



Scottish Government Building Standards Division  
Almondvale Business Park  
Denholm House  
Livingston  
West Lothian EH54 6GA

2 October 2009

Dear Sirs

**Proposed amendments to the Building (Scotland) Regulations 2004: A Review of Guidance in the Technical Handbooks on Section1: Structure**

**Proposed amendments to the Building (Scotland) Regulations 2004: A Review of Guidance in the Technical Handbooks on Section 6: Energy; Reducing Co2 Emissions and Energy Demand (incorporating minor changes to Section 3: Environment; Ventilation Guidance)**

**Building (Scotland) Regulations 2004: Compliance**

**Introduction**

Homes for Scotland is the representative body of the Scottish homebuilding industry, with over 200 full and associate members. Its members build around 95% of all new homes for sale built each year, as well as a significant proportion of the affordable housing output annually. Homes for Scotland makes policy submissions on National and Local Government policy issues affecting the industry, and its views are endorsed by the relevant local committees and technical advisory groups consisting of key representatives drawn from within our members.

We recently received copies of the various Consultation documents noted above together with an invitation to submit a response on behalf of our Members. Homes for Scotland welcomes the opportunity to comment on these documents. Homes for Scotland would be happy to discuss further any of the issues raised in this response. It also wishes to be kept advised of the process of taking these consultations forward together with the full timescales of their anticipated implementation.

The purpose of this correspondence is to set out the industries wider views on this policy agenda beyond those specific consultation questions, as set within the consultation framework, each of which have been answered in detail.



For the avoidance of doubt the house building industry is fully supportive of the sustainability agenda, particularly the need to reduce energy consumption together with controlling or limiting further growth in Carbon emissions, which clearly are major contributors to climate change. However for the reasons outlined below, we believe that a relaxation of the pace of change within Scottish Governments policy in these areas is a necessary step at this time to enable a return to sustainable economic growth and for important developments or regeneration projects to continue to progress.

### **The industry's performance**

The house building industry is leading the way in achieving reductions in CO2 emissions within its product range. This has been achieved in no small part by constantly improving and regularly reviewed Building Standards throughout the last twenty years.

Recent research by the Scottish Government –“Comparison of the level of CO2 emissions from buildings built in 1990 and 2008” – BRE - confirmed that average CO2 emissions from new dwellings are already 61% less in 2008 than was the case in 1990 - the base year against which all current carbon reduction and climate change policy targets have been set.

Therefore, clearly the new house building industry is currently achieving very high standards and has already made significant progress toward low carbon policy targets in comparison to almost all other industry sectors.

### **The current economic climate**

The house building industry has been at the forefront of the dramatic impact of the credit crunch with a national reduction in sales to about half of its previously normalized trend levels. Huge jobs and skills losses have been incurred as a result.

National targets set by Scottish government (35,000 new homes per year by the middle of the next decade) are not likely to be realized for a considerable period of time. Indeed Homes for Scotland has predicted that to return to previous trend levels (25,000 per year) could even take until 2025 (at 5% compound growth /year). This will be predicated on a return to more freely available mortgage finance, but crucially, isn't likely to be subject to the kind of year on year double digit house price inflation trends that have characterized the last sixteen years.

Average house prices, especially those related to new build homes, have been significantly falling throughout the past eighteen months and whilst early signs of stability in the market are now appearing the industry is by no means in full recovery mode yet. Therefore for the foreseeable future the industry's focus will simply be on re-growing baseline supply, and meeting consumers expressed core needs, in a trading environment where affordability (in its widest sense) is significantly constrained.



## **Costs**

At present most house builders are still to construct houses which comply with even the current 2007 regulations, and as such, we have still to test what impacts those extra costs will have on overall sales and project viability. Costs to achieve these proposed new standards are predicted by Scottish Government to add approx within the range of £3,000 to £8,000 onto the build costs for each and every new build home. It is interesting to note that these costs will also apply to the publicly funded “Affordable Housing Investment Program” and to our knowledge this has yet to be factored into Scottish Government budgets from 2010 onwards.

It is simply not possible for the industry to absorb costs of this magnitude at present.

Especially is this so when projects of this nature are also additionally burdened with developer contributions for education, affordable housing and the like which are constantly being added to by rampant or over exuberant Local Authority sponsored supplementary planning guidance.

Consumers are demonstrably not willing at present to incur a premium for low carbon living, or “bolt-on renewables”, which at present offer little in the way of pay back, may prove difficult to understand and operate, or are untried with regards to long term performance and maintenance. Property valuations undertaken for mortgage lenders have also been tightened with new properties no longer achieving any “new build premium” and a view being taken that energy saving equipment will not add value to the property.

This leaves the house builders involved with no mechanism to recover the significant additional costs incurred, which will inevitably lead to a substantial reduction in housing supply as a legitimate reaction if this particular circle can't be squared.

In this context the industry is already facing a significant challenge to comply with the next planned change in standards. So whilst supporting environmental and climate change enhancements in principle, it is seeking to challenge the timing of the implementation of the standards. The industry requires breathing space to adopt these onerous standards and as such the need for them should be delayed until more stable and viable economic conditions return for the industry.

## **Building Standards & The Sullivan report – “A low Carbon Buildings Standards Strategy for Scotland”**

The new standards follow the route map as laid out in the Sullivan Report and will seek to improve current standards broadly speaking by another 30% reduction in CO2 by October 2010.

One of the many recommendations of this report was:



*“That the requirement for on-site low and zero carbon equipment should be reviewed and probably removed from the Scottish Planning Policy 6 (Renewable Energy) as the very low standards are introduced in 2013”.*

Another recommendation was:

*“That the energy standards for buildings should only be set at national level under the building regulations”.*

These recommendations were particularly welcomed by the industry and seen as a sensible way forward. However, we would propose in light of the current economic climate and the unprecedented conditions that house builders find themselves in, that these recommendations should be accelerated and implemented now to remove unrealistic or unduly onerous additional local planning obligations over and above the stretching targets already contained within the proposed Building Standards.

### **Is new build the only answer?**

The high levels of CO2 reduction already achieved, the impending change in building standards and the inability to absorb any further immediate rise in costs questions the role of the new build house in achieving the overall carbon reduction and Climate Change targets set by Scottish Government within this key policy area. New build is already performing at a high level in comparison to the existing built environment and has a clear route forward regarding higher standards. For the reasons outlined above, annual new build supply is likely to remain constrained below 1% of the existing built environment for a considerable period of time to come.

Therefore much greater emphasis needs to be placed on systematically improving the carbon performance and energy efficiency of existing dwellings.

Further enhancements applying only to new build homes as proposed under these consultations will only marginally reduce Scotland’s overall carbon footprint and may in the process delay the provision of essential new housing to meet both private and social needs.

As an alternative strategy there may be merit in exploring with the industry an approach where rather than a house builder incurring very high costs to achieve a marginal improvement in limited new build stock they contribute towards the improvement of existing housing stock in the immediate area where more efficient and easy to deliver carbon emissions reductions can be achieved. This would also thereby assist in the realization of the Scottish Governments overall Carbon emission reduction targets across the whole of the residential built environment, (arguably to even better or quicker standards), where bigger reductions in CO2 would be achieved with much less significant per unit costs.



**Conclusion**

In summary, in an attempt to assist a beleaguered industry and to facilitate progress with the construction of much needed new housing, particularly family and affordable housing, the Scottish Government would do well to seriously consider the very real and substantive progress already made by the home building industry in reducing the Carbon footprint of its products to date, and as a result, slow down or significantly reduce the speed with which it moves to implement very low carbon new homes.

I look forward to your response and I am available to meet to discuss any aspect of this letter or our associated consultation responses that you may consider to be appropriate.

Yours

A handwritten signature in black ink, appearing to read "Jonathan Fair".

**Jonathan Fair**  
**Chief Executive**  
Homes for Scotland

*improving living in scotland*



**RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION ON  
COMPLIANCE WITH BUILDING STANDARDS**

## CONSULTATION QUESTIONS – COMPLIANCE

### 1. Roles and Responsibilities

Under the building standards system, building work on both new and existing buildings must meet the building standards. The standards that require to be met (66 in total) are mandatory statements of functions that completed buildings must fulfil or allow. Through the Building Standards Division, Scottish Ministers issue guidance documents that outline possible ways of complying with the mandatory standards. The principal documents issued are the Technical Handbooks; one for domestic buildings and one for non-domestic. The intention is to permit a variety of ways of complying with the standards therefore solutions alternative to the Technical Handbooks may be used for compliance.

The mechanisms for achieving compliance with required standards in a building are met through the various duties and responsibilities placed on those involved in the process.

***Do you consider that the duties and responsibilities of those involved in the building standards system are clearly defined?***

Yes

No

**Please give the reasons for your answer:**

A wider understanding of the roles and responsibilities would be helpful, particularly amongst the public where the role of the verifier may be confusing. When building control and the verifier are one in Scotland, why have two terms?

Clarification on the term 'reasonable enquiry' would also be helpful.

### 2. Compliance

Compliance may be described as: Ensuring what is actually constructed (as-built) matches the applicable building regulations all in accordance with the approved building warrant.

***Do you consider that there is a current compliance gap, for certain building standards, between design approvals and the actual completed construction of buildings?***

Yes

No

On occasion there will be a risk of a compliance gap between building design approval and results on completed construction.

It is recognised that these gaps are attributed to inadequate supervision, and relate clearly to the availability of skills and access to a qualified workforce. The home building industry is well aware of these inherent issues and continues to work closely with Construction Skills Scotland to eliminate this.

Compliance regulations are not therefore the issue, and changes to the regulations will not help and are not appropriate.

### 3. Compliance during Construction

The Sullivan Report (A Low Carbon Building Standards Strategy for Scotland) identified that, for issues such as energy and noise, incorrect detailing or poor assembly of components can have a significant impact on overall performance.

Whilst the focus of 'Sullivan' was on energy related standards the following questions relate to all building standards.

***Do you consider that there is a need for greater certainty on compliance with certain building standards during the construction stages?***

Yes <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
<b><i>Which standards do you consider require assessment during the construction process for compliance and why?</i></b>	
It may be helpful to test sound and acoustic performance during construction on a representative sample of buildings given the cost and inconvenience involved correcting it at a later stage. Testing insulation levels may also be helpful to prevent cold bridging. However, understanding remedial measures where problems occur will be essential prior to construction.	
<b><i>What methods would you suggest could be employed during construction to confirm compliance with these standards?</i></b>	
The cost of routine testing must be considered, versus the benefits of taking representative samples. If a sample size is selected for a building site this must not involve the testing of <i>each</i> dwelling type as in some cases this could considerably increase the size of the sample. 1 in 20 buildings on a site is considered by the industry as reasonable to give an indicative value. We must remember that it is the workmanship quality that is being measured and not the house type design. Representative sample testing has all the benefits of a full testing regime, without the disadvantageous costs, resulting in the same level of impact on behavioural change.	

### 4. Verification

Although the building standards system places the compliance duty on a building owner (the relevant person), verifier test and inspection regimes have traditionally played an extremely important role in assessing compliance with standards and delivering buildings that meet the standards prescribed by the building regulations. Verifiers may require to balance inspection regimes with their other statutory duties, such as the plan checking/ processing of building warrant applications.

<b><i>Do you consider that within the building standards system the balance between plan checking and inspection is correctly weighted?</i></b>	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<b>Please give the reasons for your answer:</b>	
Local Authorities are currently under no financial obligation to expand building control resources. The home building industry does not believe that building control resources are adequate in terms of finances or physical staff numbers. The ring-fencing of building control fees, as lobbied by NHBC, would ensure an adequate increase in resources for on-site inspection.	



## 5. Reasonable Inquiry

In the process of accepting or rejecting submitted completion certificates verifiers are required to make reasonable inquiry to be satisfied that the work certified is in accordance with the building warrant and complies the building regulations. 'Reasonable inquiry' is not defined within the building standards system legislation and in practice verifiers across the country implement their own area specific 'risk assessment' methods to determine the level of inspection required.

***Do you consider that there is a need for enhanced guidance on what constitutes reasonable inquiry?***

Yes

No

**Please give the reasons for your answer:**

At the moment the unambiguous term 'reasonable enquiry' results in it being applied inconsistently across Scotland. A clear definition for this reason would be helpful.

If Local Authorities are the verifiers do they have the necessary resources to undertake inspections? This would in theory be an ideal approach, but in reality lack of resources could make it difficult to work, resulting in delays etc.

Given that the product needs to be inspected to comply with warranty providers, we do not view it as helpful to introduce another set of checks. A more sensible approach would be to more closely with warranty providers, streamlining the approach. After all the inspections undertaken by warranty providers are far more stringent and wide ranging.

**Do you consider that there should be guidance to verifiers on risk assessment for setting inspection levels?**

Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<p>This seems sensible to achieve a consistent approach.</p> <p>When allocating the wide variety of inspections, NHBC currently take into account the competency and experience of surveyors, creating a hierarchy. They also take into account the experience of the main contractor and all parties involved in projects. We would suggest a similar approach as helpful for verifiers.</p> <p>It would also seem sensible that warranty providers are given the opportunity to act as consultants in the verification process.</p>	

## 6. Certification

The [building](#) standards system permits the design or construction of building work to be certified by qualified, experienced, and reputable building professionals and trades-people as complying with the building regulations without the need for detailed scrutiny of designs or inspections by verifiers

Certification is an optional procedure for the implementation of building regulations in Scotland and is only relevant to work that requires a building warrant.

<b>Do you consider that certification should be adapted to cover all work that needs to comply with building regulations irrespective of the need for a building warrant?</b>	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<p><b>Please provide reasons to support your view:</b></p> <p>Whole building certification schemes in theory are attractive, however at this time it is too early to extend certification. The existing schemes need time to bed in and prove they are effective.</p>	

## 7. Building Standards Register

Through Schedule 3 the building standards system permits various types of work to be done without the need to obtain a building warrant. This permission is on condition that the work meets the building standards.

<b>Should all work (including schedule 3 work types) that requires to comply with building standards be included on the local authority Building Standards Register?</b>	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<p><b>Please provide reasons to support your view:</b></p> <p>We understand the reasoning to ensure consistent treatment/approaches, but we would be concerned about the associated resource implications on Local Authorities, creating the potential for delays to developers.</p>	

## 8. Building Warrant Life

***A building warrant is valid for a period of three years from the date of granting. This gives the owner / applicant a minimum period of three years to complete the works.***

***Do you consider that the 3 year life of a building warrant is still appropriate?***

Yes

No

**Please provide reasons to support your view:**

The recent economic downturn has demonstrated the need for the life of a building warrant to be extended. We would suggest to a minimum of 5 years. The experience has shown that many developments, intended to be constructed and sold within a planned timeframe, have been stalled and this has had serious implications for building warrants.

As Building Standards will understand, the footprint of projects is considered at the earliest stage to ensure the developer is informed when negotiating land prices, this includes the layout, the number of units and the house types. At this stage the developer will also only be aware of the Building Standards that apply at that time and will have incorporated these into the appraisal.

The recent 'moth balling' of live developments has resulted in the expiration of building warrants on developments designed and in some cases part constructed, now having to comply with new building standards in order to qualify for a new building warrant. The costs of making changes at this stage are often insurmountable.

Common sense must be applied to ensure this situation cannot occur. This could involve extending the life of a building warrant from 3 years back to 5 years or introducing a degree of flexibility through inclusion of a condition which allows the extension of a building warrant beyond 3 years when unavoidable delays occur.

We would be happy to consider options for this further with Building Standards.

## 9. Incomplete Applications

Under the Procedure Regulations, an applicant may be given up to 42 days in which to submit the specified plans and thereby convert an incomplete building warrant submission into a complete application.

***Do you consider that the 42 day period to submit the specified plans and complete the application for the proposals contained in a building warrant is still appropriate?***

Yes

No

**Please provide reasons to support your view:**

As far as we are aware there are no problems with use of the current system and there is no reason to reduce the statutory period.

