



**The Scottish  
Government**

# **The Scottish Building Standards Procedural Guidance for Crown Buildings Third Edition**

**This guidance document is intended to be read in conjunction with The  
Scottish Building Standards Procedural Handbook 3rd Edition**

**September 2010**

**Version 1.1**

Produced by the Buildings Standards Division

September 2010

version 1.1

#### Document Version Control

Title: The Scottish Building Standards Procedural Guidance for Crown Buildings

Purpose: The Procedural Guidance for Crown Buildings provides clarification on the procedures relevant to verification processes for Crown buildings following the removal of Crown immunity from building regulations in May 2009. The guidance is intended to assist with practical operation of the building standards system and the document should be read in conjunction with the Procedural Handbook 3<sup>rd</sup> Edition.

Version	Date	Notes
1.0	May 2009	Guidance on the practical operation of the building standards system in relation to Crown buildings following removal of Crown immunity in May 2009.
1.1	September 2010	Expanded definition of a building where a person may be legally detained or otherwise held in custody to improve interpretation of the work not requiring building warrant approval. Contact information for HM Chief Inspector of Fire and Rescue Services to assist with the statutory consultation with the Fire Authority.

# The Scottish Building Standards Procedural Guidance for Crown Buildings

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## **1. The Building Standards System in Scotland**

1.1 The Scottish Building Standards Procedural Handbook 3rd Edition explains the procedures put in place by the Building (Scotland) Act 2003 and associated legislation. Guidance contained in that document is equally applicable to Crown developments.

1.2 This document relates closely to, **and should be read in conjunction with**, the comprehensive guidance contained in the Procedural Handbook 3rd Edition which was published in September 2010. The procedural guidance is relevant to all building projects irrespective of whether the Crown has an interest. In addition to the Procedural Handbook, Section 0 of the Scottish Building Standards Technical Handbooks provides an introduction to the Scottish system and expands upon the building regulations. The transitional arrangements covering the lead-in period for Crown applicants to gain warrant approval for projects are explained here as are the procedural changes being introduced to cover the security sensitive nature of some Crown projects.

1.3 The Building (Scotland) Act 2003 gives powers to Scottish Ministers to make building regulations to secure the health, safety, welfare and convenience of persons in or about buildings, furthering the conservation of fuel and power and furthering the achievement of sustainable development.

1.4 The purpose of the building standards system is to ensure that building work on both new and existing buildings results in buildings that meet reasonable standards. The system sets out essential standards to be met when building work or a conversion takes place, and only to the extent necessary to meet the building regulations. The system is pre-emptive, designed to check that the proposed building work meets the standards.

1.5 The Building (Scotland) Act 2003 identifies three roles: verifiers; certifiers; and local authorities. The role of checking design compliance rests with verifiers, currently the building standards service within each of the 32 Scottish local authorities. Certification of compliance with building regulations is carried out for design and construction by Approved Certifiers who are members of certification schemes approved by Scottish Ministers. Certification is an optional procedure and is limited to the scope of the approved schemes. A warrant is required before building work can start or a building is converted and the verifier will carry out reasonable inquiries before accepting a completion certificate. The local authority for the geographical area in which a project or building is sited is responsible for the enforcement of matters covered by the Building (Scotland) Act 2003.

## **2. Background to the removal of Crown Immunity from building regulations**

2.1 Immunity from the requirement to comply with building regulations has been removed for Crown bodies such as Government departments, agencies and non-departmental public bodies. Section 53 of the Building (Scotland) Act 2003 is commenced on 1 May 2009 to bind the Crown.

2.2 Removal of the immunity regularises the building standards procedures for all buildings in Scotland and follows the arrangements made in June 2006 to introduce statutory planning procedures for Crown developments. All applications for a building warrant are handled by the verifier. The prescribed forms, model forms and tables of fees are used for all applications. Crown developments that require building warrant approval may benefit from the use of an Approved Certifier of Design or Construction to provide assurance of compliance with building regulations.

### 3. Transitional Provisions

3.1 All work on Crown buildings starting on or after 1 May 2009 will be subject to the legislation and anyone proposing to carry out work or convert a building for which a building warrant is required must obtain a building warrant before they start. The transitional provisions are intended to ease the introduction of the new legislation in the period immediately after removal of the immunity.

3.2 The transitional arrangements allow a further period of Crown immunity and are based on when the work starts and when it finishes, the provisions permit the work to be done without a warrant. However work not completed by 30 April 2012 will not be covered by the transitional provisions and the new legislation will apply.

3.3 Therefore when the transitional provisions are met, Crown immunity continues and a building warrant will not be required if the work has **commenced on or before 30th April 2009** and is **completed on or before 30th April 2012**.

3.4 In addition, when a **contract has been entered into on or before 30 April 2009** the **start date is extended to on or before 31 October 2009** with again work to be **completed by 30 April 2012**.

3.5 It is not possible to provide a single definition of “contract” that will fit all scenarios. All work starting on or before 30<sup>th</sup> April 2009 will be subject to the Building (Scotland) Act 2003 with one exception. The intention of the transitional provisions is to recognise a pre-existing commitment to start the construction of the project.

3.6 A building warrant is only valid for three years but this period of validity may be extended at the verifier’s discretion. However, verifiers have the power to insist that work done during the period of extended validity must meet the regulations in force on the date of the application for extension of the period. Discussion with the verifier should take place if an applicant for a building warrant does not think the proposed work will be complete by 31<sup>st</sup> October 2012. If this is the case, the applicant must assume that they will build to the higher standards. Therefore, a backstop of three years for completion of the work has been allowed in recognition of the diverse range of projects and the validity of a warrant.

#### *Scope of Transitional Provisions*

3.7 Transitional provisions allow a lead-in period for warrants to be obtained and set a date after which all work will be subject to the legislation. The transitional provisions apply when:

(a) such work is commenced on or before 30 April 2009 and is completed on or before 30 April 2012; or

(b) such work –

- (i) is carried out pursuant to a contract entered into on or before 30 April 2009;
- (ii) has commenced on or before 31 October 2009; and
- (iii) is completed on or before 30 April 2012.

3.8 During the transitional period it is critical that the timing of work is considered carefully. If the work is estimated to start or complete outwith the timetable provided then Crown must apply for a building warrant. Similarly, for a conversion the same criteria in 3.6 determines if a warrant is required.

#### **4. Exemption for Ministry of Defence and Security Service Buildings**

4.1 Full exemption from the Building (Scotland) Act 2003 has been introduced for buildings used or to be used for national security or defence purposes. This exemption from the Scottish building standards system is wide ranging and covers matters reserved to the UK Parliament. These buildings are exempted by The Building (Scotland) Act 2003 (Exemptions for Defence and National Security) Order 2009 which means exemption from local authority powers and actions over defective or dangerous buildings.

4.2 The provisions of the 2003 Act do not apply to–

(a) a building, or work to or in a building used or to be used for the purposes of national security;

(b) work, to or in any building, carried out for the purposes of national security;

(c) a building, or work to or in a building, occupied for the purposes of -

- the Secretary of State for Defence;
- the Defence Council;
- any of the armed forces of the Crown;
- any visiting force as defined in the Visiting Forces Act 1952; or
- any international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisation Act 1964.

#### **5. Buildings and work exempt from building regulations**

5.1 From 1 May 2009, Crown projects benefit from the provisions for exempted buildings and services, fittings and equipment currently defined under Schedule 1 to Regulation 3.

5.2 Work on the types of buildings, services, fittings and equipment listed as “exempt” in Schedule 1 is exempt only from regulations 8 to 12, i.e. those regulations imposing standards. While such work is not required to meet a particular standard

nor subject to warrant procedures, it is still subject to the requirements of the Building (Scotland) Act 2003 and regulations 1-7 and 13-17. The work may also be subject to enforcement action by the local authority.

## **6. Work not requiring Building Warrant approval**

6.1 The provisions in Schedule 3 to Regulation 5 are for the types of work that do not require a building warrant on the basis that the work will comply with building regulations are also applicable to Crown projects.

6.2 The types of work described in Schedule 3 have been extended to include new types of building, work and conversions that are specific to the Crown. Works of a type specified in Schedule 3 must comply with building regulations but do not need building warrant approval or to have a completion certificate accepted by the verifier. However, failure to comply could result in enforcement action. Crown bodies may decide to use the services of a building consultancy firm to provide assurance of compliance with building regulations or seek the advice of the verifier.

6.3 The coverage of Schedule 3 has been extended to allow the erection of a new building or work to or in the Scottish Parliament and Her Majesty's private estate to be carried out without obtaining a building warrant. The coverage has also been extended to include work to or in prisons, or a building where a person may be legally detained or otherwise legally held in custody, where the work does not increase the floor space by more than 100 square metres. In the case of a building where a person may be legally detained or otherwise legally held in custody, the coverage under Schedule 3 only applies to the cells area and does not apply to the rest of the building or buildings that have not been designed specifically for that purpose.

6.4 The nature of the security issues involved in carrying out work, gaining access to the site for inspections and also the need for urgent work to take place have all been taken into account when extending the range of the exemptions included in Schedule 3.

## **7. Prison or Building where a Person may be Legally Detained**

7.1 There is limited coverage in Schedule 3 for prisons and other buildings where a person may be legally detained or otherwise legally held in custody. New build prisons and large extensions to prison buildings will require to gain building warrant approval for works. It is important to note that there are exceptions contained in Schedule 3 where building warrant approval is necessary. It is recommended that Schedule 3 is read carefully to take any exceptions to the exemptions into account. Schedule 3 exemption from the requirement to gain warrant approval covers:

- the extension of a building, subject to the extension not exceeding 100 square metres in area;
- the alteration of a building; and
- the provision of services, fittings and equipment in connection with a building.

## *Handling of Security Sensitive Information and Access on Site*

7.2 The Scottish Prison Service, and any duly appointed agent, follow security protocols which provide controls over the handling of project documents containing security sensitive information and also for permitting access on site for inspection of works.

7.3 Security of drawings and documents relating to building projects is taken seriously. Any breach of procedures could have significant implications on the running and security of prisons. Protocols for building standards matters should be project specific and agreed between the applicant, or their agent, and the verifier. The following protocols have been discussed and agreed between the Scottish Prison Service and the Scottish Government Building Standards Division:

### *Building Standards Staff*

- Only nominated officers should handle Scottish Prison Service (SPS) projects.
- Named staff should be identified to the SPS Project Manager. It is recommended that a signed protocol agreement is in place prior to submitting the application for building warrant.

### *Drawings and Other Documents*

- Drawings should be logged by named staff into a specifically marked file.
- Drawings should be stored in a specific lockable cupboard. Electronic copies of drawings must also be controlled and made secure.
- Amended or phased drawings should follow the same procedure.
- Two drawings should be submitted and stamp dated by the nominated member of staff.
- One copy should be retained by the verifier and the approved copy returned to the applicant.
- No other copies should generally be required by the verifier.
- In the course of inspections, building standards staff should ensure that warrant drawings are not taken to site.
- Appropriate drawings will be made available for consultation at the site office.
- Members of the public should not be afforded access to SPS drawings.

### *Interaction with Fire Safety Legislation*

- It should be noted that the Chief Inspector of Fire and Rescue Authorities is the Enforcing Authority for most premises where the Crown is a dutyholder under the Fire (Scotland) Act 2005, including the SPS estate. See Section 11 for further information on consultation with the fire authority.

## **8. Royal Private Estate**

8.1 All buildings in Scotland owned or occupied by Her Majesty in Her private capacity such as the royal residences are included under a new work type in



Schedule 3. Any work to or in a royal residence, or a conversion, does not require building warrant approval but must still comply with building regulations. See section 10 for further information on conversion.

## **9. The Scottish Parliament**

9.1 There are similar provisions to 8.1 for the Scottish Parliamentary Corporate Body.

## **10. Conversions**

10.1 Schedule 2 to Regulation 4 sets out those changes in occupation or use known as conversions that, even if no work is proposed, require the building to be upgraded to current standards and require a building warrant. Conversions of Crown buildings are subject to these requirements.

10.2 Although a building warrant is not required, the requirements for conversions apply to the new types of work contained in Schedule 3 for the royal private estate and the Scottish Parliament as detailed above.

## **11. Consultation with the fire authority**

11.1 Under regulation 11 of the Building (Procedure) (Scotland) Regulations 2004, the verifier must consult, or direct the applicant to consult the fire authority when an application for building warrant, or amendment to building warrant, is received relating to:

- a non-domestic residential building;
- a non-domestic, non-residential building where the design is not in accordance with the guidance contained in the Scottish Building Standards Technical Handbook;
- a domestic building with a storey height over 18 metres; and
- a domestic building with a storey height over 7.5 metres up to 18 metres where the design is not in accordance with guidance contained in the Scottish Building Standards Technical Handbook.

11.2 In each of the four cases, there is also a requirement to notify the fire authority in the following instances:

- when a completion certificate has been submitted for works when no warrant has been granted; and
- when the verifier has granted permission to temporarily occupy or use a building before a completion certificate is accepted.

11.3 In respect to any building, when the verifier intends to impose continuing requirements on a completion certificate which relate to fire safety, the verifier must send a copy to the fire authority.

11.5 The Fire (Scotland) Act 2005 has introduced two roles; “relevant authority” and “enforcing authority”. The “relevant authority” is the fire and rescue authority or

joint fire and rescue board, which is effectively the Fire and Rescue Service for the area.

11.6 In light of this change, and to remove any possible confusion when deciding the appropriate fire authority, the definition of “fire authority” in the Building (Procedure) (Scotland) Regulations 2004 has been amended so that the consultation will, in the majority of cases, be with the “enforcing authority” as defined in Section 61(9) of the Fire (Scotland) Act 2005.

11.7 The intention of Regulation 11 is to require the verifier to consult, in specified circumstances, with the appropriate enforcing authority. Information about HM Chief Inspector of Fire and Rescue Services can be found on the Scottish Fire and Rescue Advisory Unit web site at: <http://www.scotland.gov.uk/Topics/Justice/public-safety/fire-and-rescue-services/fire-rescue-advisory-unit>. In particular, the section on Crown premises provides contact details for the Crown enforcement officers to assist with the consultation process. The enforcing authority is the body that enforces fire legislation in the finished or converted building, as determined by Section 61 of the Fire (Scotland) Act 2005. The exception will be in respect of those premises, to which fire legislation does not apply.

11.8 The Fire and Rescue Authority or Joint Fire and Rescue Board for the area will be the enforcing authority in respect of the majority of premises to which fire legislation applies. There are exceptions which are:

- In premises occupied by the armed forces of the Crown or visiting forces, the Defence Fire and Rescue Service is the enforcing authority;
- In most construction sites and in construction and nuclear installations, the Health and Safety Executive is the enforcing authority;
- In other premises where the Crown has fire safety duties, HM Chief Inspector of Fire and Rescue Authorities is the enforcing authority; and
- In major sports grounds, the local authority is the enforcing authority.

11.9 It is important to recognise that the enforcing authority under the Fire (Scotland) Act 2005 during the construction phase of a project may be the Health and Safety Executive whereas, after completion and handover, the enforcing authority will be determined by the occupation of the relevant premises.

11.10 The wider objectives of consultation are to:

- Reduce the potential for conflict between building regulation compliance and compliance with fire safety law, particularly when the guidance in the Scottish Building Standards Technical Handbook has not been followed; and
- Involve the fire and rescue service in discussions where the physical features of buildings may have an adverse impact on the risk to fire-fighters or where arrangements for access, water supplies and other facilities for use by the fire and rescue service depart from the norms established by the Technical Handbooks.

11.11 Ongoing dialogue between the verifier and the enforcing authority may be required due to the varied nature of projects and the complexities of fire engineered solutions. Before the removal of Crown immunity, consultation was with the local Fire and Rescue Service. The wider range of enforcing authorities means that they will not always be locally based. Early discussions between Crown applicants for building warrant and the verifier is critical to ensure that potentially extensive discussions start as soon as possible. In some cases regular travel may prove necessary to hold effective discussions which may extend the time taken to process the application for building warrant. It is expected that including a fully annotated set of fire drawings as part of the warrant application submitted to the consultee (with Model Form R) will help expedite the consultation process.

11.12 To facilitate this process, the necessary application forms have been amended to allow the Crown applicant to identify the appropriate enforcing authority when this is not the local Fire and Rescue Service. A new field to identify the enforcing authority has been added to the following model forms:

- Application for building warrant; and
- Application for amendment of building warrant.

11.13 The *enforcing authority* should not be confused with the *relevant authority* referred to in Section 2 of the Scottish Building Standards Technical Handbooks. As the guidance in Section 2 recommends, the fire and rescue service should still be consulted on matters of operational concern to them, even when they may not be the enforcing authority for the completed building.

### *Weekly Lists*

11.14 Verifiers produce weekly lists under Regulation 10 of the Building (Procedure) (Scotland) Regulations 2004 to notify various authorities of all building warrant applications received by them. Following the removal of Crown immunity, there will be a higher number of warrant applications to be included on weekly lists and a wider range of enforcing authorities to be consulted. The details included on the lists should, wherever possible, identify which applications are appropriate for each of the different enforcing authorities, as identified on the above forms.

## **12. Building Standards Register**

12.1 Section 24 of the Building (Scotland) Act 2003 requires local authorities to keep a Building Standards Register (BSR) for the geographical area of the authority. The register consists of two parts, Part I containing data with Part II containing documents. The BSR is accessible by the public however access to documents can be restricted by removing them from the register. The local authority can do this where the disclosure or copying of that document would raise security concerns.

12.2 Part I is electronic and includes data items relating to particulars of applications, submissions and other documents and is published online. Part II of the register consists of documents including building warrants, completion certificates and project drawings.

12.3 For those documents on the BSR, there are limitations in their availability for copying. For a non-residential building, a prison, a building where a person may be legally detained or otherwise held in custody, the Scottish Parliament or a building part of the Royal Private Estate, copying may be restricted by the building owner for those documents where they have security concerns. For any other residential building, copying is restricted to owners, occupiers or tenants; or prospective owners, occupiers or tenants of the relevant building or an adjoining building.

12.4 Early discussions with the verifier should take place if there are any security concerns to be taken into account. This would ensure those documents that the local authority should remove from the BSR are clearly identified.

### **13. Enforcement**

13.1 The local authority for the geographical area in which a project or building is sited is responsible for the enforcement of the regulations. This applies irrespective of whoever carried out the verification role. In particular, the local authority has responsibility for enforcing continuing requirements, whether imposed by verifiers or Scottish Ministers, where building owners have failed in their duty.

13.2 The local authority may serve a notice on the owner of a building requiring compliance. Where compliance is not achieved, the owner has committed an offence and the local authority can carry out any necessary works, register a completion certificate and recover costs from the owner.

13.3 Section 53(3) of the Building (Scotland) Act 2003 states that if the Crown contravenes any provision it will not be held criminally liable but it may be reported to the Court of Session.

13.4 The Scottish Building Standards Procedural Handbook 3rd Edition provides further information on compliance and enforcement in section 10. This section covers the process for serving of building regulation compliance notices, enforcement notices and continuing requirements imposed by verifiers. Sections 10 and 11 explain the powers available to local authorities for dealing with dangerous and defective buildings.

### **14. Further Guidance**

14.1 Further explanation of the procedures forming the Scottish building standards system are contained in the Scottish Building Standards Procedural Handbook 3rd Edition. It is important to read the guidance in this document in conjunction with the Procedural Handbook.

14.2 Requests for further advice or feedback on the impact of the removal of Crown immunity from building regulations should be made to The Scottish Government Building Standards Division.