

THE BUILDING ACT, 1968

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Arrangement of sections

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An Act to provide for the control of building and the safety of buildings and for incidental or connected matters.

PART I

INTERPRETATION AND ADMINISTRATION

Short title.

1. This Act may be cited as the Building Act, 1968.

Interpretation.

2. (1) In this Act, unless the context otherwise requires —

“architect” means such member of the Institute of South African Architects, or of the Royal Institute of British Architects or other body the members of which are eligible for membership of either of those bodies, as is practising as an architect in Swaziland;

*“building” means a structure or erection of whatever kind or nature whether temporary or permanent, and every part thereof, including a fixture affixed thereto, not being a structure or erection consisting of or ancillary to —

- (a) a street, whether public or private, including, in the case of a public street, but not in the case of a private street, a bridge or culvert on which the street is carried; or
- (b) a sewer or water main which is, or is to be vested in a public authority; or
- (c) an airport runway; or
- (d) a railway track; or
- (e) a fence not exceeding five feet six inches in height; or
- (f) a telegraphic line; or
- (g) an electricity supply line and its supports which is or is to be vested in a public authority; or
- (h) a reservoir which is to be vested in a public authority;

“chief fire officer” means a person appointed as such by a local authority or the Government, or any other fit person designated as such by a local authority or the Minister for a particular purpose or for the purpose generally of performing the functions of a chief fire officer under this Act;

“class” means a class defined in section 3;

“code of practice” means a set of rules relating to the methods to be applied or the procedure to be adopted in connexion with the construction, installation, testing, operation or use of any building, article, apparatus, instrument, device or process and includes standards or specifications or Regulations prescribed by the laws of any country or by any professional or other body;

“construct” includes alter, erect, extend, install or fit;

* See also subsection (2).

“controlled area” means a municipality or town within the meaning of the Urban Government Act (No. 8 of 1969) or an area which the Minister, after holding a public inquiry in the area concerned has by notice in the Gazette, declared to be a controlled area;

“dangerous building” means a building which on account of its structural condition is unfit for human or other habitation or which constitutes a danger to public health or public safety or to the health or safety of the occupier or owner of the building or to a neighbouring building;

“dead load” means the weight of all walls, floors, roofs, partitions and other permanent construction;

“dwelling” means a building or part of a building used or intended to be used by a single family or part of a family for residential purposes;

“engineer” means a town engineer appointed by a local authority as such or any other fit person designated as such by the local authority for a particular purpose or for the purpose generally of performing the functions of the engineer under this Act;

“existing building” means a building erected, or in the course of erection, at the time when this Act comes into force in the area in which the building stands or a building the plans of which have been approved by the local authority at that time;

“hazardous process” means a process prescribed by the Minister as being a hazardous process and includes a process involving hazardous materials;

“hazardous material” means material prescribed by the Minister as hazardous material and includes all substances for the storage or use of which special legislation exists such as explosives, petroleum and other highly flammable substances;

“imposed load” means all loads other than the dead load;

“local authority” means

- (a) in an area having a town management board or town council such management board or council;
- (b) elsewhere, the District Commissioner or other person, appointed by the Minister, by notice in the Gazette, to be responsible for the administration of this Act;

“magistrate’s court” means a court established under the Subordinate Courts Proclamation (*Cap. 20*);

“Minister” means the Minister for Housing and Urban Development;

“movable dwelling” includes a tent, caravan, van, or other conveyance, whether on wheels or not, which is capable of being moved from one place to another while in use as a dwelling or habitable room on any plot;

“occupier” means a person in actual occupation of a building without regard to the title under which he occupies and, in the case of buildings subdivided or let to lodgers or tenants, the person receiving the rent payable by the lodgers or tenants whether on his own account or as agent for a person entitled thereto or interested therein;

“operations” includes operations carried out in relation to the enclosure and preparation of the site of a building;

“owner” includes a person receiving the rent or profits of a building from a tenant or occupier thereof, or who would receive rent or profits if the land or premises were let, whether on his own account or as agent for a person entitled thereto or interested therein;

“person constructing or demolishing”, in relation to the construction or demolition of a building, means the person upon whom ultimately rests the obligation to pay for the construction or demolition;

“plot” means a stand, lot or erf in a town, urban area or township; and in a rural area, town, urban area or township or a portion thereof not divided into stands, lots or erven, on a general plan, it shall mean the area of land designated by the local authority to be the plot; (Amended A.2/1971.)

“railway track” means rails and sleepers, together with all earthworks, ballast, fittings, fastenings, and devices installed in connexion with track or train operation and, in addition, all bridges, platforms, loading bays, pens, culverts, inspection and ash pits, signals and signal installations, track signs and warning boards, telecommunications installations, centralized train control gear, rolling stock weight-bridges, locomotive and train watering installations, coaling plants, electric power transmission lines, poles, pylons, transformers and switch-gear used in connexion with track and train operations, whether they are situate within or without buildings, provided they are used for the normal working of the railway;

“street” includes a road, lane, avenue, by-road, passage, thoroughfare or other right of way and bridge, subway, pavement, footpath, side walk, drain, culvert or the like therein;

“temporary building” means a building the life or intended life of which does not exceed two years and any movable dwelling, shed or similar building which is not intended to remain in any place for more than two years;

“Tribunal” means the Building Appeals Tribunal established by section 20.

(2) A reference to construction or demolition of a building shall, unless the context otherwise requires be construed to include a reference to prospective construction or demolition of a building; and, in relation to the extension, alteration or change in use of a building, the expression “building” shall, unless the context otherwise requires, be construed as a reference only to so much of the building as is comprised in the extension or is the subject of the alteration or change in use, as the case may be.

(3) Where any reference is made to a building, material, component, design, construction or method of operation complying with a code of practice, there shall be deemed to be compliance therewith if there is compliance with the relevant code of practice prescribed in Regulations made under section 37.

(4) Where any reference is made to a material, component, design, construction or method of operation complying with a code of practice, the reference to that code of practice shall be deemed to be a reference to the latest edition for the time being of that code of practice including any published amendments thereof.

(5) A building which extends into the areas of two or more local authorities shall be treated as being wholly within the area of such one of those local authorities as may from time to time be agreed by the authorities concerned or, in the absence of agreement, as may be determined by the Minister.

(6) A reference to a height, width, area, cubic content or other dimension shall, unless the context otherwise requires, be taken to be any height, width, area, cubic content or other dimension as the case may be, measured or calculated in accordance with the provisions of the Second Schedule.

Classes of buildings.

3. (1) Buildings are divided into the following classes —

(a) *Class A. Residential Buildings*, being —

- (i) buildings of not more than two storeys comprising one or two dwellings; or
- (ii) buildings of three or more storeys or comprising three or more dwellings; or
- (iii) barracks, school hostels and similar buildings containing dormitories; or
- (iv) hotels, inns, and other such buildings where persons may lodge;

- (b) *Class B. Institutional Buildings*, being buildings —
 - (i) for use principally by persons whose liberty is restricted; or
 - (ii) for use principally by persons whose activity is restricted by age or physical limitations;
- (c) *Class C. Business Buildings*, being buildings used for trade, commerce, administrative or professional services and being —
 - (i) office premises; or
 - (ii) shop premises, laboratories and television, radio or film studios;
- (d) *Class D. Public Buildings*, being buildings where persons congregate for any religious, social or other communal purpose or for the purpose of entertainment and being —
 - (i) passenger stations, grandstands, stadia; or
 - (ii) non-residential clubs, colleges, schools, buildings used for religious purposes, clinics; or
 - (iii) theatres, cinemas, concert halls, radio and television studio to which the public are admitted, restaurants, cafes, bars, beerhalls, and exhibition halls;
- (e) *Class E. Industrial Buildings*, being buildings used for the purpose of manufacture, assembly, fabricating, processing, packaging, repairing or fitting operations and being —
 - (i) where non-hazardous processes or materials are involved; or
 - (ii) where hazardous processes or materials are involved;
- (f) *Class F. Storage Buildings*, being buildings for storage or deposit of goods, materials or vehicles; and
- (g) *Class G. Other Buildings*, being buildings not principally used for human occupation and being —
 - (i) buildings used principally for the accommodation of animals; or
 - (ii) other buildings.

(2) In case of doubt the Minister, in his sole discretion, may decide into which class a building falls.

Application.

4. (1) This Act applies to a building situated —

- (a) in a controlled area; or
- (b) outside a controlled area and used or intended for use in commercial or industrial activities including a factory, hotel or shop or a building used for public purposes or public entertainment or a building to which the public have access;

and is of a class or type of building to which Regulations under this Act have been applied.

(2) For the purposes of subsection (1) a “controlled area” means an area within the jurisdiction of a town council or a municipality or town under the Urban Government Act, No. 8 of 1969 or an area which the Minister after holding a public inquiry in the area concerned has by notice in the Gazette, declared to be a controlled area.

(3) Buildings constructed in accordance with the provisions of this Act shall not be altered in such a way that, if they had been first, so constructed, they would have contravened a provision of this Act.

(4) An addition made to a building shall comply with provisions of this Act even if the building was constructed before the Act came into force.

Temporary buildings.

5. (1) No person shall construct a builder’s shed which does not comply with the requirements prescribed.

(2) Subject to the provisions of subsection (7), no movable dwelling shall remain on any land for more than thirty days in any period of six months without a permit from the local authority.

(3) Subject to subsection (7), no temporary building shall be constructed in any place without a permit from the local authority.

(4) A permit issued under this section may contain such terms and conditions and be for such period as the local authority thinks fit and may be extended or renewed by the local authority provided that the total period of the permit does not, without the consent of the Minister, exceed two years.

(5) A permit issued under this section may be withdrawn by the local authority on three months notice given at any time.

(6) Subject to subsection (7), where a temporary building is not removed in accordance with the terms or conditions of a permit or is constructed without a permit, the local authority may remove the building and recover any expense incurred in so doing from the person to whom the permit was granted or the person who constructed the building, as the case may be.

(7) A caravan or similar movable dwelling may be kept by its owner, for parking purposes only, on a plot owned by him and without a permit.

Exemptions.

6. (1) The provisions of this Act do not —
- (a) apply to any building which is erected for experiment upon or research into the behaviour of any material, method of construction or design technique provided that the research has been approved in writing by a local authority or a body mentioned in subsection (2);
 - (b) subject to the provisions of sections 5 and 22, apply to temporary buildings;
 - (c) apply to accommodation for domestic animals, children's play structures and such similar buildings as may be prescribed by the Minister and do not exceed five feet six inches in height and fifty square feet in area.
- (2) Sections 10, 11, 12, 13, 14 and 25(4) do not apply to —
- (a) the Department of Public Works; or
 - (b) the police or armed forces of Swaziland, in respect of a building erected in an emergency or for the purposes of public safety, public order or defence.

Buildings of mixed occupancy.

7. (1) Where a building is divided into parts which are occupied by different persons, the separating walls and floors between the parts shall conform with the provisions of this Act.

(2) Where a building or part of a building occupied by one person is divided into compartments or divisions, the respective use or intended use of which is described in different classes, either —

- (a) each compartment shall conform with the provisions of this Act relating to the class to which it belongs and the separation between the compartments shall comply with the provisions of this Act as regards insulation, fire or other risks; or
- (b) all compartments shall comply with the provisions of this Act relating to the part to which the more stringent provisions apply and, in that case, the separation between the compartments need be to no specific standard of fire resistance.

Change of use.

8. (1) If the use of a building is changed so that the building falls into a different class the whole building shall be made to comply with the provisions of this Act for the new class.

(2) If a building is divided to form two or more parts each of which is or is intended to be of the same use as the whole building was before the division, then each part so formed and the separation between them shall comply with the provisions of this Act as if the whole building were being newly erected.

Maintenance.

9. The owner of a building shall, at all times, maintain it in a safe and sanitary condition.

Permit to build, demolish or change use.

10. (1) No person shall —

(a) conduct operations for the construction or demolition of a building; or

(b) change the use of a building;

unless there has been obtained from the local authority a permit for the construction, demolition or change in use, as the case may be, but nothing in this subsection applies to any operations for the alteration of a building which consist solely of the fitting of a fixture of such kind as may be prescribed by the Minister for the purposes of this subsection.

(2) If construction work has not been started within twelve calendar months of the date of issue of the permit to build or building operations are abandoned for twelve months, then the permit shall lapse.

(3) The date before which the building must be completed or demolished shall be specified on the permit but the date may be altered by the local authority on application to it.

(4) A person who performs an act described in subsection (1)(a) or (b) shall do so in accordance with the plans approved, and any conditions contained in the permit issued, by the local authority, unless the local authority agrees in writing to a variation of the plans or conditions.

Application for permit.

11. (1) A person who proposes to perform any act described in section 10(1)(a) or (b) shall send to the local authority an application for a permit to do so.

(2) Every application for a permit shall be made in the manner prescribed.

(3) The applicant shall provide such information as the engineer may require about the methods to be used and precautions to be taken during the construction or demolition of the building.

(4) If required by a local authority to do so, a person constructing a building shall forthwith engage at his own expense a land surveyor, recognized for the purposes of the law relating to land survey, to point out the boundary beacons of the plot if any, or of the land on which the building is to be erected to a specified employee of the local authority.

(5) The provisions of this section apply, *mutatis mutandis*, to a person who proposes to construct or demolish a building in a manner not in conformity with a permit issued by the local authority.

Issue of permit.

12. (1) The local authority shall either issue a permit or refuse the application therefor within six weeks from the date the application is received by it.

(2) The local authority shall issue a permit —

(a) in the case of a permit for the construction of a building, if it is satisfied that the operations involved will be conducted in accordance with this Act and that nothing in any plan, specification or other information submitted with the application shows that the building, when constructed, will fail to conform with this Act; or,

(b) in the case of a permit for demolition, if it is satisfied that the operations involved will be conducted in accordance with this Act.

(3) Approval of a drawing or application for a permit conveys no title to land or to any term in a lease or licence.

(4) A permit shall specify the plans approved and contain the conditions, if any, subject to which the permit is granted.

(5) If the local authority disapproves the application, it shall specify the provisions of this Act or any other law which would be contravened by the construction of the proposed building, and no disapproval shall imply approval of any part of the application or any matter submitted in connexion therewith.

(6) If the local authority fails to comply with subsection (1), the applicant may proceed with the proposed operations in the case of demolition and, in the case of construction, proceed therewith to foundation level, provided, however, that any work done is in conformity with the application made to the local authority and with this Act.

Inspection.

13. (1) In order to satisfy himself that the provisions of this Act are being or have been complied with, the engineer may, during and after construction of a building —

(a) inspect any work;

(b) test any part of the work including fittings, services and installations; and

(c) instruct, in writing, the person conducting any building operation, to expose, cut into or lay open any part of the building for the purposes of paragraphs (a) and (b);

(2) Any work, fitting, service or installation which the engineer finds not to be in accordance with this Act shall be remedied forthwith by the person conducting the building operation concerned.

(3) One of the copies of the drawings, descriptions, specifications or other matter approved by the local authority in accordance with this Act shall be kept on the plot throughout the construction period, maintained in a legible condition and shall be made available to the engineer at his request.

(4) The local authority may require that the owner shall inform it when any stage of construction has been reached so that the work may be inspected before it is covered.

(5) The engineer may inspect the work during and after the demolition of a building in order to satisfy himself that the provisions of this Act are being or have been complied with and, for the purpose, the provisions of subsections (1) and (2) shall *mutatis mutandis* apply.

(6) Where a person is required to inform the local authority when any stage of construction has been reached he shall so inform the local authority; and if the local authority fails to inspect the work within four days after the receipt of the information, the work to which the information related may be covered.

(7) A person who wilfully obstructs the engineer or any other representative of the local authority in the exercise of any of his acts authorized by this section or who fails to comply with any provision of this section shall be guilty of an offence.

Power of entry.

14. (1) A local authority may, by a person authorized thereto, and forcibly if reasonably necessary, enter any premises for the purpose of exercising any power of inspection, inquiry or execution of work which this Act gives to a local authority.

(2) A person who fails or refuses to give access to a person empowered by this section to enter premises, or who obstructs or hinders him in the execution of his duties, shall be guilty of an offence.

Permit to occupy and use.

15. (1) Subject to subsection (4), a person who has completed a new building shall, not later than seven days after completion thereof, send a notice in writing to the local authority stating the date of completion and apply for permission to occupy and use the building.

(2) Save as provided in subsections (5) and (6), no person shall occupy any new, altered or rebuilt building or use any work in connexion therewith until the engineer, after inspection of the building, has certified the building to be fit for occupation.

(3) The permit to occupy and use a building shall be issued within two weeks of the receipt of the application or within two weeks of the completion of any amending works required by the engineer and, where a building comprises more than one part, the engineer may issue a permit to occupy and use separate parts before the remainder is completed.

(4) The Permanent Secretary or the commanding officer, as the case may be, of a body referred to in section 6(2) shall send the local authority a notice in writing certifying the date of completion of the building and the date of occupation or commencement of use thereof, within seven days of each such event, and certifying that the building has been completed in accordance with the requirements of this Act.

(5) Where the engineer is unable, within the period of two weeks, to issue the permit referred to in subsection (2), he may issue a temporary occupation permit for a period not exceeding two months and subject to such other conditions, stated in the permit, as seem reasonable to him.

(6) Until the provisions of this section have been complied with, not more than two watchmen may occupy a new, altered or rebuilt building.

(7) A person who occupies a building or uses any work contrary to the provisions of this section shall be guilty of an offence.

Dangerous buildings.

16. (1) Where the engineer is of the opinion that a building is a dangerous building, he shall —

- (a) forthwith take all reasonable precautions for the safety of the inhabitants and members of the public; and
- (b) give notice in writing to the owner, if known, or the occupier, if any, requiring the owner or the occupier, as the case may be, to take such action in relation to the building as may be specified in the notice.

(2) Where an owner or occupier on whom a notice is served under this section fails, within fourteen days of the service of the notice, to comply with the terms of the notice or where the owner or occupier cannot be found, the engineer may cause such repairs to be carried out in relation to the building as he considers necessary to render the building safe.

(3) Where the engineer is satisfied that the condition of a building is such that it cannot be remedied and because of that condition the building will continue to be a danger or potential danger to any person, he shall serve a notice on the owner of the building if he is known or, if he is not known, on the occupier, requiring the owner or occupier, as the case may be, to demolish the building within fourteen days of the service of the notice.

(4) Where an owner or occupier fails to demolish the building within fourteen days or such period as the local authority may allow, or the owner or occupier of the building cannot be found, the local authority shall demolish the building.

(5) All expenses incurred by the local authority under this section, whether in respect of fencing, repair, demolition or otherwise, are a debt due to the local authority by the owner of the building.

(6) A person who fails to comply with a notice under this section shall be guilty of an offence.

Closure orders.

17. (1) The following persons may apply to a magistrate's court of the First Class for, and are entitled to the closure order referred to in subsection (4) —

- (a) the engineer, where a building is or is potentially dangerous;
- (b) the owner, where a notice has been served on him under section 16;
- (c) the owner, where the engineer has issued a certificate to him to the effect that a building should be closed to enable any construction work to be carried out without danger to the occupiers or the public; and
- (d) a local authority, where an owner or occupier unreasonably fails to comply with the terms of a notice served under section 16(3).

(2) A person intending to apply for such a closure order shall first post a written notice of his intention to do so in English and siSwati, on a conspicuous part of the building to be affected.

(3) If the court to which application for such closure order is made is satisfied that subsection (2) has been complied with or that in the circumstances it was not reasonably practicable to comply with it, and that the applicant is entitled to such order, it shall make the order.

(4) A closure order shall —

- (a) specify the building to be closed;
- (b) order the closure thereof under the direction of a police officer; and
- (c) remain in force until the local authority certifies in writing that the order is no longer required.

(5) A person who occupies or uses a building during the continuance in force of a closure order made in respect thereof shall be guilty of an offence.

Fire safety in existing buildings.

18. (1) Where a chief fire officer is satisfied that an existing building in Class D, or a building of three or more storeys in any class, or a building a part of which is in Class E(ii), or, as regards escape only, a building any part of which is in Class E(i), does not comply with section 28 or any Regulations made under paragraph (c) of Part I of the First Schedule and constitutes a danger to the safety of the public or of persons using or occupying the building, he shall send the local authority a written certificate to that effect.

(2) The local authority shall, within fourteen days after receiving the certificate from the chief fire officer, serve a notice on the owner of the building, if he be known, or the occupier, if any, requiring the owner or occupier to take such action as may be specified in the notice and stating the period within which the action shall be taken.

(3) A person who fails to comply with a notice under this section shall be guilty of an offence.

Correcting contraventions.

19. (1) If a person carries out any work in contravention of any provision of this Act and receives notice in writing from the engineer requiring him to pull down the work or to alter or amend it so as to bring it into conformity with that provision, he shall, within such period as shall be specified in the notice, comply with the requirements thereof.

(2) Subject to his right of appeal under section 21, if he fails to comply with the notice within such period he shall be guilty of an offence, the local authority may execute the work which that person has failed to execute, and all expenses so incurred by the local authority shall be a debt due to the local authority by the owner of the building.

Building Appeals Tribunal.

20. (1) There is hereby established a Building Appeals Tribunal composed of the following persons appointed for such periods as in any case may be deemed reasonable —

- (a) an architect appointed by the Minister after consultation with the body representing architects in Swaziland;
- (b) an officer nominated by the Minister for Public Works and Transport;
- (c) a person nominated by a body recognized by the Minister as representing master builders in Swaziland;
- (d) a person nominated by the Minister of Health;
- (e) not more than two other persons nominated by the Minister from among persons having a technical knowledge of building.

(2) The functions of the Tribunal are —

- (a) to decide whether a material or method of construction satisfies the requirements of this Act;
- (b) to decide matters of interpretation of technical terms relating to buildings or building operations;
- (c) to keep this Act under review and advise the Minister of any changes in technical requirements the Tribunal thinks desirable;
- (d) to advise the Minister on such technical matters as he may refer to it; and
- (e) to hear and determine appeals made to it.

Appeals.

21. (1) A person aggrieved may, within fourteen days after the receipt of the notice or decision, appeal —

- (a) against a decision of, or notice issued by, the engineer, to the Tribunal on any matter referred to in section 20(2)(a) or (b);
- (b) against a decision of, or notice issued by the engineer on a matter not within the purview of the Tribunal, to the local authority;
- (c) against a decision of the Tribunal, to the High Court on a matter of law only;
- (d) against a decision of the local authority, to the High Court on a matter of law only and on any other matter to the Tribunal;

(2) The noting of an appeal suspends the operation of the notice or decision against which the appeal is noted.

Special classes of building.

22. Compliance with the provisions of this Act does not exempt a person from compliance with any other law which refers to special classes of building or to the storage or use of hazardous materials.

PART II

PLANNING AND ACCOMMODATION

Location of buildings.

23. Where no planning scheme is in force under any other law, no person shall construct a building in such position on a plot that the construction in that position of a building of its class is considered by the local authority or the Minister to be, or likely to become —

- (a) prejudicial to the economy or the amenities of any part of Swaziland;
- (b) a menace to the health of either the occupants of the building or the public;
or
- (c) undesirable for any other sufficient reason.

Accommodation.

24. (1) A dwelling shall be provided by the owner with adequate accommodation for living, sleeping, storing and preparing food, and ablutionary and latrine accommodation, for the sole use of the occupants of that dwelling.

(2) A building in Class A or Class B, not being a dwelling, shall be provided by the owner with adequate and suitably located accommodation for living, sleeping, the storage and preparation of food, and ablutionary and latrine accommodation, having regard to the purpose for which the building is intended, its size and the number of persons that it is intended to accommodate.

(3) A building intended for human occupation, not being a dwelling or a building in Class A or Class B, shall be provided with adequate and suitably located ablutionary and latrine accommodation and with adequate other accommodation for the health and welfare of those persons habitually using the building, having regard to the purpose for which the building is intended, its size and the number of persons who will be continually employed therein at any one time or who will otherwise habitually use the building.

Protection against harmful matter and flooding.

25. (1) The ground to be covered by a new building and its foundations shall be —

- (a) cleared of all vegetable and noxious matter; and
- (b) put into a condition so as to prevent harmful effects either to the building or its occupants as a result of water lying on the surface or the danger of flood water;

by the person constructing the building, to the satisfaction of the engineer before construction is commenced.

(2) Where it appears to the local authority that the plot on which it is intended to erect a building cannot be rendered sufficiently free from harmful or offensive matter or cannot be put into such condition as to prevent any harmful effects accruing either to the

building or to its occupants as a result of water lying on the surface of the ground, or the danger of flood water, the local authority may prohibit the construction of any building on that plot or may impose such limitations on the kind of building to be constructed on that plot as it thinks fit.

(3) As soon as the construction of a building has been completed or if at any time in the opinion of the engineer a public nuisance is being created, and he gives notice thereof to the person constructing the building, that person shall remove forthwith all rubbish, refuse or debris which has resulted from the work, from the plot and from any land or street adjoining the plot.

(4) A person who commences construction, without first obtaining the approval of the engineer, contrary to the provisions of subsection (1) or who fails to comply with a notice under subsection (3) shall be guilty of an offence.

Access.

26. No person shall use or occupy or permit to be used or occupied a building unless it is provided with —

- (a) suitable and safe access, having regard to the purpose for which the building is intended; and
- (b) reasonable means of ingress and egress for cleaning, for the removal of refuse and fire fighting and egress, for escape, for the occupants.

PART III

DESIGN AND CONSTRUCTION

Strength.

27. (1) The foundation of every building shall be —

- (a) so designed and constructed as to sustain and transmit to the ground the combined dead load of the building and the imposed vertical and lateral loads in such manner that the pressure on the ground does not cause such settlement as may impair the stability or condition of the whole or any part of the building or adjoining land or buildings; and
- (b) taken down to such depth, or be so designed and constructed, as to safeguard the building against damage by swelling or shrinking of the subsoil.

(2) Every part of the structure of a building above the foundations thereof, either alone or in combination with the rest of the structure, shall be capable of safely sustaining and transmitting the dead load, imposed loads and the horizontal and inclined forces to

which it may be subjected without exceeding the appropriate limits of stress for the materials of which it is constructed and without undue deflection.

Reduction of danger from fire.

28. (1) For the purpose of reducing the danger of the outbreak and spread of fire, a building shall be designed and constructed, having regard to the risk inherent in the use for which the building is intended, the size of the building and its proximity to other land or buildings, so as to —

- (a) reduce sufficiently the risk of the ignition of any part of the building and the spread of fire, within the building, into the building and out of the building; and
- (b) withstand the effects of fire for a sufficient period to avoid such collapse of the building as would increase the risk of the spread of fire.

(2) A building shall be so designed and constructed that, in the event of an outbreak of fire in the building, every person therein may leave the building and its precincts in safety.

(3) A heat-producing appliance, together with its necessary accessories, shall be so constructed and installed as to prevent the ignition of any combustible material forming part of the building, or any combustible material that may be placed against the surface of a wall, or other part of the building, enclosing or adjacent to the appliance.

Ventilation.

29. (1) A building shall be adequately ventilated having regard to the use for which the building is intended.

(2) An adequate amount of open space for the purposes of ventilation shall be provided at the front and back of a building and on any other side which includes a door, window or other opening.

Lighting.

30. (1) Subject to the provisions of subsection (2), a building shall be provided with adequate means of lighting by natural light.

(2) Where the local authority is satisfied that the use for which a building is intended will render the provision of natural lighting either unnecessary or undesirable, and that adequate lighting by artificial means will be provided at all relevant times, the local authority may, in its discretion, waive the requirement of subsection (1).

Resistance to the transmission of heat.

31. Where a building is used or intended to be used for human occupation, the external walls, the roof or the roof in conjunction with the ceiling of the topmost storey, and the floor nearest the ground, shall be of such materials and be so constructed as to offer adequate resistance to the transmission of heat from the inside of the building to the outside and from the outside of the building to the inside.

Resistance to the reception of sound.

32. A room in a building shall be sufficiently protected against the reception of sound from outside the room.

Resistance to moisture from the ground.

33. In a building —

- (a) every wall, pier, buttress, column and chimney shall be so constructed as to prevent such passage of moisture from the ground to any inside surface of the building as would be likely to harm either human health or any part of the building; and
- (b) the lowest floor shall resist the passage of moisture from the ground to a degree sufficient for the purpose for which the building is intended to be used.

Resistance to weather.

34. The roof, external walls and chimney stacks of a building, alone and in conjunction one with the other, shall be sufficiently weatherproof for the purpose for which the building is intended, having regard to the degree of exposure of any particular part.

Removal of waste products.

35. A building shall be provided with such means for the removal and, where necessary, the disposal, of all waste products, including smoke and noxious fumes from any heat-producing or other appliance, domestic or other refuse, excretory matter, waste water and rain water, from inside the building and from its immediate neighbourhood, as offer no menace to health, cause no nuisance and cause no damage to any property.

Durability.

36. A building and all fittings and installations necessary to render a building fit to comply with the requirements of this Act shall be constructed of materials of sufficient durability for the conditions to which they are likely to be subjected, and so put together and, where necessary, protected that the durability of the materials is not impaired.

PART IV

SUBORDINATE LEGISLATION

Building Regulations. (First Schedule)

37. (1) The Minister may make Regulations generally for the better carrying into effect of the provisions of this Act and, in particular, in relation to the matters specified in the First Schedule.

(2) The Swaziland Building (Grade II) Regulations, 1967 (published under Legal Notice No. 55 of 1967), shall be deemed to have been made under this section.

(3) Regulations made under this section may make different provisions for different standards or categories of buildings, building operations and professions, trades or occupations, in relation to building, as the case may be, and apply in such area as the Minister shall specify in the Regulations.

Incorporation of codes of practice by reference.

38. (1) In a Regulation made under this Act, the technical requirements relating thereto may be prescribed by reference to a code of practice approved by the Minister.

(2) A copy of every approved code of practice and any amendment thereof shall be kept —

(a) with the signed copy of the Regulation prescribing it; and

(b) at the offices of the Minister and at the offices of every local authority, for inspection by any person at all reasonable times.

(3) Where there is a conflict between the provisions of this Act and an approved code of practice, the provisions of this Act prevail.

(4) The code of practice shall be proved by its mere production in evidence accompanied by a certificate signed by the Permanent Secretary for Housing and Urban Development certifying that it is a true copy of the code of practice in force between the dates stated by him in his certificate.

Offences and penalties in Regulations.

39. A Regulation made under this Act may provide penalties for an offence and also provide additional penalties in the case of successive or continuous offences under that Regulation and the provisions of section 40 apply, *mutatis mutandis*, to offences and penalties in such Regulations.

PART V

OFFENCES AND PENALTIES

Offences and penalties.

40. (1) An owner, occupier or person constructing or demolishing a building who contravenes a provision of this Act —

- (a) other than a provision relating to the conduct of building operations, shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangeni or, in default of payment thereof, to imprisonment for a period not exceeding three months and, in the case of a continuing offence, to a further fine not exceeding four emalangeni, or in default of payment thereof, to imprisonment for a period not exceeding three days for every day during which the offence is continued after a date set by the court; and
- (b) relating to the conduct of building operations, shall be guilty of an offence and liable, on conviction, to a fine not exceeding one thousand emalangeni or, in default of payment thereof, to imprisonment for a period not exceeding twelve months and, in the case of a continuing offence, to a further fine not exceeding one hundred emalangeni or, in default of payment thereof, to imprisonment for a period not exceeding three months for every day during which the offence is continued after a date set by the court.

(2) A person, not being a person referred to in subsection (1) or an officer or servant of a local authority or of the Government bona fide carrying out his duties as such, who contravenes a provision of this Act shall be guilty of an offence and liable, on conviction, to the penalties provided in subsection (1)(a).

PART VI

GENERAL

Serving of notices and other documents.

41. (1) A notice or any other document required by this Act to be served on a person may be served in any of the following ways —

- (a) on the person personally; or
- (b) by delivering the notice or other document at his place of business or his place of residence; or
- (c) by posting a prepaid letter, containing the notice or other document, addressed to the person on whom the notice or other document is to be served, to his last known place of residence or his last known place of business or to his Post Office box number; or,
- (d) if his address in Swaziland is unknown, by fixing the notice or other document in a conspicuous place on the building to which it relates.

(2) Service in terms of subsection (1)(c) shall be deemed to be effected —

- (a) by properly addressing, prepaying and posting a letter containing the notice or other document, unless it is proved that the letter was not delivered at the place to which it was addressed; and,
- (b) unless the contrary is proved, at the time when the letter would be delivered in the ordinary course of post.

(3) When a notice or any other document is required to be served on a person because he is or was the owner or occupier of a building, it is not necessary to name him but it is sufficient if he is described therein as the owner or occupier, as the case may be.

Delegation to fit person.

42. Wherever in this Act a power or discretion is vested in a local authority with regard to any matter or it is provided that a local authority must be satisfied or its opinion is made decisive, the local authority may delegate the exercise of the power or discretion to a fit person skilled in the matter in question.

Responsibility.

43. (1) The granting of approval by a local authority to construct a building, or any inspections made by a local authority prior to, during or after, the construction of a building, or anything done by a local authority or any employee thereof, does not impose any liability on the local authority nor relieve the person constructing the building or any other person concerned in the construction thereof from complying with this Act or any other law.

(2) The owner of the land upon which a building is constructed or demolished shall be deemed to be a person constructing or demolishing that building unless he proves the contrary.

FIRST SCHEDULE

(Section 37)

Matters in regard to which Regulations may be made by the Minister —

PART I

(BUILDING STANDARDS)

- (a) Preparation of sites;
- (b) strength and stability;
- (c) fire precautions, including the resistance of the structure to the outbreak and spread of fire, the protection of the occupants and means of escape in the event of fire;
- (d) resistance to the transmission of moisture;
- (e) resistance to the transmission of heat;
- (f) resistance to the reception of sound;
- (g) durability;
- (h) drainage and sanitation;
- (i) natural ventilation, including the provision of open space therefor;
- (j) lighting, including the provision of open space therefor;
- (k) services, installations and ancillary equipment;
- (l) accommodation;
- (m) access, ingress and egress;
- (n) prevention of danger and obstruction;
- (o) advertisement by signs, sky signs, or hoardings;
- (p) hazardous processes and materials;
- (q) encroaching buildings and projections therefrom;
- (r) temporary buildings;
- (s) fixing notices stating the safe load on part of a building;
- (t) new materials;
- (u) new design and construction methods;

- (v) radiation; and
- (w) water supply, including the supply of water for particular purposes.

PART II

(BUILDING OPERATIONS)

- (a) Use of streets and other public land;
- (b) interference with public services;
- (c) safety of the public;
- (d) safety of workmen;
- (e) health and welfare of workmen;
- (f) builder's sheds; and
- (g) any other operations necessary for the better implementation of this Act.

PART III

1. *Persons in professions, trades or occupations in relation to building —*
 - (a) building contractors;
 - (b) lift contractors;
 - (c) escalator contractors;
 - (d) electricians;
 - (e) drain layers;
 - (f) plumbers; and
 - (g) any other profession, trade or occupation in connexion with the building industry.
2. *In respect of the persons mentioned in paragraph 1 —*
 - (a) registration;
 - (b) duties;
 - (c) disciplinary boards; and
 - (d) operations for which registered persons must be employed.

PART IV

(ADMINISTRATIVE)

- (a) The procedure relating to the application for and issue of permits to construct, demolish or change the use of a building;
- (b) the fees payable to local authorities and the Tribunal in respect of any matter under this Act;
- (c) the procedure of the Tribunal and the expenses and remuneration of members thereof; and
- (d) the procedure for noting and determining appeals.

PART V

Any other matter not mentioned in Parts I to IV and for the better implementation of this Act.

SECOND SCHEDULE

(Section 2)

Rules of Measurement

General.

- 1. (1) A distance from any point on a boundary of land shall be measured horizontally.
- (2) A rise, slope, or fall away shall be taken to be one unit measured vertically in a given number of those units measured horizontally.

Thickness.

- 2. (1) The thickness of timber shall be taken to be the actual thickness.
- (2) The thickness of any plaster shall be taken to be the least thickness of the plaster.
- (3) The thickness of a wall or a leaf of a cavity wall shall be taken to be the actual thickness exclusive of any applied surface finish.

Internal horizontal measurements.

3. All internal horizontal measurements in a room shall be measured from the inner finished surfaces of the walls or partitions excluding skirtings forming the room.

Internal vertical measurements.

4. For the purpose of making internal vertical measurements —

- (a) a reference to a floor shall mean the upper finished surface of the floor;
- (b) a reference to a ceiling shall mean the underside of the finished surface of the ceiling, provided that where there is no ceiling or where a beam or rafter, other than a beam or rafter which throughout its length in the room is an integral part of one of the walls or partitions enclosing the room, projects below the ceiling, the reference shall mean the underside of the finished surface of the lowest beam or rafter; and
- (c) the height of a part of a chimney or flue-pipe above an appliance shall be measured vertically from the highest part of the junction of the appliance with the chimney or flue-pipe.

Area of a room.

5. The area of a room shall be the total area of the floor of the room, but —

- (a) where there is, within a habitable room or kitchen, a stairway or part of a stairway, the area of any space occupied by any part of the stairway in any horizontal plane within that room shall be excluded from the area of the room;
- (b) the area of a habitable room shall be deemed to include the area of any built-in storage in that room:
 - Provided that —
 - (i) there is a clear space of at least two feet measured vertically between the upper finished surface of the built-in storage and the ceiling, and
 - (ii) the area of built-in storage which may be so included does not exceed one tenth of the total area of the room;
- (c) the area of a kitchen shall be deemed to include the area of any built-in storage or other fixture in that room:

Provided that —

- (i) the upper finished surface of the storage or other fixture is at a height of not more than three feet above the floor; and
 - (ii) the area of built-in storage or other fixture which may be so included does not exceed one half of the total area of the kitchen; and
- (d) any part of the floor area of a room over which the height of the room is less than six feet nine inches shall be deemed not to form part of the room.

Area of a storey.

6. The area of a storey shall be the area measured inside the inner finished surfaces of the enclosing walls or, where there are no enclosing walls, the outermost edges of the floor, and includes all internal and partition walls, but covered balconies or covered verandahs to any storey shall be deemed to be within the enclosing walls of that storey.

Area of a building.

7. The floor area of a building shall be the sum of the areas of the storeys comprising that building.

Area of openings.

8. (1) The area of a window or glazed opening shall be the area of the glass therein clear of any frame, sash, mullion or glazing bar.
- (2) The area of any ventilation opening shall be measured inside the frame and shall exclude any sash, bar, or other obstruction to the passage of air.

Height of a room.

9. (1) Where the ceiling over the whole or part of the area of a room is level, the height over that area shall be the vertical measurement from the floor of that area to the ceiling.
- (2) Where the ceiling over the whole or part of the area of a room slopes, the height over that area shall be deemed to be the vertical measurement from the floor to the highest part of the ceiling over that area, less one half the vertical measurement between the highest and lowest parts of the sloping ceiling over that area.
- (3) Where the floor is at more than one level, the height shall be measured from each floor level.
- (4) Where the height of a part of a room exceeds the minimum permissible average height by more than two feet, it shall be deemed to be the minimum permissible average height plus two feet.

Height of a storey.

10. (1) The height of a storey other than the top storey shall be the vertical measurement from its floor to the floor next above.

(2) Where the whole of the top storey is under one roof the height of the top storey shall be deemed to be the vertical measurement from its floor to the highest part of the roof less one-half the vertical measurement between the highest and lowest parts of the roof.

(3) Where different parts of the top storey are under different roofs, the height of each part shall be deemed to be the vertical measurement from its floor level to the highest part of the roof over it, less one-half the vertical measurements between the highest and lowest parts of the roof over it.

(4) Where parts of the floor of a storey are at different levels, the height of the storey shall be measured from each floor level.

Height of a building.

11. (1) The height of a building, which is covered by one roof, shall be deemed to be the vertical measurement from the mean level of the ground adjoining the building to the highest part of the roof of the building less one-half the vertical measurement between the levels of the highest and lowest parts of the roof.

(2) Where different parts of a building are covered by different roofs, the heights of each part of the building shall be deemed to be the vertical measurement from the mean level of the ground adjoining that part of the building to the highest part of the roof over that part of the building less one-half the vertical measurement between the highest and lowest parts of that roof.

Average height of a room.

12. The average height of a room shall be the cubic content of the room divided by its floor area.

Cubic content of a room.

13. The cubic content of a room shall be the sum of the volumes obtained by multiplying the heights of the various parts of the room by the floor areas under each height.

Cubic content of a storey.

14. The cubic content of a storey shall be the height of each part of the storey multiplied by the area of that part.

Cubic content of a building.

15. The cubic content of a building shall be the sum of the cubic contents of its storeys.

Buildings on columns or piers.

16. Where the lowest floor of a building is raised above the level of the site on columns or piers, the height of the building shall be measured vertically from the underside of the finished surface of the lowest beam supporting the building, instead of from the mean level of the ground adjoining the building, but where any part of a building is raised above the level of the site on columns or piers and the vertical measurement between the upper finished surface of the pavement under that part of the building, or the ground where there is no pavement, and the underside of the finished surface of the lowest beam supporting the building exceeds five feet, that pavement, or, where there is no pavement, that ground shall be deemed to be the floor of a storey of the building.

Stairways.

17. (1) For the purposes of this paragraph —

“stairway” includes stairs and steps;

“the going” means the horizontal distance between the nosings of two consecutive treads;

“pitch line” means line tangential to the nosings of the treads;

“theriser” means the vertical distance between the tops of two consecutive treads;

“tread” means the upper surface of a step.

- (2) “Tread width” means the horizontal distance between the front of the tread and the front face of the riser or, if there is no riser, the back of the tread so, however, that, in the case of a stairway or part of a stairway having tapering treads, the going and the tread shall be measured at a distance of one foot six inches from that side of the stairway at which the treads are narrower.

- (3) The width of a stairway means the unobstructed width taking no account of any obstruction caused by handrails.

- (4) The height of any wall, railing, or balustrade in relation to a stairway shall be measured vertically above the pitch line.