



Scottish Government: Building standards enforcement and sanctions consultation

Consultation Questions

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

- **Strongly agree**

Provide your views in the box below:

Fire and Rescue Services (FRS) have seen multiple examples of constructions which have not complied with the building regulations due to changes in design, changes in materials and/or deficiencies in standards of construction work. The current situation where action can be taken against those who occupy the building but not those who potentially allowed or encouraged such occupation seems entirely disproportionate. This may especially be the case in the accommodation sector where those occupants are vulnerable but by circumstance have few other options.

Making owners legally accountable will help in preventing their actions which place others at risk and provide a broad alignment with the regulatory system for High-Risk Buildings in other parts of the United Kingdom.

The occupation or use of a premises without an appropriate completion certificate, when coupled with any of the failures mentioned above can lead to those occupiers being placed at risk. Poor standards of fire protection will seriously reduce the time people have to escape to safety, compromise the building's fire strategy (how it is supposed to function in the event of fire) and increases the risk to fire and rescue service responders.

There is concern that Late Completion Certificates do not sufficiently deter violation of standards, in particular, the financial penalties are not high enough some ranging in the hundreds of pounds which can be a drop in the ocean on some building developments and conversions.

Owners should be held further to account by ensuring that local authorities are able to determine that they are a fit and proper person to own a building – i.e due diligence on the part of the council through the planning process ascertaining that there are no past violations anywhere else in the country (UK).

Sanctions should have regard for owners who take reasonable steps to protect their new or converted building being occupied illegally.

The proposed amendment will also allow the Fire Rescue Service to continue working with other partners but the outcomes (i.e. the targeting of those who own the buildings rather than just the occupiers) will have more benefit.

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**

Provide your views in the box below:

The ability to allow for the removal of non-authorised work allows for greater flexibility in the regulatory building control system which owners and LAs may find useful.

While it is assumed that such buildings would not be occupied, and so would not fall under the fire safety regulatory regime, it may reduce the number of premises which represent a higher level of risk to those in/around them, such as those who occupy them illegally or for when firefighting activities are necessary.

It is also important that those given regulatory powers use them where it is appropriate to do so. In order to achieve this, there may be additional 'cost' in terms of the provision of resources and training to ensure such action can take place. There should also be appropriate collaboration between all relevant parties including regulators, of which the fire and rescue service will be part.

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

- **Strongly agree**

Provide your views in the box below.

The provision of a standalone stop notice would provide a degree of consistency with the development of Higher Risk Buildings in other parts of the United Kingdom which developers may find useful. This could assist in the change of culture within the built environment industry which would, over time, result in safer buildings. This is something that everyone, including fire and rescue services, would benefit from.

There is the potential that this change would also prevent the construction of unsafe or non-compliant buildings and bring along associated benefits, such as helping prevent the fire and rescue service having to undertake regulatory activity. However, these changes can only be realised if such powers are used. Therefore, it is important that sufficient resources are made available, including the ability to identify such premises and then determine where they need to be 'stopped'. Sufficient competent staff with the resources available to undertake meaningful action will help add an additional safety net to the building safety regime.

This power in the form of a stop notice, would be a useful deterrent, especially where it is recorded and available to the general public and openly communicated with other stakeholder regulators.

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

- **Strongly agree**

Please provide your views in the box below

NFCC agrees that there should be an option for enforcement after the acceptance of a completion certificate. Completion certificates are essentially produced by third parties with which Local Authority Verifiers must take at face value. It has been noted that building control officers are not onsite as regularly as they used to be and as such increases the potential for issues to arise after the completion certificate has been accepted.

The ability to remedy known issues in a building should remain even after the completion certificate has been granted. This power already exists, but as the consultation highlights, its clarification would help to ensure that it is more widely used.

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

Unsure

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

Unsure

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

Currently there is no time limit on the action that can be carried out by local authorities. However, the consultation seems to suggest that the lack of a time limit may actually be the cause of inaction due to them being “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”. As such, care needs to be taken to ensure that introducing any kind of time limit equates to a lessening of existing standards. Whereas in England the ten-year time limit represented an increase in the local authority powers, in Scotland this may be a lessening.

We agree the time limit should be at least ten years as proposed, however, for greater local consistency it may be worth consideration of alignment to other statutory periods, such as those within section 7 of the Prescription and Limitation (Scotland) Act 1973 (which is twenty years). However, regardless of the time limit it is apparent that work needs to be taken to ensure that local authority enforcers are aware of the extent of their powers and encouraged to use them in cases where they are applicable.

The building control regulatory function is limited in resource, and it is possible that there will be some buildings which will take some time to come to the notice of the local authority. It is not appropriate that a building which requires removal or alteration of non-compliant work, would ‘slip the net’ purely due to a technicality i.e. it is outside the time limit.

8. Do you agree with the level of fines proposed?

No

Please provide your views in the box below

NFCC believes that the level of fines introduced should act as an appropriate deterrent to ensure developers construct buildings in accordance with the Building Regulations. While it is for the Scottish government to determine an appropriate level of fine, some developers and owners will not consider a £50,000 fine to be a significant deterrent. In England, the fines form part of a wider set of deterrents, such as the 'Responsible Actor's' scheme, and the developer's pledge, which go towards encouraging better behaviour in the sector. The Responsible Actors Scheme in England means that offenders may be prevented from undertaking other works through either planning or building control until they have fixed the issues that have been found. While the implementation in England is not quite the same, the principle would be familiar to those developers who work across the border. This could also be extended not just to developers but owners as well. This would create three levels of sanctions and may offer the courts a higher degree of proportionality and as such support compliance.

It may be that without these other aspects, the level of fines alone in Scotland will not be enough to encourage a more responsible building culture. It is also noted that the level of fines are written into legislation and so will require relatively regular amendments to keep current and as such take time to come into force.

Another approach could be to fine wrong doers a percentage of the cost of the project and or the profits, which can range in the millions, this could act as a better deterrent.

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

Yes

Please provide your views in the box below

There are already legal obligations on companies and individuals that can lead to imprisonment – especially where these companies operate nationally, UK wide or internationally.

We support that, in the worst cases a custodial sentence is justified and should deliver the highest level of deterrent, but any action must be achievable by those who are duty bound to undertake it. Therefore, sufficient resources must be available to enable such actions to be taken.

A custodial sentence is more likely to deter poor behaviour. Taking a wider view however, it is important to ensure there is sufficient capacity, skills and finances to pursue potential offenders, and to ensure clarity over who is accountable; in large multinational companies or consortiums this can be complex.

Impact assessments

10. Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics? Choose from the following options:

Yes

The proposals have implications for buildings housing vulnerable individuals such as:

- Care homes
- Schools
- Sheltered Housing

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)? Choose from the following options:

Yes

It is not clear whether the proposals will directly result in meaningful financial, regulatory or resource implications given these all relate to the building control enforcement process that is outside of the fire and rescue service. Where the changes would result in action that would deliver meaningful and positive culture change amongst builders and owners which should result in safer buildings, there may be a positive impact.

There is the potential for increased workload relating to the audit and inspection of buildings/premises. There may be additional resource and time demands required of the FRS in order to better support local authority colleagues in effectively applying these proposals.

Any changes will require additional training and so there may be some impact on delivering this to the existing workforce and ensuring this learning is embedded in training available to new members of staff.

12. Do you think that any of the proposals in this consultation have any impact or implications on island communities? Choose from the following options:

Yes

Implications of the Islands (Scotland) Act 2018 will need to be considered but, justifiably, not at the cost of reducing the safety or protection of people.