

Building Standards Enforcement and Sanctions: Consultation

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Building Standards Enforcement and Sanctions: Consultation

Contents

Part 1 - Building Standards Enforcement and Sanctions: Consultation.....	2
1. Overview.....	2
2. Background - The Building Standards System in Scotland.....	3
3. Aim	4
4. Proposals.....	4
5. How We Would Like You to Help.....	9
6. Consultation questions	10
Part 2: Impact Assessments.....	14
7. Equality Impact Assessment.....	14
8. Business and Regulatory Impact Assessment (BRIA).....	15
9. Island Communities Impact Assessment	15
10. Responding to this Consultation.....	17
11. Handling your response.....	17
12. Next steps in the process	17
13. Comments and complaints	18
14. Scottish Government consultation process	18
15. Respondent Information Form.....	19

Building Standards Enforcement and Sanctions: Consultation

Part 1 - Building Standards Enforcement and Sanctions: Consultation

Building (Scotland) Act 2003 – Amendments

1. Overview

In Scotland, a Ministerial Working Group was set up following the tragic fire at Grenfell Tower in 2017, to review building and fire safety regulatory frameworks. The Group commissioned two reviews of building standards; one to cover compliance and enforcement and the other fire safety. The Review Panel on Building Standards Compliance and Enforcement identified the need for improving aspects of the building standards system (covering procedural compliance, built compliance and enforcement of both procedural matters and non-compliant work).

As part of the compliance and enforcement review, consideration was given to the issues and findings of the [Independent Inquiry into the construction of both the Edinburgh Schools \(Cole Report\)](#) and the [DG One leisure complex in Dumfries independent inquiry report](#). This included considering the importance of site inspections and supervision and the roles, responsibilities and competency of different persons involved in building projects.

A public consultation was carried out between July to September of 2018. The majority of respondents to the consultation were in favour of the proposals presented. In the [2018 consultation analysis report](#), it confirmed that 75% of responses expressed support for increased fines for non-compliance with building regulations.

A review of the measures needed to deliver change for the building standards system was taken forward under the remit of the Scottish Government, Futures Board. The Board was set up with the purpose to identify measures to strengthen the building standards system. Another [public consultation on Building Standards Compliance and Enforcement](#) was carried out between 11 November 2021 and 4 February 2022.

The consultation sought views on the proposed changes to strengthen the building standards system initially for High-Risk Buildings (HRBs) by:

- Requiring applicants (building owners and developers) to evidence and document how compliance with the building regulations has been approached from a 'pre-application meeting' (initial) stage through to completion of the building project.
- Strengthen compliance across all building types with the new Compliance Plan approach and also to introduce a requirement for independent professional oversight - a Compliance Plan Manager - on high-risk buildings (high rise residential, high public value - schools, healthcare facilities, and also housing sites) to manage the compliance process from start to finish.
- Increasing the current level of fines where work is not carried out in accordance with the building regulations, and
- Asking if the existing powers for local authorities to take action on work not meeting building regulations is adequate.

Building Standards Enforcement and Sanctions: Consultation

Note - HRBs include new build, conversions, alterations and extensions and are defined as:

Higher risk buildings (HRBs)

- Domestic building or residential building with any storey at a height of more than 11 metres above the ground.
- Educational establishments (schools, colleges and universities), community/sport centres and non-domestic buildings under local authority control/where they have an interest in a building.
- Hospitals
- Residential care buildings

The responses to the consultation¹ recognised the importance of achieving compliance first time. This is viewed as a critical point, and that any enforcement is always a backstop when all other options for resolution have failed. The current enforcement powers are considered adequate for local authorities to take action on work where it does not meet building regulations or not in accordance with a building warrant. There was however support for strengthen existing enforcement powers and increasing penalties for offences in the Building (Scotland) Act 2003.

2. Background - The Building Standards System in Scotland

The building standards system in Scotland is established by The Building (Scotland) Act 2003 (The Act). The purpose of the building standards system is to protect the public interest.

The building standards system is pre-emptive and is designed to check that proposals meet building regulations. The main principles of the system are that a warrant must be obtained before work commences on site and a completion certificate is accepted by a verifier if, after undertaking reasonable inquiry, they are satisfied the building work meets the building regulations, prior to the building being occupied.

The buildings standards system relies on the building warrant applicant, normally the building owner, to control the work on site. They are also normally the ones certifying the work complies with the building warrant and building regulations at the completion stage.

Responsibility for compliance with the building regulations lies with the “relevant person” and ultimately with the building owner. For the purposes of the Act the relevant person is -

- any person carrying out the work; that is a self-build owner or tenant,
- a developer who is the builder,
- any person for whom the work is to be done; that is an owner, tenant or developer who is not doing the work but has engaged a builder to do it; and
- the owner; if the owner is different from those persons above.

¹ [Building regulations – compliance and enforcement: consultation analysis - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Building Standards Enforcement and Sanctions: Consultation

The thirty-two local authorities in Scotland are appointed by Scottish Ministers as verifiers to administer the building standards system in their geographical areas. The appointment as a verifier is made on the condition that local authorities meet the requirements of the Operating Framework and Performance Framework.

Their primary function is to protect the public interest by providing an independent check of applications for building warrant to construct or demolish buildings, to provide services, fittings or equipment in buildings, or to convert buildings. This includes checking the design before granting a building warrant and checking during construction before accepting a completion certificate.

The Act gives powers to local authorities to take enforcement action. Local authorities are autonomous bodies under the Local Government (Scotland) Act 1973, and it is not the role of Scottish Ministers to intervene in enforcement matters. It is for the local authority to determine the most appropriate course of action, taking into account the particular circumstances of each case.

3. Aim

The aim is to strengthen existing enforcement powers used by local authorities (LAs), and increase existing penalties for offences to act as a deterrent to persons who commit offences under the Act.

The proposed changes will send an important message to the actors with roles in the Act e.g. building warrant applicant/owner/relevant person, that they should take their responsibilities seriously. By strengthening existing sanctions and increasing penalties for offences this will send a clear message that by not fulfilling their roles set out in the Act, and Building (Scotland) Regulations 2004, as amended (building regulations) their actions could have consequences that affect the health and safety of building occupants.

4. Proposals

The proposals aim to strengthening existing provisions, Section 21 Occupation or use without completion certificate, 27 Building warrant enforcement notices, and 48 Penalties for offences of the Building (Scotland) Act 2003. These proposals are to:

- Include owners in the offences for occupation without completion (section 21)
- Include removal of work, introduce a standalone stop notice, and clarify the scope of section 27 to take action after acceptance of a completion certificate for Higher Risk Buildings (HRBs) with a time limit for serving enforcement notices (section 27).
- Increase penalties for offences (section 48) that will also apply to Offences by bodies corporate etc. (section 49).

Section 21 - Occupation or use without completion certificate

Section 21 is an existing provision in the Act that gives local authorities powers to take action (i.e. refer case to the courts), for the offence of occupation without a completion certificate against “any person who occupies or uses a building”.

Building Standards Enforcement and Sanctions: Consultation

Local authorities have made Scottish Government aware that new or converted buildings are being occupied without a completion certificate or temporary occupation certificate. For example, where the building owner is allowing occupation of the building for rent /short term lets without completion or temporary occupation certificates.

The existing provision allows local authorities to take action on the persons occupying/using the building, but not on the building owner who is allowing the building to be occupied/used. Amending section 21 to include an offence by the building owner would allow local authorities to take action on them, and send a clear message that occupation without the necessary certificates is not acceptable.

Section 27 - Building warrant enforcement notices

Section 27 is an existing provision in the Act. Starting work without a building warrant or not in accordance with the building warrant is an offence against the Act, and attracts penalties.

Where work is done without a building warrant or not in accordance with the building warrant, local authorities can serve a notice under Section 27 Building Warrant Enforcement Notices to remedy the situation. Section 27 includes steps to be taken to secure compliance, and if appropriate for the work to be “suspended” (stopped).

The current wording does not give local authorities the option/flexibility to have the work removed where this is considered a more appropriate response. Although provision is made for work to be “suspended” (stopped), a clearer message is sought that the work must “stop”.

Section 27 - Removal of work

Local authorities have made Scottish Government aware that when non-authorised work is brought to their attention, they discuss/give owners options how they may remedy the situation. These are to comply with the requirements of the Act i.e., obtain a building warrant where one is required, and/or comply with the building regulations. However, some owners would rather remove the work rather than make changes to existing work. The Act currently does not make provision for work to be removed, only that work meets building regulations.

Introducing a new provision for the removal of work would give local authorities more flexibility with building owners on how the situation is remedied. i.e. remove any work done without a building warrant or not done in accordance with building regulations. The current wording does not give local authorities the option/flexibility to have the work removed where this is considered a more appropriate response.

Section 27 - Stopping work

Section 27 also gives local authorities powers to suspend work (stop work). The views from local authorities are that a standalone “stop notice” would send a stronger and more effective message to actors that there are consequences to their actions.

Building Standards Enforcement and Sanctions: Consultation

This would enable the local authority to have work “stopped” until the owner/developer gained consent to continue on site. This step is expected to be a more effective deterrent, and would provide useful evidence should the local authority be required to take formal action including prosecution.

Section 27 - Clarification on the scope of section 27 for taking action by the local authority after acceptance of the completion certificate

The provisions under section 27 may be used by local authorities to address work not in accordance with the building warrant and building regulations, once the verifier has accepted the completion certificate. Local authorities do utilise this power. However, they are reluctant to use it for cases after the acceptance of the completion certificate as they do not think the scope is set out clearly in the Act.

The acceptance of the completion certificate does not appear to prohibit the local authority serving a building warrant enforcement notice requiring that the work complies with the building warrant and building regulations.

When the verifier accepts the completion certificate, they are satisfied after reasonable inquiry that the work was carried out in accordance with the building warrant and building regulations. However, any failures may not have been readily identifiable at the point of acceptance of the completion certificate even after reasonable inquiry. The acceptance of the completion certificate is therefore not conclusive of compliance with a building warrant, as reasonable inquiry alone does not enable the verifier to establish how all the works were carried out.

We need to ensure that the legislation is clear, and that it addresses the doubt over the use of Section 27 for local authorities to take action after acceptance of the completion certificate. To reflect the work being carried out under the Futures Board, Compliance Manager role for Higher Risk Buildings (HRBs), the proposals include clarifying /extending the powers under section 27 to give local authorities powers to take action on HRBs after the acceptance of the completion certificate. The clarification of the use of section 27 would allow local authorities to consider use of this section at their discretion.

Section 27 - Introduction of a time limit

The power under section 27 does not currently contain a time limit for local authorities to take action on all work subject to a building warrant and building regulations. The Building Act 1984 in England was amended by the Building Safety Act 2022 to increase the existing time limit from 6 months to 10 years. A time limit for local authorities for serving notices (requiring removal or alteration of non-compliant work) under the Act is proposed to be 10 years.

Section 48 - Penalties for offences

We are seeking to strengthen the message to actors with roles in the building standards system that they are responsible for compliance with building regulations. Starting work without a building warrant or not in accordance with the building warrant is an offence against the Act, and attracts penalties under section 48.

Building Standards Enforcement and Sanctions: Consultation

Where an offence has occurred, the Act sets out the penalties applicable under section 48. If a person is guilty of an offence, they are “liable on summary conviction to a fine not exceeding level 5 on the standard scale.” The standard scale is specified under the Criminal Procedure (Scotland) Act 1995 and a level 5 fine is set at £5,000 - £10,000.

Penalties for offences are applicable to work that does not meet building regulations at design, construction and completion stage. The Act sets out when an offence has been committed where new work or conversion of buildings is being carried out. This includes offences by the building owner, verifier and certifier of design and certifier of construction.

The level of fine at the statutory maximum at level 5 (£5,000 - £10,000) is considered fit for purpose for low-risk projects e.g., alterations and extensions to domestic buildings, which account for the majority of building warrant applications. However, for higher risk types of buildings, which are usually larger and more complex projects, the penalties are considered to be too low to and not proportionate for the offence committed, and do not act as a deterrent for those committing offences.

A comparison of similar legislation for similar types of offences and penalties has been considered. If the penalties were increased to the same level of the fines applied in the Housing (Scotland) Act 2014 and Planning (Scotland) Act 1997 and 2019, this would provide the courts more flexibility in applying appropriate penalties for offences for higher risk buildings. The introduction of a maximum two year prison term, and maximum penalty for offence of £50,000 is proposed.

This would also bring Scotland into alignment with the Building Safety Act 2022, and Building Act 1984 applicable in England and Wales, where penalties for offences for not meeting building regulations introduced a two-year sentence. The Building Act 1984 in England is the equivalent of the Building (Scotland) Act 2003 and similarly establishes the building standards system.

The proposed changes aim to increase the penalties for offences and include a prison term under section 48. The increased level of fine will give the courts flexibility to decide the level of the fine against the type of offence. This will act as a greater deterrent to actors with responsibilities in the building standards system and allow the penalty to be appropriate for the offence. The existing fine is already applicable to section 49 Offences by bodies corporate.

Building Standards Enforcement and Sanctions: Consultation

The amendments proposed are:

- increasing the level of fine from level 5 on the standards scale to £50,000
- introducing a two-year custodial sentence; and
- option for fine and/or custodial sentence

Building Standards Enforcement and Sanctions: Consultation

5. How We Would Like You to Help

This consultation is comprised of 12 questions related to:

- Part 1: Building Warrant Enforcement and Sanctions
- Part 2: Impact Assessments

Responses to the consultation will be used to inform the final policy and impact assessments that will be prepared to support any legislative changes.

Information on how to respond to the consultation is on page 17.

Building Standards Enforcement and Sanctions: Consultation

6. Consultation questions

Section 21

Question 1 - Do you agree with the inclusion of holding owners accountable for new/converted buildings which are occupied illegally?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please select only one answer and provide your views in the box below.

Section 27

Question 2 - Do you agree with the proposal to include a new provision for the removal of work on the section 27 Building Warrant Enforcement Notice?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please select only one answer and provide your views in the box below.

Building Standards Enforcement and Sanctions: Consultation

Stopping work

Question 3 - Do you agree that the provision of a standalone stop notice under section 27 would act as a helpful deterrent?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please select only one answer and provide your views in the box below.

Question 4 - Do you agree with enforcement after the acceptance of a completion certificate for High Risk Buildings?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Do you have any views on enforcement after the acceptance of a completion certificate for HRBs ?

Building Standards Enforcement and Sanctions: Consultation

Time limit

Question 5 - Do you agree that the introduction of a time limit is necessary?

- Yes
- No
- Unsure

Question 6 - Do you agree with the introduction of a 10-year time limit for taking action on non-compliant work?

- Yes
- No
- Unsure

Question 7 - Do you have any views on the 10-year time limit proposed?

Section 48

Question 8 - Do you agree with the level of fines proposed?

- Yes
- No

Do you have any views on the level of fines?

Building Standards Enforcement and Sanctions: Consultation

Question 9 - Do you agree with the option to include a custodial sentence?

- Yes
- No

Do you have any views on the proposed option to include a custodial sentence?

Building Standards Enforcement and Sanctions: Consultation

Part 2: Impact Assessments

7. Equality Impact Assessment

The Scottish Government does not think that the proposals in the consultation will have negative impacts for people with protected characteristics. However, we welcome your comments on the impact of the proposals on particular groups of people in respect of their age, disability, gender reassignment, race, religion, sex or sexual orientation, being pregnant or on maternity leave and children's rights and wellbeing. Your views on the impact of these proposals will be used to inform the final Equality Impact Assessment that will be prepared in support of any changes required to the building standards fee legislation.

Question 10 - Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics?

- Yes
- No
- Unsure

Please select only one answer and provide any comments in the box below. If selecting yes, please specify which of the proposals you refer to and why you believe specific groups will be impacted.

Building Standards Enforcement and Sanctions: Consultation

8. Business and Regulatory Impact Assessment (BRIA)

To help us determine the impact of the policies proposed in the consultation, we are interested to find out if these proposals would lead to increased costs and/or impact on resources for you or your business (if applicable).

Any comments received will be used to inform the final BRIA which would be prepared in support of new building standard fee legislation.

Question 11 - Do you think that any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?

- Yes
- No
- Unsure

Please select only one answer and provide any comments in the boxes below. If selecting yes, please specify which of the proposals you refer to and why you believe financial, regulatory or resource implications will be impacted.

9. Island Communities Impact Assessment

To help us determine the impact of the policies proposed in the consultation, we are interested to find out if these proposals would lead to an increased impact on islands communities.


Any comments received will be used to inform the final Island Communities Impact Assessment which would be prepared in support of new building standards fee legislation.

Question 12 - Do you think that any of the proposals in this consultation have any impact or implications on island communities?

- Yes
- No
- Unsure

Please select only one answer and provide any comments in the boxes below. If selecting yes, please specify which of the proposals you refer to and why.

Building Standards Enforcement and Sanctions: Consultation

A large, empty rectangular box with a thin black border, intended for providing input or feedback during the consultation process.

Building Standards Enforcement and Sanctions: Consultation

10. Responding to this Consultation

We are inviting responses to this consultation by **22 January 2024**.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online [here](#). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date **22 January 2024**.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to buildingstandards@gov.scot or by post:

Building Standards Division
Scottish Government
Denholm House
Almondvale Business Park
Livingston
EH54 6DE

11. Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

12. Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Building Standards Enforcement and Sanctions: Consultation

13. Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at buildingstandards@gov.scot

14. Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

15. Respondent Information Form

Please Note this form **must** be completed and returned with your response.
To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Group/Organisation type (please tick one)

Local Authority		Commercial Organisation	
Professional Body		Voluntary Organisation	
Contractor/Developer		Housing Provider / RSL	
Designer/Consultant		NDPB/Agency	
Academic Body		Advisory Body/Committee	
Industry Association/ Manufacturer		Other (Please Specify)	

Full name or organisation's name

Phone number
Address

Postcode

Email

Building Standards Enforcement and Sanctions: Consultation

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:
The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.
If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



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