



**FINAL BUSINESS AND REGULATORY IMPACT
ASSESSMENT**

CHANGING PLACES TOILETS

**PROVISION UNDER THE BUILDING (SCOTLAND)
REGULATIONS 2004 AND ASSOCIATED GUIDANCE**

BUILDING STANDARDS DIVISION

19 June 2019

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Final Business and Regulatory Impact Assessment

1. TITLE OF PROPOSAL

Amendments to the Building (Scotland) Regulations 2004 and Technical Handbook Guidance to introduce Changing Places Toilets as a requirement for certain types of larger buildings under standards 3.12 'Sanitary Facilities'.

2. PURPOSE AND INTENDED EFFECT

2.1 Background

Scottish building regulations set national mandatory building standards for the health, safety, welfare and convenience of persons in and around buildings, furthering the conservation of fuel and power and furthering the achievement of sustainable development. These building standards are supported by guidance contained in the Building Standards Technical Handbooks. The building regulations apply to new buildings and to buildings being converted, altered or extended.

Building Standards are expressed in functional terms and do not dictate the methods that should be used to meet requirements. The choice of how to comply with the standards lies with building owners and for this purpose Scottish Ministers issue Technical Handbooks containing practical guidance illustrating how the requirements of the Building Standards may be met. The guidance may be relied upon in any proceedings as tending to negative liability for an alleged contravention of the Building Regulations. This does not however preclude the use of alternative approaches provided the designer can satisfy the local authority Verifier that the aim of the Building Regulations is being fulfilled.

2.2 Objective and rationale

Buildings have significant implications for health, safety, the environment and our communities. Through the appropriate application of minimum building standards, set by regulations and supported by published guidance, the design and construction of Scotland's built environment can benefit all owners, users and people in and around our buildings.

The principle aim and objective of the proposed amendment is to introduce a requirement for Changing Places Toilets (CPTs) in certain types of large new buildings. This supports the government's National Performance Framework, to increase the wellbeing of people living in Scotland through the following National Outcomes: we live in communities that are inclusive, empowered, resilient and safe; and we respect, protect and fulfil human rights and live free from discrimination.

A Changing Places Toilet (CPT) is a larger combined toilet and changing facility with specialist equipment which addresses the needs of people for whom standard accessible toilet accommodation is inadequate or impractical to use.

They provide a better quality of life for people who have more complex care needs by enabling people to plan activities with confidence around knowledge of where such facilities are located and when they are open and available.

In Scotland 1,040,000 people had a long-term activity-limiting health problem or disability¹. Around 20,000 people can benefit from the additional facilities offered by a CPT where standard accessible toilets do not meet their needs.

PAMIS (Promoting a More Inclusive Society), an organisation working with people with profound and multiple learning disabilities (PMLD) and their families in Scotland, started a UK-wide campaign with the aim of ensuring fully accessible toilets with hoists and changing benches are made available. PAMIS joined forces with other groups to form the UK Changing Places Consortium and has been campaigning for these toilets to be provided by local authorities in all towns and cities across Scotland. These facilities allow people with complex care needs to take part in everyday activities such as travel, shopping, family days out or attending a sporting event.

PAMIS and the Scottish Government worked together to bring CPTs into the 2009 revision of BS 8300, the recognised UK code of practice for the delivery of accessible environments. The provision of CPTs is not currently required through building standards.

However, guidance to Standard 3.12 (Non-Domestic) of the Building Standards Non-Domestic Technical Handbook gives a basic CPT specification for designers to follow when their client elects, on a voluntary basis, to provide a CPT as part of new building work. This specification was introduced in October 2013, following the conclusion of [research](#) from the Building Research Establishment (BRE). However, five years on, there is now a drive to do more to further the provision of CPTs throughout Scotland as voluntary provision has been limited.

3. CONSULTATION

3.1 Within Government

Before making or amending provisions within the building standards system, Scottish Ministers are required, under section 1(2) of the Building (Scotland) Act 2003, to consult “such persons as appear to them to be representative of the interests concerned”.

Prior to Public Consultation on proposed changes, this duty is discharged through the development of proposals by a Departmental Working Group, comprising

¹ <https://scotland.shinyapps.io/sg-equality-evidence-finder/>

of officials and representatives of industry, together with communication with other parts of Government and representative organisations of the construction industry. This is intended to ensure that proposals are proofed against: cost implications, technical feasibility, flexibility in achieving the desired policy, confliction with other regulatory requirements and the wider societal impact of proposals relative to the occupation and use of buildings.

Prior to Public Consultation, four Building Standards Working Groups were held, between March 2018 and January 2019. These discussed a range of topics including the provision of CPTs and where these might be provided as part of new development.

Regular engagement with colleagues in Directorate for Health has taken place as they work closely with and provide SG funding to PAMIS, the organisation that has been campaigning to increase the number of CPTs throughout Scotland.

Discussion with affected policy areas included Equalities, Schools, Transport, Health and Planning. In November 2018, an amendment at stage 2 of the Planning (Scotland) Bill was made on the subject of Changing Places Toilets

3.2 Public Consultation

In 2017, to help build an understanding of the current delivery of CPTs, all 32 local authority Chief Executives were asked to provide information on the number of CPTs for their geographic area and the rationale for installing them, where known.

The Scottish Government (SG) sought comments on the proposal to regulate for the provision of such facilities as part of defined types of new development. The consultation was published on the SG Consultation Citizen Space portal from 18 February 2019 to 13 May 2019. It was highlighted in the Building Standards e-newsletter which is issued to over 8,000 registered e-news recipients.

A total of 1112 responses were received to the consultation. Responses were received from 1040 individuals and 72 organisation. Responses, the consultation analysis report and Scottish Government response are all available at: <https://consult.gov.scot/building-standards/changing-places-toilets/>.

Proposals to amend the Building (Scotland) Regulations 2004 require to be notified to the European Commission under the provisions of Technical Regulations Directive EU 2015/1535. This Directive seeks to prevent technical barriers to trade and lays down a procedure for the provision of information in the field of technical standards and regulations. A standstill period on further development is imposed by the Directive until after this consultation process is completed. No representations on proposals were received under this process.

3.3 Business

Consultation with 6-12 businesses was carried out during the public consultation period. This proposed change will have little or no impact micro or small businesses as it is proposed that these facilities will only be provided in larger premises such as: enclosed shopping malls, large leisure centres, schools and hospitals. A further note is provided under section 5, below.

4. OPTIONS

4.1 Options proposed

There are three options in the regulatory framework to consider.

- Option 1 – Do nothing;
- Option 2 – Increase awareness of the issues through the introduction of guidance outwith the Building Standards Technical Handbooks;
- Option 3 – Introduce amended guidance contained within the Building Standards Technical Handbooks.

4.2 Sectors and groups affected

- a) Building users – would benefit from more inclusivity as a result of CPTs being provided.
- b) Building owners/developers – would require to factor the cost of this additional provision into the planning of qualifying large new buildings.
- c) Building operators – would require to maintain the additional facility for use by those who would seek to use it.
- d) Building designers/constructors - All those involved with building design and construction would have to familiarise themselves with the new/amended standards and guidance through training, etc.
- e) Verification - Local authority verifiers would have to train staff in relevant areas of the building standards and associated guidance where the scope has been extended or revised.

4.3 Benefits

The benefits from the provision of Changing Places Toilets are societal, to address a known need within our population and communities. Action through review of building regulations offering a mechanism for the Scottish Government to recognise and signal further change in what provision is expected where development delivers new buildings.

This is considered to be part of a continual review of the processes that define and implement minimum standards applicable to building work. In making provision for the access and use of non-domestic buildings in Scotland, review considers implemented

good practice taken from recognised authoritative sources of guidance, including BS 8300-2: 2018 'Design of an accessible and inclusive built environment. Part 2: Buildings — Code of practice'.

A further, proportional provision of enhanced sanitary accommodation will enable people with complex care needs to take part in everyday activities such as travel, shopping, family days out or attending a sporting event. As is demonstrated by the current voluntary network of Changing Places Toilets across Scotland and elsewhere in the UK, the need to make provision of such facilities is already recognised and valued by many building operators.

Option 1 – do nothing

The Scottish Government, through the building standards system, is committed to ensuring the health, safety, welfare and convenience of people using buildings through building regulations. Additionally, Scotland's current learning disability strategy *The keys to life* was launched in 2013. The 10 year strategy sought to consolidate progress made during the life of the previous strategy *The same as you?* which had been launched in 2001. The keys to life embraces a human rights approach and included a strong focus on reducing health inequalities.

This option would not offer a positive response to address the lack of CPTs throughout the country and therefore no benefit to those who would use such facilities.

The Minister for Local Government, Housing and Planning wrote to PAMIS (the organisation promoting action to increase the number of CPTs in Scotland), in May 2018, intimating that provision of CPTs for certain types of large new buildings would be investigated through building regulations. There may be reputational risk from lack of implementation as this proposal is in the public domain, particularly where a measured and proportionate approach can be taken through regulation.

Option 2 – increase awareness through the introduction of guidance outwith the Building Standards Technical Handbooks

Any benefits gained by the introduction of voluntary guidance would be unlikely to deliver significant additional numbers of CPTs throughout the country. Voluntary guidance within the Technical Handbooks has been in the Technical handbooks since 2013.

More broadly, the work of the Changing Places Consortium continues to assist building operators in the voluntary installation of CPTs in both new build and retrofit of existing premises. Therefore, without a move to mandatory status, the level of take-up is likely to be maintained at the current rate. This option is not considered to meet the objective in respect to the increased delivery of numbers of CPTs.

Option 3 – introduce amended guidance contained within the Building Standards Technical Handbooks

It is now determined that provision for CPTs can be made without the need to amend the relevant mandatory standard. Introduction of guidance on the circumstances where a facility should be provided and the form accommodation should take can be addressed within the current scope of mandatory standard 3.12 (sanitary facilities).

This will address for the provision of CPTs in certain large new buildings and new building work and, as such, will increase the numbers of CPTs throughout the country, albeit this will depend upon decisions to undertake such development in a particular location.

Therefore, CPTs may still not exist where they are needed most and other action, including voluntary or supported provision will still be beneficial. However, this is a limitation of the building standards system which relies upon development taking place. Additional CPTs will therefore only be created where specific building types are developed. The proposed option is targeted at larger projects to deliver the policy in a proportionate manner, relative to suitable building types, development costs and the ease of accommodating larger sanitary facilities within more extensive works.

A key point is that a proportionate approach via requiring CPTs in large new developments can guarantee provision and link this to specific use and access characteristics. The presence of such a provision within building standards may also be material in the consideration of provision within larger existing buildings of a similar type and size under existing equalities duties.

4.4 Costs

Option 1 - Do nothing

There are no implementation costs associated with this option.

Option 2 - increase awareness through the introduction of guidance outwith the Building Standards Technical Handbooks

There are no implementation costs associated with this option.

However, where a person chooses to follow any advice on non-mandatory provision, the likely costs (for provision as part of new development) would be as indicated under option 3 below.

Option 3 – introduce amended guidance contained within the Building Standards Technical Handbooks

The proposed requirement for CPTs would apply in a targeted and proportionate manner. Such a requirement would only apply to the construction, conversion of

significant extension of specific non-domestic building types. Generally these building types would be projects with a build cost of £1 million upwards, with most new building type examples in the range of £10 million plus.

Based upon responses made to the consultation and further analysis of levels of new development in Scotland, the scope of new building work that triggers provision of a CPT is amended from that proposed in the consultation, to provide greater assurance on the change that will be delivered by proposals. This includes reduce area and occupancy criteria for managed buildings that are open to the public. This is summarised in Annex A.

BSD commissioned the Building Research Establishment to undertake research in 2012 on Changing Places Toilets. The research covered the estimated costs for the inclusion of a CPT in different building types and is now updated for Q4 2018. The research concluded that the cost is relative to the type of building. Accordingly, the costs vary and were established as:

- Allowance of £15,000 for external drainage, plumber work and water supply (for all building types)
- Allowance of £13,500 for equipment (for all building types, 2016 figures)
- Cost per square metre of floor area, dependant on building type, examples being:

Retail (unit)	£ 1,100 per m ²
Leisure	£ 1,350 per m ²
Retail (Mall)	£ 1,650 per m ²
Education	£ 1,850 per m ²
Health (hospital)	£2,300 per m ²

Based on this research from 2012, the overall capital cost for the proposed additional sanitary accommodation may fall in a range from £41,700 (retail unit) to £56,100 (hospital).

Cost in operation – It is estimated that annual operational costs, including maintenance, servicing, cleaning and allowance for replacement of equipment (£12,000 - 12 year life) and sanitary facilities (£1,500 - 20 year life) would be approximately £2,500.

Non-domestic work equates to about 20 percent of the total number of building warrant submissions. In 2017/2018 there were 726 building warrants with project values over £1 million. Therefore, it is likely that around 145 projects were non-domestic projects over £1 million. However, as stated in 4.4, the buildings that would require a CPTs are more likely to be larger, higher cost projects which would reduce the application and economic impact considerably. Assuming, a generous estimate, that 1 in five (29) of

these jobs are large multi-million pound projects that would require a CPT, the potential cost of implementation (allowing an average of £50,000 per installation) would be in the region of £1.5 million annually.

Using lodged Energy Performance Certificate data, a further analysis of the rate of construction of qualifying new buildings, based upon size and building type, indicates that proposals as taken forward are likely to result in in the region of 15 new facilities per year based upon patterns of development from 2013-18. No equivalent information is available to assist in assessment of the number of facilities that would be created by conversion or extension but it is considered reasonable to assert that this would not result in additional activity greater than that for new buildings.

Cost of new guidance and familiarisation

BSD now produces their technical guidance in-house. Therefore the only cost for producing new guidance is BSD staff costs.

There are approximately 560 building standards professionals in Scotland. The time impact per person should be no more than 4 hours on training and familiarisation. Therefore, based on an average hourly rate of £21.50 per hour (based on £16.50 average hourly wage plus 30% overhead costs), the total one off cost for building standards professionals would be $560 \times 4 \times £21.50 = £48k$.

However, this can be off-set against Continued Professional Development requirements. For example, building standards professionals (verifiers) architects, architectural technologists, energy consultants may incur no additional costs as professional institutions demand at least 25 - 40 hours Continued Professional Development as part of their professional membership criteria.

According to Businesses in Scotland 2018, there are an estimated 20,355 enterprises in Scotland working in the Construction sector. Assuming one person from every enterprise in Scotland spends 1 hour familiarising themselves with the guidance at a rate of £8.75 per hour, the total cost of familiarisation cost would be £178k. Again, for many of these individuals, such activity may form part of mandatory CPD activity where their professional activity includes working to building regulations.

5. SCOTTISH FIRMS IMPACT TEST

On balance, the subject (Changing Places Toilets) was not one that many organisations were familiar with, even those that considered they took a proactive approach to accessibility of premises.

Whilst proposals were seen to offer a proportionate response to the need to introduce sanitary facilities into key buildings, the cost of an initial installation and the ongoing management of the facility were both raised as themes. Issue of liability was also raised around use of equipment and manual handling (building owner simply maintains

in good order, responsibility for use rests with user). View expressed that this should be led as a funded (public sector) issue, particularly from a network creation perspective. The premise of a wider range of facilities in very large or 'destination' buildings was recognised.

Some of these points were repeated in consultation responses from commercial organisations, including further concern over the practicality of implementing measures when redeveloping smaller buildings in constricted locations.

5.1 Competition Assessment

As the proposals will form part of the national building standards system, they will be implemented uniformly throughout the country. It is not envisaged that the means of complying with the building regulations will impact on competition between companies.

Having reviewed the four competition filter questions provided within the Office of Fair Trading guidelines for policy makers on competition assessment we are satisfied that the proposed changes to the building standards and guidance will not impact on competition within the market place.

5.2 Consumer Assessment

By providing CPTs in larger buildings such as retail and other larger buildings accessible to the public, people who benefit from the presence of such facilities will have improved access to the facilities, goods and services offered by such premises where once this was not possible due to the lack of suitable sanitary facilities. This increases access to services for everyone, regardless of their ability and accordingly should offer a small positive change to the number of customers accessing goods and services.

5.3 Test Run of Business Forms

No new forms associated with this proposal are expected.

6. DIGITAL IMPACT TEST

The proposal calls for large sanitary facilities in certain types of large new buildings, conversions and large extensions through the building standards system. The policy is not linked to the digital technology and will not impact on businesses in a digital context.

7. LEGAL AID IMPACT TEST

It is not expected that there will be any greater demands placed on the legal system by this proposal. Accordingly, it is not considered that there will be any effect on individuals' right of access to justice through availability of legal aid or possible expenditure from the legal aid fund.

The Scottish Government Legal Team has been consulted on this subject.

8. ENFORCEMENT, SANCTIONS AND MONITORING

8.1 Background

Monitoring of the provision of CPTs in new buildings would be sought should Option 1 or 2 be implemented. This would be necessary to determine the potential need for further future action to support the delivery of CPTs as part of new development.

Only Option 3 (regulation) would be subject to enforcement, sanctions and monitoring. Delivery through the building standard system will require amendment to published guidance contained within the Scottish Government's Building Standards Technical Handbooks.

All matters relating to enforcement, sanctions and monitoring will be carried out under the existing processes, which form the building standards system in Scotland, as set out under the Building (Scotland) Act 2003. Parties responsible for operation of this system are the 32 Scottish local authorities, appointed as verifiers under the 2003 Act, and the Building Standards Division, on behalf of Scottish Ministers.

8.2 Enforcement and sanctions

Work subject to the Building (Scotland) Regulations 2004 generally requires that a building warrant must be obtained before work can start, unless it is an exempt type, or a type not requiring a warrant.

As CPTs will be in a new building, conversion or large extension, a building warrant is required. On completion of the work for a new building, a completion certificate certifying compliance with the building regulations must be signed and submitted by the 'relevant person' to the local authority. Only if the certificate is accepted by the local authority can such a building can be occupied. The 'relevant person' responsible for the building work is defined in section 17 of the 2003 Act.

Where a building warrant is required, the proposals are subject to scrutiny of the verifiers prior to their granting a building warrant or acceptance of a completion certificate. Local authorities have enforcement powers under the Act to ensure compliance with the approvals and building regulations. Cases of non-compliance can be referred to the Procurator Fiscal and persons found guilty of offences in terms of the Act are liable on summary conviction to a fine not exceeding level 5 on the standard scale. Local authorities can also undertake enforcement work themselves and recover their costs from the building owner.

9. IMPLEMENTATION AND DELIVERY PLAN

9.1 Implementation

The proposal will be taken forward by amendment to published guidance contained within the Scottish Government's Building Standards Technical Handbooks.

The Technical Handbooks are the primary source for compliance with building standards and, as such, are used by designers and others involved in the building process to ensure compliance with the Scottish Building Regulations. The amendment to the Technical Handbooks, under Section 3 'Environment', clause 3.12, will be published in advance of the implementation date to enable those affected to assess the impact of changes.

Publication of the Technical Handbooks is the established method of introducing changes to the building standards system and ensures that this information reaches those involved in building work subject to complying with the building regulations. This information is made available free of charge, as an electronic download from the Building Standards Division (BSD) website, www.gov.scot.

The Scottish Government will publicise the changes on the Building Standards section of the Scottish Government website and by issuing a building standards eNewsletter/alert to stakeholders. The Scottish Government will also notify all local authorities of the changes.

9.2 Implementation Period

The proposed changes to the building standards system are relevant to any party responsible for building work that is subject to the building regulations.

The proposed changes will be implemented as part of a package of changes planned for 1 October 2019. Stakeholders will be made aware of these changes at the earliest opportunity and ideally at least three months prior to their introduction.

9.3 Post-Implementation Review

There will be continuous monitoring of the implementation of the proposals through feedback from the local authority verifiers, designers, manufacturers and building owners. These stakeholders are in regular contact with Building Standards Division, and any issues identified will offer a broad view of how proposals are being implemented, if the objective is being achieved and how it is working in practice. Issues raised in this manner become a matter of record and are used to inform any future review.

As part of the delivery plan a formal post-implementation review will take place within 10 years of these provisions being applied.

10. SUMMARY

10.1 Summary Costs and Benefits Table

Option	Total benefit per annum: - economic, environmental, societal	Total cost per annum: - economic, environmental, societal - policy and administrative
Option 1- Do nothing	No additional benefits accrue	No cost associated with action
Option 2 – increase awareness through the introduction of guidance outwith the Building Standards Technical Handbooks	Benefits wholly dependent on scale of uptake of voluntary good practice. Benefits from provision of CPTs are as noted below in Option 3.	Where facilities are provided on a voluntary basis, non-regulatory costs are assessed as those reported under Option 3.
Option 3 - introduce amended guidance contained within the Building Standards Technical Handbooks.	<p>Social – The needs of a proportion of our population are not met by current regulatory provision of sanitary accommodation despite there being established good practice on the issue. Regulation for provision of CPTs will both make facilities available where they currently are not provided and encourage adoption of the principle in other development, assisting current broader action to deliver CPTs on a voluntary basis.</p> <p>Economic (unquantified) – provision may result in increased trade for businesses able to cater for a wider range of customers. This will arise through awareness of facilities for persons who would benefit from them, when planning activities.</p>	<p>The overall capital cost for the proposed additional sanitary accommodation may fall in a range from £41,700 (retail unit) to £56,100 (hospital). An initial assertion of 15 new buildings and (potentially) 15 conversion/extension of buildings as qualifying projects per annum (allowing an average of £50,000 per installation) would result in capital costs in the region of £1.5 million annually.</p> <p>Operational costs of around £2,500 per annum per facility are to be anticipated</p>

10.2 Recommendation

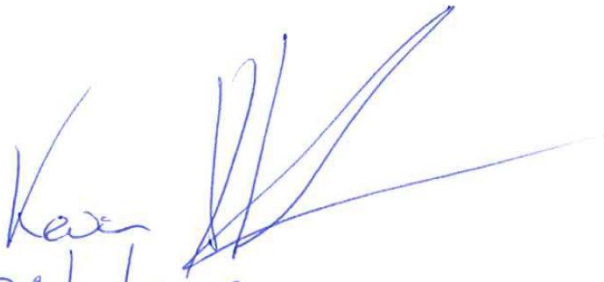
It is considered that consultation on proposals to introduce a requirement for Changing Places Toilets where certain new building work takes place should be undertaken with a view, subject to responses to that consultation, to introducing such a provision via the building standards system.

11. DECLARATION AND PUBLICATION

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:



Kevin Stewart MSP
28/6/2019

Kevin Stewart MSP

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Annex A – comparison of proposed implementation against original consultation proposals.

CPT Trigger - consultation proposal	CPT Trigger – post-consultation
Newbuild - a shopping centre/mall with a gross floor area of 30,000 m ² or more;	Newbuild - a retail building (shop), assembly building or entertainment building or a building which combines any of these uses and which is: <ul style="list-style-type: none"> • over 5,000 m²; or • has a capacity of more than 1,000 persons; or • has a swimming pool
Newbuild - a single retail premises with a gross floor area of 10,000 m ² or more;	Incorporate single retail premises trigger within amended scope of item above.
Newbuild - a place of entertainment or place of assembly with a capacity of 2,000 persons or more;	Incorporate 'place of entertainment' and 'place of assembly' triggers within amended scope of item above.
Newbuild - a leisure centre or similar building containing a swimming pool.	Incorporate 'leisure centre or similar building' trigger within amended scope of item above, retaining 'swimming pool' as a facility that is an additional trigger.
Newbuild - a hospital;	No Change to consultation proposed
Newbuild - a secondary school providing community facilities;	No Change to consultation proposed
Conversion to create any of the above	No Change to consultation proposed
Extension of any of the above by 25% or more	No Change to consultation proposed