

SCOTTISH EXECUTIVE

BUILDING REGULATION NOTE Note No. 1/2000

Building Standards (Scotland) Regulations 1990 (as amended)

Application of the Technical Standards to Existing Buildings

Our Ref: QTD 1/5
23 February 2000

Dear Sir/Madam

Enclosed for your information is a copy of Building Regulation Note 1/2000

This Building Regulation Note is intended to provide guidance on the application of the Technical Standards to existing buildings

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Yours faithfully

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APPLICATION OF THE TECHNICAL STANDARDS TO EXISTING BUILDINGS

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1 THE ISSUES

1.1 Our recent involvement with local authorities in cases that called for the application of the [Technical Standards](#) to existing buildings indicates that a number of problems are arising, and that a variety of approaches are being adopted. There are concerns about the extent to which standards should be applied to buildings, particularly historic buildings, and different approaches to changes of use. As a result, the Department has decided it may be helpful to up-date and re-issue the information contained in previously issued Building Regulation Notes 6/77 and 1/85.

2 EXTENT OF APPLICATION

2.1 Broadly speaking, the regulations can only be applied in existing buildings to those parts of the building which are:

- a. an extension or the subject of an alteration;
- b. adversely affected by an alteration being carried out elsewhere in the building; or
- c. the subject of a change of use.

2.2 For the authoritative statement on the above, reference should be made to the relevant provisions of the Building (Scotland) Acts 1959 and 1970 (as amended). These can be outlined as follows:

- a. Section 6(2)(a), together with the definitions of "building" and "construct" in section 29(1) and the modified meaning of "building" in section 29(2), has the effect of limiting the application of the regulations to the parts of the building being altered or extended. It should be borne in mind that within section 29(1) "construct" includes alter, erect, extend and fit, and in section 29(2) "building" is to be construed as a reference only to so much of the building as is comprised in the extension or is the subject of the alteration or change of use as the case may be.
- b. Section 6(8)(c) has the effect of extending the application of the regulations to any part of the building which is directly affected by an extension or alteration anywhere in the building, but only to the extent of preventing a new infringement arising or an existing infringement becoming worse.
- c. 'Change of use' in relation to a building is defined in section 29 (1) as "such change in the

use or occupation of the building as will bring it within a class of building to which the building standards regulations apply, or, if it is already within such a class, within a class to which additional or more onerous provisions apply".

The first part of this reference concerns a building being brought within a class to which the regulations apply and in effect removes the exemption of the building which is then treated as if it were a new building subject to all the relevant requirements.

In all other cases of change of use the effect of section 6(2)(b) in relation to warrant applications is to apply only to those regulations attracted by the change of use, i.e. those regulations which apply for the first time, or apply more onerously due to the change of use. Change of use therefore operates selectively by the application of specific requirements of the regulations to particular features of the building.

Note the term "building" means the whole structure or any part thereof, and can therefore apply if the use of a room or building element (such as a wall) changes. It does not refer only to a change in occupancy or purpose group.

2.3 It is therefore important to remember that:

- a. A "change of use" can occur without a change in purpose group or sub-groups taking place. Similarly a change of purpose group or sub-group may not result in the application of a more onerous requirement. Each regulation or provision within a regulation is considered separately for this purpose.
- b. A "change of use" does not necessarily have to apply to the complete building. It may refer to only a part of a building e.g. in the case of a subdivision of a large dwelling, a wall may become a separating wall as a result of the subdivision and therefore attract more onerous or new requirements for fire resistance and sound insulation.

2.4 To expand the reasoning behind the above statements it is helpful to consider the use of the word 'class' within the Act:

Section 3 (3) (a) of the Act allows building standards regulations to prescribe different standards for different 'classes of building'.

Section 3 (5) of the Act refers to 'classified' which allows buildings to be classified by size, description, design, purpose, location or any other characteristic whatsoever.

Section 29 (1) of the Act within the definition of change of use refers to 'class' and this refers back to the 'classes of building' mentioned in section 3 (3) (a) of the Act.

2.5 These references to "classes of building", 'classified', and 'class' all pre-date the regulations use of the term 'classification by occupancy' (now known as "purpose groups") and should not be confused. It is clear from section 3 (5) of the Act that purpose, or occupancy, is only one of the methods by which the building standards regulations may classify and set different standards for buildings. In summary, the word 'class' has a much wider meaning than in the term 'occupancy classification' ("purpose group") and the two must be clearly distinguished.

3 HISTORIC BUILDINGS

3.1 Many of the perceived problems in existing buildings are particularly acute in buildings which are protected by other legislation on historic buildings or conservation areas. Building Control legislation only specifically recognises this legislation in relation to notices being served on such buildings, but applications for warrant related to work on such buildings should take cognisance of the aims of this related legislation and decisions on what are suitable standards must be made accordingly.

3.2 Relaxation or dispensation of regulations will of necessity often be applicable in respect of historic buildings. The current 'Memorandum of Guidance on Listed Buildings and Conservation Areas', published by Historic Scotland, is the guidance document to which all planning authorities are directed by the Scottish Executive Development Department (Circular No. 13/1998) in their consideration of conservation and listed building consent matters. This document suggests, in relation to requests for relaxations on historic buildings, that Building Control staff should be encouraged to recognise, and accept, that what should be achieved may not always be achievable in older property. In such cases Building Control staff should be asked to give careful thought to alternative methods of achieving alternative, but nevertheless adequate and reasonable, standards which would have less impact upon the architectural quality or historic value of the building.

3.3 This advice emphasises the need for lateral thinking when dealing with proposals for certain types of work in some historic buildings. It does not seek the acceptance of standards which are clearly inadequate, but rather a willingness to consider different solutions, which will still offer standards deemed appropriate for each particular case. The wording of this section of the Memorandum is to be adjusted and amplified for inclusion in the next edition and will continue to promote a flexible and respectful approach. The aim will remain to obtain a reasonable balance between the standards achieved and the protection and preservation of the architectural and historic quality and character of the building which are matters that are equally legally protected.

3.4 From the building control viewpoint, applicants should be encouraged to look for acceptable and suitable alternatives that improve conditions, rather than assume a 'no change' approach is likely to be the correct one. Nevertheless in difficult cases, such as the reversion to domestic use of property that may have been used for offices, achieving modern standards may be seen as requiring unreasonable change. There is a case for differing the approach to different requirements of the regulations. It may be possible, say, to show a greater willingness to consider relaxations which relate to issues of conservation of fuel and power and disabled access rather than those which apply more directly to health and safety, such as means of escape and structural precautions. These decisions are the prerogative of the local authority, because only local knowledge of the particular case will fully inform a decision, but the intent of all national legislation, not just the building standards, must be assessed. Local decision making means that centrally issued, simple, prescriptive guidance is not appropriate, but both the Building Control Division of the Scottish Executive and the Historic Buildings Inspectorate within Historic Scotland (an executive agency of the Scottish Executive) are willing to comment on difficult cases where this might aid the local authority.

4 FURTHER INFORMATION

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