

# 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. If you do not include a name and/or contact details, we may have to disregard 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.

an individual

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".)

Professional with experience in a relevant subject

**Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:**

I am a solicitor in private practice acting for both purchasers of new build properties and small house builders

Please select the category which best describes your organisation

*No Response*

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).

Stephen Cranston

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.**

There are a number of issues with the current system, most notably that all the power lies in the hands of the developer. Often (non-refundable) reservation fees are required to be paid before the purchaser has had any legal advice or seen any details of the missives or title. The contracts that follow are then generally heavily in favour of the builder and at the expense of the purchaser. The fees and outlays expected of the purchaser are never explained by the builder. There is often no provision for rectification of any issues with the property in the contract with the purchaser being left to deal only through the warranty provider. Generally no alterations to the standard contract will be permitted even if something has been specifically agreed by sales representatives. Generally the builders will require payment of the price even if they have not delivered a disposition (transferring the ownership of the property to the purchaser) and the purchaser is expected to pay for the property even although they do not own it at that stage. That also causes issues with mortgage providers and essentially the only way to solve the issue is for the solicitors involved to take the risk personally, that the solicitor (and their insurers) will require to repay any losses to the mortgage provider should the disposition never arrive. A clear contractual or legislative undertaking is clearly required to redress the balance of negotiations.

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**

There is need to make a clear contractual obligation on the builder to fix any issues with the property. I would not think a particular statutory route is necessary. If providing a property that is structurally sound is a mandatory term of the contract, then the purchaser can sue for breach of contract and damages if that is not provided.

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

A redress of the balance between purchaser and seller. Often the real effect of such legislation is not that the legislation itself actually gets used, but that the threat of use of it is sufficient to change behaviour.

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

Other (please specify)

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

NHBC currently warrants 10 years for major structural issues (which can take some time to show themselves). I have been involved in a case where it became apparent not long before the 10 years expired that the roof supports did not comply with regulations and the roof was sagging. Given that there were supports (but they were insufficient) it took some time for this defect to show itself. I would suggest that different lengths of time for different types of defects would be sensible.

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 opposed

**Please explain the reasons for your response**

This would be a small step in the right direction, but I would prefer an enforceable term of the contract that it would be built to standards and structurally sound. The cost of the survey would need to be paid by the purchaser and my expectation would be that very few would actually take this option up. In private house sales the seller is required to obtain a home report. Why should large national companies not be held to the same standard as individuals?

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.

I have never bought a new build property myself, and under the current system never would. That perhaps tells more about the process than anything else. I would be happy to discuss experience further with those promoting the bill.

## 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
Government and the public sector			X			

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

<b>Businesses (including housebuilders)</b>		X				
<b>Individuals (including new- build house buyers)</b>			X			

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

There could be additional costs on builders in having to rectify defects, honour assurances given by sales staff and defend court actions. Costs on individuals shouldn't be any different, unless they are having to pay for a survey when the property is completed.

## 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.**

These issues affect purchasers irrespective of any protected characteristics.

## 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?

Yes

## General

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

I have provided some comments above on other matters which should be considered for inclusion in a standard missive or as required terms that could not be contracted out of.