

Chief Executives – Scottish Local Authorities
[Copy and email: Local Authority Building Standards Managers (LABSS)]

Our ref: A7564712
14 January 2014

Dear Chief Executive

The Building (Scotland) Regulations 2004
Schedule 5: Mandatory Standard 3.12
Sanitary Facilities – Takeaway Food Shops

A trend has emerged where some owners of takeaway food shops are providing limited seating for their customers. Where this coincides with work which attracts a building warrant, to create or alter such shops, they are currently experiencing differences in interpretation around the requirements to provide toilets for the public.

Although Scottish Government are not in a position to interpret the standards that apply, the courts have ultimate responsibility for that, we can give informal guidance on the intention behind the standards.

Within the Building (Scotland) Regulations 2004, as amended, Standard 3:12 sets out the mandatory functional requirements for the provision of toilets for both occupants of and visitors to a building. The intention of this is to give some flexibility in relation to various building categories.

For public (customer) toilets, the supporting guidance in the non-domestic Technical Handbook recognises that some buildings will not be easily categorised, but currently does not give any more advice in this regard. For example, there is no formal guidance on the provision of sanitary facilities for 'takeaway food' shops (with or without seating) given in the Technical Handbooks. This could be contributing to the issue where takeaway food shops may be being considered for compliance purposes under the category of 'public entertainment and assembly' buildings. Consequently they may be being aligned with the sanitary facility provision for cafés as set out in the table to guidance clause 3.12.5.

It is not the intention that a small area of a 'takeaway food' shop cannot provide customers with limited seating without automatically attracting 'café' status and the associated requirement to provide public toilets. The sole purpose of such a limited seating arrangement is to offer an alternative to customers having to eat their food outside. It is expected that customers would quickly move on. So such an arrangement, should not be set up in such a way that would encourage the social interaction that usually prevails within a café, and means that customers are being encouraged to linger (and thereafter expect to be able to use toilets). It also should not

be used to set up a café 'by stealth' by adding extra tables and chairs after the building work is complete.

Whilst each building operating as a takeaway food shop should be assessed on its own merits, it is considered that the provision of around 6 seats (with a few 'micro-tables' on which to rest food) located adjacent but clear of the main sales area should not need public toilet provision.

It is hoped that the above information will promote a consistent approach across Scotland when applying the standards. We intend to review the current Technical Handbook guidance on this matter at the first opportunity. This will involve a formal review process and include looking at whether the limited seating arrangement referred to above (without toilet provision) should be extended or if that would result in a 'blurring' of the categories of 'retail' and 'public entertainment and assembly' buildings. The outcome of this part of the review will result in full public consultation with all verifiers and other stakeholders.

I would like to take this opportunity to thank you in advance for your local authority's co-operation in this matter.

Yours sincerely

A handwritten signature in black ink that reads "Bill Dodds". The signature is written in a cursive, slightly stylized font.

Bill Dodds
Head of Building Standards