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The Scottish Association of **BUILDING STANDARDS MANAGERS**  
Incorporating the Scottish Association of Chief Building Control Officers and  
representing Local Authority Building Standards in Scotland



# **SABSM PROCEDURAL POLICY NOTE PR01/2012**

## **STATUTORY POSITION with regard to the SUBMISSION OF COMPLETION CERTIFICATES under the 2003 Act**

Guidance Note Number: PR01/2012

Issue Date: 01/05/2012

Building (Scotland) Act 2003 Section 17

## BACKGROUND

A debate has arisen over the procedures of accepting a completion certificate within or outwith the period of validity of a building warrant.

1. Essentially, once a warrant has been granted, is it legally correct to then accept a completion certificate if that warrant has expired?
2. When work has already been the subject of a warrant can the procedures whereby a "late completion certificate can be accepted" be used?

### ISSUE 1 –Validity of Warrant

When considering this issue, a view was expressed that a warrant must be valid prior to accepting a completion, either within the three year life span, or suitably extended / re-opened by virtue of Sec 19. This was confirmed by the BSD <sup>(1)</sup>, as being the "intention of the Act". The Procedural Handbook, which carries no specific legal status, appears to reinforce this in paragraph 5.1.2.

(1) BSD is the Building Standards Division

In fact, Paragraph 5.1.2 is quite misleading. It implies that the REGULATIONS REQUIRE that ALL completion certificates should be submitted before the expiry of the warrant. **In fact, they do not.**

What the Procedural Handbook is pointing out, is that Section 21 makes it an offence to occupy a building without having a completion certificate accepted EXCEPT where only alterations are being carried out to an existing building. What they say under Clause 5.1.2 is, that despite the fact that an offence is NOT committed by occupying a building being altered a COMPLETION CERTIFICATE is still required.

Since the possession of a valid warrant as a prerequisite is not prescribed nor alluded to in either the Act or The Procedural Regulations, an alternative legal interpretation cannot be dismissed.

*It may be that the initial intent of the authors was that ALL completion certificates, to be granted for work covered by a building warrant, would be granted **during the currency of the warrant whether extended or not BUT the statutory legislation – the Act and Procedures - are silent on this.***

### ISSUE 2 – Late Completions

It has been confirmed by the BSD that the "intention of The Act" regarding Late Completions is that these submissions should relate only to instances where no warrant was obtained.

## SUMMARY OF STATUTORY POSITION

### SUBMISSION OF COMPLETION CERTIFICATES – WHERE A BUILDING WARRANT HAS BEEN GRANTED

CASE	STATUTORY POSITION	OPTIONS FOR VERIFIERS / EXPLANATION OF INTENT
<p><b>Completion certificates where the work or conversion has a <u>building warrant granted</u></b></p> <p>Section 17(1)</p>	<p>A completion certificate must be submitted for acceptance by the verifier in every case</p>	<p>This would normally be within the duration of a warrant</p>
	<p>A completion certificate must be accepted in every case where a warrant has been granted</p>	<p>As above</p>
	<p>The “compliance check” is such circumstances that the building when completed complies both with the building warrant and with the building regulations applicable at the time of the submission of the warrant</p>	<p>This is important for the reasons given below when considering the empowerment given to verifiers on how to deal with late completions</p>
	<p>It is an offence to occupy a building without an accepted completion certificate EXCEPT in the case of a building subject to “alterations” only.</p>	<p>This is of little significance in relation to the need to submit and have accepted a completion certificate.</p>
	<p>A completion certificate is still required, however, even</p>	<p>The import of this (Section 21) is that enforcement powers cannot</p>

although no offence occurs in such circumstances

be used in a building which has merely been altered but does not have a completion certificate before being re-occupied after the works.

**NOTE: The Act and the Procedure Regulations are “silent” on whether a completion certificate can be submitted AFTER a building warrant has expired.**

The main thrust of the Act and Procedures is that a works to a building should have a building warrant followed by an accepted completion certificate ALL within the currency / validity of the warrant.

Although the Act and Procedures are silent on this currency / validity question, a verifier would be acting within the spirit of the Act in seeking an extension to a building warrant if a completion certificate IS submitted AFTER the expiry of the warrant.

This would be the case regardless of how long ago the warrant expired. This, because the only compliance checks a verifier can make are against the building regulations which were applicable at the time of the building warrant application.

This, of course could be influenced by the granting of a conditional extension to the warrant which verifiers are empowered to do should they so decide under Regulation 19 of the Building Procedure (Scotland) Regulations 2004 when later regulation requirements would be / could be applicable in the compliance check.

**NOTE: What you clearly cannot do is adopt the “late completion” procedures to works which were carried out under a building warrant which has now expired.**

In such events, a verifier would be acting within the spirit of the Act in seeking an extension to a building warrant if a completion certificate IS submitted AFTER the expiry of the warrant.

This would then allow a completion certificate to be accepted within the currency / validity of a warrant.

However, if a verifier decided to accept the submission of a completion certificate after a warrant has expired and, thereafter, determines that it is acceptable when assessed against the building warrant and the applicable regulations (those in force at the time of the warrant submission) then they would still be acting within the Act.

Final Approved Procedure

## SUMMARY OF STATUTORY POSITION

### SUBMISSION OF COMPLETION CERTIFICATES – WHERE A BUILDING WARRANT HAS NOT BEEN GRANTED

CASE	STATUTORY POSITION	OPTIONS FOR VERIFIERS / EXPLANATION OF INTENT
<p><b>Completion certificates where the work or conversion <u>did not have a building warrant granted</u></b></p> <p>Section 17(4)</p>	<p>A completion certificate must be submitted for acceptance by the verifier in every case.</p>	<p>This is the prescribed “late completion” process which, in effect, is a retrospective warrant process involving, in some cases at least the submission of a warrant for additional works should failure to comply arise. However, there are significant compliance checks issues on the applicability of relevant building regulations.</p> <p>There is no limit as to how long after the completion of the work a late completion certificate may be submitted but it is always the regulations at the time of submission that must be met.</p> <p>In such a case it is the building regulations <b><u>in force at the time the completion certificate is submitted which apply i.e. not those in force at the time the building work etc. was carried out, if different.</u></b></p> <p><b><u>NOTE:</u></b>  <b><u>It is for the above reasons that these procedures CANNOT BE USED for works which, at some time at least been the subject of a building warrant.</u></b></p> <p>This because you then have conflicting compliance requirements – those applicable at the time of the submission of the warrant and those applicable at the time of the submission of the completion certificate – subject to any conditions applied to an extended warrant.</p>