consult such bodies as appear to him to be representative of the interests concerned (including in particular, in the case of a direction that relates to a requirement relevant to any of their functions, the National Water Council).

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(5) Where the Secretary of State gives a direction under this section, he shall publish notice of that fact in such manner as he thinks fit.

(6) A person who contravenes any condition specified in a direction given under this section or permits any such condition to be contravened shall be liable to a fine not exceeding £400 and to a further fine not exceeding £50 for each day on which the offence continues after he is convicted.

(7) If at any time a direction under subsection (1) above dispensing with or relaxing a requirement of building regulations ceases to have effect by virtue of subsection (2)(a) above or is varied or revoked under subsection (2)(b) above, that fact shall not affect the continued operation of the direction (with any conditions specified therein) in any case in which before that time—

(a) plans of the proposed work were, in accordance with building regulations, deposited with a local authority; or

(b) a building notice was served on the district surveyor in pursuance of section 83 of the London Building Acts (Amendment) Act 1939.

1939 c. xcvi.

(8) In this section and section 67 below "building matter" means any building or other matter whatsoever to which building regulations are in any circumstances applicable.

Power of Secretary of State to approve types of building etc.

67.—(1) The following provisions of this section shall have effect with a view to enabling the Secretary of State, either on an application made to him or of his own accord, to approve any particular type of building matter as complying, either generally or in any class of case, with particular requirements of building regulations.

(2) An application for the approval under this section of a type of building matter shall comply with any requirements of building regulations as to the form of such applications and the particulars to be included therein.

(3) Where under subsection (1) above the Secretary of State approves a type of building matter as complying with particular requirements of building regulations either generally or in any class of case, he may issue a certificate to that effect specifying—

(a) the type of building matter to which the certificate relates;

(b) the requirements of building regulations to which the certificate relates; and

(c) where applicable, the class or classes of case to which the certificate applies.

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(4) A certificate under this section shall, if it so provides, cease to have effect at the end of such period as may be specified in the certificate.

(5) If, while a certificate under this section is in force, it is found, in any particular case involving a building matter of the type to which the certificate relates, that the building matter in question is of that type and the case is one to which the certificate applies, that building matter shall in that particular case be deemed to comply with the requirements of building regulations to which the certificate relates.

(6) The Secretary of State may vary a certificate under this section either on an application made to him or of his own accord; but in the case of a certificate issued on an application made by a person under subsection (1) above, the Secretary of State, except where he varies it on the application of that person, shall before varying it give that person reasonable notice that he proposes to do so.

(7) Building regulations may require a person making an application under subsection (1) or (6) above to pay the Secretary of State the prescribed fee; and, without prejudice to section 4(2) of the 1961 Act, regulations made by virtue of this subsection may prescribe different fees for different cases:

Provided that the Secretary of State may in any particular case remit the whole or part of any fee payable by virtue of this subsection.

(8) The Secretary of State may revoke a certificate issued under this section, but before doing so in the case of a certificate issued on an application under subsection (1) above shall give the person on whose application the certificate was issued reasonable notice that he proposes to do so.

(9) Where the Secretary of State issues a certificate under this section or varies or revokes a certificate so issued, he shall publish notice of that fact in such manner as he thinks fit.

(10) If at any time a certificate under this section ceases to have effect by virtue of subsection (4) above or is varied or revoked under the preceding provisions of this section, that fact shall not affect the continued operation of subsection (5) above by virtue of that certificate in any case in which before that time—

(a) plans of the proposed work were, in accordance with building regulations, deposited with a local authority; or

(b) a building notice was served on the district surveyor in pursuance of section 83 of the London Building Acts 1939 c. xcvi. (Amendment) Act 1939.

(11) For the purposes of subsection (3) above or any variation of a certificate under subsection (6) above, a class of case may be framed in any way that the Secretary of State thinks fit.

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(12) The Secretary of State may by building regulations delegate to any person or body, to such extent and subject to such conditions as the Secretary of State may think fit, the powers of approval conferred on him by this section; and so far as those powers are for the time being so delegated to any person or body, the preceding provisions of this section, except so much of subsection (7) as precedes the proviso, and any building regulation made by virtue of that subsection shall (subject to any prescribed conditions) have effect in relation to that person or body with the substitution of references to that person or body for references to the Secretary of State.

Power to require or carry out tests for conformity with building regulations.

68.—(1) The following subsection shall have effect for the purpose of enabling a local authority to ascertain, as regards any work or proposed work to which building regulations for the enforcement of which they are responsible are applicable, whether any provision of building regulations is or would be contravened by, or by anything done or proposed to be done in connection with, that work.

(2) The local authority shall have power for that purpose—

- (a) to require any person by whom or on whose behalf the work was, is being or is proposed to be done to carry out such reasonable tests of or in connection with the work as may be specified in the requirement; or
- (b) themselves to carry out any reasonable tests of or in connection with the work, and to take any samples necessary to enable them to carry out any such test.

(3) Without prejudice to the generality of the preceding subsection, the matters with respect to which tests may be required or carried out under that subsection include—

- (a) tests of the soil or subsoil of the site of any building;
- (b) tests of any material, component or combination of components which has been, is being or is proposed to be used in the construction of a building, and tests of any service, fitting or equipment which has been, is being or is proposed to be provided in or in connection with a building.

(4) A local authority shall have power, for the purpose of ascertaining whether there is or has been, in the case of any building, any contravention of any continuing requirement that applies in relation to that building—

- (a) to require the owner or occupier of the building to carry out such reasonable tests as may be specified in the requirement under this paragraph; or
- (b) themselves to carry out any tests which they have power to require under the preceding paragraph, and to take any samples necessary to enable them to carry out any such test.

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In this subsection “continuing requirement” means a continuing requirement imposed by building regulations made by virtue of section 65(1) or (2).

(5) The expense of carrying out any tests which a person is required to carry out under this section shall be met by that person:

Provided that the local authority, on an application made to them, may, if they think it reasonable to do so, direct that the expense of carrying out any such tests, or such part of that expense as may be specified in the direction, shall be met by the local authority.

(6) Any question arising under this section between a local authority and any person as to the reasonableness—

- (a) of any test specified in a requirement imposed on him by the authority under this section; or
- (b) of a refusal by the authority to give a direction under subsection (5) above on an application made by him; or
- (c) of a direction under that subsection given on such an application,

may on the application of that person be determined by a court of summary jurisdiction; and in a case falling within paragraph (b) or (c) above the court may order the expense to which the application relates to be met by the local authority to such extent as the court thinks just.

69.—(1) On an appeal to the Secretary of State under section 64 of the 1936 Act, section 7 of the 1961 Act or section 64 of this Act, the Secretary of State may at his discretion afford to the appellant and the local authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

Provisions relating to appeals etc. to the Secretary of State under certain provisions.

(2) On determining any such appeal as is mentioned in subsection (1) above, the Secretary of State shall give such directions, if any, as he considers appropriate for giving effect to his determination.

(3) Where the Secretary of State gives a decision in proceedings—

- (a) on any such appeal as is mentioned in subsection (1) above; or
- (b) on a reference under section 67 of the 1936 Act; or
- (c) on any application for a direction under section 6 of the 1961 Act where the power of giving the direction is not exercisable by the local authority,

the relevant person or the local authority may appeal to the High Court against the decision on a point of law.

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In this subsection "the relevant person"—

- (i) as regards such an appeal as is mentioned in paragraph (a) above, means the appellant;
- (ii) as regards a reference under the said section 67, means the person on whose application (jointly with the local authority) the reference was made;
- (iii) as regards any such application as is mentioned in paragraph (c) above, means the applicant.

(4) At any stage of the proceedings on any such appeal, reference or application as is mentioned in the preceding subsection, the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court; and a decision of the High Court on a case stated by virtue of this subsection shall be deemed to be a judgment of the court within the meaning of section 27 of the Supreme Court of Judicature (Consolidation) Act 1925 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).

1925 c. 49.

(5) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules—

- (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
- (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

(6) Rules of court relating to any such proceedings as are mentioned in subsection (5) of this section may provide for excluding so much of section 63(1) of the said Act of 1925 as requires appeals to the High Court to be heard and determined by a Divisional Court; but no appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.

(7) In this section "decision" includes a direction, and references to the giving of a decision shall be construed accordingly.

(8) Without prejudice to section 4(5) of the 1961 Act, building regulations may in connection with any such appeal as is mentioned in subsection (1) above include such supplementary provisions with respect to procedure as the Secretary of State thinks fit.

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70.—(1) The following enactments (which relate to the power to make, and other matters connected with, building regulations), namely sections 61, 62 and 67 of the 1936 Act and sections 4(2) and (5) to (7), 5 and 9 of the 1961 Act, shall (with this Part, except section 75 and Schedule 7) apply throughout Inner London as they apply elsewhere in England and Wales; but without prejudice to that power as extended by this subsection, this subsection shall not of itself cause any building regulations made before it comes into force to apply to Inner London.

Power to make building regulations for Inner London.

(2) Subject to any provision made by virtue of section 62(4) it shall be the duty of the Greater London Council to enforce in Inner London any building regulations which are in force there except to the extent that other local authorities or district surveyors within the meaning of the London Building Acts 1930 to 1939 are by virtue of building regulations made responsible for their enforcement there.

(3) Where by virtue of this section or section 62(4) local authorities or any prescribed person or class of persons (other than local authorities) are made responsible for enforcing, or performing prescribed functions under or in connection with, building regulations in force in Inner London, then, without prejudice to the said section 62(4), building regulations may in that connection provide for any prescribed provision falling within section 76(1)(a) or (b) but not mentioned in subsection (1) above to apply (with any prescribed modifications, and notwithstanding paragraph 12 or 34 of Part I of Schedule 11 to the London Government Act 1963) in relation to any such authority or person, or persons of any such class, as that provision applies in relation to a local authority outside Inner London.

1963 c. 33.

(4) Without prejudice to the generality of section 62(5) building regulations may repeal or modify any provision to which this subsection applies if it appears to the Secretary of State that the repeal or, as the case may be, the modification of that provision is expedient in consequence of the provisions of this section or in connection with any provision contained in building regulations that apply to or to any part of Inner London.

(5) The preceding subsection applies to any provision—

- (a) of the London Building Acts 1930 to 1939;
- (b) of any enactment contained in this Act, other than this Part, or in any other Act passed before or in the same Session as this Act, in so far as that provision—
 - (i) applies to or to any part of Inner London; and

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(ii) relates to, or to the making of, byelaws for or for any part of Inner London with respect to any matter for or in connection with which provision can be made by building regulations;

(c) of any byelaws made or having effect under the said Acts or of any such byelaws as are mentioned in paragraph (b)(ii) above.

(6) Before making any building regulations that provide for the repeal or modification of any provision to which the preceding subsection applies, the Secretary of State shall (without prejudice to the requirements as to consultation in section 9(3) of the 1961 Act) consult the Greater London Council and any other local authority who appear to him to be concerned.

(7) In this section "Inner London" means the area comprising the Inner London boroughs, the City, and the Inner Temple and the Middle Temple.

1963 c. 33. (8) In Part I of Schedule 11 to the London Government Act 1963 (modifications of Public Health Acts)—

(a) in paragraph 12, for the words "53 to 55, and 57 to 71" there shall be substituted the words "54, 55, 57 to 60, 64 to 66, 69, 70 and (so far as unrepealed) 71";

(b) in paragraph 34, for the words "4 to 11" there shall be substituted the words "4(3) and (4), 6 to 8 and 10 and (except in so far as it amends any enactment mentioned in section 70(1) of the Health and Safety at Work etc. Act 1974) section 11".

Civil liability.

71.—(1) Subject to the provisions of this section, breach of a duty imposed by building regulations shall, so far as it causes damage, be actionable except in so far as the regulations provide otherwise; and as regards any such duty building regulations may provide for any prescribed defence to be available in any action for breach of that duty brought by virtue of this subsection.

(2) Subsection (1) above and any defence provided for in regulations made by virtue thereof shall not apply in the case of a breach of such duty in connection with a building erected before the date on which that subsection comes into force unless the regulations imposing the duty apply to or in connection with the building by virtue of section 62 of the 1936 Act or section 65(2) of this Act.

(3) Nothing in this section shall be construed as affecting the extent (if any) to which breach—

(a) of a duty imposed by or arising in connection with this Part or any other enactment relating to building regulations; or

PART III

(b) of a duty imposed by building regulations in a case to which subsection (1) above does not apply.

is actionable, or as prejudicing any right of action which exists apart from the enactments relating to building regulations.

(4) In this section "damage" includes the death of, or injury to, any person (including any disease and any impairment of a person's physical or mental condition).

72.—(1) Except in so far as building regulations provide otherwise, the substantive provisions of building regulations— Application to Crown.

(a) shall apply in relation to work carried out or proposed to be carried out by or on behalf of a Crown authority (whether or not in relation to a Crown building) as they would apply if the person by or on behalf of whom the work was or is to be carried out were not a Crown authority; and

(b) so far as they consist of continuing requirements, shall apply to Crown authorities (whether or not in relation to Crown buildings) as they apply to persons who are not Crown authorities.

(2) In so far as building regulations so provide as regards any of the substantive requirements of building regulations, those requirements shall apply in relation to work carried out or proposed to be carried out as mentioned in subsection (1)(a) above in Inner London and, so far as they consist of continuing requirements, shall apply to Crown authorities there as mentioned in subsection (1)(b) above, even if those requirements do not apply there in the case of work carried out or proposed to be carried out otherwise than by or on behalf of a Crown authority or, in the case of continuing requirements, do not apply there to persons other than Crown authorities.

In this subsection "Inner London" has the same meaning as in section 70.

(3) Except in so far as building regulations provide otherwise, building regulations and the enactments relating to building regulations—

(a) shall apply in relation to work carried out or proposed to be carried out in relation to a Crown building otherwise than by or on behalf of a Crown authority, and, in the case of section 65 and building regulations made by virtue thereof, shall in relation to a Crown building apply to persons other than Crown authorities, as they would apply if the building were not a Crown building; and

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(b) shall apply in relation to work carried out or proposed to be carried out by or on behalf of a government department acting for a person other than a Crown authority as they would apply if the work had been or were to be carried out by that person.

(4) Section 341 of the 1936 Act (power to apply provisions of that Act to Crown property) shall not apply to provisions relating to building regulations.

(5) Section 71 and any building regulations made by virtue of subsection (1) of that section shall apply in relation to duties imposed by building regulations in their application in accordance with the preceding provisions of this section.

(6) In the case of work carried out or proposed to be carried out by or on behalf of a Crown authority, and in any case in which a Crown authority is or (apart from any dispensation or relaxation) will be subject to any continuing requirements, that authority may exercise the like powers of dispensing with or relaxing the substantive requirements of building regulations or, as the case may be, the continuing requirements in question as are conferred on the Secretary of State and local authorities by virtue of section 6 of the 1961 Act (other than a power excepted by the following subsection), subject, however, to the like requirements as to consultation (if any) as apply by virtue of section 62(1) in the case of a local authority (but not the requirements of the said section 6 as to consultation with the local authority) and to the like requirements as in the case of the Secretary of State apply by virtue of section 8 of that Act (opportunity to make representations about proposal to relax building regulations); and no application shall be necessary for the exercise of any such powers by virtue of this subsection.

In relation to any continuing requirements references in this subsection to the said section 6 are references thereto as modified by section 65(5).

(7) The power excepted from the preceding subsection is one which by virtue of section 62(4) is exercisable otherwise than by a local authority.

(8) For the purposes of subsection (6) above work carried out or proposed to be carried out by or on behalf of a government department acting for another Crown authority shall be treated as carried out or proposed to be carried out by or on behalf of that department (and not by or on behalf of the other Crown authority).

(9) In this section—

“continuing requirement” means a continuing requirement of building regulations imposed by virtue of section 65(1) or (2)(a) or (b).

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“Crown authority” means the Crown Estate Commissioners, a Minister of the Crown, a government department, any other person or body whose functions are performed on behalf of the Crown (not being a person or body whose functions are performed on behalf of Her Majesty in her private capacity), or any person acting in right of the Duchy of Lancaster or the Duchy of Cornwall;

“Crown building” means a building in which there is a Crown interest or a Duchy interest;

“Crown interest” means an interest belonging to Her Majesty in right of the Crown or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department;

“Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall.

(10) If any question arises under this section as to which Crown authority is entitled to exercise any such powers as are mentioned in subsection (6) above, that question shall be referred to the Treasury, whose decision shall be final.

(11) The preceding provisions of this section shall, with any necessary modifications, apply in relation to the making of a material change in the use of a building within the meaning of building regulations made for the purposes of section 62(1)(e) of the 1936 Act (as substituted by this Part) as they apply in relation to the carrying out of work.

73.—(1) The provisions of section 72, except subsections (2) to (4), shall apply in relation to the United Kingdom Atomic Energy Authority (in this section referred to as “the Authority”) as if—

Application to United Kingdom Atomic Energy Authority.

(a) the Authority were a Crown authority;

(b) any building belonging to or occupied by the Authority were a Crown building; and

(c) the references in subsection (1) to not being a Crown authority were references to being neither a Crown authority nor the Authority,

but so that the said provisions shall not by virtue of this subsection apply in relation to dwelling-houses or offices belonging to or occupied by the Authority.

(2) Subject to the said provisions as applied by the preceding subsection, building regulations and the enactments relating to building regulations shall not apply in relation to buildings belonging to or occupied by the Authority, being buildings other than dwelling-houses or offices.

PART III
Meaning of
"building" etc.
in connection
with, and con-
struction of
references to,
building
regulations.

74.—(1) For the purposes of any enactment to which this subsection applies—

- (a) "building" means any permanent or temporary building and, unless the context otherwise requires, includes any other structure or erection of whatever kind or nature (whether permanent or temporary), and in this paragraph, "structure or erection" shall include a vehicle, vessel, hovercraft, aircraft or other movable object of any kind in such circumstances as may be prescribed (being circumstances which in the opinion of the Secretary of State justify treating it for those purposes as a building);
- (b) unless the context otherwise requires, any reference to a building includes a reference to part of a building, and any reference to the provision of services, fittings and equipment in or in connection with buildings, or to services, fittings and equipment so provided, includes a reference to the affixing of things to buildings or, as the case may be, to things so affixed; and
- (c) references to the construction or erection of a building shall include references to—
- (i) the carrying out of such operations (whether for the reconstruction of a building, the roofing over of an open space between walls or buildings, or otherwise) as may be designated in building regulations as operations falling to be treated for those purposes as the construction or erection of a building, and
- (ii) the conversion of a movable object into what is by virtue of paragraph (a) above a building.
- and "construct" and "erect" shall be construed accordingly.

(2) The preceding subsection applies to sections 61 to 71 of the 1936 Act and to any other enactment (whether or not contained in the 1936 Act or this Act) which relates to building regulations or mentions "buildings" or "a building" in a context from which it appears that those expressions are there intended to have the same meaning as in the said sections 61 to 71.

(3) Unless the context otherwise requires, references in this Act or any other enactment (whether passed before or after this Act) to building regulations shall, in any particular case in relation to which any requirement of building regulations is for the time being dispensed with, waived, relaxed or modified by virtue of section 6 of the 1961 Act, section 66 of this Act or any other enactment, be construed as references to building regulations as they apply in that case.

75. The Building (Scotland) Act 1959 shall have effect subject to the amendments provided for in Schedule 7.

PART III
Amendment of
Building (Scotland)
Act 1959.
1959 c. 24.

76.—(1) The following provisions, namely—

- (a) so much of Part II of the 1936 Act as relates to building regulations;
- (b) so much of Part II of the 1961 Act as relates to building regulations; and
- (c) this Part, except section 75 and Schedule 7;

Construction
and
interpretation
of Part III and
other
provisions
relating to
building
regulations.

shall be construed as one; and Part XII of the 1936 Act shall have effect as if the provisions mentioned in paragraph (b) and (c) above (as well as those mentioned in paragraph (a)) were contained in Part II of that Act.

(2) For the purposes of the provisions mentioned in subsection (1)(a) to (c) above—

- (a) "local authority" means a district council, the Greater London Council, a London borough council, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, and includes the Council of the Isles of Scilly; and
- (b) the definitions of "local authority" in section 1(2) of the 1936 Act and section 2(3) of the 1961 Act shall not apply;

and in section 1(1) of the 1961 Act (Part II of that Act to be construed as one with Part II of the 1936 Act), after the words "Part II of this Act" there shall be inserted the words ", except so much of it as relates to building regulations,"

(3) In this Part—

- "the 1936 Act" means the Public Health Act 1936; 1936 c. 49.
- "the 1961 Act" means the Public Health Act 1961; 1961 c. 64.
- "the substantive requirements of building regulations" means the requirements of building regulations with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings (including requirements imposed by virtue of section 65(1) or (2)(a) or (b)), as distinct from procedural requirements.

(4) In this Part, in sections 61 to 71 of the 1936 Act and in sections 4 to 8 of the 1961 Act "prescribed" means prescribed by building regulations.