

Local Authority Building Standards Managers



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Dear Building Standards Manager

THE BUILDING (SCOTLAND) ACT 2003 APPLICATION OF BUILDING REGULATIONS AND CHANGES OF USE

At the recent Building Standards Division (BSD) and Local Authority Building Standards Scotland (LABSS) liaison meeting on 22 January 2015, the application of building regulations to a change of use was discussed. BSD received an enquiry last year from a local authority about the same issue in relation to standard 2.15 and LABSS thought it would be helpful for BSD to issue the general advice that BSD gave to the LA at that time.

When do the building regulations, in particular the building standards apply?

The building standards are set out in Schedule 5 of the Building (Scotland) Regulations 2004 with regulation 9 and regulation 12 setting out the two main instances where they apply. Regulation 9 provides that the standards apply to construction and regulation 12 provides that the standards apply to conversions. This results in two independent trigger points, firstly when there is building work, and secondly when there is a conversion.

Although construction and conversion should be looked at independently, it is worth considering the interaction between them for different scenarios. Construction is wide ranging and includes the erection of a new building, an extension to an existing building and alterations to an existing building. Construction will take place over a period of time whereas a conversion will happen at a point in time.

Alterations could take place before or after a conversion happens, in which case the use of the building at the time of the alterations is relevant to the proposed work. If the alterations take place at the same time as a conversion, it is likely that the proposed use would be appropriate to the alterations. Further details of the interaction are provided in **Annex A**.

The definition of building in the Act (section 55) makes it clear that in relation to the extension, alteration or conversion of a building, references to building are to so much of the building as is comprised in the extension or is the subject of the alteration or conversion.

Section 10 of the Act sets out when the verifier must refuse to grant a building warrant (or an amendment) and therefore protects the whole building from the effects of the extension, alteration or conversion of part of a building. However, the intention is to prevent the creation of a worse situation rather than to require other parts of the building to be upgraded to remove existing deficiencies.

How do the building standards apply to changes of use or occupation that do not constitute a “conversion”?

The Building (Scotland) Act 2003 significantly altered the way changes of use or occupation had been dealt with previously under the Building (Scotland) Act 1959. Under the 2003 Act particular types of changes are specified in Schedule 2 which attract all the applicable standards. This approach differs to the 1959 Act approach where the focus was to apply those standards which attracted a more onerous requirement for the proposed use.

To demonstrate this, if the current system had continued the 1959 Act approach, change of use and standard 2.15 would have been considered in the following way –

- If the use of a building “not covered within the scope of 2.15” changed to a building “covered within the scope of 2.15”, standard 2.15 would have applied.
- If both the existing and proposed uses are “covered within the scope of 2.15”, but the proposed use attracts a more onerous requirement under standard 2.15, standard 2.15 would apply the more onerous requirement.

However the 2003 Act does not follow this approach and the building standards only apply to a “defined” conversion. This is reflected in paragraph 3.7.7 of the Procedural Handbook which states *“In other cases where the occupation or use of an existing building changes, i.e. cases which do not fall within the definition of conversion, there are no standards applied to it unless there is alteration or extension work done, in which case the guidance in paragraphs 3.7.1 to 3.7.4 above applies.”*

Although the building standards might not apply to a particular change of use, there may be requirements under other legislation. There is also no reason if a verifier considers it appropriate why they cannot suggest, in an advisory capacity, that the applicant might want to consider any aspects of work.

What does “allow access by the public” mean in the context of type 9 conversions?

The purpose of the building standards system is to protect the public interest, hence the “public” reference made in parts of the regulations and Technical Handbooks including –

- Type 10 of Schedule 1 to regulation 3, buildings of a specialised nature
- Type 9 of Schedule 2 to regulation 4, conversions
- Type 2 of Schedule 3 to regulation 5, work not requiring a building warrant
- Regulation 13, provision of protective works
- Standard 4.3 private stair means a stair wholly within a dwelling
- Standard 6.9(c) limitations
- Building uses in Appendix A Defined terms

The type 9 conversion brings in those changes in use or occupation that “allow access by the public where previously there was not”. The result being that the existing building needs to be assessed against the current standards and is likely to require some upgrading. This could be as a result of more onerous standards applying from when the building was built or from unauthorised non-compliant work having been done in the past.

The criteria “allow access by the public” for type 9 is not defined and each proposal should be considered individually. New buildings that have free and unsupervised access by the public are designed as such, recognising that it could be the visitor’s first visit and do not know the building, and a type 9 converted building must be considered in a similar way.

This is important because occasional visitors are likely to be less familiar with the building and management procedures than the normal occupants thus creating a greater risk during emergency evacuation.

The guidance in paragraph 0.4.1 of the Technical Handbooks states that *“Type 9 in Schedule 2 refers to allowing access by the general public where previously there was none. Access by the general public refers to permitting members of the general public to enter a building during opening hours and allowing them to access all parts of the building, other than those parts restricted to staff only.”* An example given is development of a retail trade in a storage building, which could be limited to only part of the building.

However where an existing office building changes occupation and the public will have access to part of the building where they previously did not, it might not necessarily mean that the project should be treated as a conversion. For example, where public access has a level of supervision, management strategies should be in place to take account of their presence in the building. This could include controlled access at the main entrance or controlled access between the public reception area and the rest of the building.

However if the new public access has no level of supervision or is not subject to an appropriate management regime, it would normally be treated as a conversion.

It is therefore difficult to define “access by the public”, “level of supervision” or “management regime” to cover all possible situations. The general concern would be that the public would be unfamiliar with the building, which is particularly applicable to risk and emergency evacuation, and every project should be assessed on a case by case basis.

In which case the same principles for offices above could equally apply to other building types including a school, as could consideration of any wider community use.

Conversions and construction – summary

Therefore to summarise:

- a) When someone intends to carry out building work, the building standards apply to the work, and the impact of the work on the existing building must be considered.
- b) When someone intends to convert a building, the building standards apply. In some cases the existing building might be compliant without needing any work. If work is needed it should be treated in the normal way as a) above.
- c) When someone undertakes a change of use or occupation that is not a conversion, any associated work they carry out should be treated in the normal way as a) above.

- d) When a new use (e.g. office, shop, school etc) is created through a conversion of an existing building, it is treated differently to a newly constructed building although the building standards apply in both cases.

I hope this is helpful.

Yours faithfully



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Annex A

Relationship between construction and conversion for existing buildings

Conversion is one of the changes in occupation or use listed in Schedule 2, and construction can range from a small simple alteration to an existing building to an extensive complex alteration, or include an extension.

The following table considers the case of a residential building subject to alterations and change of use (type 5 of Schedule 2 being relevant), and the different scenarios for when the alterations or the change of use take place.

| | <i>When construction or change of use/occupation takes place</i> | | |
|--|--|----------------|-----------------|
| | <i>Jan-April</i> | <i>May-Aug</i> | <i>Sept-Dec</i> |

| Scenario 1 (construction only) | | | |
|---------------------------------------|--|------------------|-------------|
| Construction | Alterations | x | x |
| Conversion/use | Residential | No change of use | Residential |
| <i>Summary</i> | <i>Alterations to residential building take place – no change of use</i> | | |
| <i>Standards apply to:</i> | <i>Alterations</i> | x | x |

| Scenario 2 (construction only – change of use to a different residential building) | | | |
|---|--|---------------|-----------------------|
| Construction | Alterations | x | (Alterations) |
| Conversion/use | Residential | No conversion | Residential (new use) |
| <i>Summary:</i> | <i>Alterations to residential building take place before (or after) change of use to different type of residential building.</i> | | |
| <i>Standards apply to:</i> | <i>Alterations</i> | x | x |

| Scenario 3 (construction undertaken before building converted) | | | |
|---|--|-------------------|-----------------|
| Construction | Alterations | x | x |
| Conversion/use | Residential | Conversion | Non-residential |
| <i>Summary:</i> | <i>Alterations to residential building take place before conversion to non-residential building.</i> | | |
| <i>Standards apply to:</i> | <i>Alterations</i> | <i>Conversion</i> | x |

| Scenario 4 (construction undertaken after building converted) | | | |
|--|---|-------------------|--------------------|
| Construction | x | | Alterations |
| Conversion/use | Residential | Conversion | Non-residential |
| <i>Summary</i> | <i>Alterations to non-residential building take place after conversion to non-residential building.</i> | | |
| <i>Standards apply to:</i> | x | <i>Conversion</i> | <i>Alterations</i> |

| Scenario 5 (construction done at the same time as the building converted) | | | |
|--|--|------------------------------------|-----------------|
| Construction | x | Alterations | x |
| Conversion/use | Residential | Conversion | Non-residential |
| <i>Summary:</i> | <i>Alterations to residential building take place at the same time as the conversion</i> | | |
| <i>Standards apply to:</i> | x | <i>Alterations Conversions</i> | x |