

REPORT TO COMMUNITIES COMMITTEE – 6 JUNE 2019

CONSULTATION ON NEW BUILD HOMES (BUYER PROTECTION) (SCOTLAND) BILL: DRAFT RESPONSE

1 Recommendations

The Committee is recommended to:

1.1 Consider and comment on Aberdeenshire Council's response (Appendix 1) to the proposal for a New Build Homes (Buyer Protection) (Scotland) Bill.

2 Background / Discussion

2.1 Graham Simpson MSP has lodged 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. It can be viewed in appendix 1.

2.2 The purpose of the bill is to provide additional safeguards for buyers. Firstly, the Bill would provide statutory standardised clauses for builders' missives to ensure sufficient consumer protection. This would also include to provide a right for buyers to carry out a full survey within a specified period and the option to pull out from the purchase where serious defects were discovered. Secondly, the Bill would provide a clear, statutory route for all new-build home-buyers to seek redress in the event of a serious defect in the property within a defined period of time after completion of the construction of the property, which will be defined in the missives.

2.3 In preparing the draft response in appendix 1, officers from Housing, Property, Legal Services, Building Standards and Trading Standards have provided comments.

2.4 The closing date for submission of the response is 27 June 2019. Members of the committee are encouraged to comment on the draft response and any further comments will be incorporated in the final submission to the Scottish Parliament.

2.5 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Scheme of Governance

- 3.1 The Committee is able to consider this item in terms of Section D 4.2 to approve a Council response to any external consultation on any policy matter falling within the delegation of the Committee.

4 Implications and Risk

- 4.1 An equality impact assessment is not required because the recommendations in the report will not have a differential impact on any of the protected characteristics.
- 4.2 There are no staffing and financial implications.
- 4.3 The following risk has been identified as relevant to this matter on a Corporate Level:
- ACORP002 – changes in government policy, legislation and regulation. Mitigation will be provided through the Corporate Risk Management Steering Group and committee reporting where required.
- 4.4 The consultation response will not have a differential impact on town centres.

Stephen Archer, Director, Infrastructure Services

Report prepared by Ally Macleod, Housing Manager (Strategy)
10 May 2019

APPENDIX 1

Proposed New-Build Homes (Buyer Protection) (Scotland) Bill

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

**Consultation by
Graham Simpson MSP, Member for Central Scotland Region**

April 2019

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FOREWORD

I believe housing is a human right. I believe everyone deserves a safe and secure place to call home. Already in Scotland we have legislation to protect residents across all tenures such as Landlord Registration, Letting Agent Registration, the Tolerable Standard, and future legislation to improve energy efficiency and reduce fuel poverty.

What is lacking, however, is statutory redress for buyers of new build property if there is a serious defect in the property. It is astounding that in 21st century Scotland, we have more rights if a kettle is defective than if a new-build home is defective.

We put our trust in the builders of our new homes. And with thousands of new homes being completed every year, we need to ensure these purchasers are not left with a faulty home and no consumer protection. The average cost of a new-build home in Scotland is £251,300¹ and we need to ensure home-owners are not at a financial disadvantage if serious problems arise.



This proposed Bill aims to address this issue by establishing statutory standardised clauses for builders' missives and by providing a statutory route for new-build home-buyers to have the necessary protection and redress should there be a fault in the property.

A handwritten signature in black ink, appearing to read 'Graham Simpson'.

Graham Simpson MSP
4 April 2019

¹Registers of Scotland, *Calendar Year Residential Market Review 2018: A Review of the Scottish Residential Property Market*, 16, March 5, 2019, accessed March 15, 2019, https://www.ros.gov.uk/_data/assets/pdf_file/0017/123830/Calendar-Year-Residential-Market-Review-2018-v2.pdf.

Values are provisional.

HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at any of the following:

The Scottish Parliament, Edinburgh, EH99 1SP
0131 348 6984
graham.simpson.msp@parliament.scot.

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

BACKGROUND

Purchasing a home

Purchasing a home is a major financial commitment and a major landmark in many people's lives. It is generally the most expensive thing anyone will buy.

When a person buys a new-build home they should be confident that the property will remain structurally safe. However, as with any purchase, new-build homes are not without flaws. Some buildings can suffer major structural defects that a new-build home-buyer should not expect. Unlike other purchases that we make during our lives however, there is limited consumer protection for new-build home-buyers.

In brief, when someone sets out to purchase a new-build home, there are a number of steps:

1. Speak to a mortgage advisor about financing a new-build property.
2. Find the property by visiting new-build developers. This can include viewing a show home if one is available.
3. Reserve the property. A reservation fee is usually payable to secure the property, and, in most cases, this is non-refundable if the buyer changes his/her mind. The reservation fee will usually be deducted from the sale price.
4. Conclude missives. For new-build property these are known as builder's missives and are drawn up by the builder. These are generally concluded within a number of weeks of reserving the property. Builders' missives vary from builder to builder and are considered by some to be weighted in favour of the builder.²
5. Pay deposit.
6. Completion of purchase and entry date. The date of entry is not defined in the missives.³

Missives

For purchasing existing homes, the buyer's solicitor typically prepares the offer and sends it to the seller's solicitor. This correspondence of letters and acceptance of the offer is what constitutes, and becomes known as, the missives. Concluding missives is a legally binding contract between the buyer and seller.

² Ownership Options in Scotland, Key Issues for Standard Builder's Missives, 1, accessed March 15, 2019, <https://www.housingoptionsscotland.org.uk/wp-content/uploads/Fact-Sheet-re-buying-from-a-builder.pdf>.

³ Ibid, 3.

Builders' missives

Builders' missives, for new-build purchases, are drafted by the builder and not the buyer.

Builders' missives are the part of the new-build purchase process that this consultation is dealing with specifically.

My concern is that there is no statutory provision to ensure that current builders' missives contain clauses that protect the new-build home buyer if there is a major or structural defect with the property. There are voluntary options that property builders can opt to use,⁴ but these are not used consistently across the sector.

Building regulations

For many years both as a local councillor and as an MSP I have been contacted by constituents who have been left in a difficult situation due to problems with new-build property. Most of these cases involved purchases of a new-build home that was covered by a warranty scheme.

One case I am dealing with has been ongoing for over seven years. This is a ridiculous situation and shows why the law needs to change.

I was shocked to discover that the current building verification process is not as robust as you might imagine. Through my work on the Local Government and Communities Committee we undertook a review of building regulations. I refer to the findings of this review later in this document.

Changing this system would be a significant overhaul and I am not proposing to change this system with this proposal.

The focus of my proposal is to strengthen the current system of builders' missives and redress by ensuring all builders' missives contain the same protection for consumers.

Current law and practice

The main piece of legislation relating to consumer protection is the Consumer Rights Act 2015.⁵ This UK legislation came into force in 2015 and replaced three earlier Acts related to consumer protection. The Act was intended to simplify and strengthen consumer protection in the UK. As welcome as these changes were, the Act does not

⁴"Scottish New Build Standard Clauses," Law Society of Scotland, accessed March 15, 2019, <https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-f/division-c/advice-and-information/scottish-new-build-standard-clauses/>.

⁵ Consumer Rights Act 2015, <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

cover the purchase of new-build homes, resulting in a gap in protection for those who purchase them.

Gaps in legislation

There are various voluntary consumer protection schemes available, including the Consumer Code for Homebuilders, warranty schemes and, as already alluded to, voluntary new-build standard missives.

This variety of services and options can often be confusing for consumers. These options are only voluntary and so therefore do not always offer the robust protection that buyers of new-build homes need.

Standard Missives

When purchasing a new-build home, the builder and not the buyer prepares the wording of the missives. Builders' missives can vary from builder to builder.

Builders therefore draft builders' missives with the clauses and protections they choose. Homebuyers have little ability to amend these if the contract fails to provide sufficient consumer protection.

To address this, a working party of solicitors drafted a set of standard clauses (the Scottish New Build Clauses, Edition 1, 2015).⁶ These standard clauses are intended to replace many styles of builders' missives.⁷ In practice, these are typically used by smaller developers, with larger developers still opting to use their own clauses.

By having standardised missives, we would ensure that everyone is treated fairly, and we could also ensure that all buyers of new-build homes had the same protection.⁸

Warranty schemes

New build homes are likely to come with some form of warranty. There are various schemes available. Builders under warranty schemes represent over 90% of the new-build homes in the UK. Such warranty schemes include the [National Housing Building Council \(NHBC\) Buildmark, Premier Guarantee](#) and [LABC Warranty](#).

⁶"Scottish New Build Standard Clauses," Law Society of Scotland, accessed March 15, 2019, <https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-f/division-c/advice-and-information/scottish-new-build-standard-clauses/>.

⁷Scottish New Build Standard Clauses Working Party, Edinburgh Conveyancers Forum, and Glasgow Conveyancers Forum, Client Guide to the Scottish New Build Standard Clauses (2015 Edition), 2015, accessed March 15, 2019, <https://www.lawscot.org.uk/media/1191/snbsc-client-guide-2015-v3fin.pdf> ⁸ Scottish New Build Standard Clauses Working Party, Edinburgh Conveyancers Forum, and Glasgow Conveyancers Forum, Practitioners' Guide to the Scottish New Build Standard Clauses (2015 Edition), 2015, accessed March 15, 2019, <https://www.lawscot.org.uk/media/1189/practitioners-guide-snbsc-2015v3fin.pdf>.

The NHBC Buildmark scheme is one example of an insurance policy for new-build home buyers who purchase a home built by one of its approved builders. It only applies to registered NHBC home builders.

New-build home-buyers can check whether their builder is registered with NHBC by checking the NHBC [register online](#).

NHBC will only get involved during years 0-2 if the builder is insolvent or refuses to take any action. Following that, in years 3-10, the scheme offers protection for things including foundations, walls, stair cases and drainage. It does not cover:

- Damage to the roof covering (including any underlays, fixings, mortar and weatherproofing details) unless the damage results in water getting into your home.
- Cracking, spalling (a chip, fragment or flake of masonry coming off the main structure), or mortar erosion that does not weaken the structural stability of your home or mean that it is no longer weathertight.
- Water entering, or dampness or condensation in, an underground garage, where its structural stability is not affected.

Consumer Code for Homebuilders

[The Consumer Code for Homebuilders](#) was developed by the homebuilding industry and applies to home builders under the insurance protection of one of the supporting home warranty bodies (NHBC, Premier Guarantee, and LABC Warranty). However, it carries no statutory weight whatsoever.

The code applies to all new private home-buyer reservations. It contains 19 requirements and principles, which home builders must meet in their marketing and selling of homes and their after-sales customer service, including:

- Effective customer service training
- Clear and truthful advertising and marketing materials
- Sufficient pre-purchase information to help you make an informed decision about your purchase
- Contact details for the Home Builder and other relevant bodies
- Home Warranty information
- Contract information including termination rights
- Timing of construction, completion and handover
- After-sales service
- Complaints process

Home buyers can seek assistance under the Code for dispute resolution should they feel that their builder has breached the Code.

Supporting evidence

UK Parliamentary and Government consideration of redress for homebuyers

The Westminster All-Party Parliamentary Group (APPG) for Excellence in the Built Environment is advocating that the Ministry of Housing, Communities and Local Government commissions a review of warranties to ensure they are fit for purpose.⁹

Although housing is devolved, this decision by the APPG reflects my own opinion that the current system is not functioning properly. The evidence received during this review was similar to the evidence heard by the Local Government and Communities Committee during its review of building regulations, and also resonates with my own caseload of complaints from constituents.

The APPG also found that house builders “were too frequently handing over poor-quality homes because they could get away with doing so.”¹⁰ In my opinion, if we cannot test the structure and material of a new-build home as part of the building verification process, then ensuring that the builder must meet its contractual obligations, and that these obligations are strengthened, is a more appropriate way to deal with the problem of building defects.

One of the ten recommendations the APPG put forward was for housebuilding sales contracts to be standardised.¹¹ Within the Scottish context of missives, this is what I am proposing to do with my proposed Bill.

In 2018, the UK Government consulted on ‘Strengthening Consumer Redress in the Housing Market’. The results of this consultation mirror in part the purpose of this proposed Bill; “more needs to be done to strengthen consumer redress in relation to new-build homes”.¹² The consultation has suggested various changes to consumer redress, including but not limited to:

1. Introduction of a New Homes Ombudsman
2. Housing Complaints Resolutions Service
3. Code of Practice on complaint handling across all tenures

⁹ All Party Parliamentary Group for Excellence in the Built Environment, Better Redress for Homebuyers: How a New Home Ombudsman Could Help Drive up Standards in Housebuilding and Improve Consumer Rights, 9, June 2019, accessed March 15, 2019, <http://cic.org.uk/admin/resources/appgebe-report-better-redress-for-homebuyers.pdf>.

¹⁰ Ibid, 5

¹¹ Ibid.

¹² Ministry of Housing, Communities and Local Government, Strengthening Consumer Redress in the Housing Market: Summary of Responses to Consultation and the Government's Response, 41, January 2019, accessed March 15, 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/77316/1/Strengthening_Consumer_Redress_in_the_Housing_Market_Response.pdf.

If the Scottish Government wishes, they could adopt these same changes when they come into practice elsewhere in the UK. If not, these improvements to the system will apply in England and Wales only.

If the Scottish Government adopts these suggestions, they would complement the measures in my proposed Bill.

Scottish Parliament Local Government and Communities Committee

In 2017 the Scottish Parliament's Local Government and Communities Committee published the report *Building Regulations and Fire Safety in Scotland*. This report "focused on complaints from a number of individuals relating to private house builders".¹³

In its report, the Committee noted that the current building verification process in place might allow for defects to go unchecked when new-build developments are being constructed.

Building verification

The report highlighted that building verification is not an exact science. In their evidence to the Committee, Local Authority Building Standards Scotland (LABSS) stated that "as a verifier need only make 'reasonable enquiry' before acceptance of a certificate, there can be circumstances where a site inspection may not be needed. In some cases, by the time building standards officers carry out their inspection, they may not get to see all of the elements of the build."¹⁴

Clearly the verification process is not perfect, with verifiers relying on the builder to confirm they have done the job properly.

LABSS also stated "in the event that following the issue of a completion certificate a property was found to be defective, any form of redress would be a civil matter between the purchaser and the builder."¹⁵

Ross MacKay from the Law Society of Scotland suggested a form of sinking fund for the "fairly rare cases of serious structural defects that are not picked up by builders or insurers and slip through the net. If there was some sort of fund there to deal with these

¹³ Local Government and Communities Committee, Building Regulations and Fire Safety in Scotland, 1, October 30, 2017, accessed March 15, 2019, <https://sp-bpr-en-prod-cdnep.azureedge.net/published/LGC/2017/10/30/Building-Regulations-and-Fire-Safety-in-Scotland/LGCS052017R9.pdf>.

¹⁴ Ibid, 16.

¹⁵ Ibid, 26.

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cases, that might be an appropriate mechanism, rather than the statutory employment of third parties”.¹⁶

In evidence to the Committee, the Royal Institute of Chartered Surveyors (RICS) pointed out that, given there may be a need for redress, this must indicate problems with the current system whereby new houses can be built and sold while not meeting standards and consideration should be given as to why this is happening. RICS stated that “if procedural regulations were introduced, in relation to inspection, this could alleviate some of the issues; but on a development site of 100 units, the Building Standards Surveyor will not have the opportunity to be on site to inspect all the houses. Moreover, Building Standards Surveyors only verify the certification provided by the owner or house builder as is required within the Building (Scotland) Act 2003.”¹⁷

New Homes Ombudsman

LABSS “recommended the setting up of a New Homes Ombudsman to mediate between consumers, their builders and/or warranty providers and to be funded by a levy on the sector.”¹⁸

Warranties

Giving evidence to the committee, Victor Palombo stated that “warranties e.g. NHBC are restrictive and limited to damage only even where a property significantly does not meet NHBC’s own building industry standards. In effect what this means is that the individual can be left with a property which will never meet building industry standards with these deficiencies having to be disclosed on a home report. The individual has to suffer any potential loss of value in these circumstances with the builder and NHBC under no obligation to redress.”¹⁹

Redress

Bern Balfe Architect supported a statutory redress system particularly for large scale new developments.²⁰

UNISON and the City of Edinburgh Council both agreed that any system of redress should be designed to focus on the builders and contractors of the new houses, stating “there will always be times when materials fail or mistakes are made a new statutory system should be looked at but it needs to have the power to look at the whole building and not a small isolated area.”²¹

¹⁶ Ibid, 25.

¹⁷ Ibid, 26.

¹⁸ Ibid.

¹⁹ Ibid, 23.

²⁰ Ibid.

²¹ Ibid, 26.

The committee “heard calls from homeowners for redress where work undertaken to adjacent properties did not conform to the building warrant and/or building standards requirements yet were granted completion certificates – effectively preventing any opportunity for enforcement action”.²²

Standard clauses

The Law Society of Scotland covered this area in great detail during the committee’s evidence session. Some of the topics it discussed included:

“for private property purchases a lot of builders use a standard contract which does not require much in terms of complying with planning permission and building regulations—

... a consumer who buys a new-build property does not have a building contract other than, at most, a one-line phrase saying that the builder will build a house.”²³

“there has always been a reluctance to impose a standard contract by legislation and that whilst smaller builders might use one, national house builders use their own bespoke contracts and are fairly reluctant to change them at all.”

The Society suggested—

“... that consumers require an element of protection in terms of a simple warranty, and builders have a duty to build in accordance with the regulations and to a reasonable standard.”²⁴

The Law Society of Scotland was “supportive of the suggestion that standard missives, which set out the legal cover people might have if issues arise or how defects or disputes are handled, might help address this issue.”²⁵

Committee recommendations

In its recommendations, the Committee called on the Scottish Government to consider the following:²⁶

- more standardised missives or contracts;
- enhanced consumer advice and support;
- working with local authorities to more clearly articulate the role of building standards verification and certification; and

²² Ibid.

²³ Ibid.

²⁴ Ibid, 26-27.

²⁵ Ibid, 27.

²⁶ Ibid, 28.

- access to an ombudsman to mediate when disputes arise.

The committee's recommendations around standardised missives providing a clearer route for redress mirror the aim of my proposal.

Previous Scottish Parliament Member's Bill proposal

In 2007, Dunfermline East MSP Helen Eadie published a draft consultation on the Missives for New-build Houses (Scotland) Bill.²⁷ In the consultation, Mrs Eadie referred to a need for standard missives to protect buyers and redress the imbalance between buyers of new-build property and existing property. Mrs Eadie also sought a legislative solution, noting that voluntary options to address her concerns had not succeeded.

This was over ten years ago. Thankfully the standard clauses from the Law Society have now been drafted and adopted by parts of the industry. Unfortunately, these advances have been gradual and have not had as much effect as I would have hoped. Following Mrs Eadie, I am now also seeking legislative solutions to a problem that pervades the new-build property sector.

Recent cases

Although no in-depth analysis has been undertaken, there are numerous anecdotal examples of problems with new-build properties.

I have mentioned that I have dealt with various pieces of casework for constituents with cases relating to new-build homes. In just one council ward I had a large part of an estate where homes suffered major problems with foundations. Another small estate had roofs which were not fit for purpose and the same was true of some blocks of flats in the same ward. The experience echoes much of the evidence heard during the Local Government and Communities Committee's work on building regulations and is also similar to the evidence heard by the UK APPG for Building Excellence and the UK Government consultation *Strengthening Consumer Redress in the Housing Market*.

A BBC article from 2018 discussed two examples in Scotland where new-build properties under the NHBC warranty scheme were substandard.²⁸ One home in North Lanarkshire was found to have been built using sub-standard mortar. After fighting the problem for 18 months, the owner had the new-build home bought back by NHBC. The BBC article quoted the owner as saying, "I'll never buy a new-build house again - never. It's just been disastrous for me".

²⁷ Helen Eadie, MSP, *Missives for New-build Houses (Scotland) Bill*, March 2007, accessed March 15, 2019, http://www.parliament.scot/S2_MembersBills/Draft%20proposals/MissivesForNew-BuildHousesConsultation.pdf.

²⁸ Jim Reed, "New Homes 'Crumbling Due to Weak Mortar,'" *BBC News*, December 6, 2018, accessed March 15, 2019, <https://www.bbc.co.uk/news/business-46454844>.

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One estate in the Scottish Borders has widespread mortar problems, and it is believed that the developer has had to replace mortar in more than 90 new-build homes.²⁹

In some cases, non-disclosure agreements have prevented home owners from speaking out about their problems and therefore the specifics and true extent of these problems are unquantifiable.

The current NHBC Buildmark scheme is not a panacea. A 2018 court case of Halvorsen v Persimmon Homes³⁰ illustrates that despite having the warranty scheme in place, a home-buyer is not guaranteed redress. In this specific example, the new-build home owner, Halvorsen, took Persimmon to court seeking damages due to her waterlogged garden. Ms Halvorsen was not successful and the court ruled in favour of the developer. The case showed that house-builders' missives "provided few relevant enforceable commitments" and that the NHBC protection can be "limited".³¹

These experiences currently faced by many owners of new-build homes are something I would like to eliminate and ensure nobody feels like this again.

DETAIL OF THE PROPOSED BILL

My proposal is to provide an additional safeguard to any insurance offered. This would come in the following formats:

1. Statutory standardised clauses for builders' missives

I would like to see standardised clauses for builders' missives and these missives should contain sufficient consumer protection, which is currently missing, as evidenced by the reviews at the UK level and anecdotal cases of new-home buyers who, despite having warranty protection, remain in homes that have problems or have to fight hard to have problems resolved.

The missives should also provide for a right for buyers to, should they wish, carry out a full survey of their property within a specified period, and could contain a right to pull out of the purchase if severe or very serious defects are discovered. . They should be given a period of notice – I suggest ten days – by the builder of when their property can be inspected. If after the inspection the buyer/ surveyor deemed that the property was not capable of occupation, the final financial completion could be delayed or the purchaser could have the option to pull out of the purchase.

²⁹ Ibid.

³⁰ Janice Halvorson v. Persimmon Homes Limited, 40 Session Cases (Sheriff Court June 28, 2018). Accessed March 15, 2019. <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2018scedin40.pdf?sfvrsn=0>.

³¹ Van McKellar, "Halvorson V Persimmon Homes: Pursuing a Builder When Things Go Wrong," Jackson Boyd, last modified July 20, 2018, accessed March 15, 2019, <https://www.jacksonboyd.co.uk/halvorson-v-persimmon-homes-pursuing-builder-things-go-wrong/>.

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Such a provision would also discourage builders from serving notices to complete prematurely or concealing major defects until after they have received the full purchase price and would also encourage better quality control and site management pre-completion. In my view, the above suggestion would be relatively easy to implement, and would encourage improvements to construction quality without deterring capital investment or adversely affecting land values for developments already in the pipeline.

The proposed Bill will establish the need for standardised clauses, and the detail of the missives will be set by secondary regulation.

2. A clear statutory route for redress

The proposed Bill will provide a clear, statutory route for all new-build home-buyers to seek redress in the event of a serious defect in the property within a defined period of time after completion of the construction of the property, which will be defined in the missives. Missives should spell out what the builder is offering and what they will do if the building fails in some way.

The specific route will be further developed following the analysis of the responses to this consultation.

The new system should provide a legal guarantee for consumers without the need to go through a legal or insurance process to redress problems that should not happen.

One idea could be to have a New Homes Ombudsman.

The impact of the Bill

This proposed Bill will affect new-build home buyers and property builders. The intention is to provide peace of mind for new-build home-buyers.

Property builders will be in a clearer position regarding consumer redress. Consequently, the hope is that the number of insurance claims and the need for litigation is reduced.

Should consumers still need to take legal action, having standardised clauses in the builders' missives should assist the courts.

There will be no criminal offences created through implementation of this legislation.

Financial Implications of the Bill

Using standard clauses instead of individual clauses should not have any great financial implications for any house builder that does not currently use them. There will be some initial up-front overhead costs for house builders to align their legal departments but once the system is in place, this will become standard practice and will not involve ongoing costs.

Although a New-Homes Ombudsman would be welcome, this proposal is not consulting on this and therefore there are no financial implications of implementing this new body. If a New-Homes Ombudsman is implemented in Scotland, this proposal will complement this and add to the consumer redress process.

SUSTAINABILITY ISSUES

A Sustainable Development Impact Assessment was carried out by the Non-Government Bills Unit. This assessment did not raise any negative impacts of the proposal with regards to sustainability and noted that the proposal could encourage better quality control, resulting in better quality builds with more adherence to building standards. This could also have a positive impact on the energy efficiency of new-build homes and ensure consistency across the industry.

EQUALITIES ISSUES

An Equalities Impact Assessment was carried out by the Non-Government Bills Unit. This assessment did not raise any particular issues with regards to equalities and noted that the proposal should make the process of buying a new-build home much clearer and more accessible to all. The current system seems to be weighted in favour of builders, the proposal could address this imbalance, making the system fairer for all.

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YOUR VIEWS ON THE PROPOSAL

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

1. Which of the following best expresses your view of establishing statutory standardised clauses for builders' missives?

- Fully supportive
 Partially supportive
 Neutral (neither support nor oppose)
 Partially opposed
 Fully opposed
LI Unsure

Please explain the reasons for your response.

Whilst we are supportive of the aim it is impractical to impose standards Missives by regulations. These are constantly amended so to have to potentially await parliamentary time to change regulations to amend missives is impractical and could result in increasing legal risks of having missives which are not compliant with changes in practice or case law.

2. 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
 Partially supportive
 Neutral (neither support nor oppose)
 Partially opposed
 Fully opposed
LI Unsure

Please explain the reasons for your response.

As a result of the high values involved court action is expensive and always carries a risk of failure which makes it prohibitive for most people. This proposal provides an alternative route to obtain justified redress. This would further suggest that this apply not just to individual home buyers but equally to all new home buyers including local authorities and registered social landlords for example

s

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

The bill should provide clarity of contract for both parties, and for any subsequent adjudicator. It should also introduce fairness for the consumer by eliminating unfair contract terms. It also provides a low cost route for the consumer to pursue complaints. There will be some increased costs for businesses but these will fall hardest on builders not providing homes of the required standard. The standardized clauses and clear route of redress may help reduce the instances of serious defect but does not fully address the cause for example poor workmanship or cutting corners on site.

4. What length of time do you think is most appropriate for a builder's warranty for a new-build home?

- 5 years
- 2 years
- 1 year
- 6 months
- Other (please specify)
- Unsure

Please explain the reasons for your response.

A purchaser should expect a house to be free of major defects for a considerable time - 5 years would be the minimum warranty period.

5. 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
- Partially supportive
- Neutral (neither agree nor disagree)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

A consumer is entitled to get what they pay for, a property built to specification, compliant with building regulations and free from major defects. This would allow consumers to establish whether or not this was the case, and provide a right to withdraw from the contract if not.

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6. 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.

N/A

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Financial implications

7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Government and the public sector

- Significant increase in cost
- LI Some increase in cost
- X Broadly cost-neutral
- LI Some reduction in cost
- Significant reduction in cost
- LI Unsure

(b) Businesses – including housebuilders

- Significant increase in cost
- XI Some increase in cost
- Broadly cost-neutral
- LI Some reduction in cost
- Significant reduction in cost
- LI Unsure

(c) Individuals – including new-build house buyers

- Significant increase in cost
- XI Some increase in cost
- LI Broadly cost-neutral
- LI Some reduction in cost
- Significant reduction in cost
- LI Unsure

Please explain the reasons for your response.

Establishing a more robust process will likely increase the costs and typically this would ultimately pass to the house buyer – however this might be a worthwhile investment to ensure that any purchase is fit for purpose.

Equalities

8. 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 and belief, sex, sexual orientation?



- LI Positive
- LI Slightly positive
- X Neutral (neither positive nor negative)
- Slightly negative
- Negative

- LI Unsure

Please explain the reasons for your response.

Sustainability

9. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

- X Yes
- LI No
- LI Unsure

General

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

NHBC / LABC and other warranty organisations do not carry out consistent inspections (if any) during the works and neither do local authority buildings standards inspectors. While on the face of it an inspection by an independently suitably qualified professional prior to conclusion of missives is one way forward, the risk is that a survey would not pick up any concealed defects or future latent defects at that point. In order to minimise risk for an independent inspection regime from start to finish. The house is then handed over with the signed report to prospective buyers. Local authorities would not currently have resources for this. One option would be for the developer to fund this similar to Home Report information but focusing on standard/quality of construction. This would augment the Building Standards Completion Certification, Electricity/Gas compliance certificates, EPC, O&M manuals normally handed over. Provided the inspection regime is fully independent, the above would give the prospective buyer some confidence and focus the developer on construction quality.

