

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

Representative organisation (trade union, professional association)

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).

RICS is the largest organisation of its kind for professionals in property, construction, land and related

Please select the category which best describes your organisation

environmental issues. As an independent Chartered organisation, RICS sets, regulates and maintains the professional standards of 125,000 qualified professionals and over 10,000 firms. Since 1868, we have been committed to setting and upholding standards of excellence and integrity – providing impartial, authoritative advice on key issues affecting businesses and society. RICS is a regulator of both its individual qualified professionals and those firms that have registered for regulation by RICS.

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).

Royal Institution of Chartered Surveyors

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.

RICS supports any moves to increase transparency and standards within the housing sector. Builders missives will bring transparency of what is required and give certainty to homebuyers that like any consumer product they can get redress if item is not up to par. A balance between builders and consumers also needs to be addressed not just in standard of the work, many builders' missives are overly weighted to the builder and do not cover delays in construction. Missives should address delays much like delays are regulated within the transport industry, so that consumers know what they are getting and have a clear timeline of when it will deliver, with consequences for builders who do not deliver on either standards or timeframes.

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 support the proposal for the complaints procedures to be standardised. The current level of complexity

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?

is a headwind to consumers seeking to access redress. This is compounded by the lack of consumer education in the area of housing. This is a key issue in the current property redress environment. With several alternative dispute resolution (ADR) providers, multiple approval bodies (depending on the activities undertaken), devolved jurisdictional variations in requirements and inconsistent signposting, it can be a challenge to understand redress options. We believe this is particularly problematic for consumers who often lack the expertise to navigate this complex environment, particularly those who are vulnerable. This can have a knock-on effect on the quality of redress provided, or the ability to access redress effectively. Consumer ADR should be clear and simple. Too much choice creates confusion and is not beneficial for either consumers or housebuilders. A single ADR service for the residential sector, covering consumer complaints about housebuilders, estate agents, local authorities and social housing providers with a clear procedure and guidelines would help create order and clarity and help consumers to access ADR. A body/organisation that offers ADR must be able to provide information and guidance to both technical and non-technical clients. We believe that belonging to the ADR scheme should be mandatory for housebuilders, estate agents, local authorities and social housing providers. We consider that better communication around the existing system would be preferable in the short-term, while in the medium-term the government should review the space more thoroughly.

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

RICS supports the streamlining of the structure of redress in order to make efficiency gains for the consumer.

Government intervention from both UK Government and Scottish Government into the sector has been abundant over the years, ranging from major Acts of Parliament, to secondary legislation and statutory instruments. There is also a wealth of case law and tribunal judgments which tend incrementally to move the law onwards.

More transparent standards within the industry can also help alleviate disputes before there is need for ADR or the ombudsman.

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.

The present warranty period of 10 years serves the sector well and does not need to change. However there needs to be a better and more transparent definition of what the warranty covers. Builders should not be held accountable for minor defects that are more a causation of the homeowners and their neglect of maintenance than the fault of the builder. RICS believes that there also needs to be thorough review of building standards, that includes the standards needed for emerging technologies including Modern Methods of Construction (MMC). We cannot state an appropriate builder's warranty for a new home time scale, but would suggest any warranties need to apply to all forms of new build including those built through MMC, reflecting the standards governing the method. RICS would like to see Scottish Government also adopt the definitions of MMC that emerged out of the UK Government's Farmer review. The definitions will help bring clarity and can better set suitable standards for MMC in the industry. The definitions are supported and agreed across industry, and not just at a Government level.

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

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?

Please explain the reasons for your response

Key to improving customer experience would be providing a professional service with accurate and succinct information that can be easily understood. All properties, barring a few exemptions, have to have a home report undertaken before going to market. Mandatory Home Reports were introduced in 2008 with three principal objectives (according to Scottish Government webpage- <https://www.gov.scot/policies/homeowners/home-reports/>) : 1. Provide better information about the condition of properties to sellers and buyers before offers are placed (and give sellers an incentive to carry out repairs before marketing their properties) 2. Address the problem of multiple surveys and valuations being carried out, and 3. Address the problem of artificially low asking prices being set. It should be noted that objectives 1 and 2 relate very closely to this consultation's proposal. The Home Report provides potential buyers with information on the fabric of the residential property – including defects. Purchasers, and potential purchasers, have always had, and continue to have, the opportunity to instruct a more detailed inspection as part of the buying process; and this is possible prior to making an offer, or as part of a "subject to" clause within the offer itself. This approach reduces the potential for a bid withdrawal, but changing the current system to allow purchase withdrawals based on a 'post-bid' survey would undermine the Home Report and cause unnecessary public confusion. Instead of proceeding with this proposal, we suggest greater provision of information around what potential buyers can do regarding Home Reports and further property inspections. There is also a lack of meaningful inspection by Local Authorities during the home building process, which has seen standards fall, which has been compounded by the lack of any warranty provider inspection. There would be merit for an independent inspection by a chartered surveyor to a prescribed level, on a set number of units, if many faults are found the inspection becomes of the whole development. The costs would be paid for by the developer.

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

Please explain the reasons for your response.

Not applicable

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.

RICS foresees no social impact of these changes, however we would reiterate previous points of the need to ensure that there is greater awareness within consumers of what they should expect, and information about their rights. RICS would expect Scottish Government to disseminate information bearing in mind the differing needs of the consumer including comprehension, disability, and access to information including those who may not have access to online sources.

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.

RICS welcomes any attempts to bring greater transparency and standards and does not believe in doing so will have a detrimental impact on the industry or consumer.

General

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

Any changes to missives must be done in conjunction with a wider industry move to a more regulated and professionalised sector with robust and supportable standards.

We would also encourage a greater focus on information, homeowners should have the ability to gain independent advice regarding complaints, procedure or what to expect/ look out for, independent advice can help an issue not to escalate, as well as bring certainty and transparency to the consumers experience.

Rather than an ombudsman scheme, RICS DRS advocates an independent redress process which utilises mediation, and provides parties with mediators who have expertise in disputed subject matters. However as mentioned before the need for a simplified and singular service provider, if Scotland does go with an Ombudsman we would support that, if it meets the needs we have identified for redress and alternative dispute resolution.