

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

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).

Dawn Homes Limited, a housebuilder in Scotland

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).

Dawn Homes

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?

Partially opposed

Please explain the reasons for your response.

Given the current legislation in place we feel that the need for a survey by the customer is excessive. We are fully committed to improving our processes related to consumer protection. However we do not believe the introduction of mandatory statutory clauses is the solution to address this. We believe that the current voluntary standardised missives drafted and updated annually by the Scottish Law Society currently provide the best format of standardised missive if a home builder decides to use this.

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?

Neutral (neither support nor oppose)

Please explain the reasons for your response

We have a customer complaint procedure in place which is advised to all our clients and of which a copy is available on our website. All of our new homes built for sale come with the comprehensive set of protections through our warranty provider NHBC who offer 10 year cover for structural defects. As we are registered with the above warranty provider, we also adhere to the Consumer Code. This information is passed to our clients in writing at reservation stage and is highlighted within all of our sales offices.

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

3.2 One of the main disadvantages with the proposed Bill as a whole, is that it is pre-empting the on-going work our representative body Homes for Scotland is already involved in regarding the establishment common consumer code that brings together one universal set of warranty standards,

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

consumer protections and the creation of a New Homes Ombudsman. We believe that any improvements to the system of new home purchase should be industry-led and covers the whole of the UK in order, to give consumers adequate protection as well as providing clarity over what is required of the development community, regardless of where homes are being built.

3.3 If the proposals were to be taken ahead they pose the threat of creating a two tier system for redress that will inevitably only create further confusion for the purchaser.

3.4 The proposals also have the potential to adversely impact what mortgage providers are currently offering, if Scotland were to depart from the rest of the UK in the development of any future consumer protections. Already in Scotland, small differences in conveyancing have prevented some lenders who offer mortgages to buyers in England from participating in the Scottish market. Even a small difference can mean significant implications for lenders in terms of processes or automated systems. In some cases lenders have taken the decision to withdraw from, or not enter the Scottish market rather than make the investment required. In maximising choice for new build customers, we are keen to see everything possible done to ensure a consistent approach to customer redress.

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.

We believe that the current ten year warranty currently offered by the mainstream warranty providers is the most appropriate. Under the mainstream warranty providers, the home builder is made liable for the first two years for any defects that may arise. The warranty provider then covers the remaining eight years for any major structural defects that may arise (including years 0-2 if the home builder becomes insolvent or fails to resolve any defects). If the customer believes the home builder has not obliged in their duty to correct any snagging or defects within the first two years, the home buyer can seek resolution through the home warranty body. Then, if the home buyer is dissatisfied with how the home warranty body has dealt with the case, they have recourse to complain to the Financial Ombudsman Service.

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 opposed

Please explain the reasons for your response

We are strongly concerned over the lack of detail included in this proposal and have queried the following:

- Who will assume financial responsibility for the full survey; will the cost lie with the developer or the purchaser? This would be detrimental to either the developer or purchaser dependent on whom the cost lies with, moreover for SME home builders this would raise yet another financial obstacle they would have to navigate in an already difficult development process.
- Further clarification on the definition of severe or serious defects is needed to ensure that minor snagging issues are not conflated with structural defects, both of which are covered by home builder warranties. It should also be noted that it is incredibly unlikely that, in the rare instances there is a structural defect, this will be picked up by a surveyor, pre-purchase.
- Without the clarification over what is referred to here by severe or very serious defects there are concerns over the ability this may give to surveyors to conflate issues that would be considered minor snagging and the home builder is obliged to remedy within the first two years of purchase.
- Dependent on when the proposed survey was to be carried out, the ability for a customer to fully pull out of a purchase will create larger uncertainty throughout the sales process for both home builder and purchaser. Given that most purchasers have already sold their home or given notice to a landlord, they want certainty of entry dates as much as the lender and the developer does. Consideration must be given to the disruption the proposals would cause across the whole home building sector, with developers likely facing increased uncertainty from sales falling through, more complex missives to conclude and with no detail on who would pay for the survey. Whilst larger developers may be able to absorb some of these costs, the impact will be felt acutely by the SME sector. Small scale home builders often tend to operate in more dispersed rural areas, in

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?

secondary or tertiary markets; where economies are the first to be hit by any slowdown, and usually the last to experience a recovery. This will result in yet another hurdle for SMEs to overcome and discourage new entrants from entering the market. The uncertainty that will be felt throughout both Dawn Homes and indeed the industry as a whole. Where a missive is concluded on a property with the ability of the purchaser to walk away at the very last moment on the basis of a survey means that a sale is not able to be taken as such until the day of completion. The knock on effect of that will cause uncertainty and delays in the build programmes of all builders. We firmly believe that the inspections carried out by Building Control and NHBC prior to handover give the purchaser prior to handover and the guarantees given on the basis of these inspections are more than sufficient.

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.

6. The high levels of customer satisfaction in relation to the purchase of new build homes should not be ignored. Results from the last four years National New Homes Survey operated by NHBC has demonstrated the consistently high level of satisfaction customers have with their purchase.

2017/18 2016/17 2015/16 2014/15

Response %

(weighted by Builder size) Scot All UK Scot All UK Scot All UK Scotland All UK

Recommend 88.9 86.8 89.9 86.1 88.9 84.3 89.3 85.0

Dawn Homes currently have surveys independent customer by InHouse and our customer satisfaction rate currently sits at over 93%.

We would like to highlight the fact that any anecdotal evidence given here should be carefully reviewed. Consideration must also be given as to whether respondents are directly referring to Scottish developments and that issues associated with developments south of the border are not conflated with the quality of Scottish new build homes. Further clarification should also be given as to what is classified as a new build home. Additionally, thought should be given as to when the homes were constructed to allow for reflection on longer term trends in customer satisfaction.

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

Please explain the reasons for your response.

Home builders would inevitably face significant increases in costs if the proposals set out within the

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

consultation were taken forward issues surrounding: - The entire sales process will inevitably be longer as the proposal is that building surveys are carried out just prior to handover. There is not an infinite number of trained/experienced surveyors in Scotland and the arranging of an appointment for a survey to be carried out could lead to a delay in settlement. Given that missives stipulate settlement taking place within a specified period of time after intimation of Habitation and NHBC being granted, this could lead to penalty interest to be payable by the purchaser, further increasing costs, as surveyors will not always be able to inspect properties timeously. - Initial set up costs aligning legal departments to deal with any new statutory missives and any subsequent delays faced in concluding them - Uncertainty in the sales process if the purchaser were to pull out of the sale completely. Whilst this would be incredibly detrimental to any home builder, for PLC's who have to report to their shareholders, setting out the total number of anticipated completions in the financial year, the uncertainty has the potential to impact share values. Further it would be even more acutely felt by the SME sector where companies already often operate in more uncertain markets. - Lack of clarity over who would be responsible in covering the cost of any survey carried out before the purchase - Purchasers of new build homes would be equally likely to face some increase in cost if the proposals were taken forward due to the anticipated longer times it would take to conclude missives and therefore experience an increase in legal fees associated with the purchase of any home. Additionally, if lenders were to pull out of Scotland as a result of the proposals, this could potentially result in the reduction in access to competitive mortgage rates for aspiring home owners, consequentially pushing up the cost to borrow and impacting on the overall housing market.

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?

No Response

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?

No

Please explain the reasons for your response.

9.2 We have serious concerns over the viability of taking forward the proposals set out within the consultation without causing significant disruption to home builders and purchasers alike. As outlined throughout our response we urge consideration of the impact these proposals may have on further restricting or hindering the supply of new homes Scotland desperately needs to meet the demands of its' growing population, particularly in the context of the backlog of 80,000 homes amassed over the last 10 years and the subsequent need to deliver approximately 25,000 homes per annum. If carried out in isolation to the rest of the UK, Scotland may be at risk of: - Increased costs: The inclusion of statutory standardised clauses within missives is overly prescriptive and will most likely add further delays to the sales process. The lack of clarity over who is financially responsible for carrying out the pre-inspection survey; will this come at increased cost to the home builder or the purchaser? - Increased uncertainty: Separate standards in relation to customer redress will ultimately result in the creation of a two-tier system which only achieve in adding further confusion to the purchaser and home builders in terms of what they are entitled to and what is required of them respectively. - Lender withdrawal: Including the provision for a customer to pull out of a purchase entirely not only creates uncertainty for us but has the potential to cause

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lenders offering mortgages to aspiring home owners to withdraw from Scotland or not enter the Scottish market entirely. - SME Home Builder Sector: All of these potential disruptions will be felt most acutely by the SME home builder sector which is still recovering from the 2008 crash and operating on much thinner margins as their costs are proportionally higher than larger builders.

General

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

We are fully committed to increasing our levels of customer redress and the quality of new build homes. However, we would strongly encourage that any changes made to strengthen the existing structures regarding customer redress in Scotland are not made in isolation to the rest of the UK, with collaboration between the home building industry and all concerned stakeholders. The proposals set out within the consultation will not deal with issues of build quality and customer service but rather simply address problems as they arise. Like HFS, we believe that a more strategic approach to improving the quality of new homes and customer redress is required with full industry buy-in. In this light the industry led work currently being undertaken by between HFS, HBF and the Consumer Code for Home Builders presents the most viable platform to improve the specific areas of concern outlined within the consultation. For further details on the issues raised in our response we would direct you to the Homes for Scotland response as our representative body for the new build home industry.