

**A BILL
ENTITLED**

AN ACT to Repeal the *Kingston and St. Andrew Building Act* and the *Parish Councils Building Act* and make new provisions for the regulation of the building industry; to facilitate the adoption and efficient application of national building standards to be called the National Building Code of Jamaica for ensuring safety in the built environment, enhancing amenities and promoting sustainable development; and for connected matters.

BE IT ENACTED by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:–

PART I. Preliminary

Short title and commencement.

1. This Act may be cited as the *Building Act, 2016*, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Interpretation.

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

“amenities” includes such quality or condition of a place or area as contributes to the pleasantness, harmony, or better enjoyment of the place or area, such as open spaces, parks, recreation grounds, and playgrounds;

“Appeal Tribunal” means the Building Appeal Tribunal established by section 62;

“applicant” means an applicant for a building permit pursuant to section 18;

“appointed day” means the day appointed pursuant to section 1 for the coming into operation of this Act;

“authorized person” means a person who is authorized by a Local Building Authority under this Act to undertake or perform any function which the Local Building Authority is empowered to undertake or perform;

“builder” means the person who has been employed, contracted or otherwise designated to execute building work in accordance with a

building permit, or where no such person is so employed, contracted or otherwise designated, the permit holder or his agent, other than a labourer or a tradesman who is engaged to provide the services comprised in his trade in relation to the building work;

“building” means a domestic building, a public building, a building of the warehouse class and any other physical structure, whether a temporary structure or not, any part of the structure, and any architectural or engineering product or work erected or constructed on, over or under land or the sea or other body of water;

“Building Advisory Council” means the Building Advisory Council established by section 75;

“building official” means the Building Surveyor and any other person who is employed or designated by a Local Building Authority pursuant to section 9(1);

“building permit” means a building permit granted under section 24(1) and a building approval that was granted prior to the appointed day, including a building permit the validity of which is preserved under section 25;

“building practitioner” means a person who –

- (a) is licensed as a building practitioner under section 71 to carry out building work in accordance with the provisions of this Act;
- (b) is engaged in any phase of the design, construction, alteration, repair, demolition, modification, erection, use or supervision of a building; or
- (c) is a building professional;

“building professional” means a person who is engaged in or supervises building work, any phase of building work or the supervision of a building and who is registered, licensed or otherwise authorized to

carry out the performance of any such function under any enactment,
other than a building official;

“Building Surveyor” means, subject to subsection (2) –

- (a) the City Engineer of the Kingston and St. Andrew Corporation;
- (b) the Superintendent of Parochial Roads and Works of a Parish Council or a Municipal Engineer of a Municipal Council; or
- (c) any other building official appointed for the purposes of this Act by a Local Building Authority to carry out the functions of Building Surveyor;

“building use”, in relation to a building, includes the activities in or on the building such as the storage of anything in or on the building;

“building work” means the design, construction, erection, alteration, repair, extension, demolition, or removal of a building, and all activities relating thereto, such as -

- (a) any increase in height or floor space of a building;
- (b) any addition to or alteration of a building that affects or is likely to affect its drainage or sanitary arrangements or its soundness;
- (c) any addition to or alteration of a building, whether done before or after completion of the building, that departs in any material particular from any plan or specification approved at any time by any authority empowered under any enactment to approve the plan or specification in respect of that building;
- (d) any addition to or alteration of a building that materially affects or is likely to materially affect the building in any manner;
- (e) any addition to, alteration of or other operation contingent upon a duly approved change of class or use of a building

under the National Building Code;

- (f) any operation normally undertaken by a person carrying on the business of building construction; or
- (g) work of any kind declared by the Minister to be building work for the purposes of this Act;

“building of the warehouse class” includes a warehouse, factory, brewery, distillery, foundry, garage, and any building designed or used for the purpose of the storage, manufacture, fabrication or assembly of goods, materials or products, that is neither a public building nor a domestic building;

“certificate of compliance” means a certificate issued by the Local Building Authority pursuant to section 34;

“change of building use”, in relation to a building, means the use of the building, resulting in or likely to result in –

- (a) the use of the building becoming inconsistent with the use class of the National Building Code for which the permit for that building was granted;
- (b) a risk of the structural integrity or other engineering aspects of the building becoming inadequate to accommodate the change;

“court” means the Supreme Court, the Resident Magistrate’s Court or any other court that the Minister with responsibility for justice may, by order published in the *Gazette*, designate for the purposes of this Act;

“domestic building” includes a dwelling house and any other building not being a public building or a building of the warehouse class;

“emergency” means a present or imminent event in respect of which a Local Building Authority reasonably believes prompt co-ordination of action or special regulation of persons or property is required to

protect the health, safety or welfare of persons or to prevent loss or damage to property;

“I-Codes” means the International Codes published by the International Codes Council as adopted, from time to time, by the Standards Authority pursuant to section 16 (1);

“international symbol of access” means the symbol adopted by the International Society for Rehabilitation of the Disabled at the Eleventh World Congress on the Rehabilitation of the Disabled held at Dublin, Ireland in September, 1969;

“Jamaica” includes the Exclusive Economic Zone established under section 3 of the *Exclusive Economic Zone Act*, the archipelagic waters of Jamaica as defined in section 5 of the *Maritime Areas Act* and the territorial waters of Jamaica as defined in section 12 of that Act;

“Local Building Authority” means a Local Building Authority designated under section 7;

“National Building Code” means the National Building Code of Jamaica referred to in section 14 as prescribed by the Standards Authority under section 16(1);

“owner”, in relation to any land or building, means -

- (a) the registered proprietor of the land;
- (b) a person who holds a beneficial interest in the land;
- (c) where any of the persons described in paragraph (a) or (b), cannot be found or is a person with a disability within the meaning of subsection (3), any person who the Local Building Authority is satisfied is the caregiver within the meaning of section 2 of the *Disabilities Act*, agent or trustee of that person;
- (d) the legal personal representative of any of the persons described in paragraph (a) or (b) if any of such persons is dead;

(e) the holder of a leasehold estate in land who is duly authorized by the owner of the reversionary interest in the land to undertake building work on the land;

(f) a person who meets such criteria as the Minister with responsibility for land may, by order published in the *Gazette*, prescribe;

“permit holder” means a person who is granted a building permit pursuant to section 24;

“public building” includes a school, college or place of instruction, church, chapel, or other place of worship, clinic, hospital, theatre, public hall, concert room, place of public assembly, hotel, tower, office, shop, platform, pier, jetty, elevator, gazebo, human shelter, community centre, emergency shelter, or other structure of general resort, admission to which is obtained by payment or to which the public or a section of the public (whether determined by membership of an organization or group or other differentiating criteria) has access;

“relevant Local Building Authority” in relation to a building, building work or land, means the Local Building Authority of the area in which the building or land is situated or the building work is carried out;

“Secretary” means –

- (a) a person employed as or carrying out the functions of Secretary pursuant to section 6 of the *Parish Councils Act*;
- (b) the Town Clerk of the Kingston and St. Andrew Corporation; or
- (c) the Chief Administrative Manager of a Municipality;

“small building code” means the division of the National Building Code that is so designated;

“small building work” means building work that is governed by the small building code;

“stage”, in relation to building work under a building permit, means a stage of the work as specified in the permit;

“Standards Authority” has the meaning assigned to it by section 15;

“Superintendent of Parochial Roads and Works” has the meaning assigned to it in section 2(2) of the *Parochial Roads Act*;

“temporary structure” means a structure that is not affixed to land so as to constitute real property, such as –

- (a) a booth, tent, marquee or other temporary enclosure, whether or not a part thereof is permanent; or
- (b) a seating structure whether enclosed or not, including a mobile seating structure.

(2) The reference in paragraph (a) or (b) of the definition of “Building Surveyor” to a designated title of an official includes a reference to any person who carries out the function normally carried out by that official by whatever name called and accordingly, the Minister may, by order published in the *Gazette*, amend the reference to a designated title to bring it into conformity with current circumstances.

(3) For the purposes of paragraph (c) of the definition of “owner” in subsection (1), a person is regarded as a person with a disability if the person has a long-term physical, mental intellectual or sensory impairment which may hinder his full and effective participation in society on an equal basis with other persons.

Objects of Act.

- 3. The objects of this Act are to –
 - (a) regulate building work and change of building use by requiring the obtaining of building permits in connection therewith, so as to protect the public safety and public health and other relevant public interest considerations;
 - (b) give effect to the National Building Code;
 - (c) facilitate –

- (i) the adoption and efficient application of internationally recognized building standards; and
 - (ii) the accreditation of building products, construction methods, building components and building systems;
- (d) enhance amenities in general and require the construction of buildings that provide sanitary facilities, easy access and adequate amenities, for members of the public in general and persons with disabilities in particular;
- (e) promote cost effectiveness in the construction of buildings;
- (f) require the construction of environmentally friendly and energy efficient buildings;
- (g) establish an efficient and effective system for issuing building permits and certificates of occupancy;
- (h) establish a fair and efficient system for the resolution of building disputes;
- (i) regulate the standard of training and certification, and provide for the licensing, of building practitioners and the establishment of a procedure for the recognition of building professionals who are regulated under other enactments;
- (j) distinguish the categories and scope of building work that may be undertaken by –
- (i) building professionals or building practitioners; or
 - (ii) building professionals only; and
- (k) establish a building appeal process.

Application of Act generally.

4. – (1) Subject to subsection (2), this Act applies to building work and the change of building use in Jamaica, whether the building has been built before or after the appointed day.

(2) This Act shall not apply to –

- (a) repairs to or the maintenance of a building, or the demolition of a part of a building, that does not affect the structural integrity or essential

design of the building or breach the provisions of the National Building Code;

- (b) the erection of a minor structure for the keeping of domestic animals or the storage of domestic goods if the structure does not exceed the prescribed dimensions and does not breach the provisions of the National Building Code; and
- (c) a wall that does not -
 - (i) form part of a building;
 - (ii) exceed the prescribed dimensions;
 - (iii) have a horizontally acting force; or
 - (iv) breach the provisions of the National Building Code.

(3) For the purposes of subsection (2)(a), a Local Building Authority may determine whether or not any type or scope of building work, whether generally or in any particular case, falls within that paragraph.

(4) Subsection (1) does not apply to building work that is exempted by or under this Act or the National Building Code.

Application of Act to pre-existing building work.

5. – (1) Subject to subsections (2) and (3) –

- (a) this Act does not apply to the carrying out of any building work in accordance with a building permit that was valid and in effect immediately before the appointed day; and
- (b) building work referred to in paragraph (a) shall be carried out in accordance with the law as in operation immediately prior to the appointed day and as if this Act had not come into operation.

(2) The relevant Building Surveyor and the owner of the premises concerned may agree, in writing supported by certification before a Justice of the Peace, that this Act, the National Building Code, and any other regulations made under this Act, are to apply to the carrying out of building work referred to in subsection (1).

(3) Where the relevant Local Building Authority determines that it is in the public interest that particular building work be carried out in accordance with the provisions of this Act, the National Building Code and any regulations made under this Act, then –

- (a) those provisions shall apply to the building work ; and
- (b) the building work shall be carried out in accordance with those provisions.

**Preservation
of other laws,
etc.**

6. – (1) Subject to subsections (2) and (4), the provisions of this Act shall be in addition to, and not in derogation of, or in substitution for the provisions of the -

- (a) *Architects Registration Act*;
- (b) *Beach Control Act*;
- (c) *Endangered Species (Protection, Conservation and Regulation of Trade) Act*;
- (d) *Housing Act*;
- (e) *Jamaica National Heritage Trust Act*;
- (f) *Local Improvements Act*;
- (g) *Local Improvements (Community Amenities) Act*;
- (h) *National Housing Trust Act*;
- (i) *Natural Resources Conservation Authority Act*;
- (j) *Professional Engineer Registration Act*;
- (k) *Town and Country Planning Act*;
- (l) *Urban Development Corporation Act*; and
- (m) *Wildlife Protection Act*.

(2) If a provision of this Act, the National Building Code, or any other regulations made under this Act, regulates buildings or building work (whether generally or within the area of jurisdiction of a Local Building Authority), then any provision of any other enactment which also regulates

that matter –

- (a) if not inconsistent with the provisions of this Act, shall be complied with in addition to the provisions of this Act; or
- (b) if inconsistent with the provisions of this Act –
 - (i) so far as is practicable, shall be read so as to resolve the inconsistency; and
 - (ii) subject to subparagraph (i), to the extent of the inconsistency, ceases to have effect, generally or in that area, for the period that the provision of this Act, the National Building Code, or any other regulations made under this Act, is in force.

(3) A Local Building Authority shall publish in a newspaper circulated generally in its area of jurisdiction a notice of the fact that a regulation has ceased to have effect in its area of jurisdiction.

(4) Nothing in Part XI shall be deemed to be in derogation or inconsistent with the provisions of any specified enactment.

(5) In subsection (4), “specified enactment” means –

- (a) the *Architects Registration Act*;
- (b) the *Professional Engineers Registration Act*; and
- (c) any other enactment specified by the Minister by order published in the *Gazette*.

PART II. *Regulatory and Enforcement Responsibilities*

Local Building Authority

Designation and jurisdiction of Local Building Authority.

7. – (1) For the purposes of this Act, each body specified in subsection (2) is designated as the Local Building Authority for the respective area specified in relation to that body, which area shall be the area of jurisdiction of the respective Local Building Authority.

(2) Subject to subsection (3), the bodies referred to in subsection (1) are, as regards –

- (a) the parishes of Kingston and St. Andrew, the Kingston and

St. Andrew Corporation;

- (b) any other parish, the Parish Council for that parish; and
- (c) a Municipality, the Municipal Council for the Municipality.

(3) Unless otherwise determined by the Minister in granting municipal status to a municipality, the Municipal Council for that Municipality shall have jurisdiction for the purposes of this section and not the Kingston and St. Andrew Corporation or the relevant Parish Council, as the case may be.

**Functions of
Local Building
Authority.**

8. The functions of each Local Building Authority shall be to –
- (a) administer and enforce the provisions of this Act, the National Building Code, and any other regulations made under this Act, within the area of jurisdiction of the Authority;
 - (b) accept and consider applications for building permission in respect of all proposed buildings within its area of jurisdiction to which this Act applies, and make determinations on the applications, subject to any conditions that may be deemed necessary; however, applications shall be in compliance with this Act, the National Building Code, and any other regulations made under this Act;
 - (c) ensure that all building work within its area of jurisdiction is carried out in accordance with the provisions of this Act, the National Building Code, and any other regulations made under this Act;
 - (d) keep and maintain full, accurate and up-to-date records of –
 - (i) the receipt and processing of all applications for building permits;
 - (ii) approvals or other determinations made;
 - (iii) inspections carried out;
 - (iv) breaches identified, of this Act, the National Building Code, and any other regulations made under this Act, and actions taken in regard to such breaches; and

- (v) any other pertinent actions taken pursuant to its functions under this Act,

and make the information referred to in the preceding subparagraphs available to the public, subject to such guidelines as may be established;

- (e) issue certificates of compliance and certificates of occupancy in respect of buildings and building work;
- (f) prescribe fees for services provided by or on behalf of the Local Building Authority;
- (g) ensure that designs submitted in respect of building applications are in compliance with the provisions of the National Building Code and that the design and supervisory aspects of building work are undertaken and executed by duly qualified persons;
- (h) engage persons under contract as it deems necessary for the proper performance of its functions in accordance with applicable law and guidelines; and
- (i) perform such other functions as are necessary or expedient for or in connection with the proper performance of its functions under this Act.

Building Officials

Appointment and designation of building officials, officers and employees.

9. – (1) Subject to subsection (2), a Local Building Authority may, in relation to its area of jurisdiction –
- (a) appoint and employ at such remuneration and on such terms and conditions as it thinks fit, Building Surveyors, Deputy Building Surveyors, District Surveyors, and other building officials and such other officers and employees, as the Authority deems necessary for the proper performance of its functions; and
- (b) designate officers of the Authority to undertake specified functions in respect of the administration and enforcement of building matters.

(2) No salary in excess of the prescribed rate shall be assigned to any office referred to in subsection (1) without the prior written approval of the Minister responsible for the public service.

(3) For the purposes of subsection (2), the "prescribed rate" means such rate as the Minister responsible for the public service may, by order, prescribe.

(4) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any officer in the service of the Government to any office within a Local Building Authority, and any public officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance and in relation to any other rights as a public officer, be treated as continuing in the service of the Government.

Building Surveyor

Functions of Building Surveyor.

10. – (1) For the purposes of this Act, a Building Surveyor shall -
- (a) have superintendence over all buildings and building work within the area of jurisdiction of the Local Building Authority in which he holds office;
 - (b) ensure that building work is undertaken in accordance with this Act, and the National Building Code;
 - (c) unless otherwise directed by the Local Building Authority, exercise supervision over the Deputy Building Surveyor, District Surveyors other officers and employees, authorized persons, building professionals and independent contractors, for the proper performance of the functions of the Local Building Authority;
 - (d) take appropriate action to –
 - (i) identify any breach of this Act or the National Building Code;
 - (ii) have the breach duly remedied in a timely manner; and
 - (iii) ensure that relevant sanctions for the breach are applied; and

take appropriate action to safeguard and protect the public users of any building from any danger or hazard that might be posed by the building;

- (f) ensure that applications for building permits are processed in a timely manner and in accordance with such guidelines as are established by the Local Building Authority from time to time, and that all duties that are to be performed in respect of the inspection of building work are conducted in a manner that prevents unnecessary delays;
- (g) ensure that certificates of compliance are granted in a timely manner and in accordance with such guidelines as are established by the Local Building Authority, from time to time, where the building work has been inspected and found to be in compliance with the relevant building permit;
- (h) prepare and submit in a timely manner through the Secretary such reports as may be required by this Act or requested by the Local Building Authority, from time to time; and
- (i) advise the Local Building Authority and the Secretary on technical matters that are relevant to the proper administration and enforcement of this Act and the discharge of their functions under this Act.

(2) The relevant Building Surveyor may refuse to approve building work or, as the case may require, order that the work be discontinued on the ground that upon his inspection of any building materials or product, construction method, design, component or system connected with the building work, he has determined that it is not in accordance with this Act, the National Building Code and any other regulations made under this Act.

(3) Work that has been discontinued pursuant to subsection (2) shall not be resumed except in accordance with the certification of the relevant Building Surveyor that upon conducting an inspection as referred to in that

subsection, he is satisfied that the breach of this Act, the National Building Code and any other regulations made under this Act that gave rise to the order for discontinuance has been satisfactorily remedied.

Building Surveyor to submit return.

11. – (1) A Building Surveyor shall, in a timely manner within each month and in accordance with such guidelines as are established by the Local Building Authority, submit a return in the prescribed form to the relevant Local Building Authority through the Secretary containing, in relation to the previous month, the information specified in subsection (2).

(2) Subsection (1) refers to information as to –

- (a) the description and locality of every building erected, repaired, extended, demolished or modified, or on which any building work has been done, under his supervision;
- (b) all building work supervised by him in the exercise of his office within the previous month;
- (c) the fee imposed by the Authority in respect of every building work during the previous month;
- (d) all notices and complaints received by the Building Surveyor in the administration of this Act, and action taken in respect of the notices and complaints;
- (e) any enforcement action taken by him in the previous month;
- (f) all matters brought by him before any court; and
- (g) any special services performed by him and any fees imposed in respect of those special services.

Return to indicate completion of building work.

12. A return under section 11 shall be signed by the Building Surveyor, and certified by him that to the best of his knowledge and belief, all building work specified in the return has been completed in all respects in accordance with this Act and that they have been duly inspected by him.

Conflict of Interest.

13. – (1) The Building Surveyor or any building official appointed by the

Local Building Authority shall not –

- (a) engage in any activity that represents a conflict of interest with his employment to the Local Building Authority;;
- (b) engage in private work or carry out any function in respect of the design and submission of an application for a building permit; or
- (c) be involved in the construction and supervision of any building work within the jurisdiction of the Local Building Authority in which he is employed.

(2) Every Building Surveyor or other person who contravenes subsection (1) is liable to disciplinary action which shall be administered pursuant to the provisions of the appropriate specified enactment.

(3) In this section –

“disciplinary action” means any process for imposing sanctions or otherwise dealing with workplace-related behaviour of an employee that does not meet the requirements and standards applicable to the employee;

“specified enactment” means any enactment specified by the Minister by order published in the *Gazette* for the purposes of this section.

PART III. *National Building Code*

National Building Code.

14. – (1) For the purposes of this Act, there shall be a building code for Jamaica comprised of a series of regulations for different categories of building work, which shall be called the National Building Code of Jamaica.

(2) The National Building Code shall specify –

- (a) minimum standards and controls for the design, construction, alteration, repair, demolition, modification, erection, use or supervision of buildings and building work;
- (b) building materials and products, construction methods, building components and building system for buildings and building work;

- (c) functional requirements for buildings and building work; and
- (c) performance criteria for buildings for the purposes of their intended use generally –
 - (i) throughout Jamaica or in particular geographical areas of Jamaica; and
 - (ii) over a range of circumstances or in particular circumstances only.

(3) Each of the following persons shall comply with the National Building Code in respect of building work being executed by the person or otherwise under the responsibility of the person, namely –

- (a) every builder;
- (b) every owner or occupier of the premises where building work has been carried out or is to be carried out; and
- (c) any person who carries out or takes steps to carry out the building work on any land and any other person concerned in the management of the work on the land; and
- (d) every building practitioner or building professional who prepares plans and specifications for building work.

Meaning of Standards Authority.

15. – (1) In this Act, references to the Standards Authority are references to –

- (a) the Bureau of Standards established under the *Standards Act*; or
- (b) any other entity that the Minister responsible for standards after consultation with the Minister responsible for local government may, by order published in the *Gazette*, designate.

Functions of Standards Authority.

16. – (1) The Standards Authority shall –

- (a) prescribe the National Building Code;
- (b) be the certifying authority under this Act with respect to building standards, building materials and products, construction methods,

building components and building systems; and

- (c) perform such other functions as may be assigned to it, by this Act or any other enactment.

(2) With respect to the National Building Code, the Standards Authority shall determine the extent to which I-Codes shall apply to Jamaica and be incorporated in the National Building Code.

(3) The relevant Local Building Authority shall not refuse to approve building work or any stage thereof on the ground that any building material or product, construction method, building component or building system connected with the building work is unsatisfactory, if the material product, method, component or system is accredited by the Standards Authority and complies with that accreditation.

PART IV. *Building Permits*

Requirement for building permit.

17. – (1) A person shall not carry out any building work unless –
- (a) a building permit in respect of the work has been issued to him;
 - (b) where applicable, a planning permit has been issued to him under the *Town and Country Planning Act*; and
 - (c) the work is carried out in accordance with the building permit, the provisions of this Act, the National Building Code, or of any other regulations made under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation thereto in the First Schedule.

First Schedule.

(3) The court under subsection (2) may issue any order that the relevant Local Building Authority could make for the remedy of the breach giving rise to the conviction, including an order for the taking down or alteration of a building or part thereof or otherwise so as to conform with the requirements of the building permit (where applicable), this Act, the National

Building Code and any other regulation made under this Act.

**Application
for building
permit, etc.**

18. – (1) A person who proposes to carry out building work shall apply in the prescribed form and manner to the relevant Local Building Authority for the appropriate building permit.

(2) An application under subsection (1) shall be accompanied by –

- (a) the building designs and plans in relation to the proposed building work;
- (b) the certification referred to in subsection (3); and
- (c) the prescribed application fee.

(3) The certification referred to in subsection (2) is the certification by one or more building professionals or, in the case of small building work, building practitioners, who carried out or supervised the preparation of the building designs and plans in relation to the proposed building work, that the designs and plans comply with the National Building Code or are exempt from the National Building Code or certain requirements of the National Building Code.

(4) Where the relevant Local Building Authority thinks necessary, the Local Building Authority may require an applicant for a building permit to furnish such additional information or document as it may specify.

(5) The applicant shall cause to be placed, in a conspicuous place on the premises where the applicant intends to carry out the building work, a notice of intention to build, which shall –

- (a) be in the prescribed form; and
- (b) contain a statement that any interested person who is aggrieved thereby, or has objections thereto, may register his objections with the Local Building Authority.

(6) The notice of intention to build shall also be placed in one of the following places in the parish where the applicant intends to build –

- (a) the police station nearest to the land where the applicant intends to build;
- (b) the post office or postal agency nearest to that land; or
- (c) such other public place as may be specified.

Requirements regarding notice of intention to build.

19. Subject to section 20 –
- (a) an application for a building permit shall be treated as incomplete unless the notice of intention to build has been posted in accordance with section 18; and
 - (b) the notice of intention to build shall remain displayed until the decision on the application has been determined.

Emergency building work before notice given.

20. – (1) Subject to subsection (2) and notwithstanding anything to the contrary in this Act, emergency building work may be carried out immediately or before a notice of intention can be given.

(2) Before the expiration of twenty-four hours after the emergency building work has begun, the person responsible for carrying out the work shall give written notice thereof to the relevant Local Building Authority and the Building Surveyor.

(3) Nothing in this section prevents the relevant Local Building Authority from exercising any power conferred upon it pursuant to Part VI.

Applicant for permit to supply information where concerns raised by interested persons.

21. – (1) An applicant for a building permit may be required by the Local Building Authority to make available such information as may be necessary to satisfy legitimate concerns raised or objections registered by an interested person.

(2) In this section and sections 22 and 23, “interested person” means –

- (a) the owner or occupier of any premises abutting, adjoining or adjacent to the premises where the notice of the intention to build has been posted; or
- (b) an owner or occupier of property in the neighborhood of the

proposed building work who has declared in writing to the relevant Local Building Authority that the value or enjoyment of the property owned or occupied by that person is or is likely to be affected adversely by the proposed building work,

and has raised his legitimate concerns or registered his objection in accordance with section 22.

Objection to proposed building work.

22. An interested person may raised his legitimate concerns or register his objection in the prescribed manner with the Local Building Authority.

Consultation on proposed building work.

23. – (1) A Local Building Authority may direct the holding of a public or, as the case may require, private consultation in the area under its jurisdiction, where building work is proposed or where there is objection to proposed building work.

(2) A Local Building Authority shall have regard to the following matters in determining whether to direct the holding of a public or private consultation, namely –

- (a) whether the proposed building work is likely to have an adverse impact on any person; and
- (b) whether the proposed use of the building and the nature of the construction is of a type that requires interested persons and other members of the public to be notified.

Grant or refusal of building permit.

24. – (1) A Local Building Authority may, in relation to an application for a building permit made under section 18 –

- (a) grant the building permit;
- (b) grant the building permit, subject to such terms and conditions as the Local Building Authority may specify in the building permit; or
- (c) refuse to grant the building permit.

(2) Regulations made under section 82 may prescribe the time within which a Local Building Authority shall decide an application for a building

permit.

(3) A building permit may be granted for –

- (a) the whole of the proposed building work; or
- (b) any stage of the proposed building work.

(4) Where the Local Building Authority refuses to grant a building permit, it shall so inform the applicant in writing stating the reasons for the refusal and advise the applicant of his right to appeal the decision.

(5) If additional information or a document or an amended application required to be supplied by an applicant is not supplied within the time specified by the relevant Local Building Authority, the application may be refused.

National monuments and protected national heritage.

25. – (1) Notwithstanding section 18 and subject to subsection (4), the relevant Local Building Authority, on the recommendation of the Building Surveyor, may issue a building permit for the carrying out of building work that does not comply with the provisions of this Act, any building regulations made under this Act or the National Building Code to the extent that the non-compliance is necessary having regard to subsection (2) if the work is to be carried out on, or in connection with, any building that is a national monument or that is designated as protected national heritage under the *Jamaica National Heritage Trust Act*.

(2) A building permit issued under subsection (1) may be issued to enable the carrying out of work appropriate to the style, manner of construction and materials of the building in keeping with the designation of the building under the *Jamaica National Heritage Trust Act*.

(3) In deciding an application for a building permit in respect of a building to which subsection (1) applies, the relevant Building Surveyor shall take into account –

- (a) the structural adequacy of the building; and

- (b) the requirements necessary to make reasonable provision for amenities and the safety and health of persons using the building.

(4) The Local Building Authority shall not grant a building permit under subsection (1) for the carrying out of building work unless it is satisfied that the requirements of section 16 of the *Jamaica National Heritage Trust Act* have been complied with in respect of the proposed building work.

(5) Without limiting the effect of the *Jamaica National Heritage Trust Act*, a person who, without being duly authorized to do so under this Act, carries out building work on, or in connection with any building that is a national monument or that is designated as protected national heritage under the *Jamaica National Heritage Trust Act* commits an offence and shall be liable on conviction to the penalty specified in relation thereto in the First Schedule.

First Schedule.

Non-transferability, validity and renewal of permit.

26. A building permit granted under section 24(1) –
- (a) shall not be transferable;
 - (b) shall be valid for such period as is specified therein; and
 - (c) may be renewed in such circumstances as may be prescribed.

Variation or modification of permit.

27. A permit holder may apply to the relevant Local Building Authority for the variation or modification of the building permit, stating clearly the reasons for the request.

Suspension of building permit.

28. – (1) Subject to subsection (2), the relevant Local Building Authority may suspend a building permit if –
- (a) the permit holder has failed to pay any fees or other charges required by this Act, the National Building Code or any other regulations made under this Act;
 - (b) the permit holder is in breach of –
 - (i) any provision of this Act, the National Building Code or any other regulations made under this Act; or

- (ii) any term or condition subject to which the permit is granted;
- (c) it is satisfied that it is not possible to carry out a proper inspection of the building work.

(2) Subject to subsection (5), before suspending a building permit under subsection (1) (a), (b) or (c), the relevant Local Building Authority shall notify the permit holder in writing of the proposed suspension –

- (a) stating the reasons for the suspension; and
- (b) requiring the permit holder, in the case of a breach, to remedy the breach within the time specified in the notice and if the breach is not satisfactorily remedied within the time specified or such longer time as the Local Building Authority may allow the suspension shall thereafter take effect.

(3) A permit holder who is served with a notice under subsection (2) shall, after remedying the failure or breach which gave rise to the suspension, notify the relevant Local Building Authority in writing that the failure or breach has been remedied.

(4) The relevant Local Building Authority shall, upon receipt of a notice referred to in subsection (3) –

- (a) in the case falling within subsection (1)(b) or (c) cause a building official or other authorized person to carry out an inspection of the building work and report thereon to the Local Building Authority in writing within ten days of the receipt of the notice; and
- (b) withdraw the notice of suspension, if satisfied on the basis of the report that the suspension is no longer warranted.

(5) The Local Building Authority, if satisfied, having regard to the risk to public safety or other public interest concern, may suspend a building permit with immediate effect and shall notify forthwith the permit holder in writing thereof; and the suspension shall continue until the Local Building

Authority is satisfied that the circumstances that warranted the suspension have come to an end.

(6) Where a building permit has been suspended under this section, the relevant Local Building Authority shall so inform the permit holder in writing of his right to appeal the decision to suspend the building permit.

(7) Where an appeal is made against a decision to suspend a building permit, the suspension shall remain in effect pending the final determination or withdrawal of the appeal.

**Revocation
of building
permit.**

29. – (1) The relevant Local Building Authority may revoke a building permit if it is satisfied that –

- (a) a permit holder has failed to comply with the provisions of this Act, the National Building Code, and any other regulations made under this Act or any condition specified in the permit in relation to the building work and the failure is sufficiently serious that the building permit ought to be revoked;
- (b) the application for the building permit contains any false or misleading information in any material particular;
- (c) the permit holder has failed to remedy the breach which gave rise to the suspension of the building permit under section 28, within the time specified in a notice under subsection (2) of that section;
- (d) the circumstances that warranted the suspension of the building permit under section 28(5) are such that the building permit ought to be revoked; or
- (e) any fee or other charge payable by the permit holder remains unpaid for a period of ninety days after the suspension of the building permit under section 28(1)(a).

(2) Upon revoking a permit under subsection (1), the Local Building Authority shall notify the permit holder in writing of the revocation, stating

the reasons for the revocation and advising the permit holder in writing of his right to appeal the decision to revoke the building permit.

Restoration of building permit.

30. Where a Local Building Authority is satisfied that the permit holder –

- (a) took reasonable steps to remedy the breach which gave rise to the suspension of the building permit under section 28(5), or as the case may be, within the time specified in a notice under section 28(2); and
- (b) is compliant with the provisions of this Act, the National Building Code, and any other regulations made under this Act or any conditions specified in the permit in relation to the building work,

the Local Building Authority may restore the permit and cause the Register to be updated accordingly.

PART V. *Restrictions on Changing the Use of Buildings*

Offence to change class or use of building.

31. – (1) The provisions of Part V, except for the penalties prescribed under that Part, shall apply to a change of building use permit required under this section as they apply in relation to a building permit.

(2) An owner or occupier of a building shall not undertake or allow a change of use of the building, except in accordance with a change of use permit granted by the Local Building Authority.

(3) A person who has been employed, contracted or otherwise designated to execute building work in connection with a change of building use shall not commence or continue the building work unless a change of use permit has been granted by the Local Building Authority.

(4) A person who contravenes subsection (2) or (3) commits an offence and shall be liable on conviction to the penalty specified in relation

First Schedule. thereto in the First Schedule.

**PART VI. *Enforcement
Inspection and Monitoring***

Interpretation of Part VI.

32. In this Part –

- (a) a reference to an “agent” in relation to a permit holder includes a reference to the builder of the building work concerned;
- (b) “responsible party” in relation to any premises on which building work has been or is to be carried out, means -
 - (i) the builder;
 - (ii) the owner of the premises;
 - (iii) the occupier of the premises;
 - (iv) any person who carries out or takes steps to carry out the building work;
 - (v) any other person concerned in the management of the building work, as the case may require.

Monitoring of building work.

33. The Local Building Authority may monitor the progress of any building work permitted under this Act, as often as may be necessary to cause the Local Building Authority to –

- (a) secure the due observance of the provisions of this Act, the National Building Code or any other regulations made under this Act or any condition subject to which the building permit is granted;
- (b) survey any building or building work placed under its supervision; and
- (c) issue certificates of compliance pursuant to section 34 at any stage of the building work.

Certificate of compliance.

34. – (1) A permit holder or his agent shall not proceed from one stage to the next stage of the permitted building work unless he has been issued with a certificate of compliance by the Local Building Authority under this section for the previous stage of the permitted building work.

(2) A permit holder or his agent who seeks the issuance of a certificate of compliance in respect of any stage of the building work shall give to the

Local Building Authority a notice of compliance in the form prescribed by the Local Building Authority and await the certificate of compliance before proceeding to the next stage.

(3) Having received the notice of compliance, a Local Building Authority may -

- (a) where it considers it appropriate, cause the building work at the particular stage to be inspected; and
- (b) grant a certificate of compliance if it has reasonable grounds to be satisfied that the work is in compliance with the building permit.

Guidelines for monitoring.

35. The Local Building Authority may establish guidelines to provide for –

- (a) the imposition of conditions on the grant of a building permit;
- (b) the inspection of building work;
- (c) the forms of notices required to be given at specified times and stages of the building process;
- (d) authorization for personnel to enter and inspect building construction and building work to ensure that the conditions of the building permit are being complied with;
- (e) powers to survey buildings and ensure that all relevant codes and regulations are being observed; and
- (f) benchmarks of standards for the performance of functions by officers of the Local Building Authority.

Notice to be evidence as against builder of intended building work.

36. Every notice given by a permit holder or his agent pursuant to this Act shall be deemed, in any question relating to any building or building work, to be *prima facie* evidence as against the builder involved of the nature of the building proposed to be built or building work proposed to be done.

Civil penalty for failure to give notice.

37. A permit holder or his agent who –

- (a) fails to give any notice required to be given by that person under this Act; or

- (b) executes any building work or causes or permits any building work to be executed prior to giving the required notice,

and shall be liable to pay a penalty to the Local Building Authority in the amount prescribed.

Power to enter and inspect building work, etc.

38. – (1) A building official or other authorized person may, at all reasonable times –

- (a) during the progress of any building work, subject to this Act, enter any premises and inspect the building or building work;

- (b) enter and inspect any premises for the purpose of ascertaining whether –

- (i) building or building work is being constructed without a building permit; and

- (ii) any building or building work erected on the premises is entitled to be treated as exempt from the operation of this Act.

(2) The building official or authorized person may do all such things as are reasonably necessary for the purpose of the inspection under subsection

(1).

Offence of failure to admit building inspector, etc.

39. A person commits an offence if the person –

- (a) unreasonably refuses to admit the building official or authorized person to inspect the premises and any building or building work pursuant to section 38; or

- (b) obstructs or otherwise impairs the building official or other authorized person from carrying out the inspection,

and shall be liable on conviction to the penalty specified in relation thereto in

First Schedule.

the First Schedule.

Notice of building breach.

40. Where, in relation to premises on which building work has been or is being carried out, it appears to a Local Building Authority that any

responsible party has contravened a provision of this Act relating to the building work, the Local Building Authority may serve on the responsible party, in the prescribed form and manner, a notice of building breach requiring the person to remedy the breach, whether by cessation of the building work or otherwise.

Contents of notice of building breach.

41. The notice of building breach –
- (a) shall state -
 - (i) the nature of the breach;
 - (ii) the steps to remedy the breach; and
 - (iii) the period within which or the time when the steps are to be taken to remedy the breach which in the case of a cessation of work may be with immediate effect; and
 - (b) may include any additional information that the Local Building Authority considers appropriate.

Power of Authority to enter and remedy breach and recover expenses.

42. – (1) Where a responsible party, upon whom a notice of building breach is served, fails to comply with any requirement in the notice, the Local Building Authority may, with such persons as it may require, enter the premises in relation to which the notice of building breach has been issued, and do all things as may be necessary –
- (a) for enforcing the requirements of the notice; and
 - (b) to remedy the breach and render the building work on the premises in conformity with the requirements of this Act.
- (2) All expenses incurred by a Local Building Authority in the exercise of its functions under subsection (1) and in any related enforcement in remedying the breach may, at the instance of the Local Building Authority, be recovered from each responsible party on whom the notice was served, jointly or severally if more than one, as a simple contract debt in the Resident Magistrate’s Court for the parish in which the building is located or the

building work is being carried out, without limit of amount.

(3) Where, having been served with a notice of building breach under section 40, a responsible party who is the owner of the premises, on reasonable demand by the Local Building Authority, refuses or neglects to pay the expenses referred to in subsection (2), the Authority may apply to a Judge in Chambers for an order for the sale of the premises in respect of which the notice is made.

(4) In selling any premises pursuant to an order under subsection (3), the Local Building Authority shall –

- (a) owe a like duty of care to that of a mortgagee to the owner of the premises; and
- (b) rank for purposes of priority as against any mortgagee or other encumbrancer of the premises, as if the Local Building Authority were selling pursuant to a power of sale under a mortgage that was registered on the title to the premises on the date that the order was made.

(5) Subject to any prior ranking claim to the proceeds and apply the proceeds of sale in the same manner, as applies in this Act in the case of dangerous structures.

Civil penalty for failure to comply with notice of building breach.

43. If a notice of building breach served under section 40 is not complied with, each person on whom it is served shall be liable to pay a penalty to the Local Building Authority in the amount prescribed.

Stop Notices

Stop notices.

44. – (1) Where a Local Building Authority, has reasonable grounds to suspect that any building work is unauthorized within the meaning specified in subsection (2), or is hazardous or otherwise dangerous to the public, the Authority shall serve on any responsible party in the prescribed form, a stop notice requiring the responsible party to immediately cease the work.

(2) Building work referred to in subsection (1) as being unauthorized is building work –

- (a) which is being carried out in breach of a condition subject to which a building permit was granted; or
- (b) which is being carried out without the grant of a building permit.

(3) A stop notice –

- (a) shall specify -
 - (i) the name of the person to whom it is directed;
 - (ii) the reason for which the stop notice is made;
 - (iii) the location at which the building work is taking place or has taken place;
 - (iv) the nature of the building work;
 - (v) that the notice takes effect from the time it is served; and
 - (vi) that the notice remains in effect until the building work to comply with a related enforcement notice under section 45 is certified by the Local Building Authority as being completed; however, if an enforcement notice is not served prior to the end of fourteen days after service of the stop notice, and the stop notice shall thereupon expire; and
- (b) may be extended for such further periods as the Local Building Authority may determine.

(4) A new stop notice may be served for similar reasons as a previous stop notice that has expired.

(5) Where a stop notice is served on a responsible party a copy thereof shall be posted in a conspicuous place –

- (a) on the premises where the relevant building work is taking place or has taken place; and
- (b) in a police station, post office, postal agency or other public place in

the parish in which the building work is taking place or has taken place.

(6) Where a person suffers any loss resulting from the service of a stop notice, compensation shall only be payable where in any action brought by him against a Local Building Authority, he alleges expressly that the service of the notice was done without the Local Building Authority having reasonable grounds to suspect that the building work is unauthorized within the meaning specified in subsection (2), or is hazardous or otherwise dangerous to the public.

(7) Any person who fails to comply with a stop notice commits an offence and shall be liable on conviction to the penalty specified in relation thereto in the First Schedule.

**First
Schedule.**

Enforcement Notice

**Enforcement
notice.**

45. – (1) If it appears to a Local Building Authority that -

- (a) any building work has been, is being, or is proposed to be, carried out without the grant of a building permit; or
- (b) any condition subject to which a building permit was granted has not been complied with,

then, subject to subsection (3), the Local Building Authority shall serve a notice under this section (hereinafter referred to as an “enforcement notice”) in the prescribed form on each of the persons specified in subsection (2).

(2) The persons referred to in subsection (1) are -

- (a) the owner and occupier of the premises where the building work has been, is being or is proposed to be carried out;
- (b) any person who has carried out, is carrying out or proposes to carry out the building work; and
- (c) any other person concerned in the management of the building work.

(3) An enforcement notice -

(a) shall specify -

- (i) the building work which it is alleged has been, is being or is proposed to be carried out without a building permit; or
- (ii) as the case may be, the matters in respect of which it is alleged that any conditions, subject to which a building permit has been granted, have not been complied with; and

(b) may require such steps as may be specified in the notice to be taken within such period as may be so specified for restoring the premises, or as the case may be, the building to its condition before the building work was carried out, or for securing compliance with the conditions subject to which a building permit has been granted, as the case may be.

(4) Without limiting the generality of subsection (3), an enforcement notice -

(a) may specify the steps required to be taken pursuant to subsection (3) for -

- (i) the demolition or alteration of any premises or building work;
- (ii) the discontinuance of any use of the premises or building work; or
- (iii) the carrying out of any building work or other operations; and

(b) may, where paragraph (a)(ii) applies, state that any person upon whom an enforcement notice is served is prohibited from continuing, or carrying out, any building work or operations on, or using the premises, in respect of which the notice is served.

(3) Where an enforcement notice is served under subsection (1), the Local Building Authority shall –

(a) cause a copy of the enforcement notice to be posted in a conspicuous

place on the premises where the building work is being carried on;

- (b) cause a notice in accordance with subsection (4) to be displayed in a conspicuous place in a, police station, post office, postal agency or other public place in the parish in which the building work is being carried out.

(4) The notice referred to in subsection (3) (b) shall -

- (a) contain information as to the place where an enforcement notice may be inspected;
- (b) state that a copy of the enforcement notice may be obtained from the offices of the Local Building Authority; and
- (c) state that any interested person may make representations in respect of the enforcement notice to the Local Building Authority.

(5) The Local Building Authority may, from time to time, cause a list of enforcement notices to be published in a daily newspaper circulated nationwide in Jamaica or on the Internet.

(6) In subsection (4) (c), “interested person” means a person who the Local Building Authority considers to have a sufficient interest to justify representations of the person being heard, by virtue of the person being the owner or occupier of premises in the vicinity of the premises in respect of which the enforcement notice is served.

(7) An enforcement notice shall take effect at the expiration of three days after the later of –

- (a) the service of an enforcement notice on any of the persons specified in subsection (2) or, if more than one, the first of such persons to be served; or
- (b) the posting of the enforcement notice on the premises in accordance with subsection (3)(a).

**Authority’s
power to enter
and remedy**

46. – (1) If at the expiration of the period specified in an enforcement

breach.

notice, or within such extended period as the Local Building Authority may allow, any steps required by the notice to be taken have not been taken to the satisfaction of the Local Building Authority, the Local Building Authority may enter on the premises to which the enforcement notice relates and take those steps.

(2) The Local Building Authority may recover as a simple contract debt in the Resident Magistrate's Court for the parish in which the premises to which the enforcement notice relates are situate, from the person who is the owner of the premises, any expenses reasonably incurred by the Local Building Authority pursuant to steps taken under subsection (1).

(3) If the owner, having been entitled to appeal to the Tribunal under section 63, fails to lodge an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken by the Local Building Authority upon any ground which could have been raised by such appeal.

(4) Any expenses incurred by the owner or occupier of any premises for the purpose of complying with an enforcement notice, and any sums paid by the owner of any premises in respect of the expenses of the Local Building Authority in taking steps required to be taken by the notice, shall be deemed to be incurred or paid for the use and at the request of the person by whom the building work was carried out.

(5) A person who fails to comply with an enforcement notice commits an offence and is liable on conviction to the penalty specified in relation thereto in the First Schedule.

**First
Schedule.***Court Injunction, etc.***Application
for injunction,
etc.**

47. – (1) Where –

- (a) a person on whom an enforcement notice is served under section 45 fails to comply with the provisions of that notice within the period specified in the notice; or

- (b) the relevant Local Building Authority considers it necessary or expedient for any perceived or apprehended breach of this Act to be restrained,

the relevant Local Building Authority may apply to the court for an injunction or other order.

(2) The relevant Local Building Authority may apply to the court for an order under subsection (1) whether or not the Local Building Authority has exercised or is proposing to exercise any other power under this Act.

(3) On an application under subsection (1), the court may –

- (a) issue a summons requiring the person to appear before the court; and
- (b) if upon the appearance of the person, or in his absence upon due proof of the service of the summons, it appears to the court that -
 - (i) the steps required by the enforcement notice, or any steps that may in the opinion of the court be authorized by this Act, should be taken; or
 - (ii) any perceived or apprehended breach of this Act should be restrained,

the court may make an order in accordance with subsection (4).

(3) The court may for the purposes of this section make an order against a person whose identity is unknown.

(4) An order made under this section may require the builder, the owner or occupier of the land where the building work has been or is being carried out, any person who carries out or takes steps to carry out the building work on the land and any other person concerned in the management of the building work on the premises, as the case may be, to –

- (a) to comply with the steps, or remedy the breach, within the time specified in the order;
- (b) demolish or alter any building work, in such manner as the Building

Surveyor shall direct;

- (c) discontinue any use of the land for building work;
- (d) carry out on the land any building work or other operation, in such manner as the Building Surveyor shall direct;
- (e) pay the costs and expenses associated with the application; or
- (f) perform such other act as the court considers appropriate in the circumstances.

Emergency Order

Emergency order.

48. – (1) Where a Local Building Authority is of the opinion that the condition or the use of land on which the building work has been, is being or is proposed to be, carried out is hazardous or otherwise dangerous to any person, the Local Building Authority may issue an emergency order and serve or cause it to be served on –

- (a) the owner or occupier, if the owner is not known to the Local Building Authority; and
- (b) any builder carrying out work on land.

(2) An emergency order may –

- (a) require the owner of, and the builder carrying out work on land to –
 - (i) evacuate the building or land;
 - (ii) cease the carrying out of any building work or other activity on the land; or
 - (iii) carry out building work or other work necessary to make the land safe, including specifying steps to be taken for this purpose; or
- (b) prohibit the occupation or use of the land, or any part of the land, for a specified period.

(3) Any person who is the subject of an emergency order issued under subsection (1) may, if the person is of the opinion that the grounds set out in

subsection (1) are not substantiated or that the emergency order is disproportionate, inappropriate or otherwise unjust, apply to the court for an order to set aside or modify the emergency order.

(4) On hearing an application to set aside or modify an emergency order under subsection (3), the court may make such order as it considers appropriate.

Duration of emergency order.

49. Subject to section 48(3), an emergency order remains in force until it expires or is cancelled by the Local Building Authority under section 50.

Cancellation of emergency order.

50. A Local Building Authority –

- (a) may cancel an emergency order if the circumstances giving rise to the making of the order have changed; and
- (b) shall give notice of the cancellation to the persons on whom it was required to be served under section 48.

Authority may enter where emergency order not complied with.

51. – (1) Where –

- (a) an emergency order is not complied with; or
- (b) the owner of the premises is not known to the Local Building Authority; or

(c) there is no builder carrying out building work on the land, the Local Building Authority may authorize the entry and taking of any necessary steps to remedy the problem specified in the order.

(2) The Local Building Authority may recover as a simple contract debt (without limit of amount) in the Resident Magistrate’s Court for the parish in which the land is situate, from the person who is the owner of the premises or the builder, any expenses reasonably incurred by the Local Building Authority in taking the remedial steps.

PART VII. *Dangerous Structures*

Interpretation of Part VII.

52. In this Part –

“dangerous structure” means any building, wall or other structure, and

anything affixed to or projecting from any building, wall or other structure, that is certified by a Building Surveyor to be in a condition, or being used in a manner, that constitutes –

- (a) a danger to persons or property; or
- (b) a nuisance;

“owner”, in relation to a dangerous structure, means any person who at the time when a notice is given under section 55(b) is the owner of the premises on which the dangerous structure is situated.

Authority to cause survey of dangerous structure.

53. – (1) Where, by notification to it or otherwise, the Local Building Authority becomes aware that any structure is a dangerous structure or is likely become a dangerous structure, the Local Building Authority shall, subject to subsection (2) , require the Building Surveyor to survey the structure.

(2) The Building Surveyor shall notify the Local Building Authority, as soon as possible, upon becoming aware of any structure that is a dangerous structure or is likely to become a dangerous structure.

Surveyor’s certificate.

54. Upon the completion of the survey under section 53 the Building Surveyor shall submit to the Local Building Authority a certificate stating his opinion as to the condition of the structure surveyed.

Proceedings after certificate of dangerous structure.

55. If the certificate under section 54 is to the effect that the structure is not a dangerous structure and is not likely to so become, no further proceedings shall be had in respect of that structure; but if it is to the effect that the structure is a dangerous structure or is likely to so become, the Local Building Authority –

- (a) shall cause the dangerous structure to be shored up or otherwise stabilized, and a proper board or fence to be put up for the protection of members of the public; and
- (b) shall cause notice in writing to be served to the owner or occupier of

the dangerous structure requiring him to take down, further stabilize or repair the same, as the case requires, within such time as may be specified in the notice.

Authority to act where owner fails to comply with notice.

56. – (1) Where the owner or occupier of the dangerous structure to whom notice under section 55(b) is served, fails to comply with the requirements of the notice within the time specified in the notice, the Local Building Authority may act in accordance with subsection (2).

(2) The Local Building Authority may enter the premises where the dangerous structure is situated and cause all or so much of the dangerous structure to be taken down, repaired, or otherwise stabilized in such manner as the Authority considers to be appropriate, and the Local Building Authority shall be entitled to recover the expenses of doing so in accordance with section 57 or 58.

Recovery of expenses by action.

57. The Local Building Authority may recover the expenses referred to in section 56 (2) as a simple contract debt (without limit of amount) in the Resident Magistrate's Court of the parish in which the dangerous structure is or was situate, from the owner of the premises or any other person who may be so liable.

Power of sale to recover expenses.

58. – (1) If a notice in writing by the Local Building Authority demanding the payment of the expenses referred to in section 56(2) is served on the owner of the premises or any other person who may be liable for the payment of the expenses and the payment is not made within thirty days after the date of service of the notice, the Local Building Authority may act in accordance with subsection (3).

(2) If a notice under subsection (1) has not been served because the whereabouts of the owner of the premises or other person are unknown to the Local Building Authority, the Local Building Authority may act in accordance with subsection (3).

(3) In the circumstances referred to in subsections (1) and (2), the Local Building Authority may, after giving three months notice of its intention to do so in accordance with subsection (4), sell the premises (or where it is a temporary structure) the structure referred to in the notice.

(4) Notice may be given under subsection (3), by –

- (a) posting the notice in a conspicuous place on the premises on which the dangerous structure is or was situated; and
- (b) publishing the notice on at least two occasions in a daily newspaper in nationwide circulation in Jamaica.

(5) In exercising the power of sale pursuant to the notice under subsection (3), the Local Building Authority shall –

- (a) owe a like duty of care to that of a mortgagee to the owner of the premises or the structure being sold; and
- (b) rank for purposes of priority as against any mortgagee or other encumbrancer of the premises, as if the Local Building Authority were selling pursuant to a power of sale under a mortgage that was registered on the title to the premises on the date that the notice was served.

(6) The Local Building Authority shall apply the proceeds of a sale under subsection (3) in the following order -

- (a) first, in payment of taxes and duties, registration or recording fees, if any, and reasonable costs incurred in connection with the sale;
- (b) second, in payment of any amounts due to third parties having priority over the claim of the Local Building Authority in accordance with subsection (5)(b); and
- (c) third, in reduction or, if sufficient, in satisfaction of the amount due to the Local Building Authority in respect of the expenses referred to in section 58(2).

(7) The Local Building Authority shall pay over the surplus to the owner of the premises or, as the case may be, of the structure referred to in the notice under subsection (3) and, pending the payment of the surplus, the Local Building Authority shall hold the supply, if any, in an interest bearing account for the benefit of the owner of the premises.

Power of court to order removal of occupant from dangerous structure.

59. Where a structure has been certified as a dangerous structure by the Local Building Authority, the Resident Magistrate's Court for the parish in which the structure is situate, if having regard to the certificate, is satisfied that the structure is dangerous, may –

- (a) upon an application by the Building Surveyor; or
- (b) on its own motion,

order that any occupant of the structure be removed from the structure forthwith by a Constable.

PART VIII. Party Structures

Regulations for party structures and party rights.

60. The Minister may make regulations in relation to party structures and the rights of building owners of party structures.

PART IX. Water Harvesting

Regulations for water harvesting.

61. The Minister may make regulations for water harvesting, including requiring provision to be made in buildings and building work, or any category of buildings or building work, for the storage of rainwater runoff.

PART X. Appeals

Establishment of Building Appeal Tribunal.

62. – (1) There is established for the purposes of this Act a tribunal to be known as the Building Appeal Tribunal.

Third Schedule.

(2) The provisions of the Third Schedule shall have effect as to the constitution and procedures of the Appeal Tribunal.

Jurisdiction of Tribunal.

63. – (1) There shall be a right of appeal to the Appeal Tribunal against a decision made by the Local Building Authority, in relation to –

- (a) a determination that any type or scope of building work does not fall

within section 4(3);

- (b) the refusal of an application for a permit, certificate, notice, order or other authorization under this Act;
- (c) the suspension or revocation of a permit, certificate, notice, order or other authorization under this Act;
- (d) a certificate of a Building Surveyor as to the condition of a structure that is or appears to be likely to become a dangerous structure.

(2) An appeal under this section –

- (a) may be made by any person appearing to the Appeal Tribunal to having a sufficient interest in the matter that is the subject of the appeal;
- (b) shall be lodged within thirty days of the relevant decision of the Local Building Authority being notified to that person or such period as the Appeal Tribunal may in its discretion allow; and
- (c) shall be accompanied by such fees as may be prescribed by the Minister by order published in the *Gazette*.

(3) Subject to subsection (4), the Appeal Tribunal shall, consequent on the lodging of an appeal under this section –

- (a) within twenty-one days the date of lodging, receive, hear and examine the evidence and submissions relating to the appeal;
- (b) within thirty days of the date of lodging, issue a written decision; and
- (c) within sixty days of the date of lodging, issue written reasons for the decision,

(4) The Appeal Tribunal may extend the periods specified in subsection (3) to such longer period in each case, as extenuating circumstances may require.

(5) Except where otherwise provided in this Act, the lodging of an appeal shall not operate as a stay of the decision under appeal.

(6) The Appeal Tribunal may, where it is satisfied that the exigencies of the situation (including any relevant public interest considerations) so require, grant a stay of a decision under appeal; and the stay of a decision under appeal shall, unless varied or rescinded by the Appeal Tribunal, continue until the appeal is finally determined.

(7) Every decision of the Appeal Tribunal shall be final in relation to findings of fact.

Conduct of appeal.

64. – (1) The Appeal Tribunal may, upon hearing an appeal against a decision in respect of which the appeal is brought –

- (a) dismiss the appeal and affirm the decision;
- (b) allow the appeal and set aside the decision;
- (c) set aside the decision and substitute therefor such other decision as the Appeal Tribunal may consider appropriate;
- (d) allow the appeal and direct that the proceedings in respect of which the decision was made, be conducted afresh either by the person who made that decision or such other person as the Appeal Tribunal may decide; or
- (e) make such order as to costs as it deems necessary.

(2) Before determining an appeal, the Appeal Tribunal shall give the appellant and the Local Building Authority or, as the case may be, other person in the administration of this Act, either of whom may be represented by an attorney-at-law or any other person, the opportunity to be heard by the Appeal Tribunal, the Appeal Tribunal may also elect to hear from any other person who it considers to have sufficient interest in the outcome of the appeal.

Part XI. Regulation of Building Practitioners

Establishment of Building Practitioners Board.

65. – (1) For the purposes of this Act, there is established a body to be called the Building Practitioners Board (in this Part called the “Board”).

(2) The provisions of the Fourth Schedule shall have effect

**Fourth
Schedule.**

with respect to the constitution and procedures of the Board and otherwise in relation thereto.

**Functions of
the Board.**

66. – (1) The functions of the Board shall be to –

- (a) define and establish categories of practice of building practitioners and determine, subject to subsection (3), the scope and nature of building work that each category of practice of building practitioners shall be licensed to perform;
- (b) determine qualifications, requirements and other criteria for the licensing of building practitioners;
- (c) license building practitioners to perform the functions they are authorized to do under this Act;
- (d) establish guidelines regarding licensing systems for building practitioners;
- (e) review and monitor the conduct of building practitioners; and
- (f) carry out any other functions conferred upon it by this Act or regulations made under this Act.

(2) The Building Practitioners Board shall have power –

- (a) to appoint examiners to conduct such examinations in respect of persons applying for licences as building practitioners;
- (b) to prescribe the procedure to be followed in respect of disciplinary proceedings against building practitioners in relation to professional conduct; and
- (c) to do all such things as may appear to it to be necessary or desirable for carrying out its functions under this Act.

(3) The Minister may, by order, after consultation with the Building Advisory Council and the Building Practitioners Board, prescribe the upper limit on building work that may be undertaken by building practitioners or

any category of practice of building practitioners.

**Registrar of
Licensed
Building
Practitioners.**

67. The Minister shall designate, by general notice in the *Gazette*, a person to be the Registrar of Building Practitioners who shall also be the secretary of the Building Practitioner Board.

**Register of
Licensed
Building
Practitioners.**

68. – (1) The Registrar shall keep and maintain up-to-date a register, to be known as the Register of Building Practitioners, containing the names, addresses, and such other particulars as may be prescribed, of each person who is registered as a building practitioner pursuant to this Act.

(2) The Register of Building Practitioners may have different parts for different categories of practice of building practitioners as determined by the Board.

(3) The Register of Building Practitioners shall be made available for inspection, at all reasonable times, by any member of the public.

(4) The Registrar shall make available to each Local Building Authority a current listing of all building practitioners by category of practice.

(5) For the purposes of this Act, a person is registered as a building practitioner if his name appears in the Register of Building Practitioners.

**Corrections
of registers.**

69. – (1) It shall be the duty of the Registrar of Building Practitioners –

- (a) to recommend to the Board the removal of any entry from the Register;
- (b) to restore to the Register any entry which the Board under subsection (3) directs the Registrar to restore;
- (c) to correct in accordance with the Board's directions, any entry in the Register which the Board directs the Registrar to correct as being in the opinion of the Board an entry which was incorrectly made; and
- (d) to make, from time to time, any necessary alterations in any of the particulars mentioned in section 68(1).

(2) If the Registrar –

- (a) sends by post to any person registered under this Act, a registered letter addressed to him at his address appearing in the Register, enquiring whether he has ceased to practice as a building practitioner or has changed his address and receives no reply to that letter within three months from the date of posting it; and
- (b) upon the expiration of that period sends in like manner to that person a similar letter and receives no reply to that letter within three months from the date of posting it,

the Board may direct the Registrar to remove from the Register the name of that person.

(3) The Board may, at any time, direct the Registrar to restore to the Register any name removed from the Register under subsection (2).

(4) Where the Board takes any action under subsection (1), it shall as soon as practicable, by notice in writing, inform the person concerned.

(5) A building practitioner shall, as soon as practicable, inform the Board by notice in writing of -

- (a) any errors in the Register of which he is aware as it relates to his registration; and
- (b) any change in the information entered in the Register as it relates to him.

**Application
for licensing as
building
practitioner.**

70. – (1) Every person seeking to be licensed as a building practitioner shall submit an application for licensing as such in the prescribed form signed by the applicant and delivered to the Local Building Authority for the area where the building practitioner resides, together with such supporting documents as the form may require.

(2) The Local Building Authority shall forthwith transmit the application to the Board for its determination.

(3) The Board may require such evidence of identity, such verification of any matter alleged by the applicant, or such further information relating to the application, as it thinks requisite.

(4) Every application under this section shall be accompanied by the prescribed fee.

Licensing of building practitioner.

71. – (1) For the purposes of licensing under this Part, the Board may require an applicant under section 70 to submit to such examination (whether oral or written) relating to his competence as a building practitioner, as the Board thinks necessary.

(2) If the Board is satisfied as to the eligibility of the applicant to be licensed under this Part in the category in which he seeks to be licensed, having regard to such criteria as may be prescribed, the Board shall license the applicant and shall notify him, in writing, accordingly.

(3) If the Board is not satisfied as to the eligibility of the applicant to be licensed under this Part in the category in which the applicant seeks to be licensed, the Board shall –

- (a) refuse to license the applicant and notify him in writing accordingly;
- and
- (b) inform the applicant of the right of appeal conferred by section 63.

(4) Every person licensed as a building practitioner under this Part shall be entitled to carry out building work in the category in which he is licensed in Jamaica.

(5) No fees in respect of any work falling within a category for which a licence is required under this Part, shall be recoverable in any legal proceedings unless the work has been conducted by a person duly licensed to do so.

Temporary licence.

72. – (1) Where the Board is satisfied, upon the application of any person,

that the person –

- (a) is not ordinarily resident in Jamaica;
- (b) is or will be temporarily visiting Jamaica for the purpose of practising the vocation of building at an institution or place in Jamaica in the capacity of a teacher or a research student or as the holder of a fellowship or other study programme or under a foreign assistance programme or in such other circumstances as the Board may approve; and
- (c) possesses sufficient knowledge and experience for the efficient practice of building in the category in which he is licensed in Jamaica,

the Board may, on receipt of the prescribed fee, grant temporary registration to that person.

(2) A temporary licence shall entitle the holder to practise the vocation of building in such institution or place or in such circumstances and for such period (not exceeding in any instance six months) and subject to such terms and conditions as may be specified in the licence at the direction of the Board, however, a person shall not be granted a temporary licence for more than three months in any consecutive four year period.

(3) The names, addresses, qualifications and such other particulars as may be prescribed of all persons to whom temporary licences are issued under this section shall be entered in a separate part of the Register.

(4) The Board may, from time to time, in its discretion, extend by not more than three months, the period of or vary the terms and conditions specified in any temporary licence.

(5) The Board shall not cancel a temporary licence, except where the Board is satisfied that the cancellation is warranted in the circumstances, and has afforded the licensees an opportunity to make representation as to why the licence should not be cancelled.

(6) During the term of any temporary licence or any extension thereof, the holder shall, unless the licence has been cancelled, be deemed for the purposes of this Act to be a building practitioner.

Entitlement to recover fees, etc.

73. - (1) No person, unless he is the holder of the licence issued under this Part in relation to the category of work in which the services fall, shall be entitled to recover in any legal proceedings any fee, charge, gratuity, remuneration or other reward for services rendered or offered, where a licence under this Part is required in order to lawfully render those services.

(2) A person whose licence is cancelled pursuant to section 74(1) (a) shall, for the purposes of subsection (1), be deemed not to be the holder of a licence.

Improper licensing.

74. - (1) If any person who is licensed as a building practitioner has, in the opinion of the Board, improperly obtained the licence, the Board shall –

- (a) where the licence was obtained on the basis of any statement, information or document supplied by that person which he knew or ought to have known at the time to be false, cancel the licence;
- (b) where the licence was obtained on any wrongful basis that would have rendered the licensee ineligible to be granted the licence, other than a basis specified in paragraph (a), by notice in writing, require the licensee to submit, within a period of three months of being so required or such longer period as the Board may permit, a new application in accordance with the provisions of this Act and, if he fails to do so, to cancel the licence.

(2) The Board shall not cancel the licence except where –

- (a) the Board is satisfied that the cancellation is warranted in the circumstances; and
- (b) the Board has afforded the licensee an opportunity to make representation as to why the licence should not be cancelled.

(3) A licence holder who obtains a licence in the circumstances specified in subsection (1) commits an offence.

PART XII. Building Advisory Council

Establishment, constitution and proceeding of Building Advisory Council.

75. – (1) For the purposes of this Act, there is established a body to be called the Building Advisory Council.

(2) The Building Advisory Council shall consist of –

- (a) the Government Town Planner;
- (b) the nominee of the Minister responsible for construction, who shall be a public officer employed in a department for which the Minister is charged;
- (c) the nominee of the Minister responsible for public works, who shall be a public officer employed in a department for which the Minister is charged;
- (d) the nominee of the Minister responsible for local government who shall be a public officer employed in a department for which the Minister is charged;
- (e) a representative of the Jamaica Institute of Engineers nominated by the President of the Institute;
- (f) a representative of the Jamaica Institute of Architects nominated by the President of the Institute;
- (g) a representative of the Incorporated Master Builders Association of Jamaica nominated by the President of the Association;
- (h) such number, as the Minister thinks fit, of other persons who are knowledgeable and experienced in matters relating to buildings and building work, property development and the real estate market.

(3) Subject to the provisions of this Act, the Building Advisory Council may regulate its own proceedings.

Functions of Building Advisory

76. – (1) The functions of the Building Advisory Council shall be to advise

Council.

the Minister on –

- (a) matters of general policy relating to the building industry;
- (b) the administration of this Act and any regulations made under this Act;
- (c) the impact of this Act on any other enactment;
- (d) any matter referred to it by the Minister; and
- (e) any other functions conferred upon it under this Act or any other enactment.

(2) In the performance of its functions under subsection (1) the Building Advisory Council may –

- (a) recommend the initiation of general national policies, strategies, plans and programmes for consideration by the Minister –
 - (i) to ensure coordination of the regulation and supervision of the building, planning and subdivision of land;
 - (ii) to promote efficiency in the processing of applications relating to the activities referred to in subparagraph (i);
 - (iii) on all other matters related to the building industry;
- (b) recommend to the Minister the establishment of standing or *ad hoc* Advisory Committees to undertake specific tasks.

PART XIII. Restrictions, Offences and Penalties

Restriction on carrying out building work, etc.

77. – (1) Subject to the provision of this Act, with effect from such date as the Minister may specify, by order published in the *Gazette*, a person shall not, unless the person is a building practitioner or a building professional under this Act –

- (a) carry out building work;
- (b) take or use, in relation to himself, the designation “builder”, “building practitioner” or “contractor” either alone or in conjunction with any other words or initials, in such manner as to imply that he is

qualified to carry out building work;

- (c) take or use, in relation to himself, any designation, title, name, initials or description indicating or implying that he is qualified to carry out building work.

(2) A person implies that he is qualified to carry out building work if

-

- (a) by any verbal claim, sign, advertisement, letterhead, card or in any other way, he represents himself as a building practitioner or building professional; or
- (b) through the use of a title, implies that he is a building practitioner or building professional, or that he is licensed or otherwise authorized under this Act, or holds himself out as being able to perform or does carry out building work.

(3) For the purposes of this Act, a person who is not a building practitioner or a building professional, does not carry out building work by reason only that –

- (a) he does so in the course of his duties as an employee of a building practitioner or a building professional; or
- (b) being an employee of the Government who does not fall within such provisions for exemption as may be prescribed, he does so in the course of his duties as an employee of a building practitioner or a building professional.

(4) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation thereto in the

First Schedule. First Schedule.

Fixed penalty. 78. – (1) This section applies to the offences specified in sections 17(2), 31, 40 (a), 41 and 42 (3) and such other offences as may be prescribed.

(2) Where a Local Building Authority finds that a person has

committed an offence in relation to its area of jurisdiction and to which this section applies, the Local Building Authority may give that person the prescribed notice in writing offering the opportunity of the discharge of liability to conviction for that offence by payment to the Local Building Authority, within the period and in the manner specified in the notice, of the prescribed fixed penalty.

(3) A person shall not be liable to be convicted of any offence referred to in subsection (2) if the fixed penalty is paid in accordance with this section and any requirement in respect of which the offence was committed is complied with before the expiration of the period and in the manner specified in the notice referred to in subsection (2), which shall be a date not less than twenty-one days following the issue of the notice.

(4) Where any person pays the fixed penalty in accordance with subsection (3), such payment shall be complete satisfaction of any liability to conviction for the offence referred to in subsection (2).

(5) Payment of a fixed penalty under this section shall be made to the Local Building Authority, and the Local Building Authority may retain the amount paid as part of its funds.

(6) In any proceedings for an offence to which this section applies, a certificate that payment of the fixed penalty was or was not made to the Local Building Authority by the date specified in the certificate shall, if the certificate purports to be signed by the Local Building Authority, be sufficient evidence of the facts stated, unless the contrary is proved.

(7) A notice under subsection (2) shall –

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state the period during which, as stated in the notice referred to in

subsection (2), proceedings will not be taken for the offence, the amount of the fixed penalty, and the address of the Local Building Authority at which the fixed penalty may be paid; and

- (d) require the person, in the event that the fixed penalty is not paid within the period specified in the notice to attend the Resident Magistrate's Court in the parish in which the offence is alleged to have been committed, to answer the charge on a specified date, being a date not earlier than ten days after the expiration of the period specified in the notice.

(8) In any proceedings for an offence to which subsection (2) applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a penalty hereunder unless, in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of the notice or, as the case may be, to such a payment or non-payment.

(9) The Minister may make regulations providing for any matter incidental to the operation of this section, and in particular –

- (a) prescribing the form of notice under subsection (2); and
 (b) prescribing the duties of the Local Building Authority and the information, with regard to any payment made pursuant to a notice under this section, to be supplied to the Local Building Authority.

(10) The Minister may, by order subject to affirmative resolution, amend the Second Schedule and, without limitation to the generality of the foregoing, the power to amend includes power to specify offences under regulations made under this Act to which a fixed penalty may apply and the amount of the penalty.

**Second
Schedule.**

**Civil penalties
recoverable
without limit**

79. The fixed penalties specified in this Act may be recovered as a simple

as a civil debt in Resident Magistrate's Court.

contract debt (without limit of amount) in the Resident Magistrate's Court for the parish in which the relevant building, building work or land is situate.

Minister may amend monetary penalties and Schedules. First, Second and Third Schedule.

80. The Minister may, by order, subject to affirmative resolution –

- (a) vary or amend the monetary penalties specified in this Act; and
- (b) amend the First, Second and Third Schedules (other than the custodial penalties specified in the First Schedule).

PART XIV. *Miscellaneous*

Protection of building officials.

81. – (1) A building official shall not be personally liable for any act or default of the Local Building Authority to which he is employed, done or omitted to be done in good faith in the exercise of any power, or in the performance of any function, conferred or imposed on the Local Building Authority by or under this Act.

(2) Notwithstanding the provisions of subsection (1), where a building official is exempt from liability by reason only of those provisions of the Local Building Authority shall be liable to the extent that it would otherwise be, but for those provisions.

Regulations.

82. – (1) Subject to section 83, the Local Building Authority may make regulations generally for the effective administration and enforcement of this Act and, notwithstanding the generality of the foregoing, the regulations may make provision for –

- (a) the manner of service of any notice required under this Act;
- (b) the fees and charges to be paid in respect of any matter required for purposes of this Act, including –
 - (i) prescribing the circumstances under which fees or charges are to be paid;
 - (ii) prescribing the circumstances in which refunds are payable;
 - (iii) prescribing the manner, place and process for payment of

fees or charges;

- (c) the manner and forms of licensing of building practitioners;
- (d) the performance of the functions, the exercise of the powers and discharge of the duties of Local Building Authorities under this Act;
- (e) the classification of buildings and building work;
- (f) the maximum dimensions of any structure or wall for the purposes of section 4 (3);
- (g) the establishment of different categories of practice of building practitioners and specifying the services within each category;
- (h) the form, procedures for the issue of, duration and other conditions relating to building permits and licences;
- (i) the keeping of records;
- (j) the making of reports by licensees;
- (k) procedures for the renewal and revocation of licences;
- (l) the timelines within which different categories of applications will be processed, conditions for meeting such timelines and the recourse available to applicants if timelines are not met;
- (m) requirements regarding notice to the public concerning the intention to seek approval to erect or change the use of a building and for concerned persons to register their interests or objections and to be heard in respect of such objections;
- (n) enforcement and compliance measures;
- (o) regulating activities related to the building process, including –
 - (i) the establishment of site offices;
 - (ii) establishment of storage facilities;
 - (iii) hoarding;
 - (iv) the disposal of debris;
 - (v) encroachment on roads;

- (vi) damage to and restoration of roads and sidewalks;
- (vii) the hours during which building work shall take place;
- (p) prescribing –
 - (i) acceptable solutions or verification methods, or both, that must be used to comply with the National Building Code; and
 - (ii) the particular circumstances in which those acceptable solutions or verification methods, or both, shall be used.
- (q) building work or categories of building work that are exempted from the application of subsection (4).

Publication of regulations and Minister's overriding powers.

83. – (1) Regulations proposed to be made under section 82 shall be notified in writing to each Local building Authority by the Minister, and the Minister shall invite the Local Building Authorities to review and provide their comments on the regulations within sixty days.
- (2) If at the expiration of the sixty days the Minister has not received any comments from the Local Building Authorities, the Minister may proceed to make the regulations.
- (3) If at the expiration of the sixty days the Minister has received comments from the Local Building Authorities, he shall consider those comments and may make modifications to the proposed regulations having regard thereto, if he is satisfied that it is in the interest of national policy to make such modifications, and he may therefore proceed to promulgate the regulations.
- (4) The Minister may extend the period specified in subsection (1) if he is satisfied that it is necessary to do so in order to facilitate adequate consideration of, and consultations in relation to the proposed regulations by the Local Building Authorities.
- (5) A Local Building Authority may propose to the Minister the fees

and charges referred to in section 82 (1) (b) in so far as they apply to its area of jurisdiction, and the Minister shall adopt those proposals unless he considers them to be unreasonable, arbitrary or otherwise inconsistent with national policy, in which case, he may make such adjustments to the proposals as he considers necessary prior to any promulgation of those regulations.

(6) Where a Local Building Authority intends to make proposals to the Minister concerning the fees and charges referred to in subsection (5), the Local Building Authority shall inform the public of the proposals by displaying a notice in a conspicuous place at the offices of the Council or by publishing such notice in a daily newspaper circulated in the parish, and afford the public an opportunity to make representations to the Local Building Authority on the proposals.

(7) Regulations made under section 82 shall be published in the *Gazette*.

Act binds Crown.

84. This Act binds the Crown.

Savings and transitional.

85. Any forms prescribed or other thing done or commenced under or by virtue of any provision that has been amended or repealed by this Act and which was in force or otherwise subsisting immediately before the coming into operation of this Act –

- (a) shall be deemed to have been done or commenced, as the case may be, under this Act; and
- (b) may, with such modifications as may be necessary, be continued under this Act.

Amendment of other enactments.

86. - (1) *The Jamaica National Heritage Trust Act* is amended in –

- (a) section 16(2), by deleting the words “twenty thousand” and substituting therefor the words “two million”;
- (b) section 17, by deleting the words “forty thousand” and substituting

therefor the words “two million”; and

- (c) section 21(6), by deleting all the words appearing after the words “not exceeding” and substituting therefor the words “one million dollars”.

(2) The *Town and Country Planning Act* is amended in section 32 by -

- (a) deleting the fullstop appearing at the end of paragraph (b) and substituting therefor a semi-colon; and
- (b) inserting next after paragraph (b) the following as paragraph (c) -
- “(c) change the use or the class of use of any building or land without the prior written approval of the local planning authority, whether or not a development order has been made,”.

Repeal.

87. The *Kingston and St. Andrew Building Act* and the *Parish Councils Building Act* are repealed.

FIRST SCHEDULE (Sections 17(2), 25(5), 31(4), 39, 44(7), 46(5), 77(4) and 80)

Schedule of Penalties

Provision of Act	Brief Description of Offence	Penalty
Section 17(2)	Carrying out any building work - (a) without a building permit in respect of the work; or (b) not in accordance with the building permit, this Act, the National Building Code or any other regulations made under this Act.	1. On summary conviction in a Resident Magistrate’s Court to a fine in an amount that is not less than 3% nor more than 10% of the estimated construction cost of the building work, but in any event not exceeding five million dollars, and in default of payment to imprisonment for a term not exceeding two years. 2. On conviction on indictment in a Circuit Court to a fine in an amount that is not less than 3% nor more than 10% of the estimated construction cost of the building work and in default of payment to imprisonment for a

term not exceeding two years.

3. For the above purposes, the “estimated construction cost” means the estimated construction cost that was used to calculate the fee paid to the Local Building Authority in respect of the grant of the building permit, or that would have been so used, had an application for a building permit been duly made and the permit granted, and in either case being the amount certified in writing by the Local Building Authority as the estimated construction cost.

Section 25(5)	Carrying out building work on, or in connection with any building that is a national monument or that is designated as protected national heritage under the <i>Jamaica National Heritage Trust Act</i> .	Fine not exceeding three million dollars or in default of payment to imprisonment for a term not exceeding one year.
Section 31(4)	Undertaking or allowing unauthorized change of use of building.	Fine not exceeding three million dollars or in default of payment to imprisonment for a term not exceeding one year.
Section 31(4)	Commencing or continuing building work without prescribed change of use permit.	Fine not exceeding three million dollars or in default of payment to imprisonment for a term not exceeding one year.
Section 39	Unreasonably refusing to admit building official or authorized person to inspect the premises and any building or building work.	Fine not exceeding five hundred thousand dollars or in default of payment to imprisonment for a term not exceeding six months.
Section 39	Obstructing or otherwise impairing building official or other authorized person from carrying out the inspection.	Fine not exceeding five hundred thousand dollars or in default of payment to imprisonment for a term not exceeding six months.
Section 44(7)	Failure to comply with stop notice.	1. On summary conviction in a Resident Magistrate’s Court to a fine in an amount that is not less than 3% nor more than 10% of the estimated construction cost of the building work, but in any

event not exceeding five million dollars, and in default of payment thereof to a imprisonment for a term not exceeding two years.

2. On conviction on indictment in a Circuit Court to a fine in an amount that is not less than 3% nor more than 10% of the estimated construction cost of the building work and in default of payment to imprisonment for a term not exceeding two years.

3. For the above purposes, the “estimated construction cost” means the estimated construction cost that was used to calculate the fee paid to the Local Building Authority in respect of the grant of the building permit, or that would have been so used, had an application for a building permit been duly made and the permit granted, and in either case being the amount certified in writing by the Local Building Authority as the estimated construction cost.

Section 46(5) Failure to comply with enforcement notice.

1. On summary conviction in a Resident Magistrate’s Court to a fine in an amount that is not less than 3% nor more than 10% of the estimated construction cost of the building work, but in any event not exceeding five million dollars, and in default of payment to imprisonment for a term not exceeding two years.

2. On conviction on indictment in a Circuit Court to a fine in an amount that is not less than 3% nor more than 10% of the estimated construction cost of the building work, and in default of payment to imprisonment for a term not exceeding two years.

3. For the above purposes, the “estimated construction cost” means the estimated construction cost that was used to calculate the fee paid to the Local Building Authority in respect of the grant of the building permit, or that would have been so used, had an application for a building permit been duly made and the permit granted, and in either case being the amount certified in writing by the Local Building Authority as the estimated construction cost.

74(3)	Improperly obtaining a licence.	Fine not exceeding five hundred thousand dollars or in default of payment to imprisonment for a term not exceeding six months.
Section 77(4)	Without being a registered building practitioner, carrying on the practice of building.	Fine not exceeding five hundred thousand dollars or in default of payment to imprisonment for a term not exceeding six months.
Section 77(4)	Without being a registered building practitioner, taking or using, in relation to self, the designation “builder” or “building practitioner” either alone or in conjunction with any other words or initials in such manner as to imply that person is qualified to carry on the practice of building in Jamaica.	Fine not exceeding five hundred thousand dollars or in default of payment to imprisonment for a term not exceeding six months.
Section 77(4)	Without being a registered building practitioner, taking or using, in relation to self, any designation, title, name, initials or description indicating or implying that person is entitled to carry on the practice of building in Jamaica.	Fine not exceeding five hundred thousand dollars or in default of payment to imprisonment for a term not exceeding six months.

SECOND SCHEDULE (Sections 17(2), 25(5), 31(4), 39, 44(7), 46(5), 77(4) and 80)

*Offences in respect of which liability
to a conviction may be discharged
by payment of a fixed penalty*

Nature of Offence	Section	Penalty
Carrying out unauthorized building work.	17(2)	\$300,000.00
Undertaking or allowing unauthorized change of use of building.	31(4)	\$300,000.00
Carrying out building work on, or in connection with any building that is a national monument or that is designated as protected national heritage under the <i>Jamaica National Heritage Trust Act</i> .	25(5)	\$300,000.00
Undertaking or allowing unauthorized change of use of building.	31(4)	\$300,000.00
Commencing or continuing building work without prescribed change of use permit.	31(4)	\$300,000.00
Unreasonably refusing to admit building official or authorized person to inspect the premises and any building or building work.	39	\$300,000.00
Obstructing or otherwise impairing building official or other authorized person from carrying out the inspection.	39	\$300,000.00
Failure to comply with stop notice.	44(7)	\$300,000.00
Failure to comply with enforcement notice.	46(5)	\$300,000.00

Without being a registered building practitioner, carrying on the practice of building.	77(4)	\$300,000.00
Without being a registered building practitioner, taking or using, in relation to self, the designation “builder” or “building practitioner” either alone or in conjunction with any other words or initials in such manner as to imply that person is qualified to carry on the practice of engineering in Jamaica.	77(4)	\$300,000.00
Without being a registered building practitioner, taking or using, in relation to self, any designation, title, name, initials or description indicating or implying that person is entitled to carry on the practice of building in Jamaica.	77(4)	\$300,000.00

THIRD SCHEDULE (Sections 62(2) and 80)

Constitution of the Appeal Tribunal

Constitution of Tribunal.

1. – (1) The Appeal Tribunal (hereinafter called the “Tribunal”) shall consist of a chairman and two other members.

(2) One of the other members of the Tribunal shall be an attorney-at-law and the other shall be a representative nominated by the Incorporated Master Builders Association and approved by the Minister.

Appointment and tenure of office of Members.

2. The chairman and other members of the Tribunal shall be appointed by the Minister and shall hold office for such period, not exceeding two years, as the Minister shall determine and shall be eligible for reappointment.

- Revocation of appointment.** 3. The Minister may, if he thinks it expedient so to do, at any time revoke the appointment of the chairman and other members of the Tribunal.
- Temporary appointments.** 4. – (1) In the case of the absence or inability to act of the chairman of the Tribunal, the Minister may appoint any person to act temporarily as chairman.
- (2) In the case of the absence or inability to act of any member of the Tribunal other than the chairman, the Minister may appoint any person to act temporarily in the place of such member.
- Resignation.** 5. – (1) Any member of the Tribunal, other than the chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Tribunal.
- (2) The chairman of the Tribunal may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.
- Filling of vacancies.** 6. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed; however, the appointment shall be made in the same manner and from the same category of persons, if any, as the appointment of the previous member.
- Publication of membership.** 7. The names of members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.
- Remuneration of members.** 8. There shall be paid to the chairman and other members of the Tribunal such remuneration, whether by way of honorarium, salary or fees, and such allowance as the Minister may determine.
- Voting.** 9. The decision of the Tribunal shall be by a majority of votes of the members present and voting, and in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.
- Rules of procedure.** 10. The Tribunal may after consultation with the Minister and subject to the provisions of this Act,

make rules governing its procedures.

**FOURTH SCHEDULE (Section
65(2))**

Building Practitioners Board

**Constitution
of the
Board.**

1. – (1) The Board shall consist of nine members of whom –

- (a) three members shall be members *ex officio*, namely, a representative of the University of Technology, Jamaica, the Bureau of Standards and the H.E.A.R.T. Trust, respectively; and
- (b) six members (hereinafter referred to as "appointed members") shall be appointed by the Minister as follows –
 - (i) a building practitioner, who shall be nominated by the Incorporated Master Builders Association;
 - (ii) an attorney-at-law;
 - (iii) an architect;
 - (iv) an engineer;
 - (v) a Secretary; and
 - (vi) one other person, not being a building practitioner.

(2) The appointment of each member of the Board shall be for a period not exceeding two years and any such member shall be eligible for reappointment.

Chairman.

2. – (1) The Board shall elect one of its members to be Chairman and the member so elected shall be eligible for reelection as Chairman from time to time.

(2) The Chairman shall, so long as he remains a member of the Board, hold office until his successor is elected.

(3) An election of Chairman, other than the first such election, shall be held at the first meeting of the Board held after the 1st day of January in each year.

(4) The Chairman of the Board shall preside at all meetings of the Board and if at any meeting of the Board the Chairman is absent or unable to act, the members present and constituting a quorum shall elect from among themselves a member to act as Chairman in respect of that meeting.

- Members.** 3. If any member of the Board is, for whatever reason, unable to perform his functions as a member of the Board for a period in excess of three months, the Minister may appoint any person to act in the place of such member provided that such appointment shall be made in such manner and from among such persons as would be required in the case of a substantive appointment.
- Resignations.** 4. – (1) Any member of the Board may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman and from the date specified therein or, if no date is specified, the date of receipt by the Minister of such instrument such member shall cease to be a member of the Board.
- (2) The Chairman may, at any time, resign his office as Chairman by instrument in writing addressed to the Minister and such resignation shall take effect from the date specified therein or, if no date is specified, the date of receipt by the Minister of such instrument.
- (3) The Minister, on receipt of the resignation of the Chairman as aforesaid shall, as soon as possible thereafter, notify the Registrar who shall convene a special meeting of the Board for the purpose of electing a new Chairman.
- Vacancy.** 5. If any vacancy occurs in the membership of the Board such vacancy shall be filled by the appointment of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.
- Publication of membership in Gazette.** 6. The names of all members of the Board as first constituted and every change in membership thereof shall be published in the *Gazette*.
- Seal.** 7. – (1) The seal of the Board shall be kept in the custody of the Chairman or any other duly authorized member, and shall be affixed to instruments pursuant to a Board resolution.
- (2) The seal of the Board shall be authenticated by the signature of the Chairman or any person performing the duties of Chairman and shall be officially and judicially noticed.
- (3) All documents, other than those required by law to be under seal, made by and all decisions of the Board may be signified under the hand of the Chairman or any other member authorized to act in that behalf or, with the approval of the

Board, by the secretary.

Meetings.

8. – (1) The Board shall meet at such time as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times and on such days as the Board may determine.

(2) The Chairman may, at any time, call a special meeting of the Board and shall call a special meeting within seven days of the receipt of a written request for that purpose addressed to him by any three members of the Board.

(3) The quorum of the Board shall be determined by the Board but shall be not less than one-half of the membership.

(4) The decisions of the Board shall be by a majority of votes and, in addition to an original vote, the person presiding at any meeting shall have a casting vote in any case in which the voting is equal.

(5) Minutes in proper form of each meeting of the Board shall be kept by the secretary.

(6) The validity of the proceedings of the Board shall not be affected by virtue of any vacancy among the members thereof or any defect in the appointment of a member thereof.

(7) Subject to the provisions of this Schedule or any regulations, the Board may regulate its own proceedings.

Committees.

9. – (1) The Board may appoint such committees as it may think fit and may delegate to any such committee the power and authority to carry out on its behalf such duties as the Board may determine, so, however, that no such committee shall have the power to make rules.

(2) The constitution of each committee appointed as aforesaid shall be determined by the Board.

Liability of Board.

10. – (1) No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the Course of the operations of the Board.

(2) Where any member of the Board is exempt from liability by reason only of the provisions of this paragraph, the Local Building Authority shall be liable to the extent that it would be if the building official were an employee of Local Building Authority.

- Remuneration.** 11. There shall be paid from the funds of the Board to the Chairman and other members of the Board such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.
- Office of Chairman or member not public office.** 12. The office of Chairman or member of the Board shall not be a public office for the purpose of Chapter V of the Constitution of Jamaica.
- Auditors.** 13. The Board shall appoint auditors who shall audit the accounts of the Board and submit an annual report to the Chairman who shall forthwith transmit the report to the Minister.

MEMORANDUM OF OBJECTS AND REASONS

The existing legislative framework for the regulation of building activities in the Island is outdated and impedes effective regulation and development of a modern building sector. The development of a modern legislative framework is particularly urgent and relevant in view of the need to reduce the vulnerability of the built environment and ensure public safety and welfare, minimize damage caused by natural or man-made hazards, prevent squatter settlements and promote sustainable development.

The Government has, therefore, decided to establish a building control framework for Jamaica, comprising a new National Building Code and a new Building Act; and repeal the *Kingston and St. Andrew Building Act* and the *Parish Councils Building Act*.

Consequently, the Bill addresses *inter alia* the following matters—

- (a) the consolidation of relevant provisions of the existing *Kingston and St. Andrew Building Act*; the *Parish Councils Act* into a single Building Act, thereby eliminating the anomalies that exist at present;
- (b) the elimination of provisions relating to building standards

from the body of the Bill and the prescribing of the standards in a separate National Building Code;

- (c) provision that all buildings or physical structures to be erected or demolished in Jamaica, and all related matters, fall under the new law and are to be undertaken with the approval and supervision of the relevant Local Building Authority;
- (d) the giving of legal recognition to the National Building Code as a separate standard for ease of updating or amendment of existing building-related documents;
- (e) the requirement of a building permit for the carrying on of building work;
- (f) the recognition of the relevant provisions of the *Jamaica National Heritage Trust Act* which require that the Trust be consulted before structures of historical value are demolished, and that any such demolition be undertaken by qualified personnel and be done to specific standards;
- (g) the expectation that the building code regime will significantly reduce or eliminate the current practice of granting exemptions;
- (h) the streamlining of the applications system to include the elimination of unnecessary referrals and to expedite responses, as well as introducing a special express services;
- (i) the introduction of provisions to ensure the rights of persons with disabilities regarding accessibility, suitability, safety and user-friendliness of all buildings to which these persons may be invited or have a right of access;
- (j) the need to address the current deficiencies in respect of

providing proper sanitary facilities in public and private buildings to which the public has access;

- (k) the requirements for building professionals to submit plans or designs and ensure that buildings are constructed in compliance with the approved National Building Code,

and the new Act will also be applicable to entities of the State.

This Bill further provides for the legal adoption of International Building Codes, as modified, to be the National Building Code for Jamaica. It will also confirm the Jamaica Bureau of Standards as the Standards Authority with power to specify the version of the International Codes that are to be used as the National Building Code and to promulgate application documents in respect of those Codes. The Bureau of Standards, as a Standards Authority, will also be empowered to recognize building standards and approve, list or certify building products, construction methods, building components and systems.

Noel Arscott

**Minister of Local Government
and Community Development**