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# RESPONSE TO THE SCOTTISH GOVERNMENT'S CONSULTATION ON BUILDING WARRANT FEES

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**Homes for Scotland**  
5 New Mart Place  
Edinburgh EH14 1RW

t: +44 (0)131 455 8350  
f: +44 (0)131 455 8360  
e: [info@homesforscotland.com](mailto:info@homesforscotland.com)  
[www.homesforscotland.com](http://www.homesforscotland.com)  
 [@H\\_F\\_S](https://twitter.com/H_F_S)

**Registered No:**  
213820 (Scotland)  
**Registered Office:**  
15 Atholl Crescent  
Edinburgh EH3 8HA

## ABOUT HOMES FOR SCOTLAND

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Homes for Scotland is **the** voice of the home building industry.

With a membership of some 200 organisation together providing 95% of new homes built for sale as well as a significant proportion of affordable housing, we are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people *want* to live.

Visit [homesforscotland.com](http://homesforscotland.com) for further information and follow us on twitter [@HFS](https://twitter.com/HFS)

## PROCESS

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Homes for Scotland represents members on a wide range of issues affecting their ability to deliver much needed homes.

Our views are endorsed by committees and advisory groups utilising the skills and expertise of key representatives drawn from our member companies.

This consultation response has been endorsed, drafted and approved by the Technical Group.

## RESPONSE TO THE SCOTTISH GOVERNMENT'S CONSULTATION ON BUILDING WARRANT FEES

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### 1. **Should building warrant and associated fees be increased to make the Scottish Building Standards system achieve full cost recovery?**

- 1.1. Whilst we agree that the Building Standards system should be fully cost recoverable, we believe that there is a significant lack of robust evidence to rationalise the proposals set out within the Scottish Government's consultation on Building Warrant Fees.
- 1.2. Firstly, there are significant discrepancies within the data provided by local authorities and used within the following reports ' Building Standards Division - Building Standards Annual Return' (Scottish Government, October 2015); 'Research Project to Review the Current Building Standards Fee Structure and Future Requirements' (Scottish Government, March 2015); and 'Evaluation of the performance of local authorities in their role as building standards verifiers' (Pye Tait, March 2016). Across these reports an income and cost variance of £3.5m £15m respectively have been noted. Minimal detail has been provided by these reports or by local authorities to help stakeholders understand how costs for the service have been calculated, indeed given the proposals put forward by this consultation are to increase building warrant fees to make the Scottish Building Standards system fully cost recoverable, we believe the Scottish Government has not provided sufficient detail or evidence to allow stakeholders to undertake a robust analysis of the current system. We would advocate that the Scottish Government postpone the current review, provide stakeholders with a full breakdown of the cost to run both the existing and proposed systems, and re-consult with end users later in 2017.
- 1.3. In consideration of the proposals put forward by the Scottish Government to raise building warrant fees it has also be assumed that the current system remains fit for purpose and that the fee structure does not generate a sufficient income to support this service. This assumption is in contrast to much of the evidence contained within the above reports which provide inconclusive evidence, note significant issues, or highlight local authorities achieving significant income surpluses.
- 1.4. Chapter five, KPO6 of the report (Pye Tait, 2016) clearly suggests that local authorities collectively achieve a significant surplus when comparing fee income against staffing costs. It goes on to show that staff costs for the years 2013-14 and 2014-15 have roughly been maintained at £19.1m, and that fee income for these years rose from £27.1m to £28.7m. As a percentage of staff costs, fee income collectively has risen from 141% to 150% across these years, ranging from 68% to 293% for the year 2014-15. Figures for Q1 of 2015-16 show further increases to 178% collectively (a 28% increase), ranging from 73% to 332%. Figures for the KPO6 included within the Scottish Government report 'Research Project to Review the Current Building Standards Fee Structure and Future Requirements' also suggest that annual return data for the year 2013-14 showed a significantly improved position for local authorities, noting a surplus of around £8m. Even accounting for the non-staff costs 'add-on', the surplus for the year was considered to be in the region of £4m.
- 1.5. What is shown by KPO figures is that the current Building Standards system is more than capable of achieving full cost recovery through utilisation of the existing fees structure and that there is very limited evidence available to justify an increase in building warrant fees particularly given local authorities have collectively maintained a surplus in the region of £9m across these years. This surplus appears to be more than enough to cover the additional £3.5m in funding sought from the proposals to incorporate Building Standards Division (£1.5m) and the service improvement investment (£2m). The remainder of the surplus indicated by KPO6 could also absorb the noted additional non-staff related costs (calculated at approximately £3.8m) as well

as provide £1.7m that could be utilised by local authorities to adequately support the service they have been appointed to undertake, or to reduce building warrant fees to provide better value to the end users of the service.

- 1.6. What is also clear is that the rationale for increasing building warrant fees has primarily been based on the data provided within the above reports for the years between 2010 and 2014. It is an obvious point to make that these years are noted as showing abnormally low levels of construction activity due to the significant economic and constitutional uncertainties that have deterred investment in Scotland. It can be argued that there will be a baseline at which any service can be operated at a cost optimal level. We would suggest that activity over this period has dropped below this baseline, resulting in a poor financial performance of the service across these years. However, these reports also show a trend of improving financial performance and recognise a significant uptake in construction activity for the years 2014-15 and 2015-16 (equating to an approximate 4% increase in housing starts for each of these years, a 9% increase in total). The proposals put forward by the Scottish Government do not appear to take into any consideration the forecast levels of construction activity. It is understood that fee income will likely increase back to levels that support cost recovery and inevitably begin producing an income stream for local authorities once more.
- 1.7. The findings of these reports raise significant questions with regard to how local authorities utilise the fee income generated by the service provisions. We would argue that what undermines the proposals put forward is that building warrant fee income is not ring-fenced by local authorities to support the verification service they have been “appointed” to deliver on behalf of the Scottish Government. Instead we suggest that this income has been used to fill significant gaps in public sector budgets. This all comes at a time where evidence and feedback suggests that performance and customer satisfaction in the service is in decline. We have included further feedback and evidence from home builders regarding performance and satisfaction within the response to question 6.
- 1.8. With regard to incorporating the costs of Building Standards Division into the building warrant fee, we are not supportive of this proposal. We believe that there must be a clear distinction between the work undertaken by the Scottish Government and that of the work of local authorities in delivering a service to the end user. It is our view that it is the role and responsibility of the Scottish Government to undertake research, update legislation, consult stakeholders and produce guidance that ensures that Scotland’s built-environment is constructed in a way that is safe and sustainable, delivering the wider social and economic benefits to Scotland’s people. As building warrant fees are merely a mechanism to support the verification service, they should not be used to fund the activities of the Scottish Government which should be drawn from general taxation.
- 1.9. We also believe that the proposed fee structure amounts to an additional tax on home building in Scotland with average increases in excess of 10% for typical housing developments. The focus on average cost per application within the above reports omits crucial resource and cost savings made by local authorities when dealing with major housing developments. The repetitive nature of housing development and mainstream use of SAP and SER certification, as well as Scottish Type Approval Scheme (STAS), means the time and resource required by a local authority to verify an application is minimised. An example has been included within the response to question 3 to illustrate how the fees chargeable are not reflective of the resource required to verify.
- 1.10. We would argue that the Scottish Government should be looking to rethink how the system works rather than enable local authorities to increase revenue through these proposals. Given the current Review of the Planning System, the Scottish Government should have considered how planning and building standards fits into the wider remit of the built-environment. Given

criticism without an alternative is empty, an suggestion as to how the building standards system could be made more efficient has been provided within the response to question 5.

**2. Should fees for building warrant applications (minimum fixed fee and incremental steps) and fixed fees for amendment to warrant applications, demolition, conversion etc., be increased as described in the proposals?**

- 2.1. No.
- 2.2. Given the objective of increasing building warrant fees is to make the Scottish Building Standards system fully cost recoverable and the current system provides sufficient surpluses for local authorities to collectively deliver the service and invest in operational improvements, fees should not be increased.
- 2.3. In addition, as building warrant fees are calculated against the value of construction works, and that fees are therefore based upon square metre rates, the Scottish Government should also look to consult and agree upon uniform rates to calculate the value of construction works. We are aware that these currently vary across local authorities, however would advocate that there is absolute transparency and consistency in the way rates are applied by every local authority.

**3. Should discounts for using a certifier of design or construction be increased?**

- 3.1. Yes.
- 3.2. We believe that use of approved certifiers significantly reduces, and at times negates, the time and resource required by a local authority to consider a building warrant application (e.g. a building control officer should not have to assess or seek advice on structural drawings and calculations where these have been prepared by a recognised structural engineer holding professional indemnity insurance). We would agree that discounts available through these schemes should be increased.
- 3.3. In addition we believe that additional discounts should be made available where the Scottish Type Approval Scheme (STAS) has been utilised. Currently no discounts are available for house types that have gain STAS approval, in effect pre-approving the building warrant for a particular house type, in fact we are aware of instances where building control officers are querying STAS approved applications. On this occasion a significant fee is paid for STAS approval and a full fee paid for each subsequent building warrant on that house type. Given this minimises the resource requirements of building control officers, a significant discount should be made available for STAS approved applications.
- 3.4. As well as the above, we also believe that the Scottish Government has an opportunity to incorporate an additional discount for bulk applications that form part of a large housing development, or where there is significant repetition of a house type. In terms of home building, we would argue that local authorities already achieve a substantial income from fees incurred on a housing development. To illustrate the resource saving by a local authority it is useful to consider a typical 100 unit development with construction costs of £100,000 per unit and a warrant fee in excess of £25,000. Given the likelihood of around 10 different house types, repeated across the development, a building control officer will only need to assess 10 house types in reality. The level of repetition at this scale has resulted in the fees chargeable on this occasion not being reflective of the resource required by a local authority to verify the development.

**4. Should fees for those who have undertaken unauthorised work be increased?**

- 4.1. No comments.

5. Are there any alternative options to achieve full cost recovery that should be considered?
- 5.1. As noted in Question 1, we believe that there is a significant lack of evidence to suggest that the current Building Standards system is not already achieving full cost recovery. We believe that current proposals to raise income generated by the system will only go to fill gaps in wider local authority budgets, not support this vital service. As an industry we believe that there are three key principles that should sit behind the Building Standards Verification service:
1. The Scottish Government has a duty to appoint suitable providers who have sufficient resource and capability to undertake the duties of Building Standards Verifiers.
  2. Fee income obtained by appointed service providers is used to support and develop the service they have been appointed to deliver.
  3. Verifiers should be held accountable to the key performance indicators identified within performance framework linked to their appointment.
- 5.2. Evidence from the reports 'Research Project to Review the Current Building Standards Fee Structure and Future Requirements' (Scottish Government, March 2015) and 'Evaluation of the Performance of Local Authorities in their Role as Building Standards Verifiers' (Scottish Government, March 2016) suggests that the current system would not meet any of these principles, highlighting that there are significant issues with the fragmented approach to the delivery of building standards services. The findings also raise significant concerns with regard to the reappointment of local authorities, given it is understood the Scottish Government is expected to do so by April 2017, despite these reports noting that:
- A. Local authority building warrant verification services are generally under-resourced,
  - B. Surpluses achieved through the system are not reinvested into the services local authorities have been appointed to deliver,
  - C. There are no real national KPIs driving performance and improvements in the services, D. Performance and costs vary significantly across the 32 different local authorities.
- 5.3. As well as supporting the addition of private sector verifiers such as NHBC, we would argue that rather than plastering over the cracks within the current system, the Scottish Government should be looking to consult with end users to rethink how verification services can be optimised and delivered more efficiently.
- 5.4. It is clear from the research that there are significant inefficiencies within the current system which can be described as fragmented and inconsistent on a national basis. We believe that funding and resources could be much better utilised where a more centralised system is created and structured around key strategic planning areas or key city regions.
- 5.5. The Scottish Government may also wish to consider taking a more holistic approach to the built-environment and better integrate planning and building standards services to create a more streamlined and aligned approach to the consents process as well as greater joined up thinking across built-environment professionals.
- 5.6. Outwith this consultation on Building Warrant Fees we are keen that the Scottish Government take the opportunity to consult with industry and wider stakeholders to understand how the building standards system can be reshaped to deliver performance improvements and better value to the end users and not just an income stream for local authorities.

## 6. Additional views or comments.

6.1. Back in 2011, Homes for Scotland (HFS) raised concerns regarding the performance of local authorities at the time they were being reappointed as the only building standards verifiers in Scotland. To help alleviate these concerns an enhanced performance framework was introduced. Six years on we continue to learn about concerns regarding performance and the capacity of the system to support the delivery of much needed and anticipated increase in housing supply, as well as concern that there is a lack of pressure on local authorities to comply with the performance framework.

6.2. While our members experiences with the services is mixed, with some Authorities operating more effectively than others, overall we are of the opinion that for the amount the process costs, uncertainties of timescales and outcomes, the service provided is generally poor and deteriorating.

6.3. As an example of poor customer service it is worth noting the wording from an auto-response email currently being issued by Glasgow City Council:

*"Due to current high demand for our services, you may experience a delay in receiving feedback relating to resubmitted information you have lodged in relation to applications for building warrants.*

*Be assured that you will receive a response in due course, in the meantime, we would be grateful if you could please avoid interim requests for updates as this places further demands on the service.*

*Your co-operation and patience is appreciated.*

*If your enquiry relates to an urgent matter or a dangerous building please call 0141 287 8555."*

6.4. Whilst first response letters are typically received within the agreed timescales these generally contain only a few general comments. Thereafter our members find that follow up communication (written or verbal) with the appointed verifiers is challenging and fragmented with builders having to chase with multiple correspondences to get a further response or the consent issued. There is also a sense that verifiers are overly bureaucratic or unwilling to clarify minor points swiftly and there is often an inconsistent interpretation and application of guidance contained within the Technical Handbooks both between differing Authorities and more worryingly even within the same Authority.

6.5. To try and mitigate this moving forward many of our members are utilising the Scottish Type Approval System (STAS) for standard house/flat types in a bid to speed up the process and remove delays or inconsistencies that arise from interpretation. However that too comes with its own challenges and our members are finding that Local Authorities continue to query applications with approved house types.

### 6.6. Scottish Government Research Findings

6.7. We note from the Scottish Government's own research (Pye Tait, March 2016) that between 2013/14 and 2014/15 the total number of building warrants granted by Local Authorities increased from just below 34,000 to just over 40,000 (a rise of 19%). Over the same time we note an increase of 19% in the average time taken to grant a building warrant (from 47 to 56 days). This goes against one of the main key performance indicators which aims for a year on year reduction in the turnaround of building warrants.



- 6.8. Furthermore, the National Survey undertaken by Pye Tait consulting on behalf of the Scottish Government revealed a decline in customer satisfaction between 2014 and 2015. We expect that the survey being circulated at this moment in time will reveal yet a further decline in customer satisfaction.
- 6.9. An added frustration in relation to this aspect of public service delivery is that we understand that fee income from service users as a percentage of staff costs has increased (from 141% in 2013/14 to 150% 2014/15. Worryingly the stats show that for 6 Local Authorities where the fee income was more than 150% of staff costs the service levels have been low, pointing to under resourcing despite the high levels of income being received.
- 6.10. Fees Paid to Receive a Service
- 6.11. We would like to see a direct correlation between the fee income from increased volumes of building warrant applications with increased recruitment and retention of staff resources. We have serious concerns that pressures on Local Authority finances generally mean that the fee income for building warrants is being used elsewhere given that it is not a ring fenced budget.
- 6.12. In addition to the fee income received we understand that the Scottish Government allocate Local Authorities a budget for 'enforcement' and would question whether this money is being used for that specific purpose. We would suggest that it is more likely that the existing building standard resources are being used to fulfil that function, distracting further resource from the verification process. With the concordat in place there is little or no pressure on the Local Authorities to dedicate building warrant fee income to the building warrant application process.
- 6.13. There is a clear lack of motivation to make appropriate improvements and we feel that this is evident despite the introduction of more stringent performance indicators when Local Authorities were last appointed in 2011.
- 6.14. The consultation report makes it clear that at present the building standards system overall funds itself. It highlights that the surplus achieved from larger projects more than covers the losses experienced in dealing with small and minor warrant applications. In addition, the significant income surpluses achieved by local authorities, as noted within the Pye Tait research, suggest that the existing fee structure is more than capable of absorbing costs of Building Standards Division as well as any improvements investment in the service. However, the home building industry must not be seen as a cash cow to fill gaps in public sector budgets. The purpose of the building warrant fee is to fund the service provision, not wider services that benefit the wider public such as Building Standards Division or the role of Scottish Government in monitoring the bodies they appoint to carry out public service.
- 6.15. In terms of home building, we believe that local authorities already achieve a substantial income from fees incurred by housing developments. It is useful to consider an example 100 unit development with construction costs of £100,000 per unit and a warrant fee in excess of £25,000. It is likely that there will around 10 different house types repeated across the development, therefore a building control officer only needs to assess 10 house type applications. We understand that there are further efficiencies made by local authorities where Scottish Type Approval Scheme (STAS) has been gained, pre-approving the building warrant for the particular house type, as local authorities still obtain a full building warrant fee.
- 6.16. Introduction of E-Building
- 6.17. Whilst we welcome the use of new technology to enhance efficiencies within services, we remain sceptical over how much impact the introduction of e-building will have in practice. Early experience suggests teething problems as well as further delays whilst systems are put in place

and training undertaken. We can accept that more time is required to see how well the system beds in however would question whether end users of the service will see any financial benefit to the efficiencies achieved through its introduction.

6.18. Appointment of Verifiers in 2017

6.19. We accept that in order to maintain a verification framework in Scotland that Local Authorities must be re-appointed. We do not accept however that they should be the sole appointment.

6.20. We understand that there may be some concerns surrounding the involvement of the private sector within the verification process but we genuinely believe that these concerns can be easily alleviated.

6.21. There will be a stronger role for the Scottish Government Building Standards Division in monitoring performance to ensure a consistency in service. We would suggest however that this role is already a crucial one that is perhaps not getting the attention it requires given inconsistencies in service levels and performance throughout the country.

6.22. We understand that there may be perceived benefit with building standards placed solely in the hands of local authorities making it free from risk of 'profit before compliance'. However the same can be said for local authorities where fee incomes are used to prop up wider public sector budgets. We note that a recommendation of the APPG Inquiry into the Quality of New Build Housing in England raises concerns that competition in building control might be fuelling "a race to the bottom" but feel that concern can be addressed through the role of the Scottish Government defining a minimum number of inspections within the appointment contracts. We also feel that the stake held by warranty bodies such as NHBC could be more easily understood by the public by promoting the key stage inspection regime which currently takes place which is much more comprehensive than the Local Authority approach to verification.

6.23. Whilst experience in England may raise anecdotal doubts over the private sector's approach to verification, we understand that concerns felt do not involve the service offered by NHBC as the first appointed private verifier. We understand that the Scottish Government may be concerned about opening up the wider verification framework to private sector involvement but believe there are legitimate reasons why the Scottish Government could place limits on this within their appointment. The Scottish Government has an ambitious target to deliver 50,000 affordable homes over the lifetime of this Parliament. Improvements to the building warrant system is something that must happen to aid delivery and we would suggest that to help deliver on its target that the Scottish Government opens up the verification framework for the delivery of new homes alone.

6.24. We understand that whilst the re-appointment of verifiers is due to happen in April 2017 and is likely to involve a minimum duration of 6 years, that there is nothing to stop other forms of verifiers becoming involved at a point in the future i.e. the Minister can appoint verifiers at any time. Whilst we accept that this may be the case we feel that now is the time to have a full conversation about the options. We remain very disappointed that the Scottish Government does not intend to consult publicly on the matter.

6.25. Data Sample

6.26. As well as documenting our views on the existing system and suggestions for the re-appointment of verifiers, a tracker has been developed to show the experiences of home builders within the building standards service. The data has been obtained from a sample of 6 home builders of varying sizes working in different council areas in Scotland.

- 6.27. Whilst Scottish Government data may show that the current overall average time taken to grant a building warrant is 56 days, the data presented in this tracker of home building developments suggests an average of 42 weeks or 210 working days. It should be noted that this average calculation includes applications that are yet to be determined and therefore the average from this sample is still to increase.
- 6.28. We accept that a few of these applications were submitted in September 2015 before the most recent change to building standards were introduced in October 2015, which means that the time taken to process the application may be a result of mutual agreement between the builder and the Local Authority.
- 6.29. A copy of this tracker has already been provided to the Minister for Local Government and Housing. As I am unable to attach this table to this response I will happily forward a copy of this table to Scottish Government on request.