Ministry of Defence
Procedures for Building Regulations - compliance in Scotland

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DEFENCE ESTATE ORGANISATION
MINISTRY OF DEFENCE

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INTRODUCTION

1. The contents of this Technical Bulletin are advisory although reference is made to Statutory Requirements which apply to Ministry of Defence (MOD) Works Projects and Works Services in Scotland.

2. This Bulletin is for the use of Top Level Budget Holders (TLB) for application by Project Sponsors, Property Managers (PROMs), Establishment Works Consultants (EWC), Works Services Managers (WSM), Defence Works Advisors (DWA) and any other consultants or contractors engaged in any capacity related to the procurement, provision, design or erection of building works on the MOD Estate in Scotland.

3. The principal users of this document are expected to be EWC specifiers, WSM designers and contractors for works which fall within the Property Services remit and Project Manager (PM) designers and contractors for Projects.

4. For MOD Establishments occupied by United States Visiting Forces (USVF), the responsibilities of Property Manager, EWC and WSM are jointly held by the USVF and DEO(USF). At base level this jointly managed organisation is to take appropriate action to implement the contents of this Bulletin. Where this Bulletin contains procedures which differ significantly from USVF practice, a DEO(USF) Code of Practice section will be issued.

AIM

5. The aim of this Bulletin is to:
   - give advice on the Statutory Requirements which apply under the Building (Scotland) Act 1959 as amended to all MOD construction works in Scotland
   - outline the procedures adopted by the MOD to satisfy the certification requirements of the Act
   - set out the Authoritative position regarding relaxation of Building Regulations and the procedures to be followed
   - describe the content and format of the Building Standards (Scotland) Regulations and highlight those Regulations which are most likely to require relaxation.
BACKGROUND

6. The Building (Scotland) Act 1959 C.24 makes provisions that apply to Crown buildings and building work being carried out on behalf of a Crown authority.

7. These provisions require that certain procedures are to be applied to building works carried out by, or on behalf of, a Government department.

8. The Act defines that for Crown Premises and building works the final Authority for matters relating to the Act and its subordinate Regulations is the Secretary of State for Scotland.

COMPLIANCE

9. Generally, compliance with the Act will be achieved by conforming to the two main aspects of the Statutory instrument which are:

   - substantive requirements - those which set design and constructional criteria
   - procedural requirements - those which set out the procedures for applications, control, certification and enforcement.

SUBSTANTIVE REQUIREMENTS

10. It is MOD policy to comply with the substantive requirements of all Legislation.

11. The substantive requirements of the Building (Scotland) Act 1959 are set out in the regulations and technical standards which support the Statutory Instrument. Compliance with the substantive requirements of these standards will ensure that the statutory obligations of the Act are met.

PROCEDURAL REQUIREMENTS

12. The procedural requirements that apply to Crown Buildings and building works are set out in the Act and include:

   - methods of compliance certification
   - relaxation of, and dispensation from, the requirements of the Regulations

   The particulars of these procedures, as are applied to MOD building works, are described below.

COMPLIANCE CERTIFICATION

13. The Scottish Office published guidance to Accounting Officers in 1994 which set out four accepted methods of compliance certification that are available to Crown Departments. These are:

   - in house certification
   - design team certification (first party certification)
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- certification by the PM (second party certification)
- independent consultant certification (third party certification).

14. It is acceptable to use any of these methods to demonstrate compliance with the Regulations for Crown building works. The private sector procedures which require submission to Local Authorities are not open to sponsors of Crown building works in order that the principle of the Crown Authority, not being subject to Local Government control, is preserved.

15. To provide a single cost effective compliance system for MOD works, the operation of a second party certification system, with the addition of an independent random audit carried out by the Defence Estate Organisation (DEO) Building Control Officer (BCO) has been employed.

ARRANGEMENTS FOR COMPLIANCE CERTIFICATION

16. The responsibility for providing compliance certification is placed on the PM for Works Projects or the WSM for Works Services by a condition in their respective contracts. The details of the procedures which are to be followed are contained in the PM’s Terms of Reference and for the WSM in DEO(W) Specification 005/Issue 003 Property Management of the Defence Estate.

17. The PM/WSM is required to carry out reviews of the design and inspection of the construction and to certify that the final design and construction comply with the Regulations, subject to any relaxation that has been obtained.

18. The procedures require that the Certificates of Compliance are produced at design and construction completion stages. Originals of the Certificates are to be forwarded through the DEO BCO for retention on the contract file.

19. Project Sponsors and Property Managers should be aware that these certificates are specific deliverables under the respective contracts and they should receive copies at the appropriate times. These copies should be retained for inclusion in the handover/maintenance documentation.

RELAXATION AND DISPENSATIONS

20. The Secretary of State for Scotland is the Authority empowered to dispense or relax the provisions of the Building Standards (Scotland) Regulations 1981 in relation to any Crown building work.

21. On receipt of an application made in the prescribed manner, the Secretary of State for Scotland may consider that any provision of the Building Standards Regulations, as applied to a particular building or building works, is unreasonable and may direct that the provision shall:
   - not apply to that building or works, or
   - apply subject to the modification specified in the direction.

22. Application for a Direction for the dispensation or relaxation of the provisions of the Regulations may be made to Construction & Building Control Group Division B of the Scottish Office Development Department.
PROCEDURE FOR APPLICATION FOR A DIRECTION

23. Where the design and/or construction of the works would be in contravention of the Regulations and for technical reasons it is considered impractical to comply, an application for a Direction may be made through the following procedure:

Initial Application

An initial application is to be made to the DEO BCO who will determine whether the Regulations have been met or whether a submission for a Direction is appropriate. Where the BCO considers that compliance with the Regulations has been achieved by the building design proposals, he will issue a formal determination to the PM/Project Sponsor or WSM/PROM.

Application for a Direction

Where a determination of compliance cannot be given, the BCO will provide initial advice on the required format and content of the application for a Direction and will indicate whether the application will be supported by the BCO.

Application for a Direction will be made through the BCO who will forward the application to the Scottish Office on behalf of the MOD.

The application is required to be submitted in duplicate and must be supported by full documentation, including drawn information, setting out the case for relaxation/dispensation.

The BCO will append to the application a statement which either gives support to the application or sets out the details of the Regulations that are considered to be contravened.

Any additional information which the Scottish Office require for their consideration will be provided by the applicant and submitted through the BCO.

Secretary of States Direction

During the period of consideration, the Scottish office will forward to the applicant and the BCO a Draft Direction for comment. Where material comments are returned, copies should be sent to the BCO/applicant.

After consideration of any material comments, the formal Direction will be issued to the applicant and the BCO. This document is the property of the Client department and the original will be forwarded to the Sponsor/PROM for retention. Copies of the Direction will be attached to any certificates required by the MOD Building Regulations compliance procedures.

Timescale for Issuing a Direction

As the procedures are between Government Departments, there are no Statutory periods given for the issue of a Direction. However, it must be anticipated that the timescale will be similar to that for private sector applications and cannot be expected to be less than 3 months. Project Sponsors, PROMs and WSMs will need to consider the implications of this in their programme.
THE BUILDING STANDARDS (SCOTLAND) REGULATIONS

24. The Regulations prescribe standards for buildings which satisfy the requirements of Part 2 of the Building (Scotland) Act 1959. They comprise statements of requirements supported by Technical Standards which are produced by the Scottish Office and published as Technical Standards for compliance with the Building Standards (Scotland) Regulations 1990 by the Stationery Office, Edinburgh.

25. The purpose of the publication is to present the Technical Standards which are the criteria for compliance with the Regulations and have statutory force by virtue of Regulation 9.

26. Regulation 9 provides that the requirements of the Regulations are satisfied only by compliance with the relevant standards set out in the Technical Standards.

27. The relevant standards may, in turn, be met by:

• conforming with the provisions which are stated in the Technical Standards to be deemed to satisfy the relevant standards, or
• by any other means which can be shown to satisfy the relevant standards.

As these standards are mandatory in format/content, the requirement for formal relaxation will be greater in Scotland than in the remainder of the UK where performance based regulations apply.

TECHNICAL STANDARDS FROM WHICH RELAXATION IS OFTEN REQUIRED

28. The following lists those standards which most often give difficulty in achieving satisfactory compliance, particularly where the works are to existing buildings. This list is not exhaustive and non compliance with any standard may require a Direction.

• Part E - Means of Escape from Fire and Facilities for Fire Fighting, particularly the requirements dealing with:
  
  Travel distances
  Width of escape routes
  Height of escape routes
  Enclosure of accommodation stairs
  Means of escape for disabled people

The above are particularly applicable to works in existing buildings. For new works, full compliance will be expected to satisfy the MOD's responsibilities regarding protection of life.

Any application for a Direction where a Part E standard is concerned must be supported by the MOD Command Fire Officer as it will require relaxation of the Crown Fire Standards which are mandatory for MOD works.

• Part P - Miscellaneous Hazards

  Roof access
• Part T - Facilities for Disabled People, particularly the requirements dealing with:
  Means of access to a building
  Means of access within a building
  Provision of sanitary accommodation in a building
  Provision of a suitable changing area in a building
  Provision of a suitable bedroom in a building of purpose group 2B

EFFECT OF DIRECTIONS ON OTHER LEGISLATION

29. A Direction given under the procedures of the Building (Scotland) Act 1959 applies only to the Regulations and Standards controlled by the Act.

30. Where a direction relaxes these standards it should not be assumed that compliance with related legislation will be achieved and the effect on other legislation controlling the built environment, the Workplace (Health, Safety & Welfare) Regulations 1992, SI 1992 no. 3004, must be considered.

Bulletin Authorised By:

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