

## **Scottish Property Federation Comments to: Building Standards Compliance and Fire Safety – a Consultation on Making Scotland’s Buildings Safer for People**

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### **Introduction**

The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members: property investors, including major pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. We are happy for our comments to be published and shared within the public sector.

The SPF welcomes the Scottish Government’s commitment to improving building standards compliance and fire safety in Scotland. This is a commitment shared by our organisation and membership and we are keen to work with the government on making Scotland’s buildings safer for all.

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### **Part 1 - Building Standards (Compliance and Enforcement)**

**Question 1.1: Do you agree that the roles and responsibilities of verifiers (including their key activities) must be clearly defined and recorded, including the expected level of resources and skills needed to undertake verification activity, and the actual level?**

**Yes**

Comments:

The SPF welcomes this prescriptive approach and we look forward to further detail on the roles. Our members have also noted that the appointment of the instructing party and the independence of the verifier needs to be confirmed.

There is currently a lack of resources and skills within some local authorities, a situation that will need to be significantly improved going forward if there is to be more confidence in the system.

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**Question 1.2: Do you agree that verifiers must place a greater emphasis on inspection and testing throughout construction and at completion?**

**Yes**

Comments:

The SPF agrees with this proposal and we believe that the inspections need to be supported by the appropriate documentation and certification. The production of this documentation will ensure that inspections and any errors or defects are picked up at an earlier stage.

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**Question 1.3: Do you agree that verifiers must place a strong focus on safety critical elements such as structure (for example wall ties, lateral restraint) and fire safety (for example fire protection, fire stopping, cavity barriers)? If possible, please provide details in the comments box of other elements that should be included.**

**Yes**

Comments:

Our members are in general agreement with this proposal and have suggested an additional element that could be included is the junction of the modern wall cladding and the main floor structure, often concrete, and that this needs to be appropriately fire stopped.

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**Question 1.4: Do you agree that local authorities should not be able to act as verifier for their own “higher risk” building work due to possible conflicts of interest?**

**No**

Comments:

The SPF is of the view that the problem is not a conflict of interest but a lack of resources within local authorities to fully enforce building standards within their own projects. We do not think that there is pressure being levied internally to circumvent standards.

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**Question 1.5: Do you agree that local authorities should still be able to act as verifier for their own lower risk building work?**

**Yes**

Comments:

See comments to question 1.4 above.

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**Question 1.6: Do you agree that the roles and responsibilities of building owners and developers (including their key activities) must be clearly defined within the building standards system and recorded including the expected level of resources and skills needed to assure themselves and verifiers of compliance, and the actual level?**

**Yes**

Comments:

Again, we welcome this proposal as it adds additional clarity to the system, although, this could be more problematic for small projects. Some of our members have informed us that this information is already available on many of the projects that they have worked on.

However, defining the 'actual level' of resources and skills is problematic and it will often depend on the scale and complexity of a project. We look forward to further details from the Scottish Government on how this could be implemented in practice.

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**Question 1.7: Do you agree that the building owners and developers must, to ensure compliance, place a greater emphasis on inspection and testing throughout construction and at completion, with focus on the safety critical elements?**

**Yes**

Comments:

Our members agree with this proposal and agree that there should be a mandatory process to be followed by owners and developers. The SPF would like the Scottish Government to give more guidance to building owners and developers on what steps should be taken and when. This could ensure clarity and some standardisation, which will help with building standards compliance.

It has been suggested that licensing of contractors may be worth pursuing, but the SPF is unconvinced that there would be any real benefits to this. Some members have suggested that a system of proved failings being 'flagged-up' might help.

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**Question 1.8: Do you agree with the requirement for a "Compliance Plan", to be provided by the owner or developer, to demonstrate their approach to compliance from initial design, through detailed design and construction, and leading to their final sign-off and certification of the completed building?**

**Yes**

Comments:

The Compliance Plan should lead to the completion of further inspections and thus defects and/or errors could be picked up at an earlier stage than is currently the case. To avoid this proposal becoming a 'tick box' exercise, the plan must be project specific and, it is assumed, compiled at an early stage in the building warrant process. However, because it includes details of the construction and completion processes, it follows that it has to be compiled in conjunction with the Principal Contractor. This puts the timing of its compilation in conflict with the requirement to have the building warrant in place prior to work commencing on site, which is the time that the contractor is normally appointed. In the case of major projects the requirement to have the building warrant in place prior to work commencing on site should be reviewed.

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**Question 1.9: Do you agree that the building owner or developer should be required to appoint a competent professional person, with the appropriate experience and qualifications, to act on their behalf in order to assure them of compliance when they submit the completion certificate?**

**Yes**

Comments:

The establishment of the certifier is a step that could incur significant costs for the property industry. However, there is general agreement from our members that this would be worthwhile, particularly in larger and more complex projects.

We would also like to see the verifiers' role more inspection biased, however, in the short to medium term we accept that local authority resources will be stretched; so having more of the inspection process rest upon the shoulders of a named person is logical.

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**Question 1.10: Do you agree that mandatory pre-application discussions and precommencement of construction discussions should be introduced for higher risk buildings?**

**Yes**

Comments:

Our members have noted that very often the developer and/or architect will want to do this but there is often insufficient resources within local authorities building control departments to facilitate such pre-application discussions. While we are supportive of this measure, it can not lead to further delays in the building warrant process and should only be introduced if the Scottish Government and local authority verifiers can guarantee that there would be no negative impact on service.

It should also be noted that 'as built' drawings may differ from those of the original designer (architect/engineer), particularly if they are not involved in detailed supervision. Drawings, therefore, reflect 'as designed' and not 'as built'.

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**Question 1.11: Do you agree that amendments to warrant should differentiate between minor changes, major changes, and staged warrants?**

**Yes**

Comments:

Our members are in agreement with this proposal and have suggested a non-material variation (NMV) could be adopted, similar to the planning system.

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**Question 1.12: Do you agree that the construction procedures and guidance should be reviewed and that mandatory notifications are introduced, including notification of progress on higher risk projects?**

**Yes**

Comments:

Our members support this measure. It has been highlighted to us that this is already partially adopted, although it is often dependent on the level of resources within the local authorities. However, it should be noted that a mandatory notification process (which would presumably be followed by a mandatory site inspection) has the potential for causing significant delays on site because of limitations on the availability of verifiers to undertake the inspections in line with the contractor's programme. An alternative approach would be to offer applicants a significant reduction in their building warrant fees if they employed an independent Clerk of Works for the duration of the construction project. The Clerk of Works would then manage the site safety supervision in lieu of the verifier.

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**Question 1.13: Do you agree that verifiers should carry out ad-hoc (unannounced) progress inspections and be able to require disruptive surveys when mandatory notifications are not made to them?**

**No**

Comments:

Our members **do not** think that this step is necessary. Like the rest of the development and construction programme, any onsite visits should be planned, and surveys of concealed area and areas of ongoing construction should be programmed. Planning visits will help to ensure that the necessary expertise is onsite at the time of inspection, which will help to ensure verifiers' visits are productive.

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**Question 1.14: Do you agree that verifiers should record safety critical building standards noncompliances and feedback at a national level to drive improvements?**

**Yes**

Comments:

This is a good idea in principle, but it will likely only work if both local authorities and the Scottish Government have adequate resources to record failures properly. However, if the system is put in place it will give both industry and policy makers more reliable data on non-compliance.

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**Question 1.15: Do you agree that verifiers should be notified of minor changes in design as the project progresses, on the understanding that they are to be covered by an amendment to warrant before the completion certificate is submitted?**

**Yes**

Comments:

This is also a good idea in principle, but it is vital that local authorities can timeously respond to minor changes as the project progresses. This will require adequate resourcing within local authority building control departments. The industry and its clients can ill afford disproportionate delays resulting from informing verifiers of minor changes.

Minor changes are commonplace, and the Scottish Government should ensure that any amendments are free of charge. This will help to promote the reporting of changes to verifiers and minimise the impact that this proposal will have on development finance.

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**Question 1.16: Do you agree that the completion certificate for a higher risk building should have sub-sets for safety critical aspects, and be accompanied by as-built drawings and the completed Compliance Plan?**

**Yes**

Comments:

Our members have noted that they would be in favour of completion certificates having subsections for safety critical aspects. They have highlighted that this could make reference to the compliance plan

(specifically the testing certification) and other reports including: a draft Fire Risk Assessment, Fire Engineering Report and Draft Access Audit.

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**Question 1.17: Do you agree that the procedures for the temporary occupation or use of a building should be strengthened for example requiring a declaration of compliance and monitoring of the expiry dates?**

**Yes**

Comments:

Our members welcome this proposal as the use of temporary Occupation Certificates can cause confusion and this could impact on compliance. Clarification and strengthening of the procedures could help to create a more prescriptive system and help decision making.

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**Question 1.18: Do you agree that restrictions to the occupation or use of existing buildings should be considered when significant alterations are being carried out to higher risk buildings?**

**Yes**

Comments:

We agree with this policy, however, this should be assessed on a building specific basis. It is important that any decisions are made timeously.

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**Question 1.19: Do you agree that local authorities should be more pro-active in enforcing building regulations and monitor construction regularly?**

**Yes**

Comments:

The SPF agrees with this policy. However, because of practical and well-known limitations on the availability of verifiers to undertake site inspections, the monitoring of construction work on major projects may have to be left in the control of the construction/design team.

It has been suggested to us, that an alternative approach would be offer applicants a significant reduction in their building warrant fees if they employed an independent Clerk of Works for the duration of the construction project. The Clerk of Work would then manage the site safety supervision in lieu of the verifier.

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**Question 1.20: Do you agree that local authorities should have a building standards enforcement policy in place that is based on national guidance?**

**Yes**

Comments:

It is very important that any enforcement is nationally consistent. Ideally there should be no change in enforcement between any two local authorities. The proposed policy of national hubs could also help to ensure a more universal approach to enforcement of the standards.

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**Question 1.21: Do you agree that national guidance on building standards enforcement should include what enforcement related actions local authorities should carry out and the level of resources and skills they should have to do so?**

**Yes**

Comments:

The SPF welcomes this proposal as it would give both developers and local authorities more clarity on what is expected in the building standards enforcement process. National guidelines will also help to ensure a minimum level of service across Scotland's local authorities.

Building standards compliance is a critical role provided by local authorities, but the Scottish Government should continue its progress towards ensuring that there is uniformity across the country, and that there are adequate resources in each local authority (or an ability to fall back on a national hub).

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**Question 1.22: Do you agree the penalties and levels of fines associated with serious failures in compliance should be increased?**

**Unsure**

Comments:

The SPF believes that, first and foremost, the building standards system in Scotland should be built on a good working relationship between the development team and the local authority enforcing the building standards. The measures suggested in the consultation will help to strengthen this relationship by making the roles and responsibilities of stakeholders more prescriptive. This prescriptive approach should help to prevent any issues becoming serious enough to warrant a higher fine.

However, where there are serious failures in compliance there could be a case for fines to be increased. This could also help to ensure that development teams that do comply with building standards are not disadvantaged against those that cut corners. However, it is critical that local authority building control departments are fully resourced and able to meet the requirements of the new proposals, in an efficient and timely manner.

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## **Part 2 – Fire Safety in Building Standards**

**Question 2.1: Do you agree that the guidance should be developed to make clear that there is more than one way of achieving compliance with the mandatory functional standards?**

**Yes**

Comments:

We agree with this proposal. We stress that there should be more than the prescribed way of doing things, but we also accept that 'deemed to satisfy solutions' are helpful and often speed up the

approval process. Therefore, as new systems are approved (through fire engineering, etc) they should be added to that list for future users.

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**Question 2.2: Do you agree that the annexes in the Technical Handbooks for residential care buildings, hospitals and enclosed shopping centres should be published separately?**

**Yes**

Comments:

The proposal has merit as these buildings have specific requirements and separate publications will help to add clarity.

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**Question 2.3: Do you agree that an additional Technical Handbook for simple domestic detached and semi-detached dwellings (up to 3 storeys) should be introduced as a means of compliance with fire, and all applicable building standards and sections of the Handbooks?**

**Yes**

Comments:

The SPF is of the opinion that anything which improves the clarity of the handbooks is worthwhile pursuing.

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**Question 2.4: Do you agree that a national “hub” approach should be developed to share expertise and skills and be responsible for verifying fully performance based “fire safety engineering designs”?**

**Yes**

Comments:

The SPF views the proposal to create national hubs as a very positive step that could help to ensure that Scotland has the skill sets required to verify complex projects properly and timeously. It is important, however, that projects sent to the national hubs are quickly responded to and that such hubs have adequate funding and resources.

We would prefer that any national hubs are either physically or virtually located with the Scottish Government (Building Standards Division). This would mean either employing national experts to work for the Scottish Government on verifying complex projects (physical) or drawing on existing expertise within local authorities and pooling those people into a national programme (virtual). However, a potential issue with the ‘virtual’ approach is that there could be competing demands on verifiers, between their responsibilities within the local authority and the requirements of the national hub.

In terms of funding, there should be an agreement between local authorities and the Scottish Government on how to split the warrant fee to fund both the local authorities’ responsibilities and those of the national hub. Developers should not be required to pay separate fees.

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**Question 2.5: Do you agree that consideration should be given to a certification scheme for fire engineering?**



**Yes**

Comments:

No further comment.

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**Question 2.6: Do you agree that the reference to British Standards Reaction to Fire Tests should be removed from the Technical Handbook?**

**Yes**

Comments:

Our members have noted that, with regard to British Standards Reaction to Fire Tests, the Scottish Government should clarify its position promptly. It has been noted by our members that the use of BS8414 and BR135 should be encouraged.

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**Question 2.7: Do you agree that only A1 and A2 materials, using the European Harmonised “reaction to fire tests”, should be required for external walls or insulation exposed in a cavity of a high-rise building (domestic and non-domestic) with a storey at a height of more than 11m above ground?**

**Yes**

Comments:

No further comment.

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**Question 2.8: Do you agree that only A1 and A2 materials, using the European Harmonised “reaction to fire tests”, should be required for external walls or insulation exposed in a cavity of entertainment and assembly buildings, residential care homes and hospitals of any height?**

**Yes**

Comments:

No further comment.

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**Question 2.9: Do you agree that BS 8414 (and BR135) may still be used as an alternative method of providing evidence to show compliance?**

**Yes**

Comments:

No further comment.

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**Question 2.10: Do you agree fire service activated evacuation sounders should be required in each flat in new domestic buildings which have a storey at a height of more than 18m**

**Yes**

Comments:

Our members agree that this proposal should be implemented if the Scottish Government and the Fire Service believe that it will improve safety in new domestic buildings over 18m.

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**Question 2.11: Do you agree that two stairways should be required for new domestic buildings which have a storey at a height of more than 18m above ground level?**

**Unsure**

Comments:

Our members are of the opinion that having two fire stairs in each building above 18m is a good idea in principle, but any decision on whether this proposal should be included in Scottish Building Standards should be based on clear evidence that it will improve safety. It has been brought to our attention that it is currently unclear that having only one stairway for buildings over 18m in height has ever impacted on safety in Scottish buildings.

There could be significant cost implications from requiring two stairways, not just through the initial increased cost of construction, but also through the reduction in space available to sell or rent. That said, if evidence is clear that having two stairways would increase safety, then the SPF would support this measure.

In addition, our members have noted that current Firefighting procedures could change to reflect current building standards. Notably, stopping the practice of opening fire doors for hoses from two floors below could be considered, with a riser used that is closer to the relevant floor. This will help to maintain the functionality of fire lobbies and smoke doors to stairwells.

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**Question 2.12: Do you agree that new HMOs used for “care” 24/7 should be included in the list of buildings with a mandatory requirement for automatic fire suppression systems?**

**Unsure**

Comments:

If there is evidence that the retrofitting of suppression systems into HMOs used for ‘care’ will improve safety, then this proposal should be considered. However, the retrofitting of suppression systems is difficult and could prove costly. Therefore, any new proposal on HMOs should only apply only to new build or where recommended on refurb.

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**Question 2.13: Do you agree that new HMOs with 10 or more occupants should be included in the list of buildings with a mandatory requirement for automatic fire suppression systems?**

**Unsure**

Comments:

If there is evidence that the retrofitting of suppression systems into HMOs with 10 or more occupants will improve safety, then this proposal should be considered. However, the retrofitting of suppression systems is difficult and could prove costly. Therefore, any new proposal on HMOs should only apply to new builds or where recommended on refurb.

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**Question 2.14: Do you agree that new flats should be included in the list of buildings with a mandatory requirement for automatic fire suppression systems?**

**Unsure**

Comments:

No comment.

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## Part 3 – Building Standards

**Question 3.1: Do you agree that protected lobbies need not be provided to shared residential accommodation with only one escape stair?**

**Unsure**

Comments:

If the evidence suggests that this approach is safe then it should be continued, however, our members are of the opinion that the issue is more complicated than simply adding a protected enclosure.

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**Question 3.2: Do you agree that exempt type 16 of building regulations should be reviewed in respect of the criteria for the erection of a temporary building and the temporary use of a building?**

**Unsure**

Comments:

No comment.

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## Part 4 - Areas for Further Consideration

**Question 4.1: Do you agree with the areas identified for further consideration?**

**Unsure**

Comments:

No comment.

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**Question 4.2: Do you consider there are other areas of the building standards system that require further consideration?**

**Yes**

Comments:

It is vitally important that local authorities are given additional levels of resource. Most of the proposals within this consultation seem reasonable but will struggle to meet the desired aim if the correct level of resourcing is not provided.

Local authorities should also be required to adhere to tighter timescales. Too many projects are held up with developers waiting for approval. Developers also receive insufficient details on the time it will take to complete the verification process and about when certification will be provided.

Consideration should also be given to establishing a meaningful mediation process. Currently the complaint procedure (when a building standards submission is disagreed by both parties) is too formal and slow. There should be a quick mediation process involving a senior body could be established to address this.

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## **Part 5 – Business and Regulatory Impact Assessment**

**Question 5.1: Are there any proposals in this consultation which impact or have implications on ‘equality groups’?**

**Unsure**

Comments:

No comment.

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**Question 5.3: Do any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business?**

**Yes**

Comment:

The proposals set out in this consultation will have significant cost and resource implications for both the property industry and local authority verifiers. The creation of a new internal role for monitoring compliance will add cost to the development process, as will the extra administration burden caused by the proposals. Local authorities will also have more responsibilities and, if customer service is to continue to improve, their resourcing will have to be increased.

Many of the points discussed in the consultation will also affect the roles of building surveyors and other industry professionals.