

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).

Pinsent Masons LLP is an International Firm of solicitors with three offices in Scotland. As a firm we act on

Please select the category which best describes your organisation

behalf of a number of national and regional housebuilders. We also have a team of para-legals who act on behalf of housebuilders in the sale of individual housing plots.

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).

Pinsent Masons 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.

Pinsent Masons believes that any simplification of the existing process for the purchase and sale of a new build residential property would be welcomed. If statutory standardised clauses were adopted for builders' missives this would be likely to facilitate a simplified and expedited process. The standard clauses for the purchase and sale of second hand properties have been successful in achieving that aim for that market and reflect a balanced position between purchaser and seller. Whilst it is acknowledged that housebuilders' missives do have particular issues that differentiate them from standard missives for the purchase and sale of second hand property, developers do recognise the benefit that a balanced standard missive would bring in terms of the speed of getting to conclusion whilst protecting both parties' interest in a balanced fashion.

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 opposed

Please explain the reasons for your response

The existing National House Building Council (NHBC) warranty is provided for by a vast majority of housebuilders delivering the bulk of new housing stock in Scotland. NHBC cover provides purchasers with an effective level of warranty and a dispute resolution procedure. It is observed that the NHBC Scheme

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?

has an existing independent arbitration scheme (CEDR) and provides access to the independent Financial Ombudsman Service. The proposal to give house purchasers the right to carry out a full survey in advance of legal completion could have the effect of significantly disrupting and delaying the system of certainty on dates of entry created by sign off by NHBC and Local Authority (that the house has been completed in acceptable standard). Having regard to the existing dispute resolution provisions within the NHBC warranty scheme (notwithstanding the contractual remedies that would also be available to a purchaser in the event of major failings) it is not necessary to establish an additional statutory based check by a surveyor who is acting only on behalf of one of the parties (the purchaser) which could lead to a protracted pre-completion dispute. The 4 and 5 star rating enjoyed by many housebuilders supports the view that the vast majority of post-completion issues are dealt with very satisfactorily by developers through a snagging process. A clear post completion statement in the missives of what the builder will do if the building fails in some way would however be helpful.

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

Facilitate and expedite conclusion of missives on a balanced basis.

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.

Two years appears to be an appropriate time period. Most defects present themselves well within that two year period.

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

(i) As stated previously this proposal could have the effect of significantly disrupting and delaying the system of certainty on dates of entry created by sign off by NHBC and Local Authority (that the house has been completed in acceptable standard), (ii) The bulk of new housing is sold under a comprehensive and recognised warranty scheme with existing resolution provisions, (iii) the surveyor will be acting on behalf of the purchaser only and (iv) it is anticipated this process may lead to protracted pre-completion disputes that are in fact not related to major failings but rather minor snagging matters that are provided for in the contract.

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
Government and the public sector			X			
Businesses (including housebuilders)		X				
Individuals (including new-build house buyers)		X				

Please explain the reasons for your response.

Businesses would require to bear the cost risk of delays to settlement of transactions. This may have a consequent effect in terms of transactions involving the part-exchange of a pre-existing property which has been forward sold by the housebuilder on the second hand market. From an individual's perspective the additional cost will be in relation to the pre-completion 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)

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.

Additional costs may be incurred to both housebuilder and purchaser as detailed above.

General

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

Standard missives have proved very successful in the second hand property market and efforts to standardise new house missives should be supported but only to the extent that it simplifies the process of conclusion and implementation of the contract in a balanced fashion.