Local Government and Communities Committee

Building Regulations in Scotland

Submission from NHBC Scotland

1. NHBC welcomes this opportunity to provide written evidence to the Local Government and Communities Committee as it conducts an inquiry into building regulations in Scotland. In particular, we welcome this timely inquiry as Scottish Ministers are soon to reappoint Building Control verifiers and it will provide a level of consultation that otherwise might not have taken place.

About NHBC

2. Established in 1936, NHBC is the home warranty provider of choice, currently insuring over 1.6m homes, with a market share of approximately 80%. Over the course of our history, we have provided warranty for around 30% of the total existing housing stock in the UK, which equates to over 7 million homes.

3. NHBC is an independent and non-profit distributing company. With no shareholders, we are able to invest any surplus generated into our purpose of raising standards to improve the quality of UK house-building. As an authority on the housing industry, active in research and development, we work with governments, parliaments and stakeholders to help shape housing policy. The ultimate governing body is the NHBC Council, which comprises the stakeholder bodies as listed in Appendix A.

4. NHBC’s prime purpose is to engage with builders and support them in improving the construction quality of the new homes they are building. This purpose is underpinned by NHBC’s Virtuous Circle business model (see opposite). NHBC’s checking and inspection of building work for Building Control purposes complements this model. The aim is to ensure that homes are built to a high standard and the likelihood of defects being built into new homes is minimised.

5. NHBC is the largest single provider of Building Control Services in the UK and have been delivering this service since 1985. Last year we carried out a full Building Control service i.e. plan checking and on-site inspection to nearly 90,000 new homes.

Background

6. The Scottish Government will soon take a decision to appoint verifiers of building standards for new homes for a five year period this spring. The Building (Scotland) Act 2003 came into force on 1 May 2005 and gave the Scottish Minister the authority to appoint Verifiers, Verifiers being defined under the Act.
7. With the introduction of the new system in 2005 the Minister decided that the responsibility for verification of building standards should be placed with local authorities for their geographical areas, at that time the Minister stating that this was to allow the new system to “bed in” with the clear inference that alternative forms of verification delivery would be considered in the future. The Act which NHBC commented on at draft and Bill Stage was written with the express intention of allowing the Minister to appoint verifiers other than local authorities.

Should verification of building standards be extended to organisations other than local authorities?

8. Yes – NHBC provides this service in England and Wales to the benefit of the end user and Government and believes if it is given this opportunity in Scotland similar benefits would arise.

9. This is not a mandatory public service and the local authorities are licensed by the Minister to deliver this service. There is no legal obligation on local authorities to provide a full Building Control service.

10. The Building (Scotland) Act 2003 was written to enable the Building Control service in Scotland to be delivered by alternative providers working alongside local authorities. It requires no secondary legislation to appoint alternative providers but requires Ministerial approval.

11. Yet 14 years since it was enacted with this express purpose successive Ministers have steadfastly refused to approve any organisations other than local authorities to deliver this service. This is despite the fact that house builders continue to experience significant delays in receiving both building warrant consent and acceptance of completion certificates.

12. An NHBC registered builder benchmarked the time taken to obtain a stage 2 building warrant from a number of different Scottish local authorities. This showed that time could stretch from 9 weeks to 98 weeks. For a stage 1 building warrant the timings ranged from 2 weeks to 45 weeks.

13. If you extrapolate this common experience across the house building sector in Scotland, significant delays to housebuilding completions will impact on the Scottish Government’s ability to reach its yearly housing targets and the overall goal of completing 50,000 new affordable units by the end of this parliament.

14. In reality the current delays inherent in the system are encouraging builders to start work without the proper Building Control consents in place and in addition to this being illegal it raises questions of how compliance can be demonstrated or checked.
15. Opening up the building control service to more providers would offer choice and competition in this sector which would combat these delays leading to service improvements that would increase the build rate of new homes in Scotland without compromising safety.

Consumer protection

16. Local authorities are not liable to the home owner if they fail in the delivery of the Building Control service unless it can be proven that they were intentionally negligent. In England and Wales NHBC provide added insurance to protect homeowners if it fails in delivering its Building Control obligations. NHBC therefore has a vested interest in ensuring its plan checking and on-site inspection processes are robust.

17. Compliance with Statutory Requirements is a requirement of demonstrating compliance with NHBC Technical Standards and accordingly our Building Inspectors in Scotland are trained to check new homes under construction are complying with the Building Standards.

18. Over the last five years local authorities provide an average of 0.54 visits per building warrant issued based on 40,219 applications. For larger developments where a warrant will cover a number of houses this means that visits to individual properties will be significantly lower. In comparison NHBC carries out a minimum of 4 Key Stage inspections on every new home, this being supplemented by “frequency inspections” which are programmed on a regular cycle dependent on project risk and referred to in paragraph 24.

Service improvement

19. Local authorities have not delivered on their service improvement obligation. The government’s own evaluation suggests that the time taken to grant warrants will actually increase. Only five local authorities have reduced the average time to issue warrants and the total number of working days dedicated to the verification process is increasing.

20. The time taken to process building warrant applications is generally not improving and this, in conjunction with a flawed inspection regime, is causing delays and frustrations in commencing projects.

21. The shortage in technical skills extends across the construction industry and equally affects Scottish local authority building control departments. NHBC has its own bespoke internal training academy where we can identify and train employees to meet demand. The current local authority building control departments are under resourced. This was clearly identified in the Government’s research published in March this year entitled “Evaluation of the performance of local authorities in their role as building standards verifiers. Following statement
about local authority performance from that evaluation" Given the constraints on public expenditure along with the overall lack of skilled professionals this is unlikely to improve.

22. As referred to NHBC has a comprehensive nationwide inspection process whereby we ensure that every home covered by NHBC warranty receives a number of inspections. The builder is obliged to call out our inspectors to inspect at a number of key stages during construction. These are: the foundation when it is being excavated and before the concrete is poured; the superstructure - usually when it is at mid-build (to check the construction of walls and avoid an Edinburgh School situation); pre-plaster to check wiring, plumbing and insulation before it is covered; and a final inspection when the home is complete. Additionally our inspectors carry out “frequency inspections” dependent on the risk level given to the site – High requires a visit every 5 days, Medium every 15 days and low every 30 days. NHBC also undertake fire safety inspections in flats to check means of escape and fire stopping, and benchmark the specification of specific work at the start of projects e.g. roof coverings.

‘Profit before compliance’?

23. The Scottish Government’s independent evaluation of the current verification process claims that current system does not put ‘profit before compliance’. However, this assertion is not supported by any evidence and neatly evades any reference to the Edinburgh Tenement Repairs scandal.

24. In England and Wales it is an offence under the Building Act 1984 to put profit before compliance. Such statute could be replicated in Scottish legislation to mitigate any perceived risk on the role of private sector verifiers.

25. All members of NHBC’s Building Control Department have to demonstrate their competency and professionalism when NHBC applies for its Building Control license in England and Wales. Furthermore the majority of NHBC’s Building Control Surveyors are professionally qualified (mainly RICS) and in addition to NHBC’s own employment policies are bound by rules governing the membership of their professional institution.

Should procedural regulations specify a minimum requirement for the inspection of ongoing building works, to ensure compliance with building standards?

26. As referenced in paragraph 18 of this submission, local authorities currently average around 0.54 visits per building warrant – not per property. Setting procedural regulations to set a minimum requirement could lead to improvement in service if this is properly established in terms of linking inspection on a project by project basis to construction risk. The inspections would need to be meaningful and have an inbuilt process for re-inspection and recording. However
the recent government research evaluating the performance of local authority verifiers stated that this service is “Facing considerable resourcing pressures” so increasing the requirement for a comprehensive inspection process will increase this pressure and will lead to additional service delivery challenges and will increase public sector costs.

Should there be a statutory system to provide redress for new home buyers whose properties are subsequently found not to meet building standards requirements?

27. As referenced in paragraph 16, local authorities are not liable to the home owner for a failing service. By allowing NHBC to verify building standards in Scotland, home owners could benefit from added consumer protection through linked inspection and insurance and warranty cover and would therefore have a system of redress.

28. In terms of statutory system of redress, NHBC would point towards what has been achieved via the industry’s approach to self-regulation and how this has improved overall consumer satisfaction against increasing burdensome regulation on the house building sector. Since the Barker Review in 2004, the UK home-building industry has significantly improved levels of customer satisfaction. NHBC was directly involved in establishing the processes behind the national new home customer satisfaction surveys which have been in place since 2004. The industry continues to demonstrate its voluntary commitment to maintaining high standards of product delivery which in turn leads to high levels of customer satisfaction.

29. NHBC was instrumental on leading on the development and introduction of the Consumer Code for Homebuilders and the most recent Code requirement came into effect on 1st April 2013 and applies to all new private home-buyer reservations from that date. It contains a set of 19 requirements and principles that requires the home-building industry to deal effectively with its customers throughout the entire home-buying process.

30. From pre to post occupation, the Code helps ensure a consistently high level of customer service is maintained by monitoring customer satisfaction and industry compliance. Where there are disputes about whether a builder has complied with the Code and the home buyer is out of pocket as a result, there is an independent dispute resolution service.

31. The Code is enforced by a change in the Rules for NHBC and those of other co-operating warranty bodies; gross non-compliance of the Code would be a breach of the Rules and can end up in the ultimate sanction - being removed from all co-operating warranty bodies’ registers.
32. Customer satisfaction and industry compliance with the Code is measured and data on performance reported back to the industry, government and consumer interest bodies.

**Are the current building warrant and associated fees set at the correct level?**

33. The aim of the current consultation on building warrant fees is purely aimed at achieving full cost recovery and making the local authority service sustainable over time. It is not clear if the fee increase proposed is being linked to the delivery of a better, higher quality service which should be the fundamental objective.

34. The fees for building warrants are not “ring fenced” against that service therefore the income is likely to be used to support activities across local authority budget expenditure rather than being used specifically to address resource and efficiency with the local Building Control department.

35. The current fee income is structured so that the cost of large applications for building warrants are supporting the cost of processing smaller building warrant applications, this is itself is patently unfair and suggests that the proposed approach is a blanket exercise not properly addressing the identified cost issues in the system.

36. The fee increases are being proposed to meet the cost of the service to the public purse. Building standards is not a mandatory public service as it is licensed by government; consequently, if the service is deemed a burden to the public purse, NHBC questions why local authorities continue to deliver this service without competition.

37. The fee increases as proposed are stated as delivering £2m to support local authorities, equating to each local authority receiving £62,500. This is not a significant amount if the aim is to support improvements and recruit new resources into the building standards service. It is also not clear if the majority of the funding will be shared by Scotland’s two largest authorities, Edinburgh and Glasgow.

38. If the fee structure is to be revised, improvements to the service could be achieved if an improved service is linked to an increased fee. If fees are increased uniformly it will not lead to an improvement in the service.

39. The fee structure should be broken down and split between the two distinct operational processes carried out by local authority verifiers; i.e. the fee should be apportioned between the plan checking process and the number, type and quality of site inspections carried out. The latter inspections should be clearly linked to a risk management strategy and should be capable of being measured to determine the extent of meaningful support they provide in terms of identifying
breaches to Building Standards. The current performance framework is flawed in this regard.

Appendix A: The NHBC Council

The following organisations are represented on the NHBC Council:

<table>
<thead>
<tr>
<th>NHBC Warranty Holders</th>
<th>Federation of Master Builders (FMB)</th>
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<tbody>
<tr>
<td>British Board of Agrément</td>
<td>Home Builders Federation (HBF)</td>
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<tr>
<td>Institute of Consumer Affairs (ICA)</td>
<td>The Housing Forum</td>
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<tr>
<td>British Property Federation (BPF)</td>
<td>Institution of Civil Engineers (ICE)</td>
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<tr>
<td>British Standard Institute</td>
<td>Joseph Rowntree Trust</td>
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<tr>
<td>Building Research Establishment (BRE)</td>
<td>Law Society</td>
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<tr>
<td>Chartered Institute of Housing (CIH)</td>
<td>National Association of Estate Agents (NAEA)</td>
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<tr>
<td>Construction Products Association (CPA)</td>
<td>National Housing Federation (NHF)</td>
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<tr>
<td>Council of Mortgage Lenders (CML)</td>
<td>Royal Institute of British Architects (RIBA)</td>
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<tr>
<td>Design for Homes</td>
<td>Royal Institution of Chartered Surveyors (RICS)</td>
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<tr>
<td>Energy Saving Trust</td>
<td>Trading Standards Institute (TSI)</td>
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<tr>
<td>Members of the NHBC Board</td>
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</tbody>
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In Scotland NHBC’s operations are overseen by a Committee which is Chaired by Sir Muir Russell and has representation from the following organisations:

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<tr>
<th>Council of Mortgage Lenders Scotland</th>
<th>The Law Society of Scotland</th>
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<tr>
<td>Scottish Federation of Housing Associations</td>
<td>Homes For Scotland</td>
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<tr>
<td>Scottish Building Federation</td>
<td>The Royal Institution of Chartered Surveyors Scotland</td>
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<tr>
<td>The Royal Incorporation of Architects in Scotland</td>
<td>Independent representing consumer interests and previous Council Member of Consumer Focus Scotland</td>
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<tr>
<td>The Mackintosh Environmental Research Unit</td>
<td>NHBC Scottish Legal Counsel-Shepherd and Wedderburn</td>
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<tr>
<td>Members of NHBC ‘s Executive team and NHBC Scotland Director</td>
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