Local Government and Housing Directorate
Building Standards Division

Scottish Government
Riaghaltas na h-Alba
gov.scot

E: buildingstandards@gov.scot

Chief Executives – Scottish Local Authorities

Copy to: Local Authority Building Standards Managers

Our ref: A45719323

31 October 2023

Dear Chief Executive

THE BUILDING (SCOTLAND) ACT 2003: SECTION 34 – REPORTS AND INFORMATION NOTIFICATION OF APPLICATION FOR BUILDING WARRANT – SECTION 2: FIRE.

I am writing to you to extend the type of applications for building warrant that a verifier must notify to the Building Standards Division (BSD) under Section 34 of the Building (Scotland) Act 2003. This letter supersedes the Section 34 letters issued on 22 May 2017, 27 July 2018 and 26 March 2021.

This letter adds a further category (f) "any conversion of a traditional building to a residential building (including hotels)" and supporting information in Annex C.

Local authorities as verifiers are formally required to notify BSD of the following applications for building warrant. Notification should take place as early as possible in the assessment process:

a) Developments with any storey at a height of more than 60 metres;
b) A dwelling having a floor area of more than 200 square metres;
c) A non-domestic building where the design is not in accordance with the guidance issued by Scottish Ministers;
d) A domestic building with a storey height over 7.5 metres where the design is not in accordance with the guidance issued by Scottish Ministers;
e) Applications which include reference to an external wall cladding system assessed in accordance with BR 135 when tested to BS 8414 as a means of demonstrating compliance with standards 2.1, 2.2, 2.4, 2.6 or 2.7; and
f) any conversion of a traditional building to a residential building (including hotels).

Notification under S34 of the Act is a statutory requirement in the circumstances outlined in a) to f) above. This is important as it allows BSD to:

- Check that verifiers are managing risk in accordance with their risk management protocols;
- Gather data to inform future reviews of building and procedure regulations and identify common issues where there are gaps in associated guidance;
- Provide further guidance and act on research; and
- Contact verifiers to offer informal counsel and expert advice as required.

Section 34 Background information and competence criteria for verifiers is provided in **Annex A**. More detailed information on managing the fire risks associated with external wall systems is provided in **Annex B** and conversions of traditional buildings to residential buildings in **Annex C**. Information that should be included in the 'Notification of Application for Building Warrant' is provided in **Annex D**.

Whilst the requirement to notify BSD of building warrant applications in the circumstances outlined above is made on a statutory basis, you should note that the determination of the application rests with the local authority. I would remind local authority verifiers of the importance of early discussions on these types of applications with the applicant, their design team and where relevant, the Scottish Fire and Rescue Service in their role as a statutory consultee.

Any enquiries about this letter should be addressed in the first instance to:

Benny Rooney
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Yours sincerely

DR STEPHEN GARVIN
Head of Building Standards Division

SECTION 34 – REPORTS AND INFORMATION

Background

In 2005, under Section 34 of the Building (Scotland) Act 2003, local authorities were requested to notify the Scottish Building Standards Agency, now the Building Standards Division (BSD) on behalf of Scottish Ministers of applications for building warrants being received in relation to developments with any storey at a height of more than 60 metres. Tall structures of this height were out with the scope of the guidance contained in the technical handbooks. Over the years, additional categories of building to be notified to BSD were added in response to emerging risks, research or published reports. The following is an extract from the Building (Scotland) Act 2003.

> ***"34 Reports and information***
>
> *(1) Every local authority, verifier and certifier must provide the Scottish Ministers with such reports and information as the Scottish Ministers may require in relation to the functions of the authority, verifier or certifier under this Act."*

Fire Engineering

The report "Research to Support the Improvement of the Design Verification of Fire Engineered Solutions as Part of the Scottish Building Regulatory System" was published in November 2016. The research set out the findings from consultation with stakeholders and made suggested improvement actions on the design verification of fire engineered solutions as part of a Scottish building regulatory system.

The report "Competency Criteria for Local Authority Verifiers When Checking Fire Engineered Solutions for Compliance with Building Standards" was published in May 2017 and identifies three levels for assessing the fire strategy of a building. It also identifies, against each of the levels, the minimum qualifications and competence criteria (training, knowledge, skills and experience) for verifying fire engineered proposals for compliance with building regulations.

Under the terms of the re-appointment of verifiers from 1 May 2023, local authorities are required to meet the Operating Framework 2021 and the Performance Framework 2021. Function 1.2 Resourcing of the Operating Framework requires that "Verifiers must have staff with appropriate building standards related qualifications and experience, and have contingencies for when resourcing is not available in-house."

Role of Scottish Fire and Rescue Service

Regulation 11 of the Building (Scotland)(Procedure) Regulations 2004 provides the Fire Authority with the right to make representations on specified building warrant applications. The verifier must take account of any comments made by the SFRS when determining the application, but ultimately the decision to grant or refuse the warrant rests with the verifier. The Fire Authority may also comment on matters that impact their statutory duties under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006.

Verifier Qualifications

The above report "Competency Criteria for Local Authority Verifiers When Checking Fire Engineered Solutions for Compliance with Building Standards" provided

recommendations for the level of qualifications and the complexity of designs. Building standard managers and team leaders should consider these recommendations when allocating building warrants to staff or deciding to use third party reviewers when appropriate resourcing is not available in- house.

The report concluded that a range of professional qualifications and competencies for verification of fire engineered designs is needed, as appropriate to the level of complexity of the design, complexity of analytical and computational methods applied, and the variation from the guidance in Section 2: Fire of the Technical Handbooks.

The research report also identified three qualification levels for verifiers based on the level of complexity of the fire engineering and building risk. The table below is based on table 6.1 from the report and is followed by further information on the qualifications and competencies for each complexity level taking into account the findings of the research.

Verifier Qualifications based on Fire Engineering Design Level

Verifier / 3rd Party IFE EC Qualification	**Level 1** Technical Handbook Compliance	**Level 2** 'Limited' Fire Engineered Design, C/VM2 Verification	**Level 3** 'Complex' / BS7974 / IFEG Fire Engineered Design
As Operating Framework for Verifiers [1]	X		
IEng		X	
CEng			X

Notes

[1] Annex A, of the Operating Framework for Verifiers, identifies chartered professional status (e.g., RICS, CABE or CIOB) should be considered at least 'desirable', supported by experience in the field where possible.

To assist in determining the competency of surveyors, the table should be read in conjunction with the following notes.

General

The table should be used flexibly and delineation between the levels have a degree of fluidity. For example, a minor deviation from the technical handbook guidance will not necessarily move the project from level 1 to level 2.

Although the qualifications of surveyors are important, their knowledge, experience and type of work that they have been involved with, are all equally important. Such decisions have to be taken by the Building Standards Manager or Team Leader as they are best placed to assess the complexity of the project and the ability, skills and (where appropriate) qualifications of their surveyors.

Level 1 Technical Handbook Compliance

No formal fire engineering qualifications beyond what is currently expected of surveyors is needed. It allows for professional judgement to be made over small departures from the guidance such as small increases to maximum travel distances, dead end corridors, exit width, compartment volume and so forth. It would be unusual for these types of projects to be subject to a formal fire engineered design. For example, the case for compliance may be made by an experienced architect, even if they do not fully appreciate that they are, in effect, fire engineered solutions. The relevant qualifications and experience of the surveyor should be considered when determining his or her suitability to verify such a project.

Level 2 Limited Fire Engineered Design, C/VM2 Verification

A level 2 design covers a wide range of variations from the technical handbook guidance. This can vary from minor deviations from the guidance with a degree of technical complexity to more challenging projects with significant deviations and high technical complexity. This type of work would not involve complete fire engineered solutions covering the entire design.

It would be usual for the building warrant application with minor variations to be supported by a fire engineering report the case for deviations may be made by an experienced architect.

The more complex designs may involve the use of innovative materials, strategies which reduce the 'specified' fire protection measures, or have a complexity that is out with the scope of the Technical Handbook guidance. The fire engineered solution should meet the intended function of the mandatory building standards taking account of a range of fire safety features including building geometry, materials, fuel load, occupant characteristics etc.

It is suggested that the minimum qualifications and competency for Level 2 verification for those dealing with projects at the lower end of the complexity scale may be expected to have relevant experience and a fire engineering degree or appropriate modules. While those involved in more complex designs should have qualifications and competency in line with those expected of an Incorporated Engineer or a recognised equivalent as well as appropriate experience in such projects.

Level 3 'Complex' / BS7974 / IFEG Fire Engineered Design

It is suggested that the minimum qualifications and competency for Level 3 design and verification, would be in line with those expected of a Chartered Engineer or a recognised equivalent as well as appropriate experience in such projects. Detailed guidance on fire safety engineering is given in BS 7974: 2001 and in the International Fire Engineering Guidelines (see clause 2.0.7 of the Technical Handbooks).

ANNEX B

MANAGING THE FIRE RISK ASSOCIATED WITH EXTERNAL WALL CLADDING SYSTEMS

Background

The local authority verifier must notify the Building Standards Division (BSD) where any proposal is supported by a BR 135, 'Fire Performance of external thermal insulation for walls of multi-storey buildings' assessment when tested in accordance with BS 8414: Part 1: 2020 or BS 8414: Part 2: 2020. Rigorous compliance checking of the design and construction must also be undertaken and evidence recorded. For example, verifiers should seek information from the applicant to confirm that:

- The cladding system tested is representative of the system design.
- Appropriate risk management protocols are in place to demonstrate compliance during construction as part of an issued Construction Compliance Notification Plan.

The design and construction of an external wall cladding systems must be carried out in accordance with the Building (Scotland) Regulations 2004 and associated amendments including The Building (Scotland) Amendment Regulations 2022 which came into force on 1 June 2022. The 2022 regulations apply to 'relevant buildings' which means "*a building having a storey, or creating a storey (not including roof-top plant areas or any storey consisting exclusively of plant rooms) at a height of 11 metres or more above the ground and which contains a:*

a) dwelling;
b) building used as a place of assembly, or as a place of entertainment or recreation;
c) hospital;
d) residential care building or sheltered housing complex; or
e) shared multi-occupancy residential building".

Therefore, BR 135, 'Fire Performance of external thermal insulation for walls of multi-storey buildings' when read in conjunction with the test methodology in BS 8414: Part 1: 2020 or BS 8414: Part 2: 2020 cannot be used as an alternative method to demonstrate compliance with building regulations for 'relevant buildings'.

When can the BS 8414 test and BR 135 assessment be used?

Where the building is not a 'relevant building,' BS 8414/BR 135 may be used to demonstrate compliance with the mandatory building standards as an alternative to European Classification A1 or A2 in the following situations:

- where the external wall cladding system of a domestic building is less than 1 m to the boundary and the building has no storey at a height of 11 m or more above the ground;
- where the external wall cladding system of a non-domestic building is less than 1 m to the boundary and the building has no storey at a height of 11 m or more above the ground;
- where the external wall cladding system of a hospital, residential care building, entertainment building, or assembly building has no storey at a height of 11 m or more above the ground; and
- where the external wall of a non-relevant building has a storey at a height of 11m or more above the ground.

It is also worth pointing out that the guidance in the technical handbooks state *"Even if an external wall cladding system is constructed of materials achieving European classification A1 and A2, clients may wish to further assess the cladding system against the performance criteria in 'Fire performance of external thermal insulation for walls of multi-storey buildings' (BR 135, 2013) when tested in accordance with BS 8414-1: 2020 or BS 8414-2:2020. BS 9414: 2019 provides additional information on the application of results from BS 8414 tests."* Whilst this is entirely a matter for the client to decide, the test may be used to provide further reassurance to clients of how the overall cladding systems performs in a large scale façade fire test even if the components are non-combustible. The June 2022 regulations also provide a list of components that are exempt from European classification A1 and A2.

Research

Managing Fire Risks Associated with Use of External Wall Systems Report (2023) was published on 30 October 2023. The aim of the research is to assist local authority verifiers to manage the fire risk associated with external wall systems (including external wall cladding systems) through the design and construction phase of a project and improve compliance with building regulations. The research focuses on compliance issues, both physical and procedural and includes qualitative analysis of the design, verification, installation, inspection, and certification of external wall systems. The key outcomes from the research were:

- Insufficient attention has been paid to the construction of external wall systems by contractors with failures to achieve the quality expected and comply with the approved design.
- The building standards verifier should focus on both the design and construction of external wall systems, making site checks and gathering evidence as part of their reasonable inquiry processes.
- A structured approach to assessing the design and construction of external wall systems is required. This should include gathering all supporting manufacturers, test and certification evidence, and recording all relevant information.

The outcome of the research will be considered in the development of the Compliance Handbook that supports the Compliance Plan Approach work stream of the Building Standards Futures Board.

Ongoing work – Compliance Plan and Compliance Plan manger role for High Risk Buildings

Building Standards Division (BSD), is developing a national Compliance Plan approach to provide greater assurance that compliance with building regulations is achieved from design to completion. A 'Building regulations - compliance and enforcements: consultation' sought views on the development of a new Compliance Plan Manager role within the building standards system. The consultation also sought views on the definition of High Risk Building (HRB) types and the level of fines and sanctions where work is not carried out in accordance with the regulations. The consultation analysis report was published in May 2022. Following this analysis a need was identified to strengthen existing provisions in the Building (Scotland) Act 2003 in relation to enforcement and sanctions and a further consultation was launched on 6 October 2023. The proposals aim to strengthening existing provisions under section 21 Occupation or use without completion certificate, 27 Building warrant enforcement notices, and 48 Penalties for offences of the Building (Scotland) Act 2003.

ANNEX C

CONVERSIONS OF TRADITIONAL BUILDINGS TO RESIDENTIAL BUILDINGS (INCLUDING HOTELS)

Background

Following publication of the Determination by Sheriff Thomas McCartney on 11 January 2023, the Cameron House Fatal Accident Inquiry recommendations: Short Life Working Group report was published on 2 October 2023. The report provides both short and longer term actions targeted at industry, Scottish Government and the Scottish Fire and Rescue Service. Two recommendations are targeted at the Scottish Government:

> **Recommendation four** - "The Scottish Government should consider introducing for future conversions of historic buildings to be used as hotel accommodation a requirement to have active fire suppression systems installed."
>
> **Recommendation five** – "The Scottish Government should constitute an expert working group to more fully explore the special risks which existing hotels and similar premises may pose through the presence of hidden cavities or voids, varying standards of workmanships, age, and the variance from current standards and to consider revising the guidance provided by the Scottish Government and others."

As a short term measure, the Scottish Government have amended clause 2.0.7 Alternative Approaches in the non-domestic technical handbook. [Publication expected November 2023]. For the purposes of the guidance in clause 2.0.7 and the guidance below, a 'traditional building' means a building constructed using techniques that were common before 1919 which may have ventilated construction and permeable components that promote the dissipation of moisture from the building fabric. Traditional buildings may also include buildings that are listed for their special architectural or historic interest.

Listed Buildings

The listing of buildings with a special architectural or historic interest was first established in 1957 and is now carried out under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The 'Designation Policy and Selection Guidance (2019)' published by Historic Environment Scotland sets the background and principles of listing and the policy that is applied in decisions about listing.

Conversions

Changes in occupation or use of buildings set out in Schedule 2 of the Building (Scotland) Regulations 2004 list 10 conversion types. Conversion Types 4, 6, 7 and 9 would cover conversions to hotel accommodation including traditional buildings. Where a building warrant for a conversion is required, Schedule 6 of the 2004 Regulations sets the legal parameters where the building "shall meet" the requirements of the mandatory building standards or "must be improved to as close to the requirement of that standard as is reasonably practicable, and in no case be worse than before the conversion". The general intent is to recognise the challenges that conversions create in achieving compliance with the mandatory building standards and the supporting guidance in the Technical Handbooks.

Technical Handbooks

Clause 2.0.7 Alternative Approaches in the non-domestic technical handbook has been changed to provide more detail on the challenges around the conversion of traditional buildings. Whilst particular focus of the guidance is on conversions to residential accommodation including hotels, the guidance is equally applicable to any traditional building being converted in accordance with Schedule 2 and Schedule 6 of the Building (Scotland) Regulations 2004, as amended. Each building will need to be assessed on its own merit and a holistic approach to fire safety should be adopted which takes into account a range of fire safety measures that are sympathetic to the character of the building, whilst ensuring that an appropriate standard of fire safety is achieved.

The amended guidance in clause 2.0.7 emphasises the dangers associated with rapid fire spread in hidden voids (cavities) particularly where the traditional building uses pre-1919 construction techniques having interconnected ventilated cavities to control moisture in the building fabric. Where those cavities are lined with combustible materials e.g. timber lath behind plaster, this increases the risk of rapid fire spread in the cavity. The guidance recognises that open state or intumescent cavity barriers allow through ventilation in their passive role and inhibit fire spread when activated by heat. However, they may not be the most practical solution in all cases especially where the building has features of special architectural or historic interest which should not be disturbed. Other challenges with conversions of traditional buildings may include for example, fire compartmentation, structural fire protection (fire resistance), fire spread on internal surfaces (reaction to fire) or where travel distance may be excessive.

An automatic fire suppression system can be an effective alternative measure in controlling a fire and can be a cost-effective solution for reducing the risks created by the conversion of traditional buildings both from life safety and property protection perspectives. The system should limit fire growth, extend the time taken until untenable conditions and hence give more time for occupants to evacuate the building. Therefore, where there are deviations from the guidance, it may be more appropriate to install an automatic fire suppression system (see guidance to standard 2.15) and a Category L1 automatic fire detection and alarm system to BS 5839-1: 2017 to ensure the earliest possible warning in the event of an outbreak of fire.

Mandatory Building Standard 2.4 Cavities states that “Every building must be designed and constructed in such a way that in the event of an outbreak of fire within the building, the spread of fire and smoke within cavities in its structure and fabric is inhibited”. In the case of Building Standard 2.4 Cavities, the building as converted shall meet the requirements of this standard in so far as is reasonably practicable, and in no case be worse than before the conversion (Schedule 6). The intent is that the means of inhibiting fire spread within cavities should be investigated and where reasonably practicable, improvements should be made in accordance with the current guidance or by way of an alternative approach (Clause 2.0.7) to meet the intent of the standard.

Mandatory Building Standard 2.15 Automatic fire suppression systems is a prescriptive standard which states that “Every building must be designed and constructed in such a way that, in the event of an outbreak of fire within the building, fire growth will be inhibited by the operation of an automatic fire suppression system.

Limitation:
This standard applies only to a building which:
a) is an enclosed shopping centre
b) is a residential care building
c) [SSI deletes text but does not amend letters assigned to the following categories]
d) forms the whole or part of a sheltered housing complex

e) is a school building other than a building forming part of an existing school or an extension to a school building where it is not reasonably practicable to install an automatic fire suppression system in that building or extension
f) is a building containing a flat or maisonette
g) is a social housing dwelling, or
h) is a shared multi-occupancy residential building"

Hotels are not defined in building regulations or included in the list of building types requiring an automatic fire suppression system under standard 2.15. Hotels fall within the definition of 'residential building' which means "a building, other than a domestic building, having sleeping accommodation." Whilst traditional building is a defined term in the technical handbooks, historic buildings or listed buildings are not defined through buildings regulations. Conversions of traditional buildings to hotels and definitions will be considered in more detail as part of the longer term actions from the Short Life Working Group report.

Whilst not relevant to the Section 34 Notification process, the following supplementary information should be noted by local authorities and passed onto dutyholders or their professional agents where appropriate.

Fire Safety Regime - (Existing non-domestic buildings)

Fire safety duties for the majority of non-domestic premises in Scotland are set out in the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006. Those premises include:

- workplaces and commercial premises
- premises the public have access to
- houses in multiple occupation that require a licence.

Traditional buildings may be used for a variety of purposes. Some in a domestic setting and others in non-domestic or commercial settings. Hotel and other non-domestic residential accommodation are 'relevant premises' within the meaning of Section 78 of the Fire (Scotland) Act 2005. A private dwelling is not a 'relevant premises'. The Scottish Government have produced fire safety guidance for different types of non-domestic premises to help dutyholders understand their responsibilities under the law, carry out a fire safety risk assessment and identify and implement fire safety measures.

Fire safety guidance for existing premises with sleeping accommodation (2022) provides guidance for those responsible for fire safety in premises which provide sleeping accommodation, including hotels and bed and breakfast accommodation, camping and caravan sites and all types of houses in multiple occupation (HMO). The guidance recognises the value of automatic fire suppression systems and states that "Fire suppression should be appropriate to the occupancy and should be determined on the basis of risk." Design and installation rules for automatic fire suppression systems are also provided.

The guidance also recommends that the potential fire spread through hidden voids (cavities) should be assessed and where practical, examined to see if there are cavities where fire and smoke could spread through. In such cases, cavity barriers may be necessary to restrict the spread of fire in those cavities particularly where fire could spread between compartments.

The guidance states "alternatives to conventional fire safety measures may be appropriate" with regard to listed buildings and references guidance published by Historic Environment Scotland.

Historic Environment Scotland

Historic Environment Scotland (HES) is the lead public body set up to investigate, care for and promote Scotland's historic environment. Detailed planning and technical guidance on managing change and conversions in the historic environment is available at:

- Managing Change in the Historic Environment - Fire and Historic Buildings (2023) - The guidance sets out the high level principles that apply to fire safety management in historic buildings and includes advice on compartmentation and automatic fire suppression systems.
- Guide for Practitioners 6: Conversion of Traditional Buildings (2007) – currently under review. This guidance includes advice on the use of automatic fire suppression systems and the dangers of hidden voids and how to mitigate those risks.
- Guide for Practitioners 7: Fire Safety in Traditional Buildings (2010). Detailed guidance is provided on conservation issues and the inherent vulnerability of traditional buildings. Detail is provided on the types of systems, equipment and material which are available to provide compliant fire safety measures whilst also addressing the way in which fire safety should be managed in traditional buildings. This includes the addressing fire spread in hidden voids and the various forms of automatic fire suppression. Case studies are also provided that illustrate how fire safety problems in traditional properties can be overcome with sensitive regard to the special architectural or historic features and fabric.

A guide to Fire Safety in Traditional Buildings is currently being drafted by Historic Environment Scotland. This guide will be targeted at planners, owners, entry level practitioners and other professionals, and is expected to be published in Spring 2024.

ANNEX D

Information required for inclusion in Notification to BSD of Application for Building Warrant

The Notification by the verifier should be submitted to the Building Standards Division (BSD), Denholm House, Livingston EH54 6GA – email: buildingstandards@gov.scot

Application Details	
Stage of application	• *Project specific pre-application discussion* • *Application (include stage of application where relevant)*
Type of development	• *Developments with any storey at a height of more than 60 metres* • *A dwelling having a floor area of more than 200 square metres* • *A non-domestic building where the design is not in accordance with the guidance issued by Scottish Ministers* • *A domestic building with a storey height over 7.5 metres where the design is not in accordance with the guidance issued by Scottish Ministers* • *which includes reference to an external wall cladding system assessed in accordance with BR 135 when tested to BS 8414 as a means of demonstrating compliance with standards 2.1, 2.2, 2.4, 2.6 or 2.7* • *any conversion of a traditional building to a residential building (including hotels).*
Use of building	• *Domestic – please specify e.g. house, flat, maisonette* • *Non-Domestic – please specify e.g. hospital, entertainment building, residential care buildings, assembly building etc.* • *Mixed Use.*
Height of building	• *Top most storey height above the ground.*
Floor area	• *Total floor area* • *Maximum storey area*
Construction of building	• *Traditional* • *Innovative.*
BS 8414 test (where relevant)	• *Testing organisation and reference* • *BS 8414 test results* • *BR 135 report* • *BS 9414 extended field of application (if applicable)* • *Related third party certification (if applicable).*
Number of escape stairs	• *Single stair* • *Multiple stairs.*
Evacuation methodology	• *Simultaneous (e.g. houses / non-domestic etc)* • *Phased (e.g. tall structures)* • *Progressive Horizontal (e.g. hospitals and residential care buildings)* • *Stay put (e.g. flats and maisonettes).*

Verification Details (See also Annex A)	
Complexity	• *Level 1 – brief rationale for decision* • *Level 2 – brief rationale for decision* • *Level 3 – brief rationale for decision.*
Staff competency[1]	• *Building standards staff qualifications and experience* • *External staff qualifications and experience.*

*Delete as appropriate

Notes

[1] This would be someone with the appropriate training, knowledge and expertise to be aware of the risks involved.