

Response ID ANON-TWGT-N4WD-3

Submitted to Building standards enforcement and sanctions: consultation
Submitted on 2024-01-22 17:07:40

Questions

1 Do you agree with the inclusion of holding owners accountable for new/converted buildings which are occupied illegally?

Agree

Provide your views in the box below:

Clearly it is important a property owner is held accountable for ensuring compliance with building standards, but in the interests of fairness there needs to be some caution exercised. Landlords may have little knowledge at times of alteration works and could not unreasonably withhold consent. They may therefore be at arm's length from direct oversight of compliance. Accountability should first and foremost sit with the party who has initiated any non-compliant works and/or illegal occupation.

2 Do you agree with the proposal to include a new provision for the removal of work on the section 27 Building Warrant Enforcement Notice?

Strongly agree

Provide your views in the box below:

In principle, we agree that works that do not comply with the appropriate standards should be removed or modified and that local authorities have discretion to do so. We believe this will help to discourage malpractice and facilitate the rectification of unsafe work. That said, we urge local authorities to only enforce this measure as a last resort for instance where a serious breach has occurred, and where unsafe work cannot be remedied. This ensures that local authorities respond in a proportionate manner, restricted to instances of genuine concern.

3 Do you agree that the provision of a standalone stop notice under section 27 would act as a helpful deterrent?

Agree

Provide your views in the box below.:

We agree that a stop notice should be enforceable as it sends a clearer message to those in breach of building standards to suspend their work. But we are concerned that this alone may not be enough to get parties to comply so there would need to be proper enforcement.

4 Do you agree with enforcement after the acceptance of a completion certificate for High Risk Buildings?

Neither agree nor disagree

Please provide your views in the box below:

We understand there may be instances where work in the future is required to be remedied for High-Risk Buildings after the acceptance of a completion certificate, particularly in cases of negligence. However, it raises the question about the current effectiveness in the issuance of completion certificate if they do not align with building standards. Local authorities must assume responsibility for their approvals. The potential for local authorities to revisit buildings despite having already approved the work does not give the industry much certainty over their decisions. We understand local authorities may be under pressure to issue a completion certificate or temporary occupation certificate, but our members have reported that at times approvals have been 'questionable'. For instance, the testing and commissioning of life safety systems is still ongoing, and we suggest that this is reviewed before greater enforcement measures are passed onto local authorities.

Our members have also noted that 'mop ups' at the end of projects which seek to rectify non-compliant work are condoned by local authorities. We feel it is important to seek clarification on the support of 'mop-up' applications to balance efficiency and compliance. In the absence of allowing minor variations (assuming the design team is confident this would align with building standards), the commercial risk is heightened and this may lead to unnecessary costs and delays to projects which could have knock-on effects in the wider economy.

5 Do you agree that the introduction of a time limit is necessary?

Yes

6 Do you agree with the introduction of a 10-year time limit for taking action on non-compliant work?

Not Answered

7 Do you have any views on the 10-year time limit proposed?

Please provide your views in the box below:

Whilst a time limit would give more certainty for building owners and local authorities as to when notices can be served, 10 years is a significantly long period for local authorities to revisit work. It is important to consider that imposing a time limit for remediating buildings will have financial implications

for developers even if they are all fully compliant. Imposing time limits will increase the liability for insurance providers, and we expect these costs will be passed onto building owners. As mentioned previously, there are grey areas between undertaking works without an associated warrant, or out of alignment with the warrant. The approach to the application of 'mop-up's for instance, must be pragmatic as it can enable work to be remedied more swiftly. We would not wish to lose this approach.

However, introducing a time limit brings Scotland into alignment with the Building Safety Act 2022 in England and we do support policy continuity when possible.

8 Do you agree with the level of fines proposed?

Yes

Please provide your views in the box below:

We understand that the level of fine should be proportionate to the size of the building as there is the potential for a more serious impact to arise. We also acknowledge that the proposed amount would create a level playing field across England and Scotland, improving policy continuity across the UK. That said, the level of fine is expected to increase fivefold which will significantly elevate insurance costs and increase the risk assessments required for contractors when taking on more complex projects.

9 Do you agree with the option to include a custodial sentence?

Yes

Please provide your views in the box below:

There may be instances where a custodial sentence is an appropriate sanction, and as this is already enforced within the Building Safety Act (2022) for England and Wales we support the policy alignment. However, we would urge that this penalty is used as a last resort where the primary emphasis should be on the rectification of the unsafe work rather than pursue overtly punitive measures. In other words, the focus should be on collaboration and providing strong initial guidance to ensure that contractors understand how to rectify the issues. Clearer guidance is also required as to who is culpable i.e., the occupant, developer, landlord or agent.

Impact assessments

10 Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics? Choose from the following options:

Not Answered

Please select only one answer and provide any comments in the box below. If selecting yes, please specify which of the proposals you refer to and why you believe specific groups will be impacted. :

11 Do you think that any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? Choose from the following options:

Yes

Provide any comments in the boxes below. If selecting yes, please specify which of the proposals you refer to and why you believe financial, regulatory or resource implications will be impacted. :

Some of our members have highlighted the unfair nature of potential for work to be revisited when at the time they were approved and in accordance with the building warrant as well as the fact it is impossible to predict future regulatory changes. We suggest they are treated as a new project not as a change otherwise it could significantly add to the risk premium attached to a building project by an insurer or financier.

12 Do you think that any of the proposals in this consultation have any impact or implications on island communities? Choose from the following options:

Not Answered

Provide any comments in the boxes below. If selecting yes, please specify which of the proposals you refer to and why.:

About you

What is your name?

Name:

Josie Sclater

Are you responding as an individual or an organisation?

Organisation

Group/Organisation type (please pick one)

Not Answered

If other, please state which group/organisation type you represent.:

Industry Membership Body

What is your organisation?

Organisation:

Scottish Property Federation

Further information about your organisation's response

Please add any additional context:

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

Yes

What is your email address?

Email:

spf@bpf.org.uk

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Please enter comments here.: