



LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

18th Meeting, 2017 (Session 5)

Wednesday 14 June 2017

The Committee will meet at 10.00 am in the James Clerk Maxwell Room (CR4).

1. **Building regulations in Scotland:** The Committee will take evidence from—
 - Ross MacKay, Convener, Property Law Committee, Law Society of Scotland;
 - Kenny McKenzie, Royal Institution of Chartered Surveyors in Scotland;
 - Gilly Carr, President Elect, Institute of Clerks of Works and Construction Inspectorate of Great Britain;
 - Glenn Campbell, Building Standards Manager, Highland Council.
2. **Consideration of evidence (in private):** The Committee will consider the evidence heard at agenda item 1.

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The papers for this meeting are as follows—

Agenda item 1

Note by the Clerk

LGC/S5/17/18/1

PRIVATE PAPER

LGC/S5/17/18/2
(P)

Local Government and Communities Committee

18th Meeting 2017 (Session 5), Wednesday 14 June 2017

Building Regulations in Scotland – Note by the Clerk

Purpose

1. This paper provides background information on the Committee's evidence session on building regulations in Scotland on 14 June 2017.

Background

2. The Committee agreed to undertake a short, focussed piece of work on the building standards verification scheme.
3. The Building (Scotland) Act 2003 gives Scottish Ministers the power to make building regulations to—
 - secure the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings;
 - further the conservation of fuel and power; and
 - further the achievement of sustainable development.
4. Scottish Ministers re-appointed all 32 Scottish local authorities as verifiers under section 7 of the Building (Scotland) Act 2003 from 2011 to April 2017. Their role is to implement the regulations set out by the Building (Scotland) Act 2003 when building work or a conversion takes place, and grant building warrants when they are satisfied the work meets requirements.
5. Current building warrant and associated fees are set out in The Building (Fees) (Scotland) Amendment Regulations 2004.
6. The Scottish Government launched a consultation on increasing these fees which closed on 9 January 2017 and the intention is to introduce new fees on 1 April 2017. The fees structure has not changed since 2005. The Scottish Government intends to publish the responses to the consultation imminently.

Local Government and Communities Committee Consideration

7. At its meeting on 1 February 2017, the Committee agreed to launch a call for views and online survey on building regulations in Scotland. The call for views

and online survey were issued on 7 February 2017 and closed on 28 February 2017. The Committee received 33 responses to the call for views, 26 from organisations and 7 from individuals. One of the responses¹ represented the views of 8 members of the organisation. There were 2² duplicate responses to the call for views and one response was endorsed by 3 other organisations³.

8. The responses received to the Committee's call for views can be found at the following link:

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103554.aspx>

9. A summary of the written submissions received was also produced and can be found at the following link:

http://www.parliament.scot/S5_Local_Gov/Inquiries/20170327_BuildingRegulationsSummary.pdf

10. The Scottish Parliament Information Centre (SPICe) produced a summary of the responses received to the online survey and that can be found at the following link:

http://www.parliament.scot/S5_Local_Gov/Inquiries/20170327_BuildingRegulationsSurveySummary.pdf

11. At its meeting on 3 May 2017, the Committee took evidence from Homes for Scotland, NHBC Scotland, the Scottish Building Federation, Local Authority Building Standards Scotland and the Federation of Master Builders Scotland.

12. The Official Report (substantially verbatim transcript) of the meeting on 3 May 2017 can be found at the following link:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10927&mode=pdf>

13. Following its meeting on 3 May 2017, the Committee reflected on the evidence received and agreed to hold a further evidence session with stakeholders focussing on building regulations and consumer rights. At its meeting on 14 June

1 [Scottish Disability Equality Forum response](#).

2 [Inverclyde Council](#), [Aberdeen City Council](#).

3 [Homes for Scotland's response](#) was endorsed McCarthy and Stone, the Walker Group and Miller Homes Scotland and similar responses were submitted from Whiteburn Projects Ltd, Robertson Homes, Springfield Properties, Persimmon Homes East Scotland, Persimmon Homes West Scotland, Persimmon Homes North Scotland.

2017, the Committee will take evidence from the Law Society of Scotland, the Royal Institution of Chartered Surveyors (RICS), the Institute of Clerk of Works and Construction Inspectorate of Great Britain (ICWCI) and Highland Council. Written submissions from RICS and ICWCI are attached at **Annexe A**.

Next Steps

14. Following the evidence session, the Committee will have an opportunity to reflect upon the evidence received and consider what, if any actions, it wishes to take.

Annexe A

Written Submission from Royal Institution of Chartered Surveyors in Scotland (RICS)

1. The Royal Institution of Chartered Surveyors (RICS) is the principal body representing professionals employed in the land, property and construction sectors. In Scotland, the Institution represents over 11,800 members comprising chartered surveyors (MRICS or FRICS), Associate surveyors (AssocRICS), trainees and students.
2. Our members practice in sixteen land, property and construction markets and are employed in private practice, central and local government, public agencies, academic institutions, business organisations and non-governmental organisations.
3. As part of its Royal Charter, RICS has a commitment to provide advice to the government[s] of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members.
4. RICS is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.
5. This Call for Evidence arises at a time when the majority of building standards teams and service provision in local authorities is decreasing due to a combination of reduction in budgets and workforce.
6. As such, RICS welcomes the opportunity to respond to this call for evidence.
 - ***Should verification of building standards be extended to organisations other than local authorities?***
7. RICS acknowledges that other organisations, such as the National House Building Council (NHBC), provide verification services in England and Wales. Therefore, the extension of verification to these other bodies should be relatively straight forward to achieve.
8. However, the addition of verifying bodies could negatively impact on service delivery.
9. Whilst there are stand-out issues with a small minority of Scotland's local authorities, there is a decent level of consistency in the approach to vetting building warrant applications.
10. The Building Standards Division (BSD) regularly audits Building Standard authorities, and if this practice continues, the small number of local authorities

that are currently under performing should reach the same levels of professionalism as the others.

11. If there was a mixture of verifiers in different local authority areas, there could be issues around consistent provision of service delivery – such as, at times of procedural changes - and consumer choice of verifier in each local authority area.
12. If the proposed additional verification providers was taken forward, the BSD should have the authority to audit the other verifiers in order to ensure consistency in the audit process.
13. RICS is firmly of the view that there needs to be a thorough assessment of any unintended consequences that may arise from the appointment of additional verifiers. This should include consideration of whether additional resourcing for local authority building standards departments may be a better approach.
 - ***Should procedural regulations specify a minimum requirement for the inspection of ongoing building works, to ensure compliance with building standards?***
14. The current system with the Construction Notification Plan allows professionals to choose which inspections are appropriate for the works.
15. This system may well result in a lack of consistency within each building standards office, and more widely across Scotland. The introduction of procedural regulations would help alleviate this.
16. However, more detail and scrutiny on the application of procedural regulations will be required in advance of its introduction; this should include consideration of measures against developers who commence work without the verifier being informed.
 - ***Should there be a statutory system to provide redress for new home buyers whose properties are subsequently found not to meet building standards requirements?***
17. At present, there is potential for dissatisfied homebuyers to take civil action. Whilst a redress mechanism may be beneficial to the public, it would appear that the need for redress indicates an issue with the current system, whereby new houses can be built, and sold, whilst not meeting standards.
18. As such, it may be more appropriate for attention to be applied as to why situations of this nature arise.
19. 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.

20. It would be beneficial to the sector, and the public (consumer), if there was more awareness and public education sessions on how the building standards system works; these events should include verification and inspection.
 - ***Are the current building warrant and associated fees set at the correct level?***
21. RICS recognises, and welcomes, the Scottish Government's ambition to make the Building Standards System fully cost recoverable; and it should be noted that the primary reason for the increases in fees is because they have remained static since 2005.
22. Building warrant fees are not presently "ring fenced" for the services they are paid for, and RICS believes this approach needs amending. By guaranteeing budgetary resource, service provision across Scotland's local Building Control departments should improve.
23. Indeed, the proposed increase in fees, which are currently proposed to support local authorities, could equate to each local authority receiving an additional £62,500. Whilst this sum is not hugely significant, it could support the recruitment of trainee or assistant posts which could alleviate some of the pressures felt by some local authorities. This in turn could improve service delivery as well as negate the need for additional verifiers.
24. Linking fees to departmental performance, as suggested for planning departments, is a positive notion, but further details on the application of this approach would be required before RICS would support an initiative of this nature. There would also need to be opportunity for building standards departments to improve their service provision before this policy was initiated.
 - ***Any other issues relating to the regulations which you wish to bring to the attention of the Committee?***
25. It would be prudent for the Scottish Government to introduce the traineeships and assistant posts that would promote Building Standards as a career opportunity for school leavers, and enhance career progression for those already in the sector.
26. RICS volunteers to work with the Building Standards Division, other educational establishments, such as the STEM programme and modern apprenticeship schemes, to promote this profession.

Written Submission from the Institute of Clerk of Works and Construction Inspectorate of Great Britain

The Institute of Clerks of Works and Construction Inspectorate (ICWCI) welcome the opportunity to put forward a general submission to Parliament's Local Government and Communities Committee to assist with inquiries for written evidence as part of its scrutiny of building regulations in Scotland.

Introduction

It is a general perception that homes and properties are not built to the same standard and quality provided as in the past. This is due to the fall in skilled operatives, resource levels, knowledge gaps and general poor standards of workmanship. On numerous projects the funding has not been in place to allow the correct amount of quality control.

- 1) *Should verification of building standards be extended to organisations other than local authorities?*

As local authority cutbacks continue independent providers could be allowed to verify building standard applications. However, it would be advisable for the independent inspectors to be under the control of the non-profit making organisation such as Building Control. It is also important that general inspections are carried out throughout the construction period and not only at key times.

Using non-independent inspections could lead to self-certification from outside agencies as happened with the Edinburgh Schools.

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

If zero defects are to be achieved minimum inspection necessities should be a starting point. Like all controls inspections are extremely important. If site inspections are limited, then these are restricted to snap shots in time.

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

Yes, the developers/builders must be held responsible for poor workmanship or defective materials. Pressure from the upper management often force the site management to hand over properties that have not received their full attention.

At this time the only redress appears to be filling out insurance claims for NHBC.

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

Fee levels for developers should be set pro-rata. Individual home owners who wish to alter, extend or build their own homes should have proportionate fees set to the time and cost of the build.

5) *Any other issues relating to the regulations which you wish to bring to the attention of the Committee?*

Historically regulations stipulated the appointment of a Clerk of Works, this should be reinstated. In recent years, many local authorities have depleted the Clerk of Works they had employed which has added to the workload of Building Control officers.

Conclusion

The current general perception from within the ICWCI is that the Construction Industry continues to face the dilemma posed by the quality-cost-time conundrum. This could be improved by specifying additional inspections from Clerks of Works and Construction Inspectors. These inspections could bring problematic issues to the Builders attention at an early stage, rather than allowing the defect or fault being built into the property.

On many occasions these issues have affected the overall quality of projects and have tarnished the image of the construction industry.

Mr Gilly Carr.
ICWCI President Elect