

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.

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

Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)

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).

This response is from a Local Authority which has had particular involvement with a case whereby concerns regarding defects were raised by residents of a new build housing site post Submission of

Please select the category which best describes your organisation

Completion Certificate by the developer. With regard to the references made within the proposal regarding the verification process we feel it is important to point out what the current Building Standards System is about and what it can deliver. It is also important to clarify the roles and responsibilities of those involved in the process. One major misconception about the Building Standards system is that the public generally believe that it is the Local Authority Building Standards Service that signs off and confirms that a built structure complies with the relevant standards and the warrant plans. This is not the case as it is the 'relevant person' who submits the completion certificate, certifying that the finished work meets the approved plans, documents and regulations. In the case of new-build housing sites the relevant person is the developer. The Building Standards system is there to protect the public interest. Its purpose is not there to provide protection to a client in a contract with a builder. The Building Standard system only sets minimum standards, sufficient to meet the regulations, it does not set out to go beyond that and cover quality and workmanship matters that a client may normally expect from a builder. The system is pre-emptive, designed to check that the proposed building work, through the warrant process, meets the standards. Inspections during construction and on completion are to protect the public interest in terms of compliance with the building regulations and to discourage avoidance of the legislation. The inspections, carried out by Building Standards Surveyors, do not provide a system to control work on site and verifiers are not clerk of works, that is a matter for the contracts and arrangements put in place between the client and builder. The Scottish Government, through the Building Standards Division, post the outcomes report on the recent consultation on 'Building Standards Compliance and Fire Safety' are already looking at short term and long term changes to the Building Standards System. In the short term these will go some way to further clarifying the roles of those involved in the process, particularly the role of the 'relevant person' in ensuring what is constructed meets the required standards.

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).

Scottish Borders Council

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.

Council Headquarters
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Aim and Approach

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

Fully supportive

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

Please explain the reasons for your response.

We welcome this proposal as it would bring strength and clarity to the customer when considering a major purchase.

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?

Fully supportive

Please explain the reasons for your response

We welcome this proposal as it strengthens consumer protection in what is a major purchase and life commitment. Further clarifying customer rights and providing a route that should be pursued should something go wrong can only help clarify the roles and responsibilities of those in the construction process. Although mentioned, but not part of this consultation, setting up a 'New-Homes Ombudsman' would also help alleviate misconceptions with regards to what can and cannot be done under Building Standards legislation when it comes to alleged defects following acceptance of a completion certificate. Our only comment would be that careful consideration should be given as to how this body would be set up and appointed. The proposed funding mechanism would also require consideration so as not to burden the consumer or tax payer.

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

Advantages:

- Consumer protection - Standard missives could set out what level of legal cover a purchaser may have should defects become apparent or what should happen in terms of dealing with disputes.
- Standards missives could help clarify Building Standards legislation in confirming that it is the developer (relevant person) who certifies regulations compliance of the completed work.
- Possible reduction in insurance claims.

Disadvantages:

- No apparent disadvantages in terms of the consumer.
- Developers may encounter initial costs in changing their standard missives.

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.

Other (please specify) – The time periods above do not appear to allow sufficient time for some potential defects to become apparent. It may be appropriate for varying periods of time for different types of defect with an upper level of about 10 years for items such as damp penetration, failed tanking, some materials defects, etc. For consistency and simplicity it may also be worth considering tying timescales to that for latent defects periods.

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?

Fully supportive

Please explain the reasons for your response

Given the amount of money involved in a house purchase and the length of time the property is expected to last, it seems reasonable to allow a purchaser to bring in expert help to advise on the suitability of a property.

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.

Not applicable.

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			
Businesses (including housebuilders)		X				
Individuals (including new-build house buyers)		X				

Please explain the reasons for your response.

There is likely to be some increase in cost to developers as in order to safeguard themselves to potential claims, site supervision and quality control may increase. This is not a bad thing, but any costs incurred will inevitably be passed onto the consumer.

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?

Positive

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?

Please explain the reasons for your response.

The purpose of this Bill is draw up standard missive clauses that mean they are less weighted in the favour of the developer, thus making the process fairer. The standard clauses should also make the process of buying a new-build property clearer and as such more suitable to all.

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

Please explain the reasons for your response.

The proposed Bill only seeks to change missives clauses. The process of drawing up missives already exists.

General

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

None.