

ABILL

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.

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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*

1. This Act may be cited as the Building Act, 2018, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment.

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

“amenities” includes any quality or condition of a place or area that 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 under section 18(1);

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

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

“Board” means the Building Practitioners Board established by section 65(1);

“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 Chief Engineering Officer or any other person who is employed or designated by a Local Authority under section 9(1);

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

“building permit” means—

- (a) a building permit issued under section 24(1);
- (b) a building approval that was issued before the appointed day; and
- (c) a building permit that is preserved under section 25;

“building practitioner” means a person, other than a building professional or a building official, who is licensed under section 71;

“building professional” means a person, other than a building official or a building practitioner, 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;

“building use”, 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, modification, demolition, or removal of a building, and all activities relating thereto, such as—

- (a) any increase in the height, depth 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 or fire safety;
- (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;

“Bureau of Standards” means the Bureau of Standards established by section 3 of the *Standards Act*;

“certificate of stage of construction compliance” means a certificate issued by the Local Authority under section 34;

“certificate of occupancy” means a certificate issued by the Local Authority under section 34;

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

- (a) the use of the building becoming inconsistent with the use or class of the National Building Code for

which the building permit for that building was issued; or

- (b) a risk of the structural integrity or other engineering aspects of the building becoming inadequate to accommodate the change;

“Chief Engineering Officer” means the senior officer of the Local Authority who is responsible for engineering matters;

“Chief Executive Officer” means the officer appointed under section 23 of the *Local Governance Act* to carry out the functions set out in section 24 of that 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 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 or adapted, from time to time, by the Bureau of Standards under section 16;

“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, as amended from time to time;

“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 the *Maritime Areas Act*;

“Local Authority” means a Local Authority as defined in section 2 of the *Local Governance Act* and designated under section 7;

“National Building Code” means the National Building Code of Jamaica prescribed by section 14(4) or as amended or replaced in accordance with section 14(6), (7), (8) and (9);

“Ordinarily resident in Jamaica”, in relation to an application by an individual, means legally residing in Jamaica for at least six months in a calendar year immediately preceding the date of the application;

“owner”, in relation to any land includes—

- (a) the registered or recorded 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 (2), a person who the Local Authority is satisfied is the caregiver within the meaning of section 2 of the *Disabilities Act*, an agent or a trustee of that person;
- (d) the legal personal representative of any of the persons described in paragraph (a) or (b) if any of the 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; and
- (f) a person who meets such criteria as the Minister responsible for land may, by order published in the *Gazette*, prescribe;

“permit holder” means a person who is issued a building permit under section 24;

“public building” means any building to which members of the public have access and every place of public resort;

“Register of Building Permits” means the register kept and maintained under section 8(i);

“small building code” means the International Building Code as modified by the Jamaica Standard, Jamaica Application Document for the International Residential Code Document or as amended or replaced in accordance with section 14(6), (7), (8) and (9);

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

“stage of construction” means a stage of the building work as specified in the building permit;

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

- (a) a booth, tent, platform, carousel or other temporary enclosure, whether or not a part thereof is permanent;
- (b) a mobile home; or
- (c) a chattel house.

(2) 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.

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 with building work and change of building use, so as to protect public safety and public health and other relevant public interest considerations;
- (b) give effect to the National Building Code;

Objects of
Act.

- (c) facilitate—
 - (i) the adoption, adaptation 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) regulate the standard of training and certification, and provide for the licensing of building practitioners and the establishments of a procedure for the recognition of building professionals;
- (i) distinguish the categories and scope of building work that may be undertaken by building professionals or building practitioners;
- (j) establish a fair and efficient system for the resolution of building disputes; and
- (k) establish a building appeal process.

Application
of Act
generally.

4.—(1) Subject to subsection (2) and section 5, this Act applies to building work and the change of building use in Jamaica, whether the building was 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 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 National Building Code; and
- (c) a wall that does not—
 - (i) form part of a building;
 - (ii) exceed the dimensions prescribed by the Local Authority;
 - (iii) have a horizontally acting force; or
 - (iv) breach the National Building Code.

(3) For the purposes of subsection (2)(a), a Local 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, the National Building Code or any other regulations made under this Act.

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

- (a) this Act does not apply to the carrying out of 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 before the appointed day and as if this Act had not come into operation.

Application
of Act to
pre-existing
building
work.

(2) The Chief Engineering Officer and the owner of the land 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 Local Authority determines that it is in the public interest that particular building work be carried out in accordance

with this Act, the National Building Code and any other 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.

(4) In determining what constitutes “the public interest”, the Local Authority shall have regard to the objects of this Act.

Preservation
of other
laws, etc.

6.—(1) Subject to subsections (2) and (4), 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) *Disabilities Act;*
- (d) *Endangered Species (Protection, Conservation and Regulation of Trade) Act;*
- (e) *Fire Brigade Act;*
- (f) *Housing Act;*
- (g) *Jamaica National Heritage Trust Act;*
- (h) *Land Surveyors Act;*
- (i) *Local Improvements Act;*
- (j) *Local Improvements (Community Amenities) Act;*
- (k) *National Housing Trust Act;*
- (l) *National Solid Waste Management Act;*
- (m) *Natural Resources Conservation Authority Act;*
- (n) *Professional Engineer Registration Act;*
- (o) *Real Estate (Dealers and Developers) Act;*
- (p) *Registration (Strata Titles) Act;*
- (q) *Standards Act;*
- (r) *Town and Country Planning Act;*
- (s) *Urban Development Corporation Act; or*
- (t) *Wildlife Protection Act.*

(2) Where 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 Authority), any provision of any other enactment which also regulates that matter—

- (a) if not inconsistent with this Act, shall be complied with in addition to this Act, the National Building Code or any other regulations made under this Act; or
- (b) if inconsistent with this Act, the National Building Code or any other regulations made under this Act—
 - (i) so far as is practicable, shall be read so as to resolve the inconsistency; and
 - (ii) subject to sub-paragraph (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 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 of, or inconsistent with, 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 Authority

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

Designation
and
jurisdiction
of Local
Authority.

Functions of
Local
Authority.

- (2) The bodies referred to in subsection (1) are—
- (a) as regards any parish, the Municipal Corporation for that parish; and
 - (b) a City Municipality.
8. The functions of each Local Authority shall be to—
- (a) in its capacity as the local building authority, administer and enforce this Act, the National Building Code and any other regulations made under this Act, within the area of jurisdiction of the Local 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 term or condition that may be specified;
 - (c) ensure that all building work within its area of jurisdiction is carried out in accordance with 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 any other pertinent actions taken in regard to the breaches; and
 - (v) any other pertinent action taken under its functions under this Act, the National Building Code or any other regulations made 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 works;
- (f) prescribe fees for services provided by or on behalf of the Local Authority;
- (g) ensure that designs submitted in respect of building applications are in compliance with this Act, the National Building Code and any other regulations made under this Act 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 laws and guidelines;
- (i) keep and maintain a register to be known as the Register of Building Permits containing particulars of all building permits issued under the Act; and
- (j) perform such other functions as are necessary or expedient for, or in connection with, the proper performance of its functions under this Act, the National Building Code or any other regulations made under this Act.

Building Officials

9.—(1) Subject to subsection (2), a Local 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 officials as the Authority considers 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.

Appointment
and
designation
of building
officials.

(2) No salary in excess of the prescribed rate shall be assigned to any officer 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.

Chief Engineering Officer

Functions of
Chief
Engineering
Officer.

10.—(1) For the purposes of this Act, a Chief Engineering Officer shall—

- (a) have superintendence over all buildings and building work within the area of jurisdiction of the Local Authority in which he holds office;
- (b) ensure that building work is undertaken in accordance with this Act, the National Building Code and any other regulations made under this Act;
- (c) unless otherwise directed by the Local Authority, exercise supervision over other officers and employees, authorized persons, building professionals and independent contractors, for the proper performance of the functions of the Local Authority;
- (d) take appropriate action to—
 - (i) identify any breach of this Act, the National Building Code and any other regulations made under this Act;
 - (ii) have the breach duly remedied in a timely manner; and
 - (iii) ensure that relevant sanctions for the breach are applied;
- (e) take appropriate action to safeguard and protect the public or 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 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 compliance certificates of the stage of construction are issued in a timely manner and in accordance with such guidelines as are established by the Local 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 Chief Executive Officer, such reports as may be required by this Act or requested by the Local Authority, from time to time; and
- (i) advise the Local Authority and the Chief Executive Officer on technical matters that are relevant to the proper administration and enforcement of this Act, the National Building Code or any other regulations made under this Act.

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

(3) Building work that has been discontinued under subsection (2) shall not be resumed, except in accordance with the certification of the Chief Engineering Officer that, upon conducting an inspection as referred to in that subsection, the Chief Engineering Officer 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.

11.—(1) The Chief Engineering Officer shall, in a timely manner within each month and in accordance with such guidelines as are established by the Local Authority, submit a return in the prescribed form and manner to the Local Authority through the Chief Executive Officer containing, in relation to the previous month, the information specified in subsection (2).

Chief
Engineering
Officer to
submit
returns.

(2) The following information shall be submitted under subsection (1)—

- (a) the description and locality of every building erected, repaired, extended, demolished or modified, or on which 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 Local Authority in respect of every building work during the previous month;
- (d) all notices issued, and complaints received, by the Chief Engineering Officer in the administration of this Act, the National Building Code and any other regulation made under this Act and action taken in respect of the notices issued and complaints received;
- (e) any enforcement action taken by him in the previous month;
- (f) all matters brought by him before any court; and
- (g) any special service performed by him and any fee imposed in respect of the special service.

Return to indicate completion of building work.

12. A return under section 11 shall be signed by the Chief Engineering Officer, and certified by him that to the best of his knowledge and belief, all building work to which the return relates has been completed in all respects in accordance with this Act, the National Building Code and any other regulations made under this Act and that they have been duly inspected by him and that information submitted under section 11(1) is true.

Conflict of interest.

13.—(1) The Chief Engineering Officer or any other building official appointed by the Local Authority shall not—

- (a) engage in any activity that represents a conflict of interest with his employment to the Local Authority;
- (b) engage in private work or carry out any function in respect of—
 - (i) the design and submission of an application for a building permit; or

(ii) the construction and supervision of building work.

(2) A Chief Engineering Officer or other building official who contravenes subsection (1) is liable to disciplinary action which shall be administered in accordance with the *Local Government (Unified Service and Employment) Act*.

(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.

PART III—*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”.

National
Building
Code.

(2) The National Building Code shall specify—

- (a) minimum standards and controls for building work and building use, including standards and controls which require that—
 - (i) alterations to existing buildings, as far as is reasonably practicable, make the land accessible to and usable by persons with disabilities;
 - (ii) new premises are to be readily accessible to, and usable by, persons with disabilities and built in accordance with the National Building Code; and
 - (iii) sanitary conveniences and appropriate space and facilities to address personal hygiene are provided in public buildings and are readily accessible to and usable by persons with disabilities, in particular, and the public, in general;
- (b) 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) the builder;
- (b) the owner or occupier of the land where building work has been carried out, is being carried out or is to be carried out;
- (c) a 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 building work on the land; and
- (d) a building practitioner or building professional who prepares plans and specifications for the building work.

(4) With effect from the appointed day, the documents specified in subsection (5) are prescribed as the National Building Code of Jamaica.

(5) The documents are the International Building Code as modified by the following documents each of which is declared by the Bureau of Standards to be a standard specification pursuant to section 7 of the Standards Act and published February 2009, that is to say—

- (a) Jamaica Standard, Jamaica Application Document for the International Existing Building Code;
- (b) Jamaica Standard, Jamaica Application Document for the International Building Code;
- (c) Jamaica Standard, Jamaica Application Document for the International Residential Code Document;
- (d) Jamaica Standard, Jamaica Application Document for the International Fire Code;

- (e) Jamaica Standard, Jamaica Application Document for the International Energy Conservation Code;
- (f) Jamaica Standard, Jamaica Application Document for the International Plumbing Code;
- (g) Jamaica Standard, Jamaica Application Document for the International Property Maintenance Code;
- (h) Jamaica Standard, Jamaica Application Document for the International Mechanical Code;
- (i) Jamaica Standard, Jamaica Application Document for the International Private Sewage Disposal Code;
- (j) Jamaica Standard, Jamaica Application Document for the International Fuel Gas Code;
- (k) Jamaica Standard, Jamaica Application Document for the International Code Council Electrical;
- (l) Administrative Provisions and National Electric Code.

(6) Where the Minister proposes to amend or replace the National Building Code, the Minister shall—

- (a) notify, in writing, each Local Authority and the Bureau of Standards;
- (b) invite each Local Authority and the Bureau of Standards to review the proposed amendment or the new draft National Building Code and provide its comments on the proposed amendment or the new draft National Building Code within sixty days; and
- (c) afford the public an opportunity to make comments and representations on the proposed amendment or the new draft National Building Code to the Minister within sixty days, including by—
 - (i) displaying a notice in a conspicuous place at the offices of every Local Authority; and
 - (ii) publishing a notice in a daily newspaper circulated in the Island; and

(d) arrange for such publicity as the Minister thinks appropriate in relation to the proposal.

(7) If at the expiration of the sixty days the Minister has received comments or representations, the Minister—

(a) shall consider the comments and representations and may make modifications to the proposed amendment or the new draft National Building Code having regard to the comments and representations; and

(b) may proceed to make the proposed amendment or the new draft National Building Code.

(8) If at the expiration of the sixty days the Minister has not received comments from each Local Authority, the Minister may proceed to make the proposed amendment or the new draft National Building Code.

(9) The Minister may extend the period specified in subsection (8) 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 amendment or the new draft National Building Code by the Local Authority, the Bureau of Standards or the public.

(10) The National Building Code and any amendment or replacement of the National Building Code, shall be published in the *Gazette*, however, a notice in the *Gazette* that the National Building Code has been made and of the place where copies of the National Building Code can be purchased or perused shall be sufficient compliance with the requirement.”.

Functions of
Bureau of
Standards in
relation to
building
work, etc.

15.—(1) The Bureau of Standards shall—

(a) comment on and make recommendations to the Minister in relation to the National Building Code;

(b) determine the extent to which the I-Codes shall apply to Jamaica;

(c) subject to section 16, make recommendation to the Jamaica National Agency for Accreditation or any other body responsible for accreditation standards with respect to building work, building material or products, construction

methods, design, building components and building systems connected with building work; and

- (d) perform such other functions as may be assigned to it by this Act.

(2) The Local Authority shall not refuse to approve building work or any stage of construction 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 building material or product, construction method, building component or building system connected with the building work is accredited by the Bureau of Standards or any other body responsible for accreditation and complies with that accreditation.

16. Where the Bureau of Standards determines under section 15(1)(b) that the I-Codes apply the Bureau of Standards may adopt or adapt the codes in the National Building Code.

Bureau of Standards may adopt or adapt I-Codes.

PART IV—*Building Permits*

17.—(1) A person shall not carry out building work unless—

- (a) a building permit in respect of the building 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 building work is carried out in accordance with the building permit, this Act, the National Building Code or of any other regulations made under this Act.

Requirement for building permit, etc.

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

First Schedule.

(3) In addition to any penalty that is imposed under section (1), the court may, under subsection (2), issue any order that the Local 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 of a building, so as to conform with the requirements of the building permit, this Act, the National Building Code and any other regulations 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 Local 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 Local Authority thinks necessary, the Local Authority may require an applicant 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 land where the applicant intends to carry out the building work, a notice of intention to carry out building work, which shall—

- (a) be in the prescribed form and manner; and
- (b) contain a statement that any interested person who is aggrieved by, or has objections to the carrying out of the building work, may register his objections with the Local Authority.

(6) The notice of intention to carry out building work shall also be placed in one of the following places in the parish where the applicant intends to carry out building work—

- (a) the police station nearest to the land where the applicant intends to carry out building work;

- (b) the post office or postal agency nearest to that land; or
- (c) such other public place as may be specified.

19. Subject to section 20—

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

Requirements regarding notice of intention to carry out building work.

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 to carry out building work can be given.

Emergency building work before notice is given.

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

(3) In the exercise by the Local Authority of any power conferred upon it by Part VI, the Local Authority shall take into account the circumstances which necessitated the carrying out of the emergency building work.

21.—(1) The Local Authority may require an applicant to make available such information as may be necessary to satisfy any legitimate concerns raised or objections registered by an interested person.

Applicant to supply information where concerns raised by interested persons.

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

- (a) the owner or occupier of any land abutting, adjoining or adjacent to the land where the notice of intention to carry out building work has been posted; or
- (b) an owner or occupier of property in the neighbourhood of the proposed building work who has declared in writing to the Local Authority that the value or enjoyment of the property

owned or occupied by that interested 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 raise his legitimate concerns or register his objection in the prescribed manner with the Local Authority.

Consultation on proposed building work.

23.—(1) A Local Authority may direct the holding of a public or private consultation in the area under its jurisdiction, as the case may require, where—

- (a) building work is proposed; or
- (b) there is objection to proposed building work.

(2) A Local 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 interested person or any other member of the public; and
- (b) whether the proposed building use or building work is of a type that requires interested persons or other members of the public to be notified.

Issue or refusal of building permit.

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

- (a) issue the building permit, subject to such terms and conditions as the Local Authority may specify in the building permit; or
- (b) subject to subsection (4), refuse to issue the building permit.

(2) A Local Authority shall decide an application for a building permit within ninety days of the date of the application or within such extended period as may be agreed upon in writing between the applicant and the Local Authority.

- (3) A building permit may be issued for—
 - (a) the whole of the proposed building work; or
 - (b) any stage of the proposed building work.

(4) Where the Local Authority refuses to issue a building permit, it shall so inform the applicant in writing, stating the reasons for the refusal and advising 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 in subsection (2) or within any extended period agreed under subsection (2), the application may be refused.

(6) The Minister may, by regulations made under section 81, amend the time prescribed in subsection (2).

25.—(1) Notwithstanding section 18 and subject to subsection (4), the Local Authority, on the recommendation of the Chief Engineering Officer, may issue a building permit for the carrying out of building work that does not comply with this Act, the National Building Code, or any other regulations made under this Act to the extent that the non-compliance is necessary, having regard to subsection (2), if the building 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*.

National
monuments
and
protected
national
heritage.

(2) A building permit issued under subsection (1) may be issued to enable the carrying out of building 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 Chief Engineering Officer 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 Authority shall not issue 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 to that offence in the First Schedule.

First
Schedule.

Non-
transferability,
validity and
renewal of
building
permit.

26. A building permit issued under section 24(1)—

- (a) shall not be transferable;
- (b) shall be valid for the period specified in the building permit, after payment of the prescribed fee; and
- (c) may be renewed in such circumstances as may be prescribed.

Variation or
modification
of building
permit.

27. A permit holder may apply to the Local 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 Local Authority may suspend a building permit if—

- (a) the permit holder has failed to pay any fee or other charge 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 building permit is issued;
- (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 Local 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 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 Local Authority in writing that the failure or breach has been remedied.

(4) The Local 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 Authority in writing within ten days of the receipt of the notice; and
- (b) withdraw the notice of suspension, if satisfied that the suspension is no longer warranted.

(5) The Local Authority, if satisfied, having regard to the risk to public safety or other public interest concern—

- (a) may suspend a building permit with immediate effect; and
- (b) shall forthwith notify the permit holder in writing of the suspension.

(6) The suspension shall continue until the Local Authority is satisfied that the circumstances that warranted the suspension have come to an end.

(7) Where a building permit has been suspended under subsection (5), the Local Authority shall so inform the permit holder, in writing, of his right to appeal the decision to suspend the building permit.

(8) 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 Local Authority may revoke a building permit if it is satisfied that—

- (a) a permit holder has failed to comply with this Act, the National Building Code and any other regulations made under this Act, or any term or 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 Authority shall notify the building 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 the Local 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 this Act, the National Building Code and any other regulations made under this Act or any term and condition specified in the building permit in relation to the building work,

the Local Authority may restore the building permit and cause the Register of building permits to be updated accordingly.

PART V—*Restrictions on Change of Building Use*

31.—(1) An owner or occupier of a building shall not undertake or allow a change of building use, except in accordance with a change of building use permit issued by the Local Authority.

Offence of change of building use.

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

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

First Schedule.

(4) Part IV shall apply to a change of building use permit required under this section as it applies, *mutatis mutandis*, to a building permit.

PART VI—*Enforcement*

Inspection and Monitoring

32. In Part VI—

Interpretation of Part VI.

- (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 land on which building work has been, carried out or is being carried out, or is to be carried out, means—
 - (i) the builder;
 - (ii) the owner of the land;
 - (iii) the occupier of the land;
 - (iv) a 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 Authority shall monitor the progress of building work permitted under this Act, as often as may be necessary to cause the Local Authority to—

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

Certification
of
compliance
and
occupancy.

34.—(1) A permit holder or his agent shall not proceed from one stage to the next stage of the building work unless he has been issued with a certificate of stage of construction compliance by the Local 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 stage of construction compliance in respect of any stage of the building work, shall give to the Local Authority a notice of compliance in the form prescribed by the Local Authority and await the certificate of stage of construction compliance before proceeding to the next stage.

(3) Having received the notice of compliance referred to in subsection (1), a Local Authority may—

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

(4) The Local Authority shall issue a certificate of occupancy in relation to building work if, on an application by the owner, the Local Authority is satisfied that—

- (a) the building work has been completed in accordance with this Act, the National Building Code or any other regulations made under this Act; and
- (b) the whole or part of the building, as the case may be, is suitable and ready for occupancy.

(5) The Local Authority shall cancel the certificate of occupancy that relates to a part of a building, if—

- (a) a certificate of occupancy has been issued under subsection (4) for a part of the building; and
- (b) the Local Authority, on completion of the whole of the building work, issues a certificate of occupancy for the whole of the building.

(6) The whole or part of a building, as the case may be, shall not be occupied until the Local Authority has issued a certificate of occupancy in relation to the whole or part of the building.

35. The Local Authority may establish guidelines to provide for—

Guidelines
for
monitoring.

- (a) the imposition of terms and conditions on the issue 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 building work;
- (d) authorization for building officials to enter and inspect building work to ensure that the terms and conditions of the building permit are being complied with;
- (e) powers to survey buildings and ensure that all relevant building codes and regulations are being observed; and
- (f) benchmarks of standards for the performance of functions by building officials.

Notice to be
prima facie
evidence as
against
builder.

36. Every notice given by a permit holder or his agent under this Act shall, in any question relating to any building or building work, be *prima facie* evidence against the builder involved.

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) carries out building work or causes or permits building work to be carried out before giving the required notice,

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

Power to
enter and
inspect
building,
work, etc.

38.—(1) A building official may, at all reasonable times, upon production of his authority if so required—

- (a) at any stage of building work, enter any land and inspect a building or building work; or
- (b) enter and inspect any land for the purpose of ensuring compliance with this Act, the National Building Code or any other regulations made under this Act, or any term or condition subject to which the building permit was issued.

(2) The building official may do all such things as are reasonably necessary for the purpose of the inspection under subsection (1).

Offence of
failure to
admit building
official, etc.

39. A person commits an offence if the person—

- (a) unreasonably refuses to admit a building official to inspect the land or any building or building work under section 38; or
- (b) wilfully obstructs a building official acting in the exercise of his functions under section 38 from carrying out the inspection,

and shall be liable on conviction to the penalty specified in relation to that offence in the First Schedule.

First
Schedule.

Notice of
building
breach.

40. Where, in relation to land on which building work has been carried out, or is being carried out, it appears to a Local Authority that any responsible party has contravened a provision of this Act, the

National Building Code or any other Regulations made under this Act relating to the building work, the Local 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.

41. The notice of building breach—

(a) shall specify—

- (i) the nature of the breach;
- (ii) the steps that are to be taken 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 Authority considers appropriate.

Contents of notice of building breach.

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 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 land in conformity with the requirements of this Act, the National Building Code or any other Regulations made under this Act.

(2) All expenses incurred by a Local 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 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 Parish Court for the parish in which the building is located or the building work is being carried out, without limit of amount.

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

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 Authority in the amount prescribed.

Stop Notices

Stop notices.

44.—(1) Where the Local Authority, has reasonable grounds to suspect that building work is “unauthorized” within the meaning specified in subsection (2), or is hazardous or dangerous to the public, the Local Authority shall serve on the responsible party in the prescribed form and manner—

- (a) a stop notice requiring the responsible party to immediately cease the building work; and
- (b) an enforcement notice under section 45 before the end of fourteen days after the date of service of the stop notice.

(2) Building work referred to in subsection (1) as being “unauthorized” is building work—

- (a) which is being carried out in breach of a term or condition subject to which a building permit was issued; or
- (b) which is being carried out without the issue of a building permit in respect of the building work.

(3) A stop notice shall specify—

- (a) the name of the person to whom it is directed;
- (b) the reason for which the stop notice is issued;
- (c) the location at which the building work is being carried out or has been carried out;
- (d) the nature of the building work;
- (e) that the stop notice takes effect from the time it is served; and
- (f) that the stop notice remains in effect until the building work required to be completed to comply with a related enforcement notice under section 45 is certified by the Local Authority as being completed; however, if an enforcement

notice is not served before the end of fourteen days after service of the stop notice, the stop notice shall expire.

(4) A new stop notice may be issued in respect of the same building work.

(5) Where a stop notice is served on a responsible party, a copy of the stop notice shall be posted in a conspicuous place—

- (a) on the land where the relevant building work is being carried out or has been carried out; and
- (b) in a police station, post office, postal agency or other public place in the parish in which the building work is being carried out or has been carried out.

(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 Authority, he alleges expressly that the service of the notice was done without the Local Authority having reasonable grounds to suspect that the building work is “unauthorized” within the meaning specified in subsection (2), or is hazardous or dangerous to the public.

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

First
Schedule.

Enforcement Notice

45.—(1) If it appears to a Local Authority that—

Enforcement
notice.

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

then, subject to subsection (3), the Local Authority shall serve an enforcement notice in the prescribed form and manner on each of the persons specified in subsection (2).

(2) The persons referred to in subsection (1) are the owner and occupier of the land where the building work has been carried out or is being carried out and—

- (a) a person who has supervised or is supervising the building work; or
- (b) 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 carried out or is being carried out without a building permit; or
 - (ii) the matters in respect of which it is alleged that any term or condition subject to which a building permit has been issued, have not been complied with; and
- (b) may require such steps as may be specified in the enforcement notice for restoring the land, or as the case may be, the building to its condition before the building work was carried out, or for securing compliance with the term or condition subject to which a building permit has been issued within twenty-eight days.

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

- (a) may specify the steps required to be taken under subsection (3) for—
 - (i) the demolition or alteration of any land or building work;
 - (ii) the discontinuance of any use of the land or building work; or
 - (iii) the carrying out of building work or other operations; and

- (b) shall, where paragraph (a) (ii) applies, provide that any person upon whom an enforcement notice is issued is prohibited from continuing, or carrying out, building work on, or using the land, in respect of which the notice is served.

(5) Where an enforcement notice is issued under subsection (1), the Local Authority shall—

- (a) cause a copy of the enforcement notice to be posted in a conspicuous place on the land where the building work is being carried out; and
- (b) cause a notice to the public in accordance with subsection (6) 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.

(6) The notice to the public referred to in subsection (5)(b) shall specify—

- (a) the location of the land, including its civic address where available, where the enforcement notice may be inspected;
- (b) that a copy of the enforcement notice may be obtained from the offices of the Local Authority; and
- (c) state that an interested person may make representations in respect of the enforcement notice to the Local Authority.

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

(8) In subsection (6) (c), “interested person” means a person who the Local 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 land in the vicinity of the land in respect of which the enforcement notice is issued.

(9) The enforcement notice shall take effect at the expiration of three days after the later of—

- (a) the service of the 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 land in accordance with subsection (3)(a).

(10) An enforcement notice may be extended for such period as the Local Authority may determine.

Local Authority's power to enter and remedy breach.

46.—(1) If, at the expiration of the period specified in an enforcement notice, or within such extended period as the Local Authority may allow, any step required by the notice to be taken has not been taken to the satisfaction of the Local Authority, the Local Authority may enter on the land to which the enforcement notice relates or take those steps.

(2) The Local Authority may recover as a simple contract debt in the Parish Court for the parish in which the land to which the enforcement notice relates are situate, from the person who is the owner of the land, any expenses reasonably incurred by the Local Authority under steps taken under subsection (1) without limit of amount.

(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 Authority upon any ground which could have been raised by such appeal.

(4) Any expenses incurred by the owner or occupier of any land for the purpose of complying with an enforcement notice, and any sums paid by the owner or occupier of any land in respect of the expenses of the Local Authority in taking steps required to be taken by the enforcement 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 to that offence in the First Schedule.

First Schedule.

Court Injunction

Application for injunction.

47.—(1) Where—

(a) a person to whom a stop notice is directed under section 44 or on whom an enforcement notice is issued under section 45 fails to comply with the stop notice from the time stop

notice is served or the enforcement notice within the period specified in the enforcement notice; or

- (b) the Local Authority considers it necessary or expedient for any perceived or apprehended breach of this Act, the National Building Code, or any other regulation made under this Act to be restrained,

the Local Authority may apply to the court for an injunction.

(2) The Local Authority may apply to the court for an injunction under subsection (1) whether or not the Local Authority has exercised 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 proof of the service of the summons, it appears to the court that—
 - (i) the step 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, the National Building Code, or any other regulation made under this Act should be restrained,

the court may make an order under subsection (5).

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

(5) An order made under this section may require the builder, the owner or occupier of the land where the building work has been carried out or is being carried out, a 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 land, as the case may be, to—

- (a) comply with the steps, or remedy the breach, within the time specified in the order;

- (b) demolish or alter building work, in such manner as the Chief Engineering Officer shall direct;
- (c) discontinue any use of the land for building work;
- (d) carry out on the land building work, in such manner as the Chief Engineering Officer 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 Authority is of the opinion that the condition or the use of land on which the building work has been carried out, is being carried out is proposed to be carried out is hazardous or dangerous to any person, the Local Authority may issue an emergency order and serve or cause it to be served on—

- (a) the owner or occupier of the land; and
- (b) any builder carrying out building work on land.

(2) An emergency order may—

- (a) require the owner or occupier of the land, and the builder carrying out building work on the land to—
 - (i) evacuate the building or land;
 - (ii) cease the carrying out of building work; 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 building or land, or any part of the building or land, for a specified period.

(3) A person who is the subject of an emergency order issued under subsection (1) may, 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.

49. An emergency order remains in force until—

- (a) it is set aside or modified under section 48(4);
- (b) it expires under section 48(2); or
- (c) it is cancelled by the Local Authority under section 50.

Duration of
emergency
order.

50. A Local 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 forthwith of the cancellation to the persons on whom it was required to be served under section 48.

Cancellation
of
emergency
order.

51.—(1) Where—

- (a) an emergency order is not complied with; or
- (b) the owner of the land is not known to the Local Authority; or
- (c) there is no builder carrying out building work on the land,

Local
Authority
may enter
land where
emergency
order not
complied
with.

the Local Authority may authorize the entry upon the land and taking of any necessary steps to remedy the problem specified in the order.

(2) The Local Authority may recover as a civil debt in the Parish Court for the parish in which the land is situate, notwithstanding any limitation as to the amount recoverable under the Judicature (Parish Court) Act from the person who is the owner of the land or the builder, any expenses reasonably incurred by the Local Authority in taking the remedial steps.

PART VII—*Dangerous Structures*

52. In Part VII—

“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 Chief Engineering

Interpretation
of Part VII.

Officer to be in a condition, or as 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 an owner who at the time when a notice is given under section 55(b) is the owner of the land on which the dangerous structure is situated.

Local Authority to cause survey of dangerous structure.

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

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

Chief Engineering Officer's certificate.

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

Proceedings after certificate of dangerous structure.

55.—(1) If the certificate under section 54 is to the effect that the structure is not a dangerous structure and is not likely to become a dangerous structure, no further proceedings shall be had in respect of that structure.

(2) If the certificate under section 54 is to the effect that the structure is a dangerous structure or is likely to become a dangerous structure, the Local 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 on the owner or occupier of the dangerous structure requiring him to take down, further stabilize or repair the dangerous structure, as

the case requires, within such time as may be specified in the notice.

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

Local Authority to act where owner fails to comply with notice.

(2) The Local Authority may enter the land 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 be appropriate, and the Local Authority may recover the expenses of doing so in accordance with section 57.

57. The Local Authority may recover the expenses referred to in section 56 (2) as a civil debt in the Parish Court of the parish in which the dangerous structure is or was situate, notwithstanding any limitation as to the amount recoverable under the Judicature (Parish Court) Act, from the owner of the land or any other person who may be so liable.

Recovery of expenses by action.

58. Where a structure has been certified as a dangerous structure by the Local Authority, a Judge of the Parish Court for the parish in which the structure is situate, if having regard to the certificate, is satisfied that the structure is dangerous, may—

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

- (a) upon an application by the Chief Engineering Officer; or
- (b) on his own motion,

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

PART VIII—*Party Structures*

59. In this Part, “party structure” includes—

Definition of party structure.

- (a) party walls and dividing walls, partitions and fences, between premises either owned or occupied by different persons; and
- (b) partitions, arches, floors and other structures, separating buildings, stories or rooms, which belong to different owners, or which are approached by distinct staircases or separate entrances from outside the building.

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 and Energy Conservation

Regulations for water harvesting and energy conservation.

61. The Minister may, in relation to buildings or building work, or any category of buildings or building work, make regulations—

- (a) for water harvesting, including requiring provision to be made for the storage of rainwater runoff;
- (b) establishing minimum requirements for their energy-efficient design and construction;
- (c) promoting the development and use of renewable energy technologies; and
- (d) for energy conservation and efficiency.

PART X—Appeals

Establishment of Building Appeal Tribunal.

62.—(1) For the purposes of this Act, there is established a tribunal to be known as the Building Appeal Tribunal.

Third Schedule.

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

(3) Notwithstanding subsection (1), the Minister may constitute appeal tribunals in so many counties or parishes of Jamaica as may, from time to time, be fixed by the Minister and an appeal tribunal so constituted shall be appointed in like manner and exercise similar jurisdiction as the Appeal Tribunal and the provisions of this Act that apply to the Appeal Tribunal shall apply to an appeal tribunal so constituted.

Jurisdiction of Appeal Tribunal.

63.—(1) There shall be a right of appeal to the Appeal Tribunal against a decision made by the Local 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, licence certificate, notice, order or other authorization under the National Building Code, or any other regulation made under this Act;

- (c) the suspension or revocation of a permit, licence certificate, notice, order or other authorization under the National Building Code, or any other regulation made under this Act;
- (d) a certificate of a Chief Engineering Officer as to the condition of a structure that is or appears to be likely to become a dangerous structure.

(2) An appeal under subsection (1)—

- (a) may be made by any aggrieved person;
- (b) shall be lodged within thirty days of the relevant decision being notified to that person, or such longer 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 subsection (1)—

- (a) within twenty-one days of the date of lodging, receive, hear and examine the evidence and submissions relating to the appeal;
- (b) within thirty days of the date of hearing the appeal, issue a written decision with reason 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 in relation to the taking down of a dangerous structure, the lodging of an appeal shall operate as a stay of the decision under appeal.

(6) The Appeal Tribunal may, where it is satisfied that the exigencies of the situation so require, including any relevant public interest considerations, grant a stay of a decision under appeal; and the stay of the decision shall, unless varied or quashed 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 confirm the decision;
- (b) allow the appeal and quash the decision;
- (c) 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;
- (d) vary the decision as the Appeal Tribunal considers appropriate.

(2) Before determining an appeal, the Appeal Tribunal shall give the appellant and the Local 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; and the Appeal Tribunal may also elect to hear from any other person whom 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”).

Fourth
Schedule.

(2) The Fourth Schedule shall have effect with respect to the constitution and procedures of the Board and otherwise in relation to the Board.

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) approve the persons to be licensed as 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 the National Building Code or regulations made under this Act.

(2) The Board shall have power to—

- (a) appoint examiners to conduct examinations in respect of persons applying for licences as building practitioners;
- (b) prescribe the procedure to be followed in respect of disciplinary proceedings against building practitioners in relation to professional misconduct; and
- (c) 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 Board, prescribe the scope of building work that may be undertaken by building practitioners or any category of practice of 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 Board. Registrar of 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 under this Act. Registrar of Building Practitioners.

(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 who may make copies of, or take extracts from the Register on payment of the prescribed fee.

(4) The Registrar shall make available to each Local 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 registered post to any person registered as a building practitioner under section 68, a 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 error 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 the 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 and manner signed by the applicant and delivered to the Local Authority for the area where the building practitioner resides, together with such supporting documents as the Board may require.

Application for licensing as building practitioner.

(2) The Local 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 appropriate.

(4) Every applicant under this section shall pay the prescribed fee.

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.

Licensing of building practitioner.

(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 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 the person 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 building 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, issue a temporary licence to that person if there is in force in relation to the person a valid work permit or a valid exemption from the work permit requirement.

(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 of the temporary licence, the holder shall, unless the licence has been cancelled, be deemed for the purposes of this Act to be a building practitioner.

73.—(1) A person shall not, unless he is the holder of a licence issued under this Part in relation to the category of work in which the services fall, 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.

Entitlement
to recover
fees, etc.

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

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

Improper
licensing.

- (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 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 licensee who obtains a licence in the circumstances specified in subsection (1) commits an offence.

PART XII—Building Advisory Council

Establishment,
constitution
and
proceedings
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) a nominee of the Minister responsible for construction, who shall be a public officer employed in a department for which the Minister is charged;
- (c) a 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) a 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 Institute;
- (f) a representative of the Jamaica Institute of Architects nominated by the Institute;
- (g) a representative of the Construction Industry Council of Jamaica nominated by the Council;

- (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 this Act, the Building Advisory Council may regulate its own proceedings.

(4) Where, for the purpose of a nomination or representation under subsection (2), a body no longer exists, the Minister may invite another body which, in the opinion of the Minister, is most representative of the membership of the body that no longer exists to make the nomination.

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

Functions of
Building
Advisory
Council.

- (a) matters of general policy relating to the building industry;
- (b) the administration of this Act, the National Building Code 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 sub-paragraph (i); or
 - (iii) on all other matters related to the building industry; or

- (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 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; or
- (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, name, initials or description 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.

78.—(1) This section applies to the offences specified in sections 17(2), 25(5) 31(3), 39, 44(7) and 46(5) and such other offences as may be prescribed. Fixed penalty.

(2) Where a Local Authority finds that a person has committed an offence in relation to its area of jurisdiction and to which this section applies, the Local 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 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), the 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 Authority, and the Local 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 Authority by the date specified in the certificate shall, if the certificate purports to be signed by the Chief Executive Officer, 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 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 Parish 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 under this section 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 and manner of notice under subsection (2); and
- (b) prescribing the duties of the Local Authority and the information, with regard to any payment made under a notice under this section, to be issued to the Local Authority.

(10) The Minister may, by order subject to affirmative resolution, amend the Second Schedule.

Second
Schedule.

Minister may
amend
monetary
penalties and
Schedules.

First, Second
and Third
Schedules.

79. 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*

80.—(1) A building official shall not be personally liable for any act or default of the Local Authority to which he is employed, which is 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 Authority by or under this Act.

Protection
of building
officials.

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

81.—(1) Subject to section 82, the Minister 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—

Regulations.

- (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 the 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; and
 - (iii) prescribing the manner, place and process for payment of fees and charges;
- (c) the manner and form of licensing of building practitioners;
- (d) the performance of the functions 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 terms and conditions relating to building permits, licences, certificates, notices, orders and other authorization;
- (i) the keeping of records;
- (j) the making of reports by licensees and holders of certificates and other authorizations;
- (k) procedures for the renewal and revocation of licences, certificate and other authorization;
- (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 building use and for persons to register their interests or objections and to be heard in respect of objections;
- (n) enforcement and compliance measures, including the execution of bonds and guarantees and the circumstances in which refunds are payable in respect of them;
- (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; and
 - (viii) parking and planning requirements specified in a development order made under the *Town and Country Planning Act*.”.

- (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; and
- (q) building work or categories of building work that are exempted from the application of section 4(4).

(2) Regulations made under this section shall be subject to affirmative resolution.

82.—(1) Where the Minister proposes to make regulations under section 81, he shall—

- (a) notify in writing each Local Authority; and
- (b) invite each Local Authority to review the proposed regulation and provide its comments on the proposed regulations within sixty days.

Publication
of
regulations
and
Minister's
overriding
powers.

(2) If at the expiration of the sixty days the Minister has not received comments from each Local Authority, the Minister may proceed to make the regulations.

(3) If at the expiration of the sixty days the Minister has received comments from a Local Authority, the Minister shall consider those comments and may make modifications to the proposed regulations having regard to the comments; and the Minister may proceed to make 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 Authority.

(5) A Local Authority may propose to the Minister the fees and charges referred to in section 81 (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 adjustments to the proposals as he considers necessary before making the regulations.

(6) Where a Local Authority intends to make proposals to the Minister concerning the fees and charges referred to in section 81(1)(b), the Local Authority shall inform the public of the proposals by displaying a notice in a conspicuous place at the offices of the Local Authorities or by publishing the notice in a daily newspaper circulated in the parishes, and afford the public an opportunity to make representations to the Local Authority on the proposals.

(7) Regulations made under section 81 shall be published in the *Gazette*.

Review of
Act.

83.—(1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of three years from the appointed day.

(2) The Minister shall prepare a report based on the review made under subsection (1) and, as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.”

Act binds
Crown.

84. This Act binds the Crown.

Amendment
of other
enactments.

85.—(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 full stop 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 building use or the class of any building or land without the prior written approval of the Local Authority, whether or not a development order has been made.”.

86.—(1) The *Kingston and St. Andrew Building Act* and the *Parish Councils Building Act* (hereinafter referred to as “the repealed Act”) are repealed. Repeal.

(2) Notwithstanding the repeal of the repealed Acts—

- (a) regulations made under the repealed Acts as in force immediately before the repeal of those Acts shall remain in full force and effect, with such changes as may be necessary, as if made under this Act, and may be amended or revoked accordingly; and
- (b) any reference in any other enactment to specific provisions of the repealed Acts shall be construed as a reference to the equivalent provision of this Act.

FIRST SCHEDULE

(Sections 17(2),
25(5), 31(3), 39, 44(7),
46(5), 77(4) and 80)

Schedule of Penalties

Provision of Act	Brief Description of Offence	Penalty
Section 17(2)	<p>Carrying out building work—</p> <p>(a) without a building permit in respect of the building work; or</p> <p>(b) not in accordance with the building permit, this Act, the National Building Code or any other regulations made under this Act.</p>	<p>1. On summary conviction in a Parish 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 imprisonment for a term not exceeding two years.</p> <p>2. On conviction on indictment in a Supreme 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 four years.</p> <p>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 Authority in</p>

Schedule of Penalties

Provision of Act	Brief Description of Offence	Penalty
		respect of the issue of the building permit, or that would have been so used, had an application for a building permit been duly made and the permit issued, and in either case being the amount certified in writing by the Local 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 a protected national heritage under the <i>Jamaica National Heritage Trust Act</i> without the approval of the National Heritage Trust.	On summary conviction in a Parish Court to a fine not exceeding three million dollars or in default of payment thereof to imprisonment for a term not exceeding one year.
Section 31(3)	Undertaking or allowing unauthorized change of building use.	On summary conviction in a Parish Court to a fine not exceeding three million dollars or in default of payment thereof to imprisonment for a term not exceeding one year.
Section 31(3)	Commencing or continuing building work without prescribed change building use.	On summary conviction in a Parish Court to a fine not exceeding three million dollars or in de-

Schedule of Penalties

Provision of Act	Brief Description of Offence	Penalty
Section 39	Unreasonably refusing to admit building official to inspect the land or building work.	<p>fault of payment thereof to imprisonment for a term not exceeding one year.</p> <p>On summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars or in default of payment thereof to imprisonment for a term not exceeding six months.</p>
Section 39	Obstructing building official from acting in the exercise of his functions.	<p>On summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars or in default of payment thereof to imprisonment for a term not exceeding six months.</p>
Section 44(7)	Failure to comply with stop notice.	<p>1. On summary conviction in a Parish Court to a fine in an amount that 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 imprisonment for a term not exceeding four years.</p> <p>2. On conviction on indictment in a Supreme Court to a fine in an amount that is not less</p>

Schedule of Penalties

Provision of Act	Brief Description of Offence	Penalty
Section 46(5)	Failure to comply with enforcement notice.	<p>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 four years.</p> <p>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 Authority in respect of the issue of the building permit, or that would have been so used, had an application for a building permit been duly made and the permit issued, and in either case being the amount certified in writing by the Local Authority as the estimated construction cost.</p> <p>1. On summary conviction in a Parish 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</p>

Schedule of Penalties

Provision
of Act

Brief Description
of Offence

Penalty

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 Supreme 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 four 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 Authority in respect of the issue of the building permit, or that would have been so used, had an application for a building permit been duly made and the permit issued, and in either case being the amount certified in writing by the Local Authority as the

Schedule of Penalties

<u>Provision of Act</u>	<u>Brief Description of Offence</u>	<u>Penalty</u>
74(3)	Improperly obtaining a licence.	estimated construction cost. On summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars or in default of payment thereof to imprisonment for a term not exceeding six months.

SECOND SCHEDULE

(Sections 78
and 79)

*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 building work— (a) without a building permit in respect of the building work; or (b) not in accordance with the building permit, this Act, the National Build- ing Code or any other regulations made under this Act.	17(2)	\$300,000.00
Carrying out building work on, or in connec- tion with any building that is a national monu- ment or that is desig- nated as a protected national heritage under the Jamaica National Heritage Trust Act with- out the approval of the National Heritage Trust.	25(5)	\$1,000,000.00
Undertaking or allowing unauthorized change of building use.	31(3)	\$500,000.00
Commencing or continuing building work without prescribed change of building use permit.	31(3)	\$750,000.00

<u>Nature of Offence</u>	<u>Section</u>	<u>Penalty</u>
Unreasonably refusing to admit building official to inspect the land and any building or building work.	39	\$500,000.00
Obstructing building official from acting in the exercise of his functions.	39	\$1,000,000.00
Failure to comply with stop notice.	44(7)	\$ 1,500,000.00
Failure to comply with enforcement notice.	46(5)	\$2,500,000.00

THIRD SCHEDULE (Sections 62(2)
and 80)

*Constitution of the Building Appeal
Tribunal*

Constitution of Appeal Tribunal.	<p>1.—(1) The Appeal Tribunal (hereinafter called the “Tribunal”) shall consist of a chairman and two other members.</p> <p>(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 Construction Industry Council of Jamaica and approved by the Minister.</p>
Appointment and tenure of office of Members.	<p>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.</p>
Revocation of appointment.	<p>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.</p>
Temporary appointments.	<p>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.</p> <p>(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.</p>
Resignation.	<p>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.</p> <p>(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.</p>
Filling of vacancies.	<p>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 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.</p>

7. The names of members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*. Publication of membership.
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. Remuneration of members.
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. Voting.
10. The Tribunal may after consultation with the Minister and subject to this Act, make rules governing its procedures. Rules of procedure.

FOURTH SCHEDULE (Sections 65(2))

Building Practitioners Board

Constitution
of
the Board.

- 1.—(1) The Board shall consist of nine members, namely—
- (a) the Registrar of Building Practitioners, who shall be a member of the Board *ex officio* and the Secretary of the Board;
 - (b) three members who are qualified in areas relating to building and construction appointed by the Minister as follows—
 - (i) a representative of the Faculty of the Built Environment of University of Technology, Jamaica, nominated by the President;
 - (ii) a representative of the Bureau of Standards nominated by the Chairman; and
 - (iii) a representative of the H.E.A.R.T. Trust, nominated by the Chairman; and
 - (c) five members appointed by the Minister, hereinafter referred to as the “appointed members”, namely—
 - (i) a building practitioner, nominated by the Construction Industry Council of Jamaica;
 - (ii) an attorney-at-law;
 - (iii) an architect;
 - (iv) a civil engineer; and
 - (v) 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 Minister shall recommend, for the approval of the Cabinet, a Chairman, from among the appointed members.

(2) Upon receiving the Cabinet approval of his recommendations, the Minister shall appoint the chairman.

(3) 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.”

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 the appointment shall be made in such manner and from among such persons as would be required in the case of a substantive appointment. Members.

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. Resignations.

(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.

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 this Schedule, hold office for the remainder of the period for which the previous member was appointed. Vacancy.

6. The names of all members of the Board as first constituted and every change in membership thereof shall be published in the *Gazette*. Publication
of
membership
in *Gazette*.

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 under a Board resolution. Seal.

(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 this Schedule or any regulations, the Board may regulate its own proceedings.
- Committees. 9.—(1) The Board may, with the approval of the Minister, constitute committees for special purposes connected with the functions of the Board and which, in the opinion of the Board, would be better regulated and managed by means of committees.”.
- (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 this paragraph, the Local Authority shall be liable to the extent that it would be if the building official were an employee of Local 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.

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. Office of Chairman or member not public office.

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. Auditors.

Passed in the House of Representatives this 7th day of November, 2017 with twenty-four (24) amendments.

PEARNEL P. CHARLES, CD, MP, JP
Speaker.

Passed in the Senate this 26th day of January, 2018 with thirty (30) amendments.

THOMAS TAVARES-FINSON, CD, QC, JP
President.

MEMORANDUM OF OBJECTS AND REASONS

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

The Government has, therefore, decided to establish a modern framework for the built environment by making new provisions for the regulation of the building industry.

Consequently, the Bill seeks to—

- (a) facilitate the legal adoption and efficient application of international building standards comprising a series of regulations for different categories of building work to be called the National Building Code of Jamaica for ensuring safety in the built environment, enhancing amenities and promoting sustainable development;
- (b) specify the regulatory and enforcement responsibilities of Local Authorities, the Chief Engineering Officer and other building officials;
- (c) confirm the Bureau of Standards as the standards making body for the building industry and specify the functions of the Bureau of Standards in relation to buildings and building work;
- (d) the requirement of a building permit and other authorization for the carrying out of building work;
- (e) streamline the permit application system to eliminate of unnecessary referrals and expedite responses;
- (f) facilitate the introduction of special express services;
- (g) to recognize 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 the demolition be undertaken by qualified personnel and be done to specific standards;
- (h) 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;
- (i) 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;

- (j) require building professionals to submit plans or designs that are in compliance with the National Building Code; and
- (k) Repeal the *Kingston and St. Andrew Building Act* and the *Parish Councils Building Act*.

DESMOND MCKENZIE, M.P.
Minister of Local Government and
Community Development.

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 building environment, enhancing amenities and promoting sustainable development; and for connected matters.

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.

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