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Chief Executives - Scottish Local Authorities

(copy: Building Standards Managers – Scottish
Local Authorities)

Our ref: A29036994

13 July 2020

Dear Chief Executive

The Building (Scotland) Act 2003

The Building (Scotland) Regulations 2004; Regulation 3, Schedule 1: Special measures to enable the erection of temporary buildings for the recovery and renew phase of COVID-19

In my [letter of 23 March 2020](#), I encouraged a supportive, pragmatic and flexible approach to the erection of temporary buildings and change of use which would enable health boards to provide essential facilities to tackle COVID-19. In the recovery and renew phase I am seeking that you take a similar approach to enable business premises to adjust the way they operate as lockdown eases.

This letter seeks to build on that guidance, to acknowledge that the provision of outdoor seating by pubs, cafes and restaurants, and beer gardens may attract the desire to erect covered areas, e.g. marquees. As the hospitality industry re-opens with physical distancing measures in accordance with the appropriate Scottish Government and sector guidance, we want to encourage the sector to take steps to provide a safe and pleasant environment for customers. This will also assist the current viability and economic recovery of the sector.

As you will be aware building regulations already makes 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.”

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The most efficient way forward is for building standards 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 would have put physical distancing measures in place for re-opening on 15 July 2020. The guidance outlined above is applicable until 30 September 2020 after which time this guidance will be withdrawn.

I have written several times since the start of the COVID-19 outbreak to discourage enforcement action in different circumstances, to allow the effects of the virus and physical distancing to be addressed for building standards interests. That remains a reasonable approach at this time.

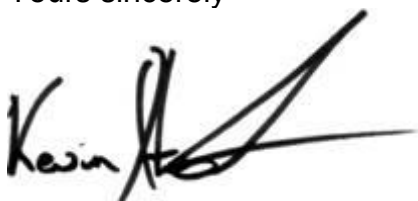
Beyond the building standards system, there will likely be some wider interests for businesses and local authorities to consider through other consenting and licensing regimes and any public health implications, including working within physical distancing requirements. I would draw your attention to recent 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.

Officials from Building Standards Division at Scottish Government will be available to respond to any queries that arise. Contact in the first instance should be via Stephen Garvin, Head of Building Standards Division (07836 504 781, Stephen.garvin@gov.scot).

Yours sincerely



KEVIN STEWART

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