

# Proposed New-Build Homes (Buyer Protection) (Scotland) Bill

## Introduction

A proposal for a Bill to establish standard missives for the sale of new-build homes, including redress for purchasers in respect of defects in construction. The consultation runs from 5 April 2019 to 27 June 2019. All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (\*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation document Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

## About you

Please choose whether you are responding as an individual or on behalf of an organisation. Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Commercial organisation (company, business)

**Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).**

Gillespie Macandrew LLP are solicitors and have a specialist Housebuilder Team who act on behalf of

Please select the category which best describes your organisation

both a variety of housebuilders and landowners in the residential development sector. We also have Residential and Estate Agency Teams who act on behalf of both sellers and purchasers of residential housing

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Gillespie Macandrew LLP

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

## Aim and Approach

Q1. Which of the following best expresses your view of establishing statutory standardised clauses for builders' missives?

Fully supportive

**Please explain the reasons for your response.**

Provided that the legislation, if successful, builds upon the current Scottish New Build Standard Clauses originally drafted between this firm and Ross MacKay, convener of the Law Society's Property Law Committee, the result would simplify the process of both selling and buying a new build property. A streamlined process would have the benefit to all parties of expediting the missive process resulting in early certainty based upon a contract that is fair and reasonable to all parties. If housebuilders were given sufficient comfort that the proposed system was fair and reasonable that would demonstrate to the house buying public that developers are not seeking to exert undue pressure and impose unreasonable terms on purchasers

Q2. Which of the following best expresses your view of providing a statutory route for home buyers to obtain redress for major failings on new-build property?

Partially supportive

**Please explain the reasons for your response**

The proposed "clear statutory route for redress" would likely be welcomed by the industry where largely the New Homes Warranty providers already offer a resolution and arbitration service which the housebuilders must abide by so some form of statutory service would be no different. There would need to be a balance to ensure that purchaser's surveyors do not create their own market by exaggerating the

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importance of issues that may otherwise be considered as minor snagging to be dealt with once the purchaser has taken entry in order to create a dispute situation where they are retained to argue the dispute. A swift third party resolution would be necessary bearing in mind that the house purchaser wants to move in (having made their removal arrangements) and the housebuilder wants to effect a sale.

**Q3. What do you think would be the main practical advantages and disadvantages of the proposed Bill?**

Redress a perception (whether real or apparent) of an imbalance in negotiating power, provide an enhanced product and service and allow a swift reconciliation of disputes. Additionally simplify and reduce costs in agreeing a missive and expedite the certainty of an early concluded contract.

**Q4. What length of time do you think is most appropriate for a builder's warranty for a new-build home?**

2 years

**Please explain the reasons for your response.**

Sufficient time to allow any latent defects to become apparent but not so long that the housebuilder has an indefinite contingency.

**Q5. Which of the following best describes your view of having standard missives that provide a right for buyers to carry out a full survey of the property within a specified period, and a right to pull out of the purchase if severe or very serious defects are discovered?**

Partially supportive

**Please explain the reasons for your response**

See responses to Question 2

**Q6. If you have bought a new-build home in the past, please tell me about your experience, taking care not to name individuals/companies or the location of the property/development.**

*No Response*

## Financial Implications

Q7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
<b>Government and the public sector</b>			X			
<b>Businesses (including housebuilders)</b>		X				
<b>Individuals (including new-build house buyers)</b>		X				

**Please explain the reasons for your response.**

Statutory inspection service/Building Control unlikely to change. Minor administrative costs to housebuilders and delay in settling transactions where there are disputes on whether the house is properly complete. New house buyers would have the additional cost of employing a surveyor to inspect the property pre-completion as this is different to the standard basic valuation survey

## Equalities

Q8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

Neutral (neither positive nor negative)

**Please explain the reasons for your response.**

All house purchasers would be the same regardless

## Sustainability

Q9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Unsure

**Please explain the reasons for your response.**

See comments on additional costs to both purchaser and housebuilder

## **General**

**Q10. Do you have any other comments or suggestions on the proposal?**

Initial discussion with Homes for Scotland as representatives of the majority of housebuilders would elicit a view from the housebuilding industry and therefore whether the proposal can be taken forward with the support of the industry.