Dear Bob

Response to the Local Government and Communities Committee Report - Building Regulations and Fire Safety in Scotland

I appreciate all the work that the Committee has done to produce the report - Building Regulation and Fire Safety in Scotland which was published on 30th October 2017. Since then, in the statement made by Angela Constance, Cabinet Secretary for Communities, Social Security and Equalities on 15 November, and by me during the debate on 23 November, the Scottish Government has shared with parliament the range of work underway that is addressing issues relating to building and fire safety in Scotland.

As a reminder, the Ministerial Working Group on building and fire safety has focused on a range of measures to enhance and strengthen building regulations and fire safety and has established the following review groups:

- Building Standards Compliance and Enforcement;
- Fire Safety in Building Standards; and.

The first is reviewing building standards compliance and enforcement and is chaired by Professor John Cole, the author of the Independent Inquiry into the Construction of Edinburgh Schools. It will examine the roles and responsibilities of everyone involved in all elements of construction from start to finish. The review will consider the actions needed before a building warrant is granted, and a completion certificate is accepted, as well as the role of certification in the construction journey.

The second is a review of fire safety in building standards, chaired by Dr Paul Stollard. The review will ensure the fire safety standards in building regulations are robust and clear. It will focus on high rise domestic buildings and high rise non-domestic buildings with sleeping accommodation.
The third review, which is Scottish Government led, will review the fire regime and regulatory framework for high rise domestic buildings. It will also consider the statutory role of the Scottish Fire and Rescue Service (SFRS) in regard to high rise domestic buildings.

Each of these reviews will adopt a flexible approach in order to be ready to respond to any relevant evidence and information that becomes available from the Grenfell public inquiry and from the UK review of building standards.

Turning to the recommendations in the Committee’s report:

**Who should verify building standards in Scotland?**

*LGCC seeks an update by April 2018 on the performance of the 3 local authorities that needed to improve performance.*

Scottish Ministers are responsible for appointing verifiers to carry out the independent checking of design and construction as part of the building warrant process. I re-appointed all 32 local authorities as verifiers in May 2017 on the basis of their meeting the new operating framework and updated performance framework for verifiers. The operating framework sets out the key functions of a verification service. The performance framework sets out the national performance targets and quarterly reporting procedure to Scottish Government.

The performance framework requires local authority verifiers to meet national targets and provide quarterly returns to the Scottish Government. Additionally, they are subject to audit by Scottish Government Building Standards Division (BSD). BSD is currently auditing the “poor” performing local authorities who I only appointed for one year. The relevant authorities and schedule of audits is set out below:

- City of Edinburgh (audit 7-8 November - Completed)
- Glasgow City (audit 28-29 November - Completed)
- Stirling (early February 2018)

I will update the Committee on performance of these authorities by April as requested.

Furthermore, investigating how improvements can be made to ensure compliance with building standards will be considered within the work of the Building Standards Compliance and Enforcement Review Group.

**Performance of building standards verification.**

*LGCC seeks clarity on how the Scottish Government will support local authorities to provide better workforce planning to ensure Building Standards departments are staffed to an appropriate level.*

Consideration of building standards staffing levels and competence is scrutinised during the verification audit process. Information from this process will inform how Scottish Government BSD can support local authorities to better workforce plan as well as ensuring building standards departments are staffed to appropriate levels.

Additionally, exploring how the level of skills in building standards can be increased will be considered within the work of the Building Standards Compliance and Enforcement Review Group, set up by the Ministerial Working Group. This will assist in determining if the right skill
mix and expertise is available across building standards and what action, if any, is needed to ensure all building standards departments are staffed appropriately and have access to the required skills.

In addition to the above it should be recognised that many local authorities are performing well and have the necessary levels of appropriately qualified and competent staff. However, I am aware that the building standards profession needs to be better promoted as a career choice. To this end, my officials are currently in dialogue with Local Authority Building Standards Scotland (LABSS) and universities to develop suitable training for both existing building standards surveyors as well as creating the opportunities for new recruits.

Fee system for building warrants.

Seek clarification that the increased fees will meet the costs of providing the service along with the evidence that supports the Minister's views.

Seek clarification on what aspects of building standards division’s work will be supported by this funding and the extent to which its performance of such work will be monitored, evaluated and reported on.

The increase in building warrant fees in July were the first increases since 2005. They will provide all local authorities with additional income to help drive forward improved performance. However I would stress that recent performance has shown that fee income is not the only factor behind verifier performance levels.

Prior to the introduction of the new fees, the Scottish Government carried out research and modelling to provide an evidence base for the public consultation (these are listed below).

- **Model changes to the building standards fees**

  This project modelled changes to building warrant related fees to provide a specific level of overall fee increase. [http://www.gov.scot/Topics/Built-Environment/Building/Building-standards/publications/pubresearch/ResearchVerification/resverbwfees](http://www.gov.scot/Topics/Built-Environment/Building/Building-standards/publications/pubresearch/ResearchVerification/resverbwfees)

- **Consider proposed changes to the building standards fees regulations and their impacts**


- **Consultation on building warrant fees**

  This consultation sought comments from stakeholders and users of the building standards system in Scotland on proposals to make changes to building warrants and related fees which would see users of the system meet all of its costs. [https://consult.gov.scot/procedures-and-verification/building-warrant-fees/](https://consult.gov.scot/procedures-and-verification/building-warrant-fees/)

  The research and modelling suggested that when construction and economic development was thriving, the fee income from verification covered the costs of the service. A sharp drop in income caused by the recession, combined with an inability to cut costs in line with income, resulted in deficits. There is now evidence that as income has risen, some local
authorities are generating a surplus. That position, however, is very sensitive to changes in economic conditions which might be influenced by geographical differences between local authorities.

I will continue to monitor the financial position within local authorities’ building standards services through the quarterly reporting requirement in the performance framework and take any necessary action to ensure they are sufficiently funded.

Income from building warrant fees increases will support the running costs of the Scottish Government BSD. I have confirmed that a condition of the increases was that some of the additional income would release funds to support running BSD. The transfer of resources to the BSD has been implemented through adjustment of the local government settlement for 2017-18 (£1.125 million for part-year) and for 2018-19 onwards (£1.5 million per year).

Additionally, my officials will work with COSLA and local authorities to reach a transparent and equitable solution to support the running costs of the Scottish Government’s BSD. This work will set out how BSD intends to use this resource in support of the building standards system and the performance, monitoring and reporting arrangements to be put in place.

Verification/certification process and ‘reasonable inquiry’.

*Endorse Cole report recommendation that a review be undertaken of the objectives of planned site visits to ensure that these prioritise the identification of areas of highest risk.*

The Scottish Government commissioned research in 2015 to ‘Investigate the impact of the introduction of Construction Compliance and Notification Plans (CCNPS) on building standards compliance levels’. The aim of the research was to:

- Investigate the levels of site inspection, performance testing and other compliance measures being undertaken by local authority verifiers across Scotland; and
- Investigate the impact of CCNPs on compliance levels since they were introduced in October 2012.

The main findings from the research were:

- Although the CCNP approach by local authorities was similar, there were differences including local authorities identifying different stages, numbers of stages and how applicants can notify when ready for inspection;
- Although local authorities take a risk-based approach to inspection, they may implement it differently;
- Existing local authority guidance has issues in need of further consideration.

As part of the work of the Compliance and Enforcement Review Group, the objectives of planned site visits and identification of areas of highest risk will be considered and in doing so, I expect the review group to consider the findings of the above research. The need to amend legislation to mandate a requirement by owners to notify local authorities when an inspection is necessary as well as mandating a certain level of site inspection in relation to different building types, will also form part of the review.

Currently, the role of the SFRS is as consultees on warrant applications for certain categories of buildings but are not responsible for, or involved in, the verification process. As part of the ongoing Building Standards Reviews and the Review of the Fire Safety Regime
and Regulatory Framework for High Rise Domestic Buildings in Scotland, the Ministerial Working Group will consider the option to broaden SFRS's role in the verification of buildings prior to the issue of a completion certificate.

**Inspections during building, including mandatory inspections, and penalties for proceeding without a warrant.**

LGCC supports Cole Report recommendation 7.1 regarding consideration of mandatory inspection.

*Also recommend a mixed approach to inspection is adopted where risk based approach is supplemented by required inspections at key stages of the building process.*

Under the performance framework introduced in 2012, local authorities have to issue a Construction, Compliance and Notification Plan (CCNP) with every building warrant. This sets out their inspection regime, developed using a risk-based methodology. Research has shown that there are some inconsistencies on how these are applied and inspections by local authorities is heavily influenced by the building owner notifying the local authority at the correct time.

The legislation currently requires building owners to notify the verifier at certain stages such as at commencement, drainage and completion. These are supported by notifications set out in the CCNP. The local authority must be notified at the right time to enable inspection to be carried out and this is an area to be improved on. It is also important that even if a local authority is not notified at the right time, they still need to carry out the necessary checks that they set out in their CCNP.

The building standards legislation is pre-emptive and includes strong controls on when work can start and when a new building can be used or occupied. These controls also deal with work not done in accordance with a building warrant, or done without a building warrant when one is required. I fully accept that this an area where improvements can, and must, be made and where a pro-active approach is necessary to achieve the desired improvement.

The role of risk-based inspection, notifications, mandatory inspection and the CCNP is being considered within the work of the Building Standards Compliance and Enforcement Review Group. The issues in relation to enforcement, penalties and sanctions will also be considered as part of this work.

**Clerk of works**

*Recommend that consideration is given to ensuring that public sector organisations employ Clerk of Works in relation to certain types of public sector projects such as those which have significant costs, utilise more innovative building techniques or products or which will provide large scale accommodation.*

*In relation to private sector projects LGCC consider Clerk of Works should be employed on projects of scale.*

It is important that contracting authorities implement project appropriate site inspection and assurance processes that mitigate resultant risk from the construction phase. A clerk of works is one of the complementary approaches that can achieve this, alongside engineers, architects and other construction professionals.

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This could be achieved either through the appointment of independent certifiers and/or provision of clerk of works services, to inspect the works on the ground. Such an approach is already best practice on our big infrastructure projects – like the Queensferry Crossing project and the M8 Non-Profit Distributing Baillieston to Newhouse contract.

Scottish Government will develop best practice guidance on the subject in partnership with the various professions, drawing on the experience of positive outcomes spanning buildings, roads and structures. Additionally, the role of clerks of works and other professionals, to provide re-assurance to building owners carrying out work, will be considered within the work of the Building Standards Compliance and Enforcement Review Group.

**Accountability and the responsibility of builders and construction firms and new build warranties/insurance companies.**

*LGCC considers new house purchasers should receive more support and information including role of building standards in assessing compliance with building regulations, their rights and responsibilities regarding quality of build, what to do in the event of defects or disputes.*

*LGCC recommends more standardised missives or contracts, enhanced consumer advice and support, clear articulation of role of local authority building standards verification and certification and access to ombudsman to mediate disputes.*

It is important that roles and responsibilities are fully understood and contracting authorities implement project-appropriate assurance processes that mitigate resultant risk. This can be achieved by using engineers, architects and other construction professionals. This also includes understanding the purpose of the different inspection regimes. This might be by, or on behalf of, the building owner or contracting authority, or by the local authority for the purposes of public safety.

The current building standards system legislative framework has been in place since 2005 but does not include the regulation of consumer protection, which is the responsibility of the UK Government. However the Scotland Act (2016) transferred new powers to the Scottish Parliament, including competence for consumer advocacy and advice. Scottish Government is committed to creating a consumer protection system that is effective, flexible and capable of both protecting consumers from harm and empowering them to make good choices. This requires working with other organisations to strengthen the services available to support consumers. We are strengthening consumer advocacy by:

- working with Citizens Advice Scotland to strengthen its consumer support;
- contributing to Trading Standards reviews to ensure more effective enforcement;
- improving links between government and the provision of consumer advice;
- strengthening data-sharing arrangements between Trading Standards bodies and the Citizens Advice service; and
- working with redress providers to raise standards and develop more consistent procedures.

The Scottish Government intends to develop a system that ensures that consumer fairness is at the centre of policy-making, and which works to find practical solutions to longstanding issues that harm consumers. This will include raising awareness of good business practice, and working with industry across sectors to raise standards and embed best practice for customer service.
The Scottish Government has also recognised concerns about the quality of new house building in Scotland. Therefore, we have taken forward a number of initiatives with the construction industry, to improve the quality of the house building process. The house building industry itself recognises the problems that need to be overcome to restore public confidence in the quality of new build in particular.

The house building industry introduced a voluntary Consumer Code in 2010 that lays down several principles to ensure the construction industry deals effectively with its consumers throughout the entire home-buying process.

In terms of standard missives these are approved by the Law Society of Scotland not Scottish Ministers. The Scottish Standard Clauses (Edition 1), designed to represent a Scotland-wide approach to standard clauses for use in residential conveyancing transactions, came into effect on 5 January 2015 and were replaced by Edition 2 which came into effect on 3 May 2016.

These Scottish Standard Clauses aim to lend greater certainty and efficiency in concluding missives than that afforded by the regime of regional standard missives.


The Scottish Government is also progressing a series of actions that review, and where appropriate, update current guidance in relation to the commissioning and procurement of public works. However, unquestionably there is a need for a clear understanding of roles and responsibilities which will be considered within the work of the Building Standards Compliance and Enforcement Review Group.

Skills

*Key question – what steps are necessary to increase the level of skills in building standards and address the suggested shortage of essential skills and/or deskilling in the construction industry?*

Addressing how the level of skills in building standards can be increased will be considered within the work of the Building Standards Compliance and Enforcement Review Group set up by the Ministerial Working Group.

On a broader industry level, officials facilitated a workshop with a wide range of trade representatives on 1 June, including the Construction Industry Training Board (CITB). The workshop was held in partnership with Construction Scotland, which is co-ordinating the agreement of a consolidated set of actions that the construction industry will take in response to the findings of the Cole report.

Construction Scotland is keeping officials informed on progress, and has supported a Ministerial Construction Summit which took place in early autumn of this year. At the summit contracting authorities and the industry provided updates on actions to address findings that have a bearing nationally.

CITB is currently reviewing the level 3 craft apprenticeship frameworks. The Scottish Government facilitated a meeting of employers and stakeholders on 8 March where the main concerns were the retention of “industry skills test” within the framework and the duration of the apprenticeship. Following consultation with industry by CITB, the skills test will be built
into the SVQ to best ensure its independence, quality of the SVQ and the apprenticeship going forward.

**Fire safety and the follow up in Scotland after Grenfell**

*LGCC asks MWG to consider FBUS’s call for a ‘one –off’ intrusive inspection of high rise domestic buildings.*

There are differences in the legislative powers of the SFRS and those of the Fire Service in England and Wales. In Scotland the SFRS has no legislative powers to carry out audits or fire safety inspections in high rise domestic buildings. This includes intrusive inspections. The SFRS does carry out operational intelligence and assurance visits at high rise domestic buildings primarily to ensure the protection of fire fighters accessing the building in the event of a fire.

Additionally SFRS personnel do not have the expertise or competence to scrutinise building materials or the structural integrity of domestic high rise buildings in Scotland. Any such inspection programme, if deemed appropriate, would be the responsibility of local authority building standards with whom SFRS has a close working relationship.

Going forward the Ministerial Working Group will consider the statutory role of the SFRS in regard to high rise domestic buildings as it undertakes a review of the Fire Safety Regime and Regulatory Frameworks in Scotland.

The Ministerial Working Group has been very successful in establishing the current position with Aluminium Composite Material (ACM) in Scottish buildings to provide as much reassurance as possible to occupiers and tenants. The Group has also instructed a comprehensive programme of work which broadly reflects the key themes of the Local Government and Communities Committee’s report. I wish to reassure the Committee that the Group will maintain a flexible approach to its work programme in order to respond to any emerging issues and evidence that may be made available from both the UK review of Building Standards and the UK Grenfell public inquiry.

I trust that the Local Government and Communities Committee will find that these responses demonstrate that the Scottish Government is actively addressing the initial recommendations of their report and that the Ministerial Working Group will continue to consider what further actions may be necessary as further evidence is gathered.

Please do not hesitate to contact me if you require anything further.

Kind regards

**KEVIN STEWART**