



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
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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'.

A stylized handwritten signature in black ink, appearing to be a monogram or initials.

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
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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/773161/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.

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>.

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 Homes*³⁰ 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 Halvorsen 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, "Halvorsen 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/halvorsen-v-persimmon-homes-pursuing-builder-things-go-wrong/>.

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.

QUESTIONS

ABOUT YOU

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:

- an individual – in which case answer Q2A
- on behalf of an organisation? – in which case answer Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

2B. Please select the category that best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously
- I would like this response to be considered, but not published (“not for publication”)

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

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

5. Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

6. Data protection declaration

- I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

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
- Unsure

Please explain the reasons for your response.

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
- Unsure

Please explain the reasons for your response.

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

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.

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.

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.

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

(b) Businesses – including housebuilders

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

(c) Individuals – including new-build house buyers

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

Please explain the reasons for your response.

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?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- 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?

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

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

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/New-Build-Homes/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

graham.simpson.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Graham Simpson MSP
Room M3.14
Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 6985.

Deadline for responses

All responses should be received no later than Thursday 27 June 2019. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <https://www.grahamsimpson.org.uk/proposed-new-build-homes-buyer-protection-scotland-bill>.

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person’s consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot

therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.

Privacy Notice

This privacy notice explains how the personal data which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be processed. This data will include any personal data including special categories of personal data (formerly referred to as sensitive personal data) that is included in responses to consultation questions, and will also include your name and your contact details provided with the response. Names and contact details fall into normal category data.

Collecting and holding Personal Data

The Scottish Parliamentary Corporate Body (the SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (EU) 2016/679 (the GDPR) and the Data Protection Act 2018 (the DPA)

Personal data consists of data from which a living individual may be identified. The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about the data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

Sharing Personal Data

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purpose of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

Publishing Personal Data

“Not for publication” responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of “not for publication” responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing “not for publication” status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with your response will not be published, but may be used by either the MSP’s office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included in that part of your response that is intended for publication, the MSP’s office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses or information will not be published are subject to the Parliament’s legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is “not for publication” or anonymous).

Use of Smart Survey software

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member’s Bill may be added manually to Smart Survey by the MSP’s office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on SmartSurvey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will

be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

Access to, retention and deletion of personal data

As soon as possible after a summary of consultation responses has been published, or three months after the consultation period has ended, whichever is earlier, all of your data will be deleted from Smart Survey. If, three months after the consultation period has ended, a summary has not been published, then the information that we would normally publish – including all your answers to questions about the proposal (unless your response is “not for publication”) and your name (unless you requested anonymity), but not your contact details – may be downloaded from Smart Survey to SPCB servers and retained until the end of the session of the Parliament in which the consultation took place. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was “not for publication”), together with your name (unless you requested anonymity), but not your contact details, to the Scottish Parliament Information Centre (SPICe), where it may be retained indefinitely and may be archived.

Purpose of the data processing

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

The legal basis

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest, or in the substantial public interest, in accordance with Art 6(1)(e) GDPR, s8(d) DPA, or Art 9(1)(g) GDPR, s10 of and paragraph 6 of Schedule 1 of the DPA. The task is the support of Members seeking to introduce Members’ Bills to the Parliament. This is a core task of the SPCB and therefore a Crown function. The adequate support of the Members Bill process and the ability to seek, use and temporarily store personal data including special category data is in the substantial public interest.

If the person responding to the consultation is under the age of 12 then consent from the parent or guardian of the young person will be required to allow the young person to participate in the consultation process (however, the legal basis for the processing of the personal data submitted remains as the public interest task basis identified above).

Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below, although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. For example, the rights allowing for erasure of personal data (right to be forgotten) and data portability do not apply in cases

where personal data is processed for the purpose of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you. As described above, the collection, storage, sharing and publishing of personal data contained in consultation responses is a task carried out in the public interest, which means that these three data subject rights do not apply here or only in a restricted scope.

Access to your information – You have the right to request a copy of the personal information about you that we hold.

Correcting your information – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

Objecting to how we may use your information – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

Restricting how we may use your information – in some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so. Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy notice was last updated on 28 June 2018.

Contact information and further advice

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

Head of Information Governance
The Scottish Parliament

Edinburgh
EH99 1SP

Telephone: 0131 348 6913 (Text Relay calls welcome)
Textphone: 0800 092 7100

Email: dataprotection@parliament.scot

Complaints

We seek to resolve directly all complaints about how we handle personal information but you also have the right to lodge a complaint with the Information Commissioner's Office:

- Online: <https://ico.org.uk/global/contact-us/email/>
- By phone: 0303 123 1113