



F/T: 0300 244 4000
E: scottish.ministers@gov.scot

To: Chief Executives - Scottish Local Authorities

(copy: Building Standards Managers – Scottish Local Authorities)

Our ref: A34450060

21 October 2021

Dear Chief Executive,

Verification - Continuation of special measures guidance during COVID-19

I am writing to inform you that the guidance given for special measures during the COVID-19 period has been reviewed, updated and consolidated in this letter.

The consolidated guidance in this letter replaces the previous letters of guidance issued (see Annex A), although they remain available for reference on the [Scottish Government website](#).

The guidance issued addresses the challenges presented by the pandemic that need a pragmatic and flexible approach in the way that building standards are delivered. To manage the current situation it is vital that support is given to communities, individuals and businesses to maintain revenue streams and to take possession of new homes and business premises.

I am extending the guidance for a further period until 30 September 2022. It is my intention to review the position in summer 2022, and will advise you if there are any further extensions at that time. It should be noted that I do not intend to extend the special measures for the hospitality sector beyond that date.

This updated guidance is set out in the following:

- Hospitality, see Annex B
- Healthcare, see Annex C

- Duration of the building warrant period and deemed refusal, see Annex D
- Occupation of new buildings - compliance and enforcement, see Annex E
- Remote verification inspection, see Annex F
- Certification, see Annex G [withdrawn]
- Adaptations requiring building work to existing buildings – see Annex H
- Construction industry restart, see Annex I [withdrawn]

It is essential that permission for the occupation of buildings can be obtained, whilst maintaining the health, safety and welfare of those in and about new buildings.

I acknowledge the ongoing engagement between Scottish Government Officials and industry, local authorities and other organisations through the Building Standards Resilience Group. The Group has advised on the ongoing need for guidance.

Officials from Building Standards Division at Scottish Government will be available to respond to any queries that may arise, contact in the first instance should be via Stephen Garvin, Head of Building Standards Division.

Yours sincerely,



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Letter of guidance issued on special measures – now withdrawn and replaced by this consolidated letter

Date in force and expiry date included in the individual letters.

Subject (and relevant Annex)

Temporary buildings – hospitality (Annex B)

[Building Standards Verification COVID-19 - Temporary Structures - Hospitality - Letter 4](#)

[Building Standards Verification COVID-19 - Temporary Structures - Hospitality - Letter 3](#)

[Building Standards Verification COVID-19 - Temporary Structures - Hospitality - Letter 2](#)

[Building Standards Verification COVID-19 - Special measures to enable the erection of temporary buildings for the recovery and renew phase - Letter 1](#)

Erection of temporary care assistance buildings (Annex C)

[Building Standards Verification COVID-19 - Temporary Structures - Health Care Facilities - Letter 2](#)

[Building Standards Verification COVID-19 - Temporary Structures - Health Care Facilities - Letter 1](#)

Duration of building warrant (Annex D)

[Building Standards Verification COVID-19 - Duration of Warrant and Refusals - Letter 4](#)

[Building Standards Verification COVID-19 - Duration of Warrant and Refusals - Letter 3](#)

[Building Standards Verification COVID-19 - Duration of Warrant and Refusals \(addendum\) - Letter 2](#)

[Building Standards Verification COVID-19 - Duration of Warrant and Refusals - Letter 1](#)

Occupation of new building (Annex E)

[Building Standards Verification COVID-19 - Occupation of new buildings - Letter 1](#)

Remote Verification on building warrant work (Annex F)

[Building Standards Verification COVID-19 - Remote Verification - Guidance to support on-going verification of building work - Letter 2](#)

[Building Standards Verification COVID-19 - Remote Verification - Guidance to support the on-going verification of building work - Letter 1](#)

Certification (Annex G)

[Building Standards Verification COVID-19 - Certification - Role of Certification - Guidance on the role of certification as a result of the COVID-19 outbreak - Letter 1](#)
[Building Standards Verification COVID-19 - Certification - BRE - Special measures to enable the acceptance of unsigned certificates of design as a result of the COVID-19 outbreak - BRE Certification of Design Energy scheme - Letter 1](#)
[Building Standards Verification COVID-19 - Certification - SER - Special measures to enable the acceptance of unsigned certificates of design as a result of the COVID-19 outbreak - SER Certification of Design Structures Scheme Letter 1](#)

Adaptations requiring building work to existing buildings – including guidance and FAQ (Annex H)

[Building Standards Verification COVID-19 - Note on application of building regulations to adaptations - Letter 1](#)

Construction industry restart (Annex I)

[Building Standards Verification COVID-19 - Construction Industry Restart in the Period affected by COVID-19 - Letter 1](#)

Hospitality

The Building (Scotland) Regulations 2004; Regulation 3, Schedule 1: Continuation of special measures to enable the erection of temporary buildings by the hospitality sector

A lead in time of 11 months is being given to allow verifiers and the hospitality sector time to discuss and agree for temporary buildings to be removed or a formal building warrant application made to the local authority.

Now we have reached level zero as defined by the strategic framework, although the current situation means that it is appropriate that the guidance remains in place. On that basis I recognise the need for businesses to provide outdoor covered areas, e.g. marquees, which will of course need to comply with physical distancing measures set out in the Scottish Government and sector guidance. The guidance is intended to encourage the sector to take steps to provide a safe and pleasant environment for customers while supporting the economic recovery of the sector.

The guidance highlights that building regulations already make provision for the erection or use (and alteration) of temporary buildings in any given year, before a building warrant is required. This is set out in Schedule 1 to Regulation 3 of the Building (Scotland) Regulations 2004:

“Type 16 A building which, during any period of 12 months, is either erected or used on a site – a. for a period not exceeding 28 consecutive days; or b. for a number of days not exceeding 60, and any such alterations to such buildings.”

It remains the case that the most efficient way forward is for building standards teams to work with businesses to allow the number of days to be extended before seeking a building warrant. I appreciate that enforcement is a discretionary activity carried out by local authorities. For the avoidance of doubt, I do not expect the limitation on the number of days to be enforced against reasonable temporary outdoor buildings should a longer period be appropriate and helpful to businesses.

I would encourage you to advise owners of such premises to engage competent advisors and contractors, and undertake appropriate risk assessments for all temporary structures.

It is anticipated that most business premises may wish to maintain outdoor covered spaces to comply with physical distancing measures for a longer period. Beyond the building standards system, there will likely be some wider interests for businesses and local authorities to consider through other consenting and licensing regimes and any public health implications, including working within physical distancing requirements.

I would draw your attention to the guidance issued by the Scottish Government in relation to **occasional licenses for licensed premises and temporary traffic**

regulation orders and notices. In addition, our guidance on **Safer Public Spaces for Scotland** published on 29 June 2020 advises on the design principles for safer urban centres and green spaces, connecting to Scotland's route map through and out of the crisis.

Where there are licensed premises [under the Licensing (Scotland) Act 2005] these will be required to meet the conditions of the licenses granted by local authorities to operate their business.

I would expect that building standards verifiers, if requested, provide professional advice to assist in these situations if at all possible.

Healthcare

The Building (Scotland) Act 2003

The Building (Scotland) Regulations 2004; Regulation 3, Schedule 1: Special measures to enable the erection of temporary care assistance buildings as a result of the COVID-19 outbreak

There have been exceptional challenges facing the country from the coronavirus (COVID-19). Building standards verifiers across all local authorities should continue to work with Health Boards throughout the country to allow the temporary construction of buildings, testing and vaccination centres, as a matter of urgency and without any unnecessary delay.

As such, I give notice that the limitations around the use of temporary construction to provide or assist with the care of people, or acting as temporary mortuary accommodation, testing facilities, temporary laboratories and vaccination centres should not be enforced for the foreseeable time and until further notice.

I would also ask that any temporary change of use of existing buildings to provide health care are not considered as “conversions”, in terms of the Building (Scotland) Act 2003, and will also be exempt from the requirement for a building warrant.

As a result, it is necessary for verifiers to continue to take a pragmatic and flexible approach to any emergency work being undertaken at this difficult time to assist our health services providing much needed care to our population and helping to prevent the further spread of the coronavirus (COVID-19).

It is acknowledged that such buildings need to be safe for occupation. As such designers, builders and those managing and maintaining such buildings must demonstrate due diligence. Health Boards should be able to demonstrate that any temporary construction can be operated safely, particularly in relation to structure, fire, escape, ventilation, electrical work, gas safety and access. They should also provide appropriate levels of services such as plumbing, drainage, heating and lighting. Health boards may set their own standards based on the use of the buildings, which would typically be in excess of building standards requirements.

If through the passage of time it is intended that these temporary buildings/conversions are to become part of the Health Boards permanent service delivery, this should be discussed with the local authority verifier on how the situation can be formalised.

I would also expect that building standards verifiers would, if requested, provide professional advice to assist in these situations if at all possible

The Building (Procedure)(Scotland) Regulations 2004
Duration of building warrant – extending the validity and determination of application – refusal and deemed refusal as a result of the COVID-19 outbreak

The intent of the guidance is to ensure that where work was paused or building warrant applications were taking longer to be approved as a result of the COVID-19 pandemic that applicants are not disadvantaged through the expiry of their building warrant or deemed refusal of their application.

More recently the current difficulties affecting supply of construction materials are affecting the ability for construction projects to start on time and continue as planned. This is a factor in the decision to extend the special measures for a further period to support the industry. Given the shortage of materials contractors may seek alternative materials to use to keep building completion dates on time. Where this is the case they should be liaising with the local authority to agree the acceptance of alternative materials, and confirm they meet building regulations. This should be formalised by submitting an amendment to the building warrant so that the verifier can record such changes.

I again recognise that granting an extension to a building warrant requires further work and a fee is normally charged. However, it remains important that the fee does not prevent the safe and timely delivery of construction projects for building warrant applicants. As such you should continue to use your discretion with regards to charging or waiving fees and particularly for small works that were halted by the pandemic.

The Building (Scotland) Act 2003: Special measures to enable the occupation of new buildings as a result of the COVID-19 outbreak – Guidance on building standards compliance and enforcement

Building standards verifiers across all local authorities are asked to work with the relevant person, whether the owner or developer, to take measures that continue to allow occupation of new domestic and non-domestic properties.

Such buildings need to be safe for occupation, and most local authorities are providing normal site inspection for the reasonable inquiry process and processing of completion certificates. However, where this is not possible consideration should be given to the following alternative approaches; the principles of which are based on compliance with the Building (Scotland) Act 2003:

- The relevant person should submit the completion certificate to local authority verifiers with as full a set of information and certification as possible. The emphasis of evidence and certification must allow key health and safety matters to be considered.
- Local authority verifiers should then work with developers and accept alternative means of demonstrating compliance during reasonable inquiry, including at completion stages and where necessary during the construction process. This might include using digital photographs or video, or using remote means to view completed buildings.
- Where site inspections can no longer be undertaken and acceptance of a completion certificate is not possible then a temporary occupation certificate with appropriate conditions should be issued, providing that the evidence provided is sufficient to address safety.
- Local authorities issuing temporary certificates should monitor which new domestic and non-domestic buildings have temporary occupation for follow up at a later date to obtain completion certificates.
- Local authorities should consider a sympathetic and risk based approach to any enforcement of occupied buildings without completion certificates or temporary occupation certificates recognising the current circumstances.
- In all cases there must be no detriment to the health, safety and welfare of people in or about their new building.
- This guidance is applicable to domestic buildings with a storey height of not more than 4.5 metres. It may be used with discretion for domestic buildings above 4.5 metres height and in lower risk non-domestic buildings. It should not be used for any domestic or non-domestic building above 11 metres in height or where the end use of the building is considered high risk or the consequences of non-compliance are likely to be significant. This would include schools, hospitals and certain other categories of residential buildings.

**The Building (Scotland) Act 2003:
Guidance to support the on-going verification of building work as a result of
the COVID-19 outbreak**

The on-going verification of buildings needs verifiers and developers to work together to deliver new homes, business premises and other building warrant projects.

The use of remote verification inspection (RVI) recognises the ongoing advantages of limiting the number of people visiting construction sites to reduce the risk of transmission whilst also providing another inspection option which may be mutually convenient for customers and verifiers to agree.

The Building Standards Division (BSD) and Local Authority Building Standards Scotland (LABSS) set up a joint RVI group last year and work is underway with the Construction Scotland Innovation Centre, local authority verifiers, and education and construction industry partners to review and develop the RVI guidance in practice.

A recent LABSS Digital Transformation Group digital capability survey confirmed that the majority of verifiers now have RVI capability in place and see RVI as a long term verification option.

The review project will seek to support the on-going use of RVI by considering the potential advantages of its use and by developing best practice guidance which is planned to be available by January 2022.

Certification Schemes under Section 7(2) of The Building (Scotland) Act 2003: Guidance on the role of certification as a result of the COVID-19 outbreak

The intent of the guidance is to highlight the 'certification' option under Section 7(2) of the Building (Scotland) Act 2003 which allows members of schemes approved by the Scottish Ministers to exercise the functions of approved certifiers of design or of construction.

Increased use of the certification process could help to reduce the risk of transmission of the coronavirus by reducing the number of people visiting building sites, as any parts of the building warrant work certified as complying with the Building (Scotland) Regulations 2004 would not require to be inspected by the local authority verifier.

Currently, there are three certification schemes approved by the Scottish Ministers, which relate to the design stage of the building warrant process for structure and for energy (domestic and non-domestic). A further two schemes have been approved for the construction phase, which are for electrical and drainage, heating and plumbing work.

The ongoing promotion of the existing schemes and ready acceptance of certification at any stage of a building warrant project by verifiers would have a positive impact on verification capacity, compliance with building regulations and, most significantly, at this time, the reduction in the risk of the transmission of COVID-19 infection.

There are OTHER Certification Guidance Letters that are now withdrawn (see Annex A) as follows:

- Building Standards Verification COVID-19 - Certification - BRE - Special measures to enable the acceptance of unsigned certificates of design as a result of the COVID-19 outbreak - BRE Certification of Design Energy scheme - Letter 1.
- Building Standards Verification COVID-19 - Certification - SER - Special measures to enable the acceptance of unsigned certificates of design as a result of the COVID-19 outbreak - SER Certification of Design Structures Scheme Letter 1.

COVID-19: advice to building operators - assessing the application of building regulations when carrying out adaptation work

There are currently many existing premises where building owners have made COVID-19 adaptations to their premises and will now be considering the removal of these. To assist owners understand the application of building regulations to such works guidance is given below. There is also guidance for building operators given in the sectoral advice given by the Scottish Government. This reinforces the benefit of seeking advice from construction professionals and notes that assistance on procedural queries can be sought from local authority verifiers.

Background

The response to COVID-19 in operational premises has been to manage the numbers of people using facilities to support physical distancing and reduce the risk of transmission from proximity and/or contact. In the majority of situations within a building, this is addressed through operational practice and the use of simple changes such as management of access, supervision, signage, floor marking, and a proactive cleaning regime. Published guidance also recognises that there are situations in which it may not be practical to mitigate risk to the same extent as in others, mostly from the issue of proximity.

As part of action to manage the risk to building occupants, some building operators may have sought to implement adaptations that do involve construction work or which may change the use of a building. This short note is produced by the [Building Standards Division](#) of the Scottish Government, in collaboration with [Local Authority Building Standards Scotland](#), to assist in the development of any adaptation work that will be subject to The Building (Scotland) Regulations 2004. Please note that this document does not include:

- [Advice on actions to take in preparing for occupation of buildings in response to COVID-19. For such matters, those responsible for buildings should refer to the advice to business and sector specific guidance available on the Scottish Government website.](#)
- [Advice on special measures to enable the erection of temporary care assistance buildings.](#)

The importance of advice from competent professionals

In addition to the detailed knowledge of operations that building operator will generally have, construction or facilities management professionals are well placed to consider operational changes proposed by building owners. Both in the context of the statutory duties a building owner has on assuring the health and safety of those within a building and, specifically, meeting current building regulations. Many changes that can be introduced may be relevant to more than one legislative duty. Where work is in the form of 'construction' - to fixed elements of building fabric or services - and building regulations are applied to it, those considering work should, first and foremost, ensure they have appropriate advice from someone who is familiar with the application of building regulations to construction work.

Certification is an option for certain design and construction activities and the benefits of using certifiers at this time have been set out in previous COVID-19 guidance notes.

Application of building regulations

Information on the application of building regulations is set out in both [Section 0 of the current Non-domestic Technical Handbook](#) and, on process more generally, the recently updated [Procedural Handbook](#).

[Section 0.1](#) of the Technical Handbook and [Section 2](#) of the Procedural Handbook introduce the application of the building regulations and make reference to work that is exempt and to work that is subject to the regulations but does not require a building warrant to be obtained before starting work.

It is not the intent of this note to repeat, further summarise or interpret guidance already published in the [Technical Handbook](#) but key points to note are:

- Exempt buildings and work.

[Schedule 1 to regulation 3](#) of the regulations sets out what buildings and construction work are exempt from building regulations. Other than the erection of temporary buildings, it is unlikely that these exemptions will apply to the vast majority of adaptation situations where the safety of employees or visitors is being considered.

- Work subject to building regulations but which does not require a building warrant.

[Schedule 3 to regulation 5](#) sets out those works which are subject to building regulations but where verification by the local authority is not deemed necessary. The person responsible for the building must still ensure works comply with the regulations but does not first have to apply for and receive a building warrant.

For non-domestic buildings, the greatest flexibility is available via Type 2: low-rise buildings (no storey above 7.5 m), other than residential buildings, where the public are not normally admitted. This enables buildings such as offices and factories to make a wide range of alterations subject to avoiding specific further excepted works. Specific building sub-types are covered in a similar way by Types 2A, 2B & 2C For all other buildings, a warrant is not needed if the scope of the building works falls wholly within the categories of work listed under types 3 to 23.

Work that is more akin to repair is also exempt from the need for a building warrant under Types 24 to 26.

- Changes to the use of a building (conversion).

As part of the response to COVID-19, some organisations may seek to repurpose buildings from one use to another. Specific types of changes to the use of a building do attract the application of current building regulations, even if no building work is proposed.

These defined 'conversions' are described in [Regulation 4 and schedule 2](#)

and, where relevant to proposed work, should be first assessed and can then be discussed with your local authority building standards department, particularly where change to the use is intended to be short term rather than permanent.

- Potential impact of non-building work on occupant safety.

Items within buildings that are not fixed and which can be easily moved or removed are outwith the scope of building regulations. However, it remains important for those operating a building to consider how changes to the layout of moveable but generally semi-permanent elements such as workstations/cubicles in offices, seating in restaurants and fixed shelving in shops might, affect compliance with building regulations or other duties. This is primarily in respect of the safety of occupants (e.g. maintain means of escape in the event of a fire).

Communication

Again, we would stress the importance of advice from a competent construction professional when considering physical alterations to a building, its fabric or its installed systems. Where the party preparing adaptation proposals is unsure of the application of regulations to specific activities or whether an application for a building warrant is needed, advice can be sought from your local authority building standards department.

Where your assessment determines a building warrant is required, dialogue with your local authority building standard department on the need for alterations as part of your response to COVID-19 to provide a safe building environment, can assist in expediting this process.

[Contact details for your local authority building standards department](#)

**CONSTRUCTION INDUSTRY RESTART IN THE PERIOD AFFECTED BY
COVID-19**

The construction industry has successfully restarted, and this guidance is now withdrawn.