

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:

As a Professional Engineer, I have dealt with the design of housing, their construction including the investigation of defects and their remedy. I have experience of dealing with house builders, legal representatives and organisations which offer warranties and on behalf of homeowners and public organisations who have had issues with their properties.

Please select the category which best describes your organisation

No Response

Please choose one of the following:

I would like this response to be published anonymously

If you have requested anonymity or asked for your response not to be published, please give a reason (Note: your reason will not be published):

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).

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.

Purchasers of new build homes should have greater protection from poor workmanship, design and other related construction issues. Housebuilding is neither particularly difficult or complex. The house builders sell themselves as being able to deliver high quality homes to both the private and public sector and whilst warranty cover is available by warranty providers, who also maintain technical and quality standards, there is little evidence that this leads to reasonable defect free properties. The general public who purchase a majority of new homes are not in a position to take up arguments against large national house builders. Under current circumstances, the use of any legal process together with professional investigative reports is also normally outwith the reach of most people. Employing professional engineers, surveyors with perhaps the initial involvement of legal practitioners may cost a few thousand pounds just to get the builder to take some initial action. Evidence provided in your report on the proposed bill, along with many other notable cases which could be cited if required, suggest that there is a degree of unfairness and imbalance in the contracts of purchase. This imbalance has been evident for many years and the lack of obvious recourse to the builder/developer is long outstanding, as is the support of warranty providers to help assist resolving the cases where things have gone wrong.

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

From a technical perspective, house building is not a hugely demanding process, however, there are many parts in the journey of building a house. From the viewpoint of a domestic purchaser, they are relying upon the abilities of the builder/developer in handing them a properly finished, technically compliant and well-designed home. The builders have sold the home on the back of their branded advertising and that of the warranty provider with respect to its warranty offering, yet the purchasers will barely begin to understand the complexities of what the builders' obligations are and what exactly their rights are under the guarantee/warranty. (or for that matter the relationship between the builders and the warranty provider). The formulation of a Statutory route for redress for failings on new build property is essential, not just for major failings but for all reasonable failings that the purchaser feels need to be dealt with. Some failures may not appear significant in themselves, however, if the error or defect extends to 10 or 20 homes and they all need to be fixed, then the builder/developer may take a different approach to dealing with their responsibilities to repair. Having some form of statutory legislation which makes the builder responsible to the homeowner, allows a degree of redress without recourse to court would be very helpful and actually might help the industry improve its build quality (some builders are now going to offer retention on a new property and allow surveys). Any changes suggested and ultimately imposed need to be viewed as part of the overall process that the industry operates under and the warranty providers, developers/builders and inspectors and professionals all need to be aware of what direction the ability to achieve redress is heading. A simple alternative approach might be to offer a standalone insurance policy to deal with defects liability and repair and sell that with the house as a means of taking the pressure off the homeowner and give them something that they can use to give leverage with the builders/warranty providers - the problem is that insurers won't offer such policies as the market cost to cover the risk would be very high and they would possibly lose money on the venture.

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

Practical advantages - Currently, when people purchase a new home, they are wholly unaware as to how unprotected they are in terms of defects, substandard workmanship and designs and the only thing for them to rely upon is the reassurance of the warranty. The advantages of the proposed bill are that it will provide a means of ring-fencing risk to the purchaser that they, having bought a defective home, have a means of ensuring that the homebuilder act reasonably to make good defects and repair the home to the standard they should have reasonably expected of a professional home builder.

The disadvantages of the proposed bill are the house builders and others will argue that it will add to the cost to the price of a house, whereas if the house price increases to allow the build to better meet the existing regulations and quality standards, then clearly the builder are not offering a product compliant with their advertising. The house builders should not have to incur additional costs to meet the standards they say they already meet.

Disadvantages - I can see very few disadvantages from the perspective of the homeowner.

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.

In my view, the current two years is appropriate, however, because the two years is mostly backed up with the further 8 years from NHBC

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

The process of construction obscures many of the critical items of the build including but not limited to foundations, main structure, roofing, electrical infrastructure, walls, plumbing etc. The materials used in the build are difficult or costly to identify over time and as such a survey or surveys of the build and pre-handover are essential if the builder is to be held to account in respect of the use of substandard materials, workmanship or as-built details or design. The issue of severity of defects is difficult to define accurately on the whole and the benchmark should not be a scale of severity of defect(s) but the issue of how adequately the homeowner can be put back into the position he should have been in had he not purchased a house with defects. Surveyors or engineers undertaking surveys of the property will be limited in what they can report on and therefore staged surveys should be considered. It is realistic that our industry could easily undertake a risk-based analysis of the construction of homes and detail out where the highest risk build issues may arise, what to look for and importantly, how to avoid building substandard homes.

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.

Yes, the experience was acceptable, however, I do believe that standards of build in new houses since then(20 years ago) have dropped considerably.

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.

In terms of government/public sector - driving up basic build quality should reduce costs - adequate organised inspection costs on a house over a large body of builds, may impact very slightly on the profit margin of the housebuilder, however that cost would be easily recouped through less snagging or ultimately high-value claims as a result of repetitive defects in multiple house units as noted in the consultation reporting . With regard to businesses and individuals - the comments above would apply but at best they are considered to cost neutral rather than resulting in cost increases.

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.

The process of obtaining a home of reasonable quality either through purchase or through a rental/lease/Shared ownership via a housing association for example. should always be the same. It is worthwhile pointing out that in the arena of public housing provision the same issues arise and the same parties are responsible for warranties/general build quality. There should be no discrimination between what is built and for whom - the expectations are the same - good quality housing, limited/zero defects and when there are defects, they should be fixed. It is acceptable to differentiate between certain types of defect however, it should be done fairly and not on the basis of who owns or occupies a house.

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.

I can see no obvious reason for there being issues of sustainability in the delivery of such changes as the bill is proposing. It may be the case that there is an improvement in the accessibility of the public as a whole, to good quality housing that carries significantly diminished personal risk resulting from defective builds and the builders/developers that wish to avoid putting things right which are clearly wrong - Those noted in the report relating to mortar, roof and foundations are possibly the tip of the iceberg. there are many other build issues that go unreported for the reasons noted in the report. These and the cases mentioned will have taken their toll on the homeowners that have sustained the discussions and negotiations with builders/warranty providers sometimes over years, leading to uncertainty about the potentially defective house not being fixed or costs required to undertake fully repairs. As is often the case, cash settlement offers are made to homeowners and these offers can be made on the basis of unfair costing practices which the homeowner has no control over.

General

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

Whilst the proposed Bill has some very significant merits and it does take account of the full spectrum of house purchase, the question of the current Ombudsman role in dealing with complaints should also be looked at. Until such time as new legislation comes into force and permeates the housebuilding markets, there will be an ongoing sale of 10,000's of new homes in Scotland and possibly a million in the UK a proportion of which may become the subject of claims.

As far as can be established, the end stop for many of these claims is that a complaint is made against the warranty provided and the Ombudsman finds against the homeowner.

The current Ombudsman organisation in their current role also needs to be reviewed as it would appear that decisions made by them can be at odds with previous decisions made by them. Additionally, where a

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

warranty provider has had a finding made against them, they are not required to alter its rules, contract terms and/or technical guidance so that future claims are dealt with more efficiently. There is no updating which would assist future claimants.

As in the reported comments made on the Halverson case, paraphrased and summarised here - there is a common misconception that there is NHBC cover which will sort things for the homeowner whereas the reality is that the cover is limited and one needs a significant technical/legal input to support a claim. The experience of homeowners who have had to both call upon and rely on that cover to repair defects that have been set aside by builders would show that this process is both exhausting and fair treatment of their interests as a beneficiary of the warranty is often limited by the warranty provider who as a fallback can re-claim their loss from the builder, which to be perfectly fair, is a really good reason to limit their liability