

BUILDING CONTROL ACT, 1995

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BUILDING CONTROL ACT 1995

ACT NO. 8 OF 1995

An Act to provide for the promotion of uniformity in the law relating to the erection of buildings in Lesotho; for the prescribing of building standards; and incidental matters.

Enacted by the Parliament of Lesotho.

Part I - Preliminary

Short title and commencement

1. This Act may be cited as the Building Control Act 1995, and shall come into operation on the date of its publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires,

“application” means an application referred to in section 18(3);

“architect” means a person who is registered as an architect by the Ministry of Works or under any subsequent legislation governing architects;

“Board” means the Review Board constituted under section 3;

“building” includes,

- (a) any structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with,
 - (i) the accommodation or convenience of human beings or animals;
 - (ii) the manufacture, processing, storage or sale of any goods;
 - (iii) the rendering of any service;
 - (iv) the destruction or treatment of refuse or other waste materials;
 - (v) the cultivation or growing of any plant or crop;

- (b) any wall, swimming pool, reservoir or bridge or any other structure connected therewith;
- (c) any fuel pump or tank used in connection therewith;
- (d) any part of a building, including a building as defined in paragraph (a), (b) or (c);

“building authority” means any council or other body appointed by the Minister under section 11 and which is authorised to issue building permits and certificates of occupancy referred to in sections 20 and 28 respectively;

“building control officer” means any person appointed or deemed to be appointed as building control officer by the building authority in terms of section 12;

“building operations” means any function related to the erection or demolition of any building, including temporary works relating to any permanent building, alterations, additions, plumbing, drainage and erosion protection;

“building regulations” means regulations made under section 39;

“council” means council as defined in section 3 of the Urban Government Act, 19831;

“demolish” in relation to a building, means to remove any building entirely from the land on which it stands or such part or parts as may be necessary or approved;

“directive” means a directive made in terms of section 39(9);

“dwelling” means all or any part of a building lawfully used or constructed, adopted or designed to be used as a residence and includes such out-buildings as are ancillary thereto;

“dwelling house” means a building designed for use exclusively as one self-contained residence together with such out-buildings as are ancillary thereto;

“earthwork” means any excavation below natural ground levels or fill above natural ground levels for the building to stand in or on, or any temporary or permanent excavation or fill as before not being for the building operations but on land within the ownership or control of the owner of the land where building operations are taking place;

“engineer” means a person who is registered as an engineer by the Ministry of Works or under any subsequent legislation governing engineers;

“erection” in relation to a building, includes the alteration, conversion, extension, rebuilding, reconstruction, or subdivision of or addition to any building, and erect shall have a corresponding meaning;

“local authority” means a local authority as defined in section 3 of the Urban Government Act, 19832;

“Minister” means the Minister of Local Government;

“Ministry” means the Ministry of Local Government;

“occupier” means a person in actual occupation of land or premises without regard to the title under which he occupies it;

“owner” means the person having the primary legal interest entitling him to possession of land whether such title is by way of a lease held by the State or by way of an allocation;

“parastatal organisation” means any incorporated body the equity capital of which is at least fifty-one percent owned by the Government of Lesotho and includes units of Government Ministries which operate revenue generating and self-accounting business activities;

“planner” means a person who is registered as a planner by the department of Lands, Survey and Physical Planning or under any subsequent legislation governing planners;

“press” means any publication or newspaper published and circulated in Lesotho; “private

building” means any building which is not a public building;

“public building” means any building to which the public has a right of access to the building during all reasonable times for which the building is used for its prescribed occupancy;

“regulations” means the regulation made under section 40;

“standard” means any standard published by any national or international standards institution relating to the quality of materials, methods of design, specifications and workmanship or any other aspect relevant to building operations;

“surveyor” means a licensed surveyor or an officer in the public service authorised by the Chief Surveyor to carry out surveys in terms of the Land Survey Act, 1980~

“this Act” includes the building regulations and other regulations made and directives issued thereunder.

Part II- Board, Building Authority and Building Control Officer

Review Board

3. (1) There shall be established a Review Board, appointed by the Minister.
- (2) The Board shall consist of,
 - (a) a representative from each building authority;
 - (b) a representative of the Physical Planning Department;
 - (c) a representative of the Lesotho Architects, Engineers and Surveyors Association;
a representative of the Lesotho Chamber of Commerce;
 - (e) a representative of the Lesotho Electricity Corporation;
 - (f) 2 representatives of the Department of Works;
 - (g) *a representative of all the technical institutes of Lesotho;*
 - (h) *a representative of the Lesotho Builders 'Associations;*
 - (i) a representative of the Ministry of Health and Social Welfare;
 - (j) 3 representatives of the Ministry of Natural Resources;
 - (k) 2 other members with knowledge and skill in the building industry.
- (3) The composition of the Board shall be published by the Minister by notice in the Gazette.
- (4) A member of the Board shall hold office for a period of two years but may be re-appointed for a further period of two years.
- (5) The Board shall, at its first meeting in every two years, elect one of their number to be Chairman, who may not hold office as Chairman for more than four consecutive years.
- (6) The appointing authority may, in terms of subsection (2), appoint another representative where its original representative fails to serve on the Board for any reason.
- (7) A member of the Board who misconducts himself or who abuses his position may be censured by the Board or if the gravity of the matter is sufficiently serious, the Board may, by a vote of two-thirds majority of the members present and voting, with the approval of the Minister, remove the member from the Board, and such removal shall be published by notice in the Gazette.

Secretary to the Board

4. (1) The Minister may, by notice in the Gazette, appoint a Secretary to the Board, who shall not be a member of the Board.
- (2) The Secretary shall perform all administrative functions of the Board.

Functions of the Board

5. The functions of the Board shall be:
 - (a) to keep the provisions of this Act under review;
 - (b) to keep developments in new building materials and construction techniques under review so as to ensure compliance with the provisions of this Act;
 - (c) to advise the Minister with regard to the revision of the building regulations or any other regulation or provision made under this Act;
 - (d) to advise the Minister in respect of any matter referred to in sections 14, 15, 16, 17,28,39 and 40;
 - (e) to prepare reports commissioned by the Minister under section 14;
 - (f) to hear and determine appeals lodged against any decision of a building authority as provided in section 24.

Meetings of the Board

6. (1) The Board shall meet at least twice in each year and as often as its business requires.
- (2) The Chairman shall preside at all meetings of the Board and in his absence the members present shall elect one of their number to preside at its meetings.
- (3) The quorum at a meeting of the Board shall be seven members.
- (4) Decisions of the Board shall be by resolution of the majority votes of members present and voting and in the case of an equality of votes, the person presiding shall, in addition to his deliberative vote, have a casting vote.
- (5) *Any member of the Board who fails, without prior notice to the secretary, to attend 3 consecutive meetings of the Board shall cease to be a member of the Board.*
- (6) Subject to this section, the Board shall regulate its procedure at its meetings.

Disclosure of interest

7. If a member of the Board or a member of his family has any pecuniary interest, direct or indirect, in any transaction, project or any other matter in which his private interests conflict with his duties as a member of the Board and which is the subject of consideration by the Board, he shall, as soon as he becomes aware of that interest, disclose the facts relating thereto to the Board and he shall not sit or take part in any deliberation or decision of the Board with respect to that transaction, project or matter, nor shall he sit on any committee or panel appointed to advise the Board with respect to that transaction, project or matter.

Disciplinary and other committees

8. (1) The Board may,
- (a) appoint a professional conduct committee from amongst persons who are practising architects, engineers, planners or surveyors, who need not be members of the Board, as the Board may consider appropriate for determining allegations of professional misconduct against any architect, engineer, planner or surveyor;
 - (b) appoint such other committees as it may deem necessary, and may delegate to them such duties and powers, except the power to hear and determine appeals under section 5(f), as it may deem desirable for the proper conduct of the business of the Board.
- (2) All committees of the Board shall report to the meetings of the Board activities and decisions undertaken by such committees and the Board may ratify or modify such decisions as it deems fit.

Power to make rules

9. The Board may, by notice in the Gazette, make rules or codes of practice, not inconsistent with regulations made under section 39, which shall define good design or construction practice or acceptable use of materials or any other matter relating to building operations.

Expenses, allowances, etc., of the Board

10. There shall be paid out of the Consolidated Fund such sums as the Minister may, in consultation with the Minister responsible for finance, determine, in respect of,
- (a) costs, expenses, and other disbursements relating to the functions of the Board; and
 - (b) *sitting allowances payable to members of the Board or of any committee thereof who are not public officers or employees of a parastatal organisation.*

Building Authority

11. (1) The Minister may, by notice in the Gazette, appoint as a building authority in relation to an area,

- (a) any local authority; or
 - (b) where there is no local authority, any department of Government or any commission.
- (2) The notice of appointment referred to in subsection (1) shall also specify,
- (a) the areas of jurisdiction for each building authority;
 - (b) the powers of building authorities to make building bye-laws, which shall not be inconsistent with regulations made under section 39; and
 - (c) the powers which the Minister may decide not to delegate to prescribed building authorities.

Building Control Officer

12. (1) Subject to subsection (3), a building authority shall appoint a building control officer.
- (2) *A person who does not have the qualifications prescribed by the regulations under section 40 in respect of a building control officer shall not be appointed as a building control officer.*
- (3) Subsection (1) shall also be construed so as to enable,
- (a) two or more building authorities to appoint, on such terms and conditions as they may agree to, one person as a building control officer for all such building authorities;
 - (b) a building authority, with the approval in writing of any other building authority and on such terms and conditions as they may agree to, to make use of the services of any person appointed as a building control officer by such other building authority.
- (4) A person who,
- (a) immediately before the coming into operation of this Act in the area of jurisdiction of any building authority, was employed by a building authority or its equivalent for the purpose of performing as a building control officer any activity substantially the same as those mentioned in section 13(1); and
 - (b) on the coming into operation of this Act is still so employed,
- shall be deemed to have been appointed in terms of this section as a building control officer by such building authority:

Provided that that person qualifies as a building control officer in terms of section 12(2).

Functions of a building control officer

13. (1) A building control officer shall,
- (a) make recommendations to the building authority in question, regarding any plans, specifications, documents and information submitted to such building authority in accordance with section 20;
 - (b) ensure that any lawful instructions given in terms of this Act by the building authority in question are carried out;
 - (c) inspect the erection or demolition of a building, and any activities or matters connected therewith in respect of which approval referred to in section 20(1) has been granted;
 - (d) report to the building authority in question, regarding non-compliance with any condition on which approval referred to in section 20(1) was granted.
- (2) Where a fire protection plan is required in terms of this Act by the building authority, the building control officer shall incorporate in his recommendations referred to in subsection (1)(a), a report of the person designated as the fire officer.
- (3) If a building control officer is of the opinion that any application is incomplete in so far as the plans, specifications or other documents or information in question are concerned, or does not comply with the requirements of this Act or any other applicable law, he may, before such application is considered in terms of section 20(1) by the building authority concerned, return it to the applicant together with an explanation why, in his opinion, such plans, specifications or other documents do not so comply.

Report on adequacy of certain measures and on certain building projects

14. (1) The Minister may order in writing any building authority to report to him on,
- (a) the adequacy of measures in or in connection with buildings in its area of jurisdiction, against fires, floods or other disasters and to make recommendations in order to remove any inadequacies in such measures;
 - (b) any particular building project which was or is being undertaken in its area of jurisdiction.

- (2) If the Minister is satisfied that any building authority is unable to report as contemplated in subsection (1), he may order in writing the Board so to report.
- (3) For the purposes of this section, the building authority concerned or the Board, as the case may be, shall have such powers and duties as may be prescribed by the Minister by regulations.

Exemptions

15. *(1) The Minister may, after consultation with the Board and on such conditions as the Board may think fit, by notice in the Gazette, exempt any area of jurisdiction, or any part thereof, from the application of any or all of the building regulations, and may, in like manner, substitute requirements therefor.*
 - (2) Different notices may, in terms of subsection (1), be published in the Gazette in respect of different areas.

Prohibition on use of certain methods or materials

16.
 - (1) If the Minister, after consultation with the Board and notwithstanding anything to the contrary contained in any law, is satisfied that any method or material used or to be used in any building operation will not be in the public interest or will be dangerous to life or property, the Minister may, having in writing notified the building authority in question, by notice of the Gazette, or by notice sent by post or delivered, prohibit the owner of the land on which such building operation is being or is to be executed from using such method or material in such erection.
 - (2) Any person who contravenes or fails to comply with the provisions of a notice referred to in subsection (1) commits an offence and is liable on conviction to the penalties prescribed in section 38.

Powers of Minister in respect of certain building authorities

17.
 - (1) If the Minister, after consultation with or on the recommendation of the Board, is satisfied that a building authority has failed to apply any relevant provision of this Act properly in its area of jurisdiction, the Minister may, by notice in writing, served by post or delivered, order such building authority to so apply such provision forthwith.
 - (2) If a building authority, without reasonable cause, fails to comply within a reasonable time, with the provisions of any notice served on or delivered to it in terms of subsection (1), the Minister may, after consultation with the Board, by notice in the Gazette, deprive such building authority of any power, or exempt it from any duty conferred upon or entrusted to it by or in terms of this Act and confer such power or entrust such duty to any other body mentioned in such notice, and thereupon, such body shall, for the purposes of such power or duty, be deemed to be such building authority.

- (3) Any notice published in the Gazette in terms of subsection (2) may be withdrawn in like manner.

Part III - Duties and Powers of Building Authorities

Approval by building authorities of application in respect of building operations

18. (1) No person shall, without the prior approval in writing of the building authority in question, commence any building.
- (2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to the penalties prescribed in the regulations.
- (3) An application for approval referred to in subsection (1) shall be in writing on a form made available for that purpose by the building authority in question.
- (4) Any application referred to in subsection (3) shall,
- (a) contain the name and address of the applicant and, if the applicant is not the owner of the land on which the building in question is to be erected, the name and address of the owner of such land, and the applicant's relationship with the owner;
 - (b) be accompanied by such plans, specifications, documents and information as may be required by or under this Act, and by such particulars as may be required by the building authority in question for the proper carrying out of the objects and purposes of this Act.
- (5) The Ministry of Works shall, in respect of all Government buildings, submit all plans, specifications, documents or information as may be required under this Act to the building authority in whose jurisdiction building operations will be carried out.

Identification of draughtsman of plans, specifications, documents and diagrams

19. (1) Any person who prepares any plan, specification, document or information submitted in terms of this Act shall affix to such plan, specification, document or information, his name and address and sign them in the case of an architect, an engineer or surveyor required under any law to be registered as such, also his profession and registration number, if any.
- (2) Subject to sub section (1), the Minister may by notice published in the gazette, order that any plan, specification, document or information in relation to a

proposed building, shall provide for the physical access to the proposed building to persons of different categories of disabilities.

Approval by building authorities in respect of building operations

20. (1) If a building authority, having considered a recommendation referred to in section 13(1),
- (a) is satisfied that the application in question complies with the requirements of this Act and any other applicable law, it shall, within 30 days after the receipt of such application, grant its approval in respect thereof by issuing a building permit;
 - (b) is not so satisfied, or is satisfied that the building operation to which the application in question relates is of such nature or appearance that,
 - (i) it will probably or in fact be unsightly or objectionable, or create a nuisance as contemplated under the Public Health Order, 1970~ or
 - (ii) it will probably or in fact be dangerous to life or property,such building authority shall, within 30 days after the receipt of such application, refuse to grant its approval in respect thereof and give reasons for such refusal:

Provided that any application returned to the applicant in terms of section 13(3), shall be deemed not to have been received by the building authority.

- (2) Where a building authority is of the opinion that more than 30 days will be required in order to reach a decision regarding any application, it shall, within 14 days after the receipt of such application, so notify the applicant and, thereupon, the period of 30 days referred to in subsection (1) shall be extended to 60 days.
- (3) Where a building authority has granted its approval in accordance with subsection (1)(a) in respect of any application, such approval shall be endorsed on one of the copies of the plans, specifications or other documents or information in question and be returned to the applicant with the building permit.
- (4) Any application in respect of which a building authority refuses, in accordance with subsection (1)(b), to grant its approval, shall not again be considered by such building authority unless the plans, specifications or other documents or information in question are amended and differ from the plans, specifications or other documents or information relating to such application at the time when such building authority refuses in accordance with subsection (1)(b) to grant its approval in respect thereof, or, unless such applicant shall have made an appeal to the Board and such appeal shall have been upheld by the Board.

- (5) The provisions in respect of this section shall not be construed so as to prohibit a building authority, before granting or refusing its approval in accordance with subsection (1) in respect of an application, from granting, on such conditions as it may think fit, conditional authorization to an applicant to commence or proceed with any building operation to which such application relates.
- (6) An application which is substantially the same as an application referred to in this Act and which, before the date of commencement of this Act, has been lodged with a building authority for its consideration and in respect of which such building authority on that date has not yet granted or refused its approval, shall be considered by such building authority as if this Act had not been brought into force.
- (7) Any approval granted by a building authority before the date of commencement of this Act in respect of an application substantially the same as an application referred to in this Act, shall be deemed to have been granted in terms of this section if the erection of the building in question has been commenced before the said date.
- (8) Any person executing any building operations in contravention of sections 18, 19 or 20 commits an offence and is liable on conviction to the penalties prescribed in section 38 and shall immediately stop all building operations upon being served with an order to do so.
- (9) Any person who fails to comply with any order served under subsection (8) commits a further offence and, in addition to any penalties prescribed for that offence, the building authority may, without further notice, move on to the site, and at the cost of such person, demolish all temporary or permanent buildings thereon, fill in any excavations, remove any materials and generally leave the site cleared and levelled, the cost of such work to be recovered as a civil debt if not paid within **30 days** of a written demand for such costs.

Action if a building authority fails to act

21. (1) If a building authority fails to grant or refuses, within reasonable time, its approval in accordance with section 20 in respect of an application, the court may, on the application of the applicant concerned, make an order directing such building authority to perform its duties and exercise its powers in accordance with that section within the period stated in such order, or make such order as it may deem just, including an order as to costs.
- (2) Notwithstanding anything to the contrary contained in the Subordinate Courts Order 1988⁵, a magistrate shall have jurisdiction to make any order referred to in subsection (1).

Execution of building operations subject to time limit

22. (1) Any building permit granted by a building authority in accordance with section 20 (1)(a) in respect of any application shall lapse after the expiry of 12 months from the date on which it was granted unless,
- (a) the building operations in question are commenced or proceeded with within the said period; or
 - (b) such building authority extended the said period at the request in writing of the applicant concerned.
- (2) Any building permit granted by a building authority in accordance with section 20(1)(a) in respect of any application shall lapse if the building operations, having commenced within 12 months of the grant of the building permit, are not completed within 24 months of commencement, except that the applicant may apply in writing for an extension of time which application shall not be unreasonably refused.
- (3) If any building operation once commenced is suspended for a period exceeding 6 months and the owner does not request any extension of time under subsection (2), the building authority in question may, by notice in writing, served by post or delivered, order the owner of such building to resume the building operation within a period specified in such notice, save that,
- (a) this action shall not prejudice the owner's right to apply in writing for extension of time, which request shall not be unreasonably refused; and
 - (b) the notice referred to in subsection (3) may be withdrawn.
- (4) If the owner of a building on or to whom a notice referred to in subsection (3) was served or delivered, fails to resume or to complete the building operation or apply for **extension of time within the period specified in such notice, building authority in question may extend** such period, from time to time, if such owner satisfies it that such failure was due to circumstances beyond his control.
- (5) If the owner of a building on or to whom a notice referred to in subsection (3) was served or delivered, fails to resume or to complete the building operation within the period specified in such notice, or, where applicable, within such period as extended in accordance with subsection (4), and the building authority in question is of the opinion that such building is unsightly or dangerous to life or property or derogates from the value of adjoining or neighbouring properties, such building authority may, by notice in writing, served by post or delivered, order such owner to demolish such building, to remove the material of which such building consisted and any other material or rubbish from the site in question, and to otherwise clean up such site within the period specified or referred to in subsection (3) or (4).
- (6) If the owner of a building fails to comply with a notice served on or delivered to him in accordance with subsections (2) to (5) in respect of such building, the building authority in question may,

- (a) demolish such building;
 - (b) remove the material of which such building consisted and any other material or rubbish from the site in question;
 - (c) otherwise clean up such site; and
 - (d) recover the costs thereof from such owner as a civil debt if not paid within 30 days of a written demand for such costs.
- (7) *Any building permit granted by a building authority in accordance with section 20(1)(a) in respect of any application shall lapse as soon as notice in terms of this section is served on or delivered to the owner of the building in question in respect of such building unless that owner shall have served or delivered his written request for extension of time within 14 days of the date of the notice served on him.*
- (8) *The provisions of this section do not apply to existing private buildings which were not erected in accordance with sections 18 and 20(1)(a).*

Minor building works

23. (1) Any building control officer may, in respect of building operations defined in the building regulations as a minor building work, in writing and upon written application from the owner of such building,
- (a) exempt the owner of such building from the obligation to submit a plan in terms of this Act to the building authority in question for approval;
 - (b) grant a building permit for the building operations in accordance with the conditions and directions specified in such authorization.
- (2) Any building permit granted in terms of subsection (1)(b) shall lapse after the expiry of a period of 6 months, but the building control officer may, from time to time, extend such period at the request in writing of the owner of such building or any person having an interest therein if the building control officer is satisfied that there are sound reasons therefor.
- (3) If any building control officer refuses to extend in terms of subsection (2) any period of 6 months referred to in that subsection, any applicant who feels aggrieved may, in writing, request the building authority in question to consider such refusal and thereupon such building authority may confirm such refusal or extend such period on such conditions as it may think fit.

Appeal against decision of building authority

24. (1) Any person who feels aggrieved by the refusal of a building authority to grant approval referred to in section 20(1)(b) or sections 25(1), 26 or 28, in respect of building operations, may, within one calendar month of receipt of such reasons for refusal, in the manner and upon payment of the fees prescribed by regulation, appeal to the Board against such refusal.
- (2) Upon receipt of an appeal in the prescribed form, the Chairman of the Board shall empanel an appeal tribunal to hear and decide each appeal.
- (3) The appeal tribunal shall comprise a chairman and two other members, all of who shall be appointed by the Chairman of the Board and who shall not be public officers.
- (4) All persons serving on the appeal tribunal shall be members of the Board at the time the appeal was lodged.
- (5) The Board shall receive and consider the findings of the appeal tribunal and may,
- (a) confirm the decision of the building authority, in which case the appellant shall lose his fees; or
- (b) uphold the appeal, in which case the appellant shall have his fees refunded and his reasonable costs paid as if they were court costs;
- (6) The fees and costs referred to in sub-section (5) (b) shall be paid by the building authority concerned.

Building operations in certain circumstances subject to prohibition or conditions

25. (1) If any building operation,
- (a) in the opinion of the building authority in question, is being or is to be executed in such manner that,
- (i) it will breach the provisions of the building regulations;
- (ii) it will not be in the interest of good health or hygiene as prescribed in the Public Health Order 19706; or it will likely be a nuisance or does become a nuisance in terms of that Order;
- (b) is being or is to be executed on a site which is subject to flooding or if it is not apprehended, may, within a reasonable period, be subject to flooding or erosion or, on a site or any portion of which, in the opinion of the building authority in question, does not drain properly or is filled up or covered with refuse or material impregnated with matter liable to decomposition,

then such building authority may, by notice in writing, served by post or delivered, prohibit the person executing or causing to be executed such building operations from commencing or proceeding with the execution as such building authority may determine, from time to time.

- (2) Any person who fails to comply with any provision of a notice or condition referred to in subsection (1) commits an offence and is liable on conviction to the penalties specified in section 38.

Demolition or alteration of certain buildings

26. (1) If the building authority in question is of the opinion that,
- (a) any building is dilapidated or in a state of disrepair or shows signs thereof; or
 - (b) any building or the land on which a building was or is being or is to be erected or any earthwork is dangerous or is showing signs of becoming dangerous to life or property,

it may, by notice in writing, served by post or delivered, order the owner of such building, land or earthwork, within the period specified in such notice, to alter or secure it in such manner that it will no longer be dilapidated or in a state of disrepair or show signs thereof or be dangerous or shows signs of becoming dangerous to life or property, or to alter or secure such land or earthwork in such manner that it will no longer be dangerous or show signs of becoming dangerous to life or property:

Provided that if such building authority is of the opinion that the condition of any building, land or earthwork is such that steps should forthwith be taken to protect life or property, it may take such steps without serving or delivering such notice on or to the owner of such building, land or earthwork and may recover the costs of such steps from such owner as a civil debt if not paid within 30 days of a written demand for such costs.

- (2) If the condition of any building or the land on which a building was or is being or is to be erected or demolished or any earthwork is such that, in the opinion of the building authority in question, is dangerous or is showing signs of becoming dangerous to life or to property, such building authority, irrespective of whether it has acted in terms of subsection (1), may, by notice in writing, served by post or delivered, order the owner of such building, land or earthwork to instruct at the cost of such owner, an architect or engineer to investigate such condition and to report to such building authority on the nature and extent of the steps to be taken, in the opinion of such architect or engineer, in order to render such building, land or earthwork safe.
- (3) The building authority in question may, by notice in writing, served by post or delivered, order that any building operation be stopped or prohibit the performance of any activities which, in its opinion, may increase the danger or hinder or obstruct the

architect or engineer referred to in subsection (2) from properly carrying out the investigation referred to in that subsection.

- (4) If the building authority in question deems it necessary for the safety of any person, it may, by notice in writing, served by post or delivered,
 - (a) order the owner of any building to remove from such building, within the period specified in such notice, all persons occupying or working in or being in such building for any other purpose, and to ensure that any person not authorised by such building authority does not enter such building;
 - (b) order any person occupying or working or being for any other purpose in any building, to vacate such building immediately or within a period specified in such notice.
- (5) No person shall occupy or use or permit the occupation or use of any building in respect of which a notice was served or delivered in terms of this section or steps were taken by the building authority in question in terms of subsection (1), unless such building authority has granted permission in writing that such building may again be occupied or used.
- (6) Notwithstanding anything to the contrary contained in the Subordinate Courts Order, 1988⁷, a magistrate shall have jurisdiction, on the application of any building authority or the Minister, to make an order prohibiting any person from commencing or proceeding with the erection of any building or authorizing such building authority to demolish such building if such magistrate is satisfied that such erection is contrary to or does not comply with the provisions of this Act or any approval or authorization granted thereunder.
- (7) Any person who contravenes or fails to comply with any provision of this section or any notice issued thereunder, commits an offence and is liable on conviction to the penalties specified in section 38(1).
- (8) Any building permit or occupation certificate shall be revoked as from the service of any notice given under this section.
- (9) ***The provisions of this section apply to buildings erected in accordance with sections 13, 18 and 20(1)(a).***

Entry by building control officers and certain other persons to building and land

27. (1) A building control officer or any other person authorised by the building authority in question shall have a right of entry to any land or site where building operations are being carried out at all times whilst the said operations are in progress, on showing duly authenticated identity.

- (2) A building control officer or a person authorised by the building authority in question shall have the right to make inspections and to require any person who holds a building operation permit or his agent or a builder to make appropriate tests and to conduct technical investigations and to make the results of such tests or investigations available to the officers of the building authority; but requests for tests and investigations contemplated by this subsection shall not be unreasonably made.
- (3) If the building control officer concerned or person authorised by the building authority in question has reason to believe that, in respect of any building or the land on which a building was or is to be erected, any act was or is being performed in contravention of the provisions of this Act or any authorization or approval granted thereunder, such building control officer or other person may, at any reasonable time, enter such building or upon such land in order to determine whether such Act was or is being performed.
- (4) An instruction on the prescribed form from a building control officer or person authorised by the building authority in question delivered to the owner and to the senior person responsible for building operations shall constitute good notice given under section 25 or 26.
- (5) Any person who hinders or obstructs any building control officer or person authorised by the building authority in question in the exercise of his powers in terms of this section commits an offence and is liable on conviction to the penalties specified in section 38(2).
- (6) Any building control officer or person authorised by the building authority in question shall, at the request of any person affected by the execution of any of his powers, duties or activities in terms of this Act, produce his official identification.

Certificate of occupancy in respect of buildings

28. (1) Where any building operation is or is alleged to be completed, the owner or any person having an interest shall notify the building authority in writing, and within 14 days of receipt of such notice, the building control officer or any other person authorised by the building authority shall make a full inspection of the building for which purpose the person conducting the inspection shall be empowered to have any tests made or work uncovered. Based upon such inspection and the report made by the person making the inspection, the building authority shall, within 14 days of the date of the inspection,
 - (a) issue such certificate of occupancy if it is of the opinion that such building operation has been completed in accordance with the provisions of this Act and the conditions on which approval was granted in terms of section 20, and if a certificate issued in terms of subsection (2) or (3) in respect of such building has been submitted to it;

- (b) in writing, notify such owner or person that it refuses to issue such certificate of occupancy if it is not so satisfied and shall state its reasons for not being satisfied and the remedial work required to attain satisfaction;
 - (c) in writing, notify such owner or person that it refuses to issue such certificate of occupancy if it is not satisfied that a certificate as required by subsection (2) or (3) has not been so issued and submitted to it.
- (2) Any person licensed or authorised by the Lesotho Electricity Corporation to carry out the installation, alteration or repair of any electrical wiring connected or of which connections desired with the electrical supply of distribution works of any statutory body, shall at the request of the owner of a building of which the building operation has been completed or of any person having an interest therein, issue a certificate to the owner or to such interested person if he is satisfied that the electrical wiring and other electrical installations in such building are in accordance with the provisions of all applicable laws.
- (3) Any person licensed or authorised to carry out the installation, alteration or repair of any plumbing or drainage installation connected or of which connections are desired with the appropriate service of any statutory body shall, at the request of the owner of the building of which the building operation has been completed, or of any person having an interest therein, issue a certificate to such person or such interested person if he is satisfied that the plumbing and drainage installations in such building are in accordance with the provisions of all applicable laws.
- (4) Any person who, for purposes of subsection (1),
 - (a) submits a certificate contemplated in subsection (2) which is substantially false or incorrect, knowing the same to be false or incorrect;
 - (b) in a fraudulent manner issues or obtains a certificate contemplated in subsection (2),

commits an offence and is liable on conviction to the penalties specified in section 38(3).

- (5) The owner of, or any person having an interest in, any building operation being executed with the approval of a building authority, who occupies or uses such building or permits the occupation or use of such building,
 - (a) before a certificate of occupancy has been issued in terms of subsection (1)(a) in respect of such building;
 - (b) except so far as it is essential for the erection of such building;
 - (c) during any period not being the period in respect of which such building authority has granted permission in writing for the occupation or use of such

building or in contravention of any condition on which such permission has been granted; or

- (d) otherwise than in such circumstances and on such conditions as may be prescribed by the building regulations,

commits an offence and is liable on conviction to the penalties prescribed in section 38(2).

- (6) Permission is writing referred to in subsection (5)(c) may, at the request of the owner of any building or of any person having an interest therein, be granted by a building authority on account of considerations of fairness for such period and on such conditions as may be specified in such permission, which period and conditions may be extended or altered by such building authority, as the case may be.
- (7) Consequent upon section 18(5), should any Ministry dispose of any building other than to another Ministry, it shall be a condition of the transfer that the transferee shall provide a certificate of occupancy from the building authority in respect of the building which is the subject of the transfer.

Power of building authorities relating to rates, taxes, fees and other moneys

- 29. (1) The provisions of this Act shall not derogate from any power conferred by or under any other law upon any building authority to levy, receive or charge any rates, taxes, fees or other moneys in respect of any building or land or to levy, receive or charge moneys in connection with the examination of plans, specifications or documents or information or the performance of any other duties in terms of this Act.
- (2) A building authority shall be empowered to inform any department of Government or local authority which has any right to assess rates or charge rates, taxes, fees or other moneys when it issues any certificate of occupation if it itself does not perform that duty or collection function.

Payment of certain moneys to building authority

- 30. Notwithstanding anything to the contrary contained in any law, all moneys recovered by way of fines or estreated bail in connection with any offence in terms of this Act shall be paid to the building authority concerned.

Liability of building authority

- 31. No approval, permission, certificate issued or act performed in terms of this Act by or on behalf of any building authority in connection with any building operation shall have the effect that,

- (a) such building authority is liable to any person for any loss or damage resulting from or arising out of or in any way connected with the manner in which such building was erected, demolished or altered or materials were used in the erection, demolition or alteration of such building;
- (b) the owner of such building is exempted from the duty to take care and to ensure that such building is erected, completed, occupied and used or demolished or altered in accordance with the provisions of this Act and any other applicable law; or
- (c) any person is exempted from the provisions of any other law applicable in the area of jurisdiction of such building authority.

Part IV - Miscellaneous

Delegation of Powers

32. (1) The Minister may, on such terms and conditions as he may think fit, in writing, delegate any power conferred upon him by or under this Act, other than the powers referred to in sections 4(1), 39 or 40 to the Chairman of the Board, but the delegation of any such power shall not prevent the exercise thereof by the Minister himself.
- (2) The Chairman of the Board may, in writing, delegate any power delegated to him in terms of subsection (1) to any member of the Board, but the delegation of any such power shall not prevent the exercise thereof by the Chairman himself.
- (3) Any building authority may, in writing, delegate any power conferred upon it or under this Act, other than the power referred to in section 12, to any committee appointed by it but the delegation of any such power shall not prevent the exercise thereof by such building authority itself.
- (4) Any building authority may, in writing, delegate any power conferred upon it to examine applications and inspect buildings and building operations to any suitable professionally qualified persons.

Deviation and exemption from building regulations

33. The Board may, at the request in writing of the owner of any building or any person having an interest therein and after consultation with the building authority is question, in respect of any building operation or the land on which it is being or is to be executed, in writing, permit a deviation or grant an exemption from any applicable building regulations relating to the design of the building, the nature of the materials and method of construction.

Breaches of duty by the building authority

34. (1) Notwithstanding anything to the contrary contained in this or any other law, any

person may apply for a writ of mandamus against the building authority in question if he believes that the building authority is not exercising its powers to enforce the provisions of this Act.

- (2) If such person has also suffered damage as a result of proven lack of exercise or powers to enforce the provisions of this Act, he shall be entitled to proceed for recovery of damages against the building authority in question.
- (3) Notwithstanding anything to the contrary contained in the Subordinate Courts Order, 19888, a magistrate shall have jurisdiction to make an order referred to in subsection (1).

Existing buildings

35. (1) Any public buildings identified from time to time by a building authority and which, at the commencement of this Act, in any area of jurisdiction of a building authority, were existing or for which building operations were commenced or for which a building permit was granted under any previous legislation shall,
 - (a) within 5 years from the date of notice of identification; or
 - (b) on change of use of such building, if that be earlier,

be brought to the standards required by this Act and any building regulations made thereunder in respect of structural, health, fire and safety requirements and an occupation certificate shall be applied for and obtained.

- (2) A person who occupies any building after the period or conditions stated in subsection (1) has expired commits an offence and is liable on conviction to the penalties prescribed in section 38(2).
- (3) Notwithstanding any other penalty prescribed in section 38(2) for the offence referred to in subsection (2), the building authority may proceed against any person who commits such offence by,
 - (a) imposing a surcharge on any rates, levies, charges or other dues charged to the owner of such building; or
 - (b) ordering that such building be demolished as if proceeding under section 26.

Conflicting terms

36. Notwithstanding that other enactments may use terms and expressions similar to or identical to those used in this Act, the terms and expressions and their interpretations and meanings assigned to them herein shall have precedence in all matters brought to reference concerning building as defined herein or under regulations made under this Act.

Notices

37. Where in this Act there is reference to the service or delivery of any notice, such notice shall be served in the first instance by registered mail or hand delivery upon the owner, or the agent of the owner, and the senior person responsible for building operations on the site. If such person cannot be traced within a reasonable period relevant to the matter the subject matter of the notices, then, such notice shall be deemed to be served if affixed in public view by the building authority to the entrance to the site *and published in the press*.

Penalties

38. (1) A person who commits an offence under sections 16, 18,19,20(8), 25 or 26 is liable on conviction to a fine of M 5 000,00 or to imprisonment for a period of 5 years.
- (2) A person who commits an offence under sections 20(9), 27, 28(5) or 35 is liable on conviction to a fine of M 5 000,00 or to imprisonment for a period of 5 years.
- (3) A person who commits an offence under section 28(4) is liable on conviction to a fine of M 25 000,00 or to imprisonment for a period of 25 years.
- (4) Where the offence of which any person is convicted under this section is continued after the conviction, he commits a further offence and is liable to a fine of M 1 000,00 for each day on which the offence is so continued.

Part V - Powers of the Minister Building Regulations

39. (1) The Minister may, by notice in the Gazette, make regulations for the carrying into effect the provisions of this Act, and without prejudice, such regulations may include any or all of the following provisions,
- (a) regarding the preparation, submission and approval of plans and specifications of building, including the approval of amendments or alterations to plans and specifications of buildings during the erection thereof;
- (b) providing for inspections and tests in respect of buildings or materials or components in connection therewith whether before or during the erection or after the completion of the erection thereof, including the powers of building control officers in that regard, and the steps to be taken in order to prevent any nuisance which may occur before, during or after the completion thereof;
- (c) regarding the nature and preparation of sites on which buildings are to be erected;
- (d) regarding the strength and stability of buildings;

- (e) providing for the requirements with which buildings shall comply in so far as precautionary measures against fires or other emergencies are concerned, including the resistance of buildings against the outbreak and spreading of fires, the protection of the occupants or users of buildings or other persons against fires or other installations to be in buildings for the combating or prevention of fires and for the vacating of such buildings in cases of fires or other emergencies;
- (f) regarding the resistance of buildings against floods, moisture, the transmission of heat, sound or other injurious factors, and infestation by insects, vermin or other pests;
- (g) regarding the durability and other desirable properties of buildings;
- (h) regarding the provision of plumbing and drainage services in respect of buildings, including the compulsory connection with the supply, distribution or sewage disposal works in question of any statutory authority;
- (i) regarding the ventilation and the provision for daylight in respect of buildings, including the provision of open spaces in connection therewith;
- (j) regarding the heating and artificial lighting of buildings;
- (k) regarding the supply and installation in respect of buildings, of gas or electrical equipment, installations or service, including the supply and manner of installing of gas or electrical equipment for the purposes of cooking or heating, or preventing, controlling or restricting the emission of smoke or other offensive fumes;
- (l) regulating, restricting or prohibiting the use to which any building or categories of buildings may be put;
- (m) regulating, restricting or prohibiting access to buildings, irrespective of whether erection thereof is completed, or the sites on which buildings were or are being erected;
- (n) regarding the prevention of dangers or obstructions during or in connection with the erection of buildings, including the prevention of danger on adjoining or neighbouring premises, pavements, streets and other public places;
- (o) regulating restricting or prohibiting the erection of temporary buildings and the occupation or use thereof or access thereto;

- (p) regarding the protection of property, including public streets, places or open spaces, of local authorities or other persons, during or in connection with the erection of buildings;
 - (q) regulating, restricting or prohibiting the performance of certain activities or categories of activities in or in connection with the erection of buildings by or under the supervision of persons other than persons having specified qualifications, experience or training;
 - (r) regarding the demolition of buildings and matters connected therewith;
 - (s) regarding the powers and duties of buildings which were or are being erected or used in contravention of the provisions of this Act or any other law in force immediately before the date of commencement of this Act, or of any approval or authority granted in terms of this Act, or the said other law, or if no such approval or authority was granted for the erection of such buildings;
 - (t) regarding the general safety, health and convenience of the public in so far as they relate to the erection of buildings;
 - (u) regarding the safety, health and convenience of occupiers or users of buildings or of persons otherwise present in buildings having access thereto, and the compulsory installing or supplying of equipment, installation or services in connection therewith;
 - (v) regarding any other matter which in terms of this Act is required or permitted to be prescribed by the building regulations;
 - (w) regarding generally any other matter deemed necessary or expedient by the Board with the concurrence of the Minister in order to achieve the objects of this Act.
- (2) Building regulations may, in terms of subsection (1), be made in respect of different buildings or categories of buildings, use of buildings, areas or categories of areas, local authorities, or categories of local authorities or portions or categories of portions of the areas of jurisdiction of local authorities.
- (3) Where building regulations are, or any amendment thereto is, so published in the Gazette, the Minister shall publish together with the regulations or amendment, as the case may be, a notice calling upon all interested persons to lodge in writing with the Board within 30 days after the date of publication, any objections which they have against such building regulations or amendments as aforesaid.
- (4) If no objections are lodged, the building regulations or any amendments thereto shall come into operation on a date specified by the Minister by notice in the Gazette.

- (5) If objections are lodged, the Minister shall publish in the Gazette and notify in writing the objectors a date when the Board will sit to consider the objections.
- (6) ***After receiving and considering all objections, the Board shall report to the Minister. The Minister after consultation with the Board shall make a decision.***
- (7) The Minister shall publish in the Gazette any alterations to the building regulations arising from such objections, if any, and the date when the building regulations, with alterations if any, shall come into operation.
- (8) Notwithstanding subsections (3) to (7), upon the publication of this Act and before the Board commences to function, the Minister may designate the means whereby appropriate consultation may be taken on the provisions of the building regulations, and after the completion of such consultations, the Minister may then proceed as is provided under subsections (6) and (7), as though it were the Board reporting to him.
- (9) If the Minister, upon the recommendation of the Board, is satisfied that any or all of the applicable building regulations are inadequate or do not make any provision in respect of any particular building or buildings, and that, for sound reasons, it shall not be expedient to amend such building regulations or to make any further building regulations, as the case may be, the Minister may, after having in writing notified the building authority in question, by notice in the Gazette,
 - (a) exempt the owner of the land on which such building operation is being or is to be executed from the provisions of such building regulations; and
 - (b) allow such owner to execute such building operations in accordance with the building regulations from which he was not so exempted, if any, and the directives specified in such notice.
- (10) Notwithstanding anything to the contrary contained in any law, the Minister may, after consultation with the Commissioner of Lands and after compliance with the prescribed procedure, by notice in the Gazette, remove or, to such extent as he may indicate, amend, any servitude, condition or provision, if he is of the opinion that it is necessary or expedient for the proper compliance with or operation of any or all the building regulations, that such servitude, condition or other provision applicable in respect of any land or under any law or registered in terms of the Land Act 1979~, or otherwise applicable in respect of land, be removed or amended.
- (11) On the publication of a notice referred to in subsection (10), the Registrar of Deeds shall, in respect of the removal or amendment of the servitude, condition or provision in question, make suitable entries in the registers in his office, and when the title deed of any land so affected is submitted to the Registrar of Deeds, he shall endorse such removal or amendment on such title deed.
- (12) Any provision occurring in any standards may be incorporated in a regulation by mere reference. The inclusion of any specific standard or reference to a standard in

this Act or any regulations made thereunder does not exclude the use of any other standard which contemplates or apprehends the same subject.

- (13) The building regulations made under subsection (1) or any rules or codes of practice contemplated by section 9 may provide that, without fully defining any particular materials or methods of erection, in so far as quality and standards are concerned, the use or employment of any specified materials or methods of erection or compliance with any standards shall be deemed to comply with the quality and standard required by the building regulations.

Other regulations

40. The Minister may make regulations,
- (a) prescribing the qualifications of a building control officer, after consultation with the Ministry of Works and other appropriate authorities;
 - (b) regarding the procedure to be followed at the hearing by the Board;
 - (c) regarding additional powers and duties of the Board, including the power to summons witnesses for the purposes of hearing appeals and to administer an oath to or accept an affirmation from a witness;
 - (d) regarding the costs in connection with an appeal to or objection lodged with the Board;
 - (e) prescribing any other matter in respect of which an appeal or objection may be lodged with the Board;
 - (f) prescribing penalties to be imposed in respect of offences under this Act for which penalties are not herein provided;
 - (g) prescribing fees and charges to be paid for applications made under this Act; and
 - (h) prescribing any other matter required to be prescribed under this Act.

Part VI- Repeals and Amendments

Repeals

41. The following enactments are repealed in the manner and to the extent specified hereunder,
- (a) Government Reserves Regulations, 194110, Part 4;
 - (b) Local Administration Act, 196911, section 4(d), (i), (j) and (n);

- (c) The Land Regulations, 198012, regulation 17;
- (d) Sanitary Services and Refuse Removal Regulations, 197213, regulations 7, and 9.

Consequential amendments

42. (1) The Land Act, 1979' ~ is amended,
- (a) in paragraph 2 of the First Schedule by deleting the words "Minister for his approval" and substituting the words "building authority as established by the Building Control Act, 1994 for its approval";
 - (b) in paragraph 5 of the First Schedule, by adding the following words at the end thereof "or where no public utility sewers exist within 30 metres of the boundary of the plot, such alternative means of excreta and waste disposal which comply with the provisions of the Building Control Act, 1994".
 - (c) in paragraph 11 of the First Schedule, by deleting the word "Minister" and substituting the words "building authority as established by the Building Control Act, 1994."
- (2) The Public Health Order, 1970's is amended,
- (a) in section 1, by deleting the definition of "health officer" and substituting the following definition,

"health officer" means any medical officer, public health engineer, health inspector, and any public health nurse employed by or so designated by the Principal Secretary for Health;
 - (b) by deleting section 67 and substituting the following section:

"Duties of health officers"
67. (1) It shall be duty of every health officer to institute all lawful, necessary and reasonable practical measures to,
- (a) ensure the potability of any supply of water which the public has the right to use and does use for drinking or domestic purposes;
 - (b) take all necessary measures against any person so polluting any such supply or polluting any streams and natural and impounded bodies of water thereby causing them to become a nuisance or a danger to health;
 - (c) take samples of water from the water works, distribution system, taps and faucets on and within the premises of private residences, commercial, industrial and public buildings and institutions and from effluent discharges

to streams and natural bodies of water, and man-made bodies of water, intended for the provision of water for drinking and domestic purposes;

- (d) make or cause to be made analyses physical, chemical, biological and bacteriological of samples taken to determine,
 - (i) whether or not the water supply satisfies the standards set for potability under the regulations;
 - (ii) whether or not effluent discharge meets the set standards for such discharges.
- (2) In the cases where the sample of water or of waste-water effluent discharge does not meet the required standards set by the Minister, by notice in the Gazette, the health officer shall serve notice upon the offending person in writing to immediately cease to discharge such effluent into the body of water in question.
- (3) Any person who discharges waste-water effluent of substandard quality into natural or impounded bodies of water shall be guilty of an offence and shall be liable to a fine not exceeding M50,000 or to imprisonment for a period not exceeding 5 years for each day he continues to discharge such effluent into the receiving body of water and for each day that the receiving body continues to be polluted or contaminated as a result of such discharge.”.

NOTE

- 1. Act No. 3 of 1983**
- 2. Act No. 3 of 1983**
- 3. Act No. 14 of 1980**
- 4. Act No. 12 of 1970**
- 5. Order No. 9 of 1988**
- 6. Order No. 12 of 1970**
- 7. Order No. 9 of 1988**
- 8. Order No. 9 of 1988**
- 9. Act No. 17 of 1979**
- 10. H.N.C. No. 41 of 1941**
- 11. Act No. 13 of 1969**
- 12. L.N. 15 of 1980**
- 13. L.N. 36 of 1972**
- 14. Act 17 of 1979**
- 15. Order No. 2 of 1970**