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## **Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan**

# **Building Regulations and Fire Safety in Scotland**



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# Local Government and Communities Committee

To consider and report on communities, housing, local government, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities, Social Security and Equalities.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/local-govt-committee.aspx>



[LGCCcommittee@parliament.scot](mailto:LGCCcommittee@parliament.scot)



0131 348 6037

# Committee Membership



**Convener**  
**Bob Doris**  
Scottish National Party



**Deputy Convener**  
**Elaine Smith**  
Scottish Labour



**Kenneth Gibson**  
Scottish National Party



**Jenny Gilruth**  
Scottish National Party



**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Alexander Stewart**  
Scottish Conservative  
and Unionist Party



**Andy Wightman**  
Scottish Green Party

# Introduction

1. On 1 February 2017, the Local Government and Communities Committee agreed to undertake an inquiry into the building standards verification process. This work contributes towards the Committee's strategic priority No.2: *The planning system and meeting the needs of communities for housing, place making and other developments*.
2. The Committee issued a call for written views on 7 February 2017, which closed on 28 February 2017 having received 33 responses. In addition, an online survey was launched by the Committee which attracted 1,072 responses. The written views, summary of written views and the analysis of the online responses can be found [online](#).
3. Any inquiry of this type is more likely to receive evidence about what can be improved following people's negative experiences than what has gone well. The Committee therefore acknowledges that for many people their experiences of building standards are positive. In order to understand people's experiences, the Committee held an informal meeting with individuals who had used the building warrants process, followed by two evidence sessions in May and June 2017. Details of who participated in the Committee meetings, Agendas, Minutes and Official Reports can be found [online](#). The Committee thanks all those who have contributed to its work.
4. **The Committee's initial work into, and interest in, the issue of building regulations and the verification process was focused on complaints from a number of individuals relating to private house builders. However, during the course of our inquiry, our work has been catalysed as a result of two events. Firstly, the publication of the *Report on the Independent Inquiry into the Construction of Edinburgh Schools* by Professor John Cole CBE (hereafter referred to as the Cole Report), published in February 2017, which made a series of recommendations which are relevant to the Committee's inquiry. Secondly, the tragic fire at Grenfell Tower in London led to the Committee agreeing on 21 June 2017 to widen its ongoing scrutiny of building regulations in Scotland to include the fire safety aspects of these regulations.**
5. This report sets out the key issues arising from the Committee's work from February to June as well as the evidence taken in September 2017 with the purpose of informing the chamber debate that we have sought in Autumn 2017. This proposed debate will give all members of the Scottish Parliament an opportunity to consider the issues raised in this report and the latest developments following both the Cole Report and the investigations underway in Scotland after the tragedy at Grenfell Tower.
6. **In this report the Committee makes recommendations and poses key questions on which MSPs' views are sought. We will consider the views received as part of our final consideration of building regulations and fire safety issues.**
7. **It is also intended that the issues raised in this report and those raised in the debate will inform the work of the Ministerial Working Group on building and**

**fire safety established on 21 June 2017 by the Scottish Government to examine building and fire safety regulations.**

8. The Committee will then keep developments in the Ministerial Working Group under review. The Committee expects the Scottish Government to continue to keep it updated on the progress of the Working Group and the recommendations it agrees to.
9. **The Committee notes that the recommendations of the Cole Report relating to schools buildings have been considered as part of a separate inquiry by the Education and Skills Committee, culminating in the publication of its [11th report 2017 entitled School Infrastructure](#).**

# Background

10. [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.
11. Building standards are currently set out in the Building (Scotland) Regulations 2004, as amended <sup>1</sup>. Detailed technical guidance for architects, engineers and other building professionals on how to meet the requirements set out in building standards are provided in a series of domestic and technical handbooks. Procedures to be followed by those involved in the building standards system are set out in the Building (Procedure) (Scotland) Regulations 2004 <sup>2</sup>, as amended. Further information on these procedures is set out in Scottish Building Standards: Procedural Handbook <sup>3</sup>.
12. The detail of how the building standards system works in Scotland is set out in Annexe A of this report.

# Issues raised in evidence to the Committee as part of its initial inquiry

## Who should verify building standards in Scotland?

13. Anyone wishing to erect a new building, alter or extend an existing building, or convert or demolish a building normally requires permission from a verifier. At present, the verifier is the building standards department of the local authority where the work is to be done. Permission is granted in the form of a building warrant, which must be obtained before starting any work. A warrant will be granted if the proposals meet the requirements of the Building (Scotland) Regulations 2004, as currently amended. It is an offence to begin work for which a warrant is required without a warrant. The verifier can inspect ongoing work and may also require work to be opened up to show that compliance with the regulations has been achieved.
14. The building standards system in Scotland was changed in 2005 following introduction of the Building (Scotland) Act 2003<sup>4</sup>, permitting the appointment of verifiers, a balanced scorecard approach to performance management and auditing of verifiers.
15. Of the 90% who responded to the question regarding who should verify building standards in an [online survey](#) undertaken for the Committee, half believed that it should be extended beyond local authorities to other organisations. Just under 40% stated that verification should remain with local authorities.
16. Aberdeenshire Council highlighted that "the overall level of service provided by Local Authorities is very good and can be evidenced by the recent National Survey undertaken by the Building Standards Division of the Scottish Government".<sup>5</sup> The Royal Institution of Chartered Surveyors in Scotland also noted that there was a decent level of consistency in the approach to vetting building warrant applications albeit "there are stand-out issues with a small minority of Scotland's local authorities".<sup>6</sup>
17. Angus Council explained that the changes made in 2005 had resulted in verifiers becoming more customer-focused and engaging in the continuous improvement agenda. Steps had also been taken to try and gain greater consistency in service delivery across local authority verifiers. They and others<sup>i</sup> explained that impartiality and a consistent approach to the verification process across Scotland are among the reasons which support the view that it should remain with local authorities.
18. Inverclyde Council and Aberdeen City Council, also argued against extending verification services outwith local authorities—

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<sup>i</sup> South Ayrshire Council, Frank Mcmillan

” There is evidence that competition has reduced service standards in England and Wales. Local Authority Building Control in its submission to the All Party Parliamentary Group for Excellence in the Built Environment *Inquiry into the quality and workmanship of new housing in England* informed that 73% of the complaints received by local authorities over the 36 month survey period were about other organisations providing the building standards service.<sup>7 8</sup>

19. A number of written submissions such as UNISON and City of Edinburgh Council highlighted the potential loss of local knowledge which could arise if verification was extended outwith local authorities. UNISON also highlighted the impact on local democracy—

” Were the system open to commercial competition there is a great deal of potential for such local knowledge to be lost. We also think that having the local authority as the sole verifier avoids the potential for conflict of interest. We would support the contention that private sector verifiers could damage the impartiality of the system, and agree that private sector verifiers lack of accountability to elected members, removes an important democratic safeguard.<sup>9</sup>

20. Homes for Scotland, who supported extending verification to other organisations, also referred to the All Party Parliamentary Group inquiry report explaining that the concerns regarding other organisations providing the building standards service are—

” ...explicitly related to new build homes in England and Wales, not Scotland where currently only local authorities can undertake the role of building standards verifiers. Whilst this is the case we are aware from our discussions with Scottish Government representatives that these concerns are not aimed at every private verifier in England. Nevertheless, we understand that these concerns can have an impact on the perception of new build homes in Scotland. We have therefore undertaken work with our members to help address many of the issues raised by the report.<sup>10</sup>

21. The Royal Town Planning Institute (RTPI) highlighted the financial pressures faced by local authorities and the need to make smarter use of resources with better use of technology and skills sharing. It warned against unintended consequences of extending verification to other organisations—

” In this vein there have been discussions for some time about seeking to merge consents for various related pre-development procedures for which local government has responsibility. This would mean that only one consent need be obtained for, for example, planning permission, building regulations, and roads development. RTPI Scotland understands that Scottish Government is in ongoing conversations with relevant stakeholders, including Heads of Planning Scotland, about how this could be taken forward. Extending powers to verify building standards to bodies other than local authorities could have the unintended consequence of making it much harder, if not impossible, to make such a change to procedures. This could represent a missed opportunity to streamline how local government discharges its responsibilities.

22. Others<sup>ii</sup> are in favour of extending verification scheme to other organisations highlighting the delays in the current process as one reason. Other reasons included that by opening the verification of building standards to competition, delays would be reduced and service levels improved.
23. The Scottish Property Federation believed that extending the verification scheme could provide flexibility and the ability to respond to increasing demands. It also said that it would welcome the introduction of a regulatory body to oversee the verification process. It explained it supported extending the verification scheme to others because—
- ” After years of budget cuts, local authorities simply do not have the capacity to respond to the demand placed on their building standards departments, an issue that has been exacerbated by the loss of experienced staff members for various reasons.<sup>11</sup>
24. In its evidence, the Scottish Building Federation (SBF) was more nuanced, suggesting a pilot scheme first. It said that there has been some ongoing discussion on this matter amongst SBF members. In particular, there is a view amongst many of its members that outsourcing building control from local authority in-house staff to approved certifiers could be an effective means of speeding up decision-making and improving consistency. SBF said it would support further work being undertaken to explore the potential advantages and disadvantages of such an approach or even to introduce a pilot to trial such an approach on the ground.<sup>12</sup>
25. In its submission, the Institute of Clerks of Works and Construction Inspectorate of Great Britain (ICWCI) warned that local authority cutbacks could mean that more independent providers could be allowed to verify building standard applications. However it would be advisable, in its view, for the independent inspectors to be under the control of a non-profit making organisation. ICWCI also considered that it is important that general inspections are carried out throughout the construction period and not only at key times.<sup>13</sup>
26. SELECT highlighted that greater consistency and application of the agreed procedural guidance would improve the service to stakeholders which ought to be achievable across the public sector and the current Certification Scheme providers. In addition, they explain that there must be measures to ensure there is greater accountability and consistency for performance. They contend that if this is not done then the case for for extending verification to the private sector will be harder to resist.<sup>14</sup>
27. In late March 2017, the Minister for Local Government and Housing appointed all 32 local authorities as verifiers for their own geographical areas under section 7 of the Building (Scotland) Act 2003<sup>4</sup>. The Minister explained that—
- ” In a departure from the appointments for 2005 and 2011, local authorities have been appointed for different periods based on their performance under the performance framework for the last appointment period.<sup>15</sup>

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ii Scottish Disability Equality Forum (SDEF), Callum Bunce and NHBC Scotland

28. As a consequence 17 local authorities with a strong performance have been appointed for 6 years, 12 local authorities with a good performance have been appointed for 3 years and 3 local authorities, with a poor performance, have been appointed for 1 year to April 2018. Those three local authorities (City of Edinburgh Council, Glasgow City Council and Stirling Council) have to address the aspects of poor performance identified following Building Standards Division visits.

29. The Minister for Local Government and Housing explained that—

” If I were not to reappoint a local authority in an area, that would not mean that I would necessarily appoint in the private sector. I could give the verification role to a neighbouring authority, for example. I will continue to look closely at all of that, including the audit that will take place in November.

Source: Local Government and Communities Committee 27 September 2017, Kevin Stewart, contrib. 99<sup>16</sup>

30. In considering the reasons provided for and against extending verification outwith local authorities, the Committee considers that the benefits of impartiality, accountability and local knowledge that local authority verification provides outweigh the benefits attributed to private sector verification. We also recognise that the potential for future streamlining of building standards consents processes could be lost if verification was extended to a range of organisations.

31. We are therefore not convinced that verification should be outwith local authority control.

32. Whilst we comment more fully on the performance of local authorities in providing verification services in the next section, we acknowledge the Minister's finding that a few local authorities will need to improve their performance by April 2018 in order for their appointment as verifiers to be extended. We therefore seek an update by April 2018 from the Minister on the performance of the three local authorities (City of Edinburgh Council, Glasgow City Council and Stirling Council) which have been asked to address certain aspects of their work relating to building standards having been rated as "poor performance".

## Performance of building standards verification

### Delay

33. As noted above, addressing delays in processing verification of building standards was one of the benefits cited by those who advocated extending verifications services outwith local authorities. The Committee heard how delays in processing building warrant applications is having a detrimental impact on developers, with Innes Associates, for example, citing regular waits of up to 12-13 weeks to receive a building warrant report. They expressed concern regarding the detrimental impact of such delays on the attractiveness of Scotland for investment. The National Housing-Building Council (NHBC) Scotland cited the experience of a NHBC builder who had benchmarked the time taken to obtain a Stage 1 building warrant from local authorities across Scotland and found the time varied from 2 weeks to 45

weeks whilst at Stage 2 it had ranged from 9 weeks to 98 weeks. They explained that in reality, such delays are encouraging builders to begin work without the proper building control consents in place. As well as being illegal, this practice raises questions of how compliance can be demonstrated or checked.<sup>17</sup>

34. NHBC Scotland was also critical of the performance of local authorities in trying to reduce delays. It said that local authorities "have not delivered on their service improvement obligation" and that "the government's own evaluation suggests that the time taken to grant warrants will actually increase".<sup>17</sup>
35. Construction firm Taylor Wimpey West Scotland also suggested that some local authority building control (BC) regimes were seeking to circumvent target response times by buying time by responding to requests with some initial comments, and following up with a much longer set of queries at a much later date. Its submission states—
- ” We tend to receive an acknowledgement within 1 week of submission, then a list of points within a further 3 week period - so 1 month from date of submission. There is evidence however of the initial list being fairly basic procedural points, then when we follow with a response, for a further longer list to be issued thereafter. It appears this method is being deployed in order to buy building control some time. Whilst some of this can be attributed to us not submitting all info up front, more often than not it down to BC wanting to comply with their 15 day response commitment (KPI) to simply rush a response ‘of sorts’ to us. There is also evidence of BC hiding behind the caveat of ‘more comments may follow in receipt of additional information’ which allows BC an opportunity to ask for more info on areas they have either not assessed, or only assessed very quickly to comply with initial 15 day response time.<sup>18</sup>
36. In its evidence, Homes for Scotland, citing Scottish Government figures, was critical of the performance of some local authority BC regimes and the delays in issuing warrants. Whilst its members’ experiences with the service was mixed, with some authorities operating more effectively than others, overall Homes for Scotland members were of the opinion "that for the amount the process costs and uncertainties of timescales and outcomes, the service provided is generally poor and deteriorating". Homes for Scotland pointed to the Scottish Government's own research (Pye Tait, 2016) which notes that "the time taken to grant a building warrant has increased 19% between the years 2013/14 and 2014/15, going against one of the main key performance indicators which aims for a year on year reduction in turnaround of building warrants".<sup>10</sup>
37. In its report *Building Stress: Overworked, stressed and stuck in the office*,<sup>19</sup> UNISON highlighted some of the causes of delays, reporting that staff in Building Standards are under enormous pressure to deliver a high quality service with the overwhelming majority (89%) who responded to their survey feeling their workload has got heavier in the last few years. UNISON reported that this was as a result of a number of causes such as dealing with more administrative issues, overwork leading to missed deadlines which then leads to dealing with complaints about missed deadlines. All of which then leads to further missed deadlines.
38. A number of local authorities highlighted the work they are undertaking to improve their performance. Inverclyde Council noted that "Service standards are already

high, with the most recent 2016 national customer satisfaction survey rating overall national customer satisfaction at 7.1 out of 10." <sup>20</sup> Highland Council highlighted that when staff resources issues mean it cannot turn around building warrant applications to meet targets, it regularly uses private verifiers or surveyors. <sup>21</sup>

39. Angus Council explained that the Local Authority Building Standards system has a balanced scorecard approach to performance management and auditing of verifiers. This approach has resulted in verifiers becoming more customer focused and engaging in the continuous improvement agenda—

” This is demonstrated by a significant number of verifiers holding the UK Government's Customer Service Excellence Standard (CSE). Indeed the Building Standards team in Angus is class leading in CSE terms, not solely across Building Standards but sector wide.

In addition national and local customer charters have been introduced across Scotland to highlight to customers the service they should expect and be given.  
<sup>22</sup>

40. Angus Council recognised, however, that there is always room for improvement and noted that verifiers are working together to try and improve the consistency of service they provide.

41. The Committee recognises the impact that delays in processing verification in building standards can have on building projects and that, although local authorities are taking action to address this, more needs to be done to ensure greater consistency of service and performance across Scotland. Ensuring building standards departments are adequately staffed is one of the mechanisms for achieving this.

42. We note that currently building standards can appoint private verifiers or surveyors during times of high demand in order to meet performance targets. We consider, however, that this approach may not be sustainable in the longer term. The Committee therefore seeks clarification from the Scottish Government of how local authorities are being supported to provide better workforce planning to ensure that buildings standards departments are staffed to an appropriate level.

## KEY QUESTIONS FOR THE PARLIAMENT DEBATE

1. **How can greater consistency and improved performance be delivered by local authorities?**
2. **What is or should be the role of the Scottish Government in improving standards in building standards verification?**

## Fees system for building warrants

43. Current building warrant and associated fees are set out in [the Building \(Fees\) \(Scotland\) Amendment Regulations 2004](#). The fees structure has not changed since 2005.
44. The Scottish Government launched a [consultation](#) on increasing these fees which closed on 9 January 2017. In launching the consultation, the Scottish Government stated that—
- ” Until now there has been a general expectation that income from fees should cover the costs of the Verification service and that the costs of Verification and the fees paid should be closely aligned..... it follows that the minimum and fixed fees are now less in real terms (by about 40%) than at the time they were introduced. There have, moreover, been significant changes impacting on the process of verification and the likely costs of verification since the fee structure was last altered.
45. Subsequently the <sup>23</sup> Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188) was laid and the Committee considered it at its meeting on 21 June 2017. It agreed to make no recommendation. This negative instrument came into force on 1 July 2017 and enables increases to fixed fees and the incremental fee steps that relate to the value of the work, and fees for work or a conversion done without a building warrant. It also increases the discounts that apply when using an approved certifier of design or construction.
46. The changes should generate £3.5 million additional fee income for local authorities.
47. The Committee received a number of comments about the proposals for fee increases, including its relationship to the performance of local authority building standards departments and the proposals for a portion of the proposed increased fee income to be shared with the Scottish Government's Building Standards Division. Some such as SELECT and COSLA were supportive of the proposed increases, especially in view that the current fees were set in 2005, with Local Authority Building Standards Scotland (LABSS) remarking that—
- ” From the introduction of the current building warrant fees in 2005, local authority verification costs have risen significantly to cover the increased technical complexity of the Building Standards, the additional inspection workload as required by the New Verification Performance Framework and for example and most recently the investment made by local authorities and ongoing investment required to support the implementation of eBuilding Standards...The building warrant and associated fees should therefore be raised to cover the recognised increased costs of local authority verification from 2005 and to fully compensate for the fee income reduction in real terms.
- 24
48. In its report [Building Stress: Overworked, stressed and stuck in the office](#), UNISON reported that "almost half (48 per cent) of respondents stated that there have been budget cuts this year and another 20 per cent stated that cuts had been severe. When asked about the last five years, 46 per cent indicated there had been budget cuts and a further 36 per cent that there had been severe cuts. The freedom of

information request indicated that there are 56 less staff working in the building standards departments now than in 2010." This, they report, has led to heavier workloads, less time on site, more time spent on administrative work by higher paid staff, missed deadlines and more time spent on complaints arising because of missed deadlines. <sup>25</sup>

49. In our online survey, just over 55% of respondents answered a question on fees, with 20% believing that the current building warrant and associated fee levels should not be changed and 35% stating that they are not at the correct level.
50. The SBF and Scottish Property Federation (SPF), for example, did not necessarily oppose a fee increase but called for it be linked to improved standards of service with SPF calling for the introduction of key performance indicators for building standards competencies. SPF explained that—
  - ” Our members feel that the proposed fees would not be value for money if the system maintained a ‘business as usual’ approach and did not use the extra injection of capital to improve response times and customer service. <sup>26</sup>
51. In their submissions, SELECT and RICS argued that the income from the increase in fees could be used to promote certification schemes or to provide for additional staff.
52. Others gave the proposed increase in fees conditional support. NHBC Scotland was concerned that it was not clear as to whether the fee increase proposed would be linked to the delivery of a higher quality service. They and others, such as ARUP Fire, highlighted that as the fees for building warrants are not ring fenced it is likely that such income could be directed to other areas of local authorities rather than building control.
53. Homes for Scotland and others did not believe that there was sufficient evidence to justify an increase in building warrant fees at this time. Homes for Scotland said—
  - ” The proposals put forward by the Scottish Government seek to incorporate the costs of Building Standards Division into the building warrant fee. The industry is not supportive of this proposal....As building warrant fees are a mechanism to support the verification service, they should not be used to fund the activities and responsibilities of the Scottish Government which should be drawn from general taxation. <sup>10</sup>
54. They and others argued that the financial and performance statistics, given to support the increase in fees, are unclear due to changes in accounting practices. They highlighted that, as they understood it, a wider range of services are provided by Building Standards Service than those solely seeking permission to build through the submission of a building warrant application.
55. Homes for Scotland commented that both the Local Authority Building Standards Annual Return (LABSAR) and the Pye Tait report on the "[Evaluation of the performance of local authorities in their role as building standards verifiers](#)" <sup>27</sup> highlight that the building standards verification service currently operates at a surplus, making a significant contribution to the overarching building control budget.

56. Taylor Wimpey West Scotland also made the point in relation to applications by volume house builders (many of which are registered with NHBC) that—
- ” ... the technical information is either STAS [Scottish Type Approval System] approved already, or of sufficient detail to demand a reduced time in assessing / processing applications. Furthermore, from speaking with some local authority building control officers it would appear much of their time is taken up dealing with householder applications, therefore it’s this area alone which may need revisited in terms of fees. <sup>28</sup>
57. Bern Balfe Architect said that the fees were too high for domestic work and stated—
- ” There is also a significant amount of time involved in dealing with warrant submissions, the cost of which has to be passed on to the client and is largely a duplication of work which needs to be done anyway for preparation of appropriate construction information. <sup>29</sup>
58. Homes for Scotland also commented on the discounts available for warrant fees observing that its members highlight that—
- ” ...there is little recognition, financially or in terms of service, of the efficiencies experienced by local authorities when dealing with warrant applications that have gone through an approved certified of design or through the Scottish Type Approval Scheme (STAS). <sup>10</sup>
59. The Scottish Type Approval Scheme (STAS) is a customer focused national approval system for house builders and developers. STAS offers approvals of standard building designs prepared by designers and developers of domestic and non-domestic projects in support of building warrant applications in Scotland. STAS can produce real savings in time in the approval process. All local authorities accept a STAS certificate as evidence of compliance of the building standards. No further checks, other than local site conditions, are made for a design which has been approved nationally. This can result in faster responses and faster approvals of building projects.
60. COSLA however highlighted that whilst there is support from councils for flexible discounting of warrant fees where this is appropriate—
- ” ... for those authorities not currently at a position of full cost recovery, discounts have to be handled carefully so as to avoid exacerbating any deficit position. <sup>30</sup>
61. In evidence to the Committee, the Minister for Local Government and Housing explained—

” the committee will be aware that I took the decision to raise fees. I have gone round the country and have said that I have allowed for that increase in fees. The Government will retain some of that money to beef up building standards centrally, and I expect the rest of it to be used to boost building standard services in local authorities. I should point out that, where some authorities are not doing so well, it is not because of a lack of fees coming in. I will continue to monitor the situation.

Source: Local Government and Communities Committee 27 September 2017, Kevin Stewart, contrib. 99<sup>16</sup>

62. In an email to the Committee, Scottish Government officials confirmed that—

” The proposals to increase building warrant fees were modelled to allow funds to be released to support running the Scottish Government's Building Standards Division (see [consultation November 2016](#)) .

Building warrant fees increased on 1 July 2017 and were modelled to provide at least £3.5 million (full year) additional revenue to local authorities. The legislative changes to provide additional fee income have allowed funds to be released to support running BSD. This is being done by adjusting the local government settlement by £1.5 million for 2018-19 onwards (and pro-rata for 2017-18 as part year).

The adjustment is allocated across local authorities using the existing agreed Building Control GAE assessment, the primary indicator being the number of Building Control Warrants provided in the annual Scottish Government GAE returns. The Building Control funding for 2018-19 and subsequent years will therefore be reduced from £5.333m to £3.833m, with the allocation based on the existing agreed assessment. In September COSLA Leaders approved the distribution of the downward adjustment to the Building Control GAE assessment.

Local authorities are appointed as verifiers for their own geographic areas and are responsible for the operation of the building standards system. The building warrant related fees are intended to cover the cost of providing the verification service and come mainly from building warrant applications, based on the estimated value of work. Local authorities collect the fees and retain 100%. The Scottish Government does not collect or receive any of the building warrant related fees.

63. The Minister confirmed at the Committee meeting on 27 September 2017 that whilst the Government has not tried to ring fence or dictate to local authorities what they should be doing, he would monitor the situation. If there is no improvement then he would discuss with COSLA whether there is a need to ring fence fee income.

64. We note that fees for building warrant and associated fees have not increased since 2005 during which time the costs of this service will have increased.

65. We note the differing views we received on whether the fees charged for the building standards verification service adequately meets the cost of providing the

service. We therefore also seek clarification from the Minister as to whether the increased fees will meet the costs of providing the service along with the evidence which supports the Minister's view.

66. We also seek clarification from the Minister on what aspects of Building Standards Division's work will be supported by this funding and the extent to which its performance of such work will be monitored, evaluated and reported on.
67. We recognise that workforce levels and improving performance in local authority buildings standards departments are to some extent dependent upon funding. On the basis of the evidence we have received to date, we are minded to recommend that such departments should be able to retain the funding they generate through fees in order to better support improved performance and consistency of service.

### KEY QUESTIONS FOR THE PARLIAMENT DEBATE

1. **To what extent should any increase in building warrant fees be commensurate with improved performance by building standards?**
2. **Should there be greater transparency of the costs and fees income for building standards services and if so, how can this be achieved?**
3. **To what extent should funding arising from fees for building standards services be retained by that service in each local authority?**

## Verification/certification process and 'reasonable inquiry'

68. The process of verifying and checking that buildings in Scotland are being constructed to the right standards and in line with building regulations was a core part of the evidence we heard. It was also an issue central to the Cole Report on the construction failings in certain schools in Edinburgh.
69. The Committee heard that the Scottish system of verification/certification is very much a pre-emptive system with the Local Authority Building Standards Scotland (LABSS) guidance entitled [Verification during Construction- Non-Domestic Buildings: Guidance to Support the Application of Reasonable Inquiry](#) <sup>31</sup> explaining that, "The work of verifiers has two main elements: checking that the building plans comply with building regulations when an application is made for a building warrant and undertaking reasonable inquiry to verify that the building work complies with the approved plans, details and with regulations."
70. In evidence, LABSS explained that all local authorities issue a construction compliance and notification plan (CCNP) which is an inspection plan tailored to the risk associated with the build. This approach is "designed to enable local authorities

to focus their attention and available resources on higher-risk projects. Reasonable inquiry under the CCNP involves targeted inspections on higher risk elements of the build for example: drainage, fire issues and structure.”<sup>24</sup>

71. The different risk criteria that are used to inform the CCNP are:

1. project or work type;
2. value of work;
3. size;
4. complexity;
5. quality of application; and
6. contractor competence.

A risk matrix is then used to define the complexity of the risk.

72. LABSS explained that in relation to a large volume build site—

” It is important that the local authority verifier engages with the developer at an early stage so that they can get an idea of how the build programme looks and can then produce a CCNP for the site, which will include random inspections—for which there could be a 1:4 ratio, depending on numbers and the size of the site. Random sampling is done. Again, that is all risk based.

Source: Local Government and Communities Committee 03 May 2017, Dave Aitken, contrib. 5<sup>32</sup>

73. The Committee heard about how the assessment of risk is informed, for example LABSS explained that—

” If it is known that there have been problems with a builder previously, the level of risk would be cranked up.

Source: Local Government and Communities Committee 03 May 2017, Dave Aitken, contrib. 48<sup>33</sup>

74. The Federation of Master Builders (FMB) also highlighted their new partnership with building control in Scotland which follows on from their partnership concordat with building control in England. Under that partnership, the FMB undertake individual inspections of every contractor every two to three years. The inspections are carried out by an external company of chartered surveyors.<sup>34</sup>

75. RICS Scotland observed that whilst businesses like NHBC would have a record of all minor and major claims found against companies, in terms of identifying other houses with similar problems the issue is not reportable to the local authorities, nor should it be.

76. RICS Scotland highlighted that there were inconsistencies in how the CCNP is used, for example—

” An officer who has a lot of experience might look at an application and, because they know the architect who will be supervising the work, will do only three visits—at the beginning, the middle and the end. A slightly more inexperienced officer might decide that they want to see quite a lot. Another officer who has a huge backlog might decide just to risk assess the application and ask for photographs. That is the type of inconsistency that exists. There is already in place a procedure whereby a document can be sent out. How that inconsistency has come about may be down to personality and experience.

Source: Local Government and Communities Committee 14 June 2017, Kenny McKenzie, contrib. 140<sup>35</sup>

77. The Cole Report on the problems in certain schools in Edinburgh highlighted the proportion of site visits undertaken in Edinburgh schools which related to drainage. It concluded—

” As one can see from the information extracted from the reports made of the visits to the PPP1 schools undertaken by building officers, a preponderance of the effort of the inspections carried out appears to be related to checking the quality of the drainage installations, with very limited if any references in site visit notes to inspecting the main elements of the structure and external envelope of the buildings. The notes of some visits made reference to checking fire-safety aspects of the works....<sup>36</sup>

78. A verifier can inspect any building work subject to a building warrant at any time during the construction process, to ensure compliance with the warrant. Following the submission of a completion certificate, the verifier usually carries out a non-disruptive inspection of the work. However, as a verifier need only make ‘reasonable inquiry’ before acceptance of the certificate, there can be circumstances where a site inspection may not be needed. For example, if the verifier has chosen to make previous inspections, these may provide sufficient assurance to inform their decision. In some cases, by the time building standards officers carry out their inspection, they may not get to see all of the elements of the build as they have been covered up by subsequent work. As LABSS explained, in those circumstances officers are going on trust in signing off the completion certificate.<sup>37</sup>

79. LABSS explained that the responsibility for ensuring that the newly built property is carried out in accordance with building regulations lies with the developer. In that regard a completion certificate is meant to prove that the developer has carried out the build in accordance with the approved plans which were signed off by the local authorities. Every stakeholder in the construction process has a part to play in ensuring compliance with building standards.<sup>38</sup>

80. The Committee heard from LABSS that in the event that following the issue of a completion certificate a property was found to be defective, any form of redress would be a civil matter between the purchaser and the builder.

81. In July 2017, the Scottish Government updated its [interim guidance](#) for site inspection and assurance on behalf of public sector clients. Six recommendations have been made to suggest that procurers should maintain a level of independent inspection of construction activities which is commensurate with the risk assessed in any individual project. This should go beyond oversight of the contractors’ quality

systems and processes, and provides some targeted independent inspection of construction activities and outputs. The Scottish Government states that an appropriate regime for individual projects will be dependent on the size and complexity of the project as well as the procurement strategy.

82. The Committee considers that a risk based approach to inspection during verification and certification is a prudent one to take when taken on an informed basis. However as we heard there can be different approaches adopted in relation to risk depending on the experience and knowledge of each building inspector, as well as risk factors being viewed differently in different local authorities.
83. Whilst we accept that assessing risk should always be informed by the specific construction circumstances, a more consistent approach to informing risk would be beneficial. We therefore endorse the Cole Report recommendation that a review is undertaken of the objectives of planned site visits undertaken by building inspectors, to ensure that these prioritise the identification and inspection of areas of highest risk.

#### **KEY QUESTION FOR THE PARLIAMENT DEBATE**

1. **Should there be a more systematic and informed approach by building standards to assessing risk, for example, notifications to Building Standards of poorly performing building and construction firms?**

### **Inspections during building, including mandatory inspections, and penalties for proceeding without warrant**

84. In our online survey, around 60% of respondents answered the question on a proposed minimum inspection regime. Just over 30% believed regulations should specify a minimum inspection regime to ensure compliance with building standards whereas around 20% did not. A number of submissions said that setting a minimum requirement would improve services but would also increase costs.
85. The Cole Report also recommended (see recommendation 7.1) that consideration be given to the practicality of extending the concept of mandatory inspections and certification of construction by approved certifiers to elements of the building that could potentially pose significant risk to users if not constructed properly and which level of inspection cannot be practically undertaken by building inspectors themselves.
86. NHBC Scotland pointed out differences in terms of the numbers and frequency of visits as part of the building warrant inspection regime—

- ” Over the last five years local authorities provide an average of 0.54 visits per building warrant issued based on 40,219 applications. For larger developments where a warrant will cover a number of houses this means that visits to individual properties will be significantly lower. In comparison NHBC carries out a minimum of 4 Key Stage inspections on every new home, this being supplemented by “frequency inspections” which are programmed on a regular cycle dependent on project risk. <sup>17</sup>
87. The Scottish Disability Equality Forum’s members all agreed that minimum standards should be set, as did Arup Fire, who explained—
- ” From our first-hand experience on projects (both during construction and post completion) that this is absolutely essential for the successful delivery of safe buildings in Scotland. Construction standards we have seen can fall significantly below the level of detail required, where contractors are not aware of the importance of certain key aspects of the build. <sup>39</sup>
88. Inverclyde and Aberdeen City Councils did not agree with a minimum inspection requirement explaining that this would remove flexibility from the system. Angus Council explained that they consider the next step in the compliance agenda is that the inspections within the CCNP should become mandatory. It was their view that—
- ” ... penalties for preceding for work, whereby no notification was given to verifiers that a building was ready for an interim inspection, should be introduced. <sup>40</sup>
89. LABSS did not believe that minimum standards should be set, stating that the national guidance already in place reduces non-compliance to an acceptable level. It pointed out that—
- ” The Verification During Construction guidance covers the minimum number of inspections and checks based on a risk based approach. Key Performance Outcome 2 (KPO 2) of the National Performance Framework relates and is reported quarterly to the Scottish Government by local authority verifiers and covers successful applicant notifications and inspections. <sup>24</sup>
90. The Scottish Building Federation said that a minimum inspection regime could be a relatively blunt instrument for ensuring compliance with building standards and is likely to impose substantial additional pressure on planning and building control at a time when these services are already over-stretched. Its view was that rather than setting blanket minimum requirements, it would be preferable to consider each project on a case by case basis and to set minimum requirements for the inspection of ongoing building works according to the individual likelihood of building faults occurring and the associated risk. <sup>41</sup>
91. UNISON reported that of those building standards staff responding to its survey, 47% felt they should be spending more time on site than in the office. UNISON commented that "Ensuring compliance requires visiting sites and it is very concerning that respondents do not feel they get enough time out on sites."

92. The Committee also heard that sometimes projects progress without the necessary inspections taking place. The Royal Institution of Chartered Surveyors in Scotland believed that the current system of inspections may well result in inconsistencies in inspections within each building standards office and across Scotland. They proposed that procedural regulations may alleviate this but that—

” ... 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. <sup>42</sup>

93. The Cole Report highlights that—

” the records provided to the Inquiry would suggest that a number of the school buildings were occupied for periods in advance of the issue of a Completion Certificate by Building Standards. The periods, in most cases, ranged from a few months to over two years. This would represent a breach of the requirements of the relevant Act, unless as provided for in the Act, Temporary Occupation Certificates were issued in relation to these schools.” <sup>43</sup>

94. We support the Cole Report recommendation 7.1 regarding consideration of mandatory inspections. We are also minded to recommend that a mixed approach to inspections is adopted whereby the current risk based approach is supplemented by required inspections at key stages of the building process. This approach could also provide greater assurance that what is built accurately reflects the consent granted by the building warrant.

95. We are also concerned to hear that, at times building works appear to progress without the necessary certification or inspections having taken place. As well as being potentially illegal this could compromise the safety of those subsequently occupying the building as it limits the ability for building inspectors to ensure compliance with the necessary building standards. We suggest that there should be a greater range of sanctions available to building standards staff to apply in those circumstances where building progresses without the necessary certification or inspection.

## KEY QUESTIONS FOR THE PARLIAMENT DEBATE

1. **Should there be mandatory inspections during building, alongside the risk based approach currently adopted? If so, when should such mandatory inspections take place and on what criteria should they be based (for example project size, innovative building materials, use of the building, use of a Clerks of Works on-site)?**
2. **Should there be penalties or sanctions for proceeding without the relevant building control warrant or subsequent inspections identified by Building Standards. If so, what should these penalties be?**

## Building completion and the role of certifiers

96. Once building work is complete, the property owner or their agent must submit a completion certificate to the verifier. A completion certificate is needed to confirm that a building has been constructed, altered or converted in accordance with the warrant and the Building (Scotland) Regulations 2004. It is an offence to submit a false completion certificate or to occupy a building without a completion certificate being accepted by the verifier.
97. The verifier must make reasonable inquiry to establish that the work complies with the warrant. If satisfied that the work complies, a verifier must accept the completion certificate. The verifier must accept or reject (with reasons) the submission within 14 days.
98. The Committee heard from the Law Society of Scotland that—
  - ” Any completion certificate always has the magic phrase “so far as can be ascertained from a visual inspection”, and that is meant quite literally. If there is anything behind the wall or underneath the floor that is not visible, the building control team cannot comment on that. As solicitors, we rely on the completion certificate as prima facie evidence that the property has been built in accordance with the regulations, but we accept that that is not 100 per cent guaranteed. There could be something that no building inspector could ascertain, because it was literally hidden from sight.

Source: Local Government and Communities Committee 14 June 2017, Ross MacKay, contrib. 12<sup>44</sup>

99. Certain approved specialist contractors, e.g. some electricians, structural engineers etc. can certify that specific elements of a building meet the requirements set out in building regulations. These are known as certifiers. Certification of these elements of a building does not replace the role of the verifier, it is simply a method of providing evidence to the verifier that those certified elements of the building are in accordance with building regulations. The Scottish Government maintains a [list](#) of approved certifiers.
100. One issue raised in the Cole Report was that there needs to be greater clarity as to the level of scrutiny of construction that the Independent Certifier role should be required to undertake and on the degree of reliance that can be placed on such certification by public sector clients in relation to assurance of build quality. Professor Cole concluded that it is vital that this role should be properly understood by staff in public sector client bodies who may only have a requirement to use these services once or twice in their careers and may have formed mistaken assumptions as to the nature of the Independent Certifier role as generally undertaken in practice.<sup>36</sup>

## Clerks of Works

101. The use of Clerks of Works as independent scrutineers of quality of construction was a key theme of the independent Cole Report into the Edinburgh School closures. Professor Cole concluded that—

” While the presence of Clerks of Works cannot guarantee the absence of defects in building construction, there is no doubt in the view of the Inquiry that the use of experienced and properly resourced high quality Clerks of Works results in a much greater likelihood of defective work being identified before it is closed in. Secondly, the Inquiry is also of the opinion that the awareness by site operatives of the presence of Clerks of Works on site can impact positively on their approach to the quality of their work. <sup>36</sup>

102. The Cole Report also highlighted the decline in the use of Clerks of Works by public sector bodies—

” It was stated by many witnesses that, in their recent experience, it was now much rarer for public sector bodies either to employ in-house Clerks of Work or to recruit them from external agencies for projects. The increasing diminution the use of Clerks of Work by the public sector was considered by many witnesses to be a real risk to quality. <sup>45</sup>

103. The Cole Report noted that, unless a separate team is appointed to do so, public sector clients sometimes do not enjoy the benefits of independent inspections of the quality of the construction work by members of the professional team representing the clients' interests. The move to Design and Build and public-private partnership types of procurement, where the role of the design team is largely determined by the contractor had, Professor Cole believed, led to the unwillingness for contractors to pay for the presence of architects and structural engineers on site to inspect the work of the contractors employing them. This has been reflected by a significant reduction over recent years in the level of this crucial activity undertaken on these types of project. <sup>36</sup>

104. Of equal concern, in his view, is the reduction by public sector clients in the direct employment or external appointment of Clerks of Works whose essential role in public sector projects has been to protect the quality of construction which represents significant investments of public funds. It was the view of the Cole Inquiry that such reductions in the core aspect of quality assurance on behalf of public sector clients is frequently a false economy. <sup>36</sup>

105. The Institute of Clerks of Works and Construction Inspectorate of Great Britain (ICWCI) explained that more recently a few companies were beginning to advertise for Clerks of Works to work directly for the building company. It was suggested that this enables such companies to better respond to any issues regarding poor building quality arising at a later date. <sup>46</sup>

106. Highland Council explained that building standards officers fulfil a different role to Clerk of Works whose role also includes checking the quality of work on site. Whilst Highland Council employ Clerks of Works for building new council housing developments such arrangements are a matter for the house builder for private sector housing developments for which the local authority is not responsible. In those circumstances, they explained that the client would be the people buying the house from the builder and so, ideally, it would be for them to employ the Clerk of Works. <sup>47</sup>

107. The Scottish Disability Equality Forum's (SDEF) members told the Committee that the verification and checking process during construction should be independent of the construction firm. One SDEF member suggested that verifiers do not normally inspect new builds and their accessibility can be as bad as older listed buildings not subject to modern accessibility requirements. Another suggested there should be more than a minimum standard regarding ongoing works. One other respondent suggested that local authorities should have a legal duty to inspect on a regular agreed basis, all work which is being undertaken in their area. Other SDEF members suggested that it should be compulsory to have a registered Clerk of Works on every major site, with legal responsibility to complete site diaries on a daily basis.
108. The Institute of Clerks of Works and Construction Inspectorate of Great Britain (ICWCI) concluded its written submission by stating that 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. Its view is that 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.<sup>48</sup> ICWCI highlighted that Clerks of Works were taken out of design-and-build contracts, although—

” Hopefully the new engineering contract 4—NEC4—will include the clerk of works in such a way that, at least, the client and the developer are aware that there is such a person as a clerk of works. Hopefully, we can get clerks of works back into the construction side.

Source: Local Government and Communities Committee 14 June 2017, Gilly Carr, contrib. 16<sup>49</sup>

109. On 17 July 2017, in a written answer (S5W-09773)<sup>50</sup>, the Scottish Government confirmed that it had "no current plans" to make a clerk of works "a legal requirement" as part of the construction process.
110. In his evidence to the Committee on 27 September, the Minister for Local Government and Housing commented that he spoke with 30 of the 32 local authorities initially to discuss the findings of the Cole Report, but which then included discussion about the Grenfell fire tragedy—

” At that meeting, and others that I have had since, it was said that public bodies that have used clerks of works on their projects have had the fewest problems with defects discovered at a later stage. It is wise for both the public sector and the private sector to look at the personnel that they have on the ground. In my opinion, having an experienced clerk of works might involve spending but will save a lot in the future.

Source: Local Government and Communities Committee 27 September 2017, Kevin Stewart, contrib. 94<sup>51</sup>

111. The Committee was struck by the comments in the Cole Report and others in relation to the positive impact of employing Clerks of Works in driving up build quality and in enabling defects to be addressed as they arise. We note the evidence we received that they are used by some local authorities and may be

increasingly used by some building companies, however, we consider that Clerks of Works should be used more often than at present.

112. We therefore recommend that consideration should be given to ensuring that public sector organisations employ Clerks of Works in relation to certain types of public sector projects such as those which have significant costs, utilise more innovative building techniques or products or which will subsequently provide large scale accommodation.
113. In relation to private sector projects, we consider that Clerks of Works should be employed on projects of scale.

## KEY QUESTIONS FOR THE PARLIAMENT DEBATE

1. **Should there be Clerks of Works appointed for public sector construction projects and if so, which projects should they be required for?**
2. **Should Clerks of Works be required in relation to private sector projects and if so, how can this be achieved, in whose interest would they act and for which types of project should they be used (for example high volume housing building)?**

## Accountability and the responsibility of builders and construction firms

114. One of the key conclusions from the Cole Report was that it was insufficient for public sector clients, with a responsibility to protect the safety of the communities they serve, to rely on the quality assurance processes of contractors for confirmation that key aspects of the building impacting on the safety of users have been properly constructed.
115. Professor Cole noted that this transfer of risk from the client to the contractor was further undermined by the lack of an appropriate level of independent scrutiny. He described this transfer of all risk as "unachievable".<sup>36</sup>
116. COSLA argued that building regulation could be repositioned as a corporate responsibility for local government. In its view, there is an argument that accountability for service could be improved if local government had statutory responsibility for all aspects of building regulation rather than the current system where local authorities are appointed by Scottish Government to act as verifiers but retain responsibility for enforcement.<sup>30</sup>
117. The Cole Report highlighted the role of procurement and contracts in ensuring compliance with specification. The traditional model had changed from one where the client generally employed the design team to separately design the project and to provide independent scrutiny of the performance of the contractor selected—

” With the increasing adoption over recent years by the public sector of other models of procurement under which the design team is employed, and their terms of employment determined, by the building contractors, the level of independent scrutiny of construction has been significantly reduced.

118. The Cole Report made a number of recommendations in relation to procurement including—
- ensuring public bodies have adequate access to a level of expertise and resources that allows it to act as an 'intelligent customer';
  - due diligence undertaken at an appropriate level to confirm that the requirements are actually delivered in accordance with the terms of the contract;
  - ensuring an appropriate level of independent scrutiny (including in areas of self-certification by others and when they are being designed and constructed) and that they fulfil their duty of care to the provision of a safe environment; and
  - an informed approach as to how to optimise the quality of design and construction into the procurement of public buildings.<sup>45</sup>
119. In oral evidence to the Committee LABSS highlighted that every stakeholder in the construction process has a part to play in ensuring compliance with building standards. They also suggested that as part of a holistic review of building standards, procurement should be examined. The role of contracts in quality assurance was also highlighted by, for example, ICWCI who observed that the new engineering contracts, in particular, could have a role in requiring Clerks of Works to be appointed.
120. Some of the evidence we received commented on the merits of a statutory scheme to redress faults in buildings after construction and who should be liable for these problems. Much of that evidence focused on accountability of and redress mechanisms for those privately purchasing new build houses.
121. The City of Edinburgh Council made reference to practices in the private sector market where many house builders use sub-contractors and have very few directly employed construction workers. The Council noted that—
- ” The housebuilding industry needs to be educated to take more responsibility for its actions. [...] The responsibility is delegated to a company that may prove to be less accountable or have a lower vested interest in the fully finished house. In other manufacturing industries a component provider has to provide traceability of their product. In the event of product failure, the main manufacturer can get to the root cause of the problem, remedy the fault, identify other products that may develop the same fault and take steps to quickly eradicate any future occurrences. Greater accountability and traceability should be introduced to encourage individuals to take personal responsibility for what they build or what they commission to be built for them. It should not be up to the verifier to check every aspect of building work.<sup>52</sup>

122. LABSS highlighted that the new housebuilding sector appears to be uniquely problematic when considered against the wider majority of building standards applicants. In this circumstance it is the owner who is responsible for certifying and supervising the work as necessary to properly submit the completion certificate. Whilst verifiers roles are to approve building warrants and make inspections and checks to protect the public interest, owners are expecting assurance and warranties to protect their private interest beyond that which is more properly a matter of consumer protection, rights and warranty.
123. LABSS highlight the [Report from the Commission of Inquiry into the quality and workmanship of new housing in England](#) which recommended the setting up of a New Homes Ombudsman to mediate between consumers, their builders and/or warranty providers and to be funded by a levy on the sector.
124. Bern Balfe Architect supported a statutory redress system particularly for large scale new developments. Similarly, Victor Palombo, who was also in favour of a statutory system of redress, argued—
- ” Warranties e.g. NHBC are restrictive and limited to damage only even where a property significantly does not meet NHBC’s own building industry standards. In effect what this means is that the individual can be left with a property which will never meet building industry standards with these deficiencies having to be disclosed on a home report. The individual has to suffer any potential loss of value in these circumstances with the builder and NHBC under no obligation to redress. <sup>53</sup>
125. Ross MacKay from the Law Society of Scotland highlighted the example of purchasing a flat in a modern block where it is quite common that factors or managing agents will seek a monthly payment from owners to go into a sinking fund to deal with future maintenance—
- ” It may be that some sort of fund like that could deal with what I think are still fairly rare cases of serious structural defects that are not picked up by builders or insurers and slip through the net. If there was some sort of fund there to deal with these cases, that might be an appropriate mechanism, rather than the statutory employment of third parties.
- Source: Local Government and Communities Committee 14 June 2017, Ross MacKay, contrib. 94<sup>54</sup>
126. Those who were not in favour of a statutory system to provide redress referred to the current system of self-regulation and the Consumer Code for Homebuilders which applies to all new private home-buyer reservations and contains 19 requirements and principles which home builders must meet in their marketing and selling of homes and their after-sales customer service. In response to this, NHBC Scotland linked this to the previous question on extending verification to organisations other than local authorities and said—
- ” By allowing NHBC to verify building standards in Scotland, home owners could benefit from added consumer protection through linked inspection and insurance and warranty cover and would therefore have a system of redress.

127. Homes for Scotland (and others such as Whiteburn Projects Ltd), referring to the Consumer Code, said—
- ” It provides an independent dispute resolution service for home buyers who believe their builder has failed to meet the requirements of the Code. This includes, amongst other items, the provision of information of the standards to which the home is being built (e.g. relevant building regulations, planning conditions and home warranty body technical requirements) during prereservation, reservation and pre-contract periods. The Code applies to complaints arising and made within two years of the date of legal completion of the first purchase and covers all home builders registered with the UK’s main new home warranty providers (NHBC, Premier Guarantee and LABC Warranty).<sup>10</sup>
128. RICS told us that given there may be a need for redress, this must indicate problems with the current system whereby new houses can be built and sold while not meeting standards and consideration should be given as to why this is happening. It also told us—
- ” 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.<sup>55</sup>
129. UNISON and the City of Edinburgh Council both agreed that any system of redress should be designed to focus on the builders and contractors of the new houses. Elizabeth Gordon told us—
- ” If building regulations were more stringent and the level of inspection was increased before habitation certificates were issued there should be no need to provide redress. But as there will always be times when materials fail or mistakes are made a new statutory system should be looked at but it needs to have the power to look at the whole building and not a small isolated area.<sup>56</sup>
130. We also heard calls from homeowners for redress where work undertaken to adjacent properties did not conform to the building warrant and/or building standards requirements, yet were granted completion certificates – effectively preventing any opportunity for enforcement action.
131. The Law Society of Scotland highlighted that for private property purchases a lot of builders use a standard contract which does not require much in terms of complying with planning permission and building regulations—
- ” ...a consumer who buys a new-build property does not have a building contract other than, at most, a one-line phrase saying that the builder will build a house.
- Source: Local Government and Communities Committee 14 June 2017, The Convener, contrib. 23<sup>57</sup>
132. The Law Society of Scotland then explained that there has always been a reluctance to impose a standard contract by legislation and that whilst smaller

builders might use one, national house builders use their own bespoke contracts and are fairly reluctant to change them at all. They suggested—

” ...that consumers require an element of protection in terms of a simple warranty, and builders have a duty to build in accordance with the regulations and to a reasonable standard.

Source: Local Government and Communities Committee 14 June 2017, Ross MacKay, contrib. 30<sup>58</sup>

133. They were supportive of the suggestion that standard missives, which set out the legal cover people might have if issues arise or how defects or disputes are handled, might help address this issue.
134. Angus Council believed there was merit in a statutory system however it had major concerns and said that further research should be carried out before introducing any such scheme. It stated—
- Work should be carried out to determine whether house buyer’s issues relate to building regulations or workmanship;
  - Insurance issues for local authority verifiers would have to be ascertained; and
  - Such a system could not be introduced without a more robust and mandatory regime being introduced in respect of site inspections. <sup>59</sup>
135. The Minister for Local Government and Housing confirmed that three priority areas in relation to the procurement of large public sector construction contracts would be taken forward following a summit with contracting authorities, senior industry representatives, construction related professions and the Fair Work Convention.
136. Those three areas are:
- to actively promote quality assurance by reviewing and adapting tendering, evaluation and on-site management practice placing quality assurance alongside site health and safety;
  - to define clear personal and professional responsibilities of those commissioning, procuring, delivering and managing public works projects;
  - to further develop work already started to ensure that the appropriate skills, experience and awareness are in place in public bodies, construction firms and their sub-contractors to deliver the built environment. <sup>60</sup>
137. The Minister then confirmed that [interim guidance](#) had been issued in July covering site inspection and assurance which highlights the role of the Clerks of Works in the traditional approach to procurement. <sup>61</sup> Contracting authorities, industry and Professor John Cole were all consulted in the development of the guidance.
138. In relation to public sector building projects, we consider that procurement can play a greater role in providing greater clarity on the roles, responsibilities and accountability of those involved.

139. Buying a new build house will, for many people, be the most significant purchase in their lifetime. It is therefore understandably distressing for homeowners when the building warrant standards are not met in relation to the building of their home or in renovations to nearby properties.
140. We consider that new build purchasers should receive more support and information on the process of buying a new build home including:
- the role of building standards in assessing compliance with building regulations (rather than directly assessing the quality of the work);
  - their rights and responsibilities in terms of how to reassure themselves regarding build quality; and
  - what to do in the event of defects or disputes arising in relation to their new build home.
141. We therefore recommend that the Scottish Government considers ways in which this additional support can be provided including through:
- more standardised missives or contracts;
  - enhanced consumer advice and support;
  - working with local authorities to more clearly articulate the role of building standards verification and certification; and
  - access to an ombudsman to mediate when disputes arise.

## KEY QUESTIONS FOR THE PARLIAMENT DEBATE

1. **Where should risk lie within a contract for the construction of a home or public building?**
2. **Should there be some form of statutory redress scheme?**
3. **How can the practice of increased reliance on sub-contractors and the consequential blurring of accountability be avoided or reduced?**

## New build warranty/insurance companies

142. During our inquiry, we heard about the range of insurance companies which may provide people with consumer protection in relation to privately purchased new build properties. Other services provided by the same companies may include verification services, registering builders and assessing their degree of competency and financial robustness. NHBC is one such company (amongst others) which has a market share of approximately 80% of all new homes registered in the UK.
143. The Committee heard from NHBC about the services they provide to both home buyers and builders. In England and Wales, NHBC provide verification of building

standards services. They are also an insurance company and explained to the Committee that they are the only self underwriting warranty organisations operating in the UK. They provide a range of insurance products that, in general terms, offer a ten year protection to consumers who purchase new homes. They also maintain a register of builders who are checked and vetted by NHBC as being technically and financially competent. Registering with NHBC enables builders to provide their clients with the NHBC insurance service and, as part of that, structured on-site inspection is undertaken on every house covered by the warranty. Builders, who meet NHBC standards, pay an insurance premium to NHBC which allows the 10-year insurance policy to be provided to those who buy their houses.

144. NHBC explained that, as an insurance company, it responds to claims or complaints that are made against its policy by the individual policy holder. Whilst in the case of a block of flats an investigation into a potential building defect or structural issue might extend to common areas, in relation to individual properties it would tend to act only in relation to the individual property. It would not usually look at other properties to see if similar issues have arisen nor would it see its duty as being to notify local authorities where defects or issues are identified in the new build home.
145. NHBC explained that as an insurance scheme it only provides its 10-year insurance policy to those new build properties built by builders on its register.

146. Warranty and insurance companies can provide new home buyers with additional assurance should they buy a new build property from a relevant registered builder. As such they fulfil a dual role - providing assurance to new home buyers that they have a potential redress mechanism should a defect or issue arise with their new home, whilst also enabling those builders who meet their competence standards and who pay a premium for the insurance to then provide this additional assurance. This dual role can, the Committee heard, occasionally lead to new home buyers confusing what is a private insurance policy with other local authority or government building inspection services.
147. We also note that organisations which undertake checks and inspections of relevant registered builders during construction of new homes play a role in driving up building quality and contribute towards improving skills in the construction sector.
148. We suggest, however, that they could do more in terms of addressing significant defects which have been caused by their registered builders in one property and which may be present in others.

#### **KEY QUESTION FOR THE PARLIAMENT DEBATE**

- 1. How can greater clarity be provided about local authority or government based inspection services as compared with new build warranty/insurance companies?**
- 2. Do you agree that companies providing warranty/ insurance services as well as builder vetting and inspection services should be more proactive in**

**rectifying significant defects accepted as a defect in one home but which might be expected in other similar homes? If so, how can this be achieved?**

## Skills

149. A shortage of appropriately trained and experienced staff was cited by some as contributing to delays in obtaining building warrants and to undermining compliance with building standards.

150. In its evidence, Jim Gilmour from the FMB and others said that a shortage in technical skills currently extends across the construction industry and equally affects Scottish local authority building control departments. Jim Gilmour from the FMB commented on the potential knock on effects of the skills gap—

” The skills gap is really hitting everybody at the moment. I was on the UK board for the Construction Industry Training Board for quite a while, and we found quite a dip in proper training. This is an important point: down in London, they wish to cut apprenticeships to two years. My question to the people in London was, “If you had a £20,000 kitchen, would you let a young two-year apprentice loose on all your marble worktops and kitchen units?” The 100 per cent answer was no.

Source: Local Government and Communities Committee 03 May 2017, Jim Gilmour, contrib. 214<sup>62</sup>

151. Bern Balfe Architect said that “more training is required for young architects in the reasoning behind, and correct interpretation of the building regulations”. His view was that perhaps “a stronger requirement to demonstrate understanding and proficiency before qualification would be worth considering”.<sup>63</sup>

152. RICS Scotland said that more needed to be done to promote building standards as a career choice. Its submission states that—

” 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. 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.<sup>55</sup>

153. Highland Council observed that succession management by local authorities seemed to have “fallen off the radar” to the extent that apprentices and trainee surveyors seem to be a thing of the past.

154. In his report, Professor Cole said—

” The evidence to the Inquiry from several experienced sources suggested that there is an increasing shortage of essential skills and/or de-skilling in the construction industry which is impacting on its ability to deliver and ensure the required quality of construction.

Three particular areas were identified where a combination of a lack of funding, lack of appropriate training courses and lack of recognition of the level of requirement has led to serious skills shortages and difficulties in recruitment. The three areas were:

Bricklaying;

Clerks of Works; and

Building Standards Inspectors<sup>36</sup>.

155. The Minister for Local Government and Housing acknowledged that—

” We need to promote, in conjunction with the construction industry itself, the trade and the message that entering construction can lead to a good career.

It is disappointing in some regards that smaller building companies have more apprentices than some of the larger ones. I encourage the larger construction companies to look at workforce planning and take on more apprentices. My colleague Jamie Hepburn has had a number of discussions with the Construction Industry Training Board and others about apprenticeships and issues relating to getting folk into the construction industry.

Source: Local Government and Communities Committee 27 September 2017, Kevin Stewart, contrib. 89<sup>64</sup>

## KEY QUESTION FOR THE PARLIAMENT DEBATE

1. **What steps are necessary to increase the level of skills in building standards and address the suggested shortage of essential skills and/or de-skilling in the construction industry?**

# Fire safety and the follow-up in Scotland after Grenfell Tower

156. As indicated in the [introductory section](#) of this report, this Committee's inquiry into building regulations in Scotland was primarily driven at the beginning by concerns about the construction and verification process mainly in the private housing sector, and questions about the redress for faults that were found by house-owners after construction.
157. The inquiry's remit was then extended to consider some of the issues that arose in relation to buildings regulations and the construction process as a result of the problems found initially in certain schools in Edinburgh, which led to the publication of the Cole Report.
158. Then, on 14 June 2017, the tragic events at Grenfell Tower led to a Scottish Government review of public buildings in Scotland such as tower blocks, university accommodation, hospitals and health centres, schools etc. for any evidence of use of similar types of cladding and fire safety more generally. As a consequence, the Committee agreed to extend its current inquiry to cover any issues raised by the Scottish Government's review.
159. **All members of the Committee reiterate their thoughts and condolences with those that lost their lives as part of the Grenfell Tower tragedy and to the families and friends of those affected. The Committee also pays tribute to the emergency services and others who did so much to help on the day and thereafter.**
160. The events in London led the Scottish Government to form a [Ministerial Working Group](#) chaired by the Cabinet Secretary for Communities, Social Security and Equalities, Angela Constance MSP with Minister for Local Government and Housing, Kevin Stewart MSP and the Minister for Community Safety and Legal Affairs, Annabelle Ewing MSP. This group is overseeing a review of building and fire safety regulatory frameworks with an initial focus on high-rise domestic buildings (a high-rise domestic building is any domestic building with a storey height of more than 18 metres above ground).
161. In addition a wider range of measures to enhance and strengthen building regulations, enforcement and compliance as well as fire safety will be considered through two working groups:
- Professor John Cole will chair the review of enforcement and compliance; and
- Dr Paul Stollard will chair the review of fire safety in building standards.
162. The FBUS questioned the membership of the Ministerial Working Group commenting that—

” Through the general secretary of the Scottish Trades Union Congress, Grahame Smith, the Fire Brigades Union requested a seat on the ministerial working group, but our request was refused because it is an internal ministerial working group. The Scottish Fire and Rescue Service sits on the group, which is absolutely appropriate, but we would prefer to have a seat at the table, too.

Source: Local Government and Communities Committee 13 September 2017, Denise Christie, contrib. 45<sup>65</sup>

163. The Ministerial Working Group confirmed that checks undertaken by local authorities and other public sector organisations had confirmed that:

- No Aluminium Composite Material (ACM) cladding had been identified on high-rise social housing, schools, universities and colleges;
- No ACM cladding has been identified on universities and colleges however Abertay teaching building investigations are underway;
- No high-rise domestic buildings owned by councils or housing associations have used ACM cladding;
- Thirty-one local authorities had reported that no private high-rise housing had ACM;
- 14 local authorities have reported that a type of ACM which can be used appropriately has been used on a small number of low-rise schools. Checks are currently being carried out by local authorities and the fire brigade to ensure that all of these have been fitted in accordance with building regulations;
- Care home investigations had been completed; and
- The Scottish Funding Council had commissioned a contractor to undertake checks of further education and higher education student accommodation. <sup>66</sup>

164. Additionally, the [Ministerial Working Group](#) confirmed that:

- Building standards systems and regulations for high-rise domestic properties in Scotland means the type of product used on Grenfell Tower should not be used in their cladding systems;
- All health boards have confirmed that none of their buildings use the cladding type reported to have been used on Grenfell Tower;
- ACM cladding found on a halls of residence in Edinburgh is being removed as a precaution and officials are keeping in close contact with the City of Edinburgh Council and Edinburgh Napier University to understand more fully the reasons behind why this material was used;
- In some controlled circumstances specified by Scottish building regulations, ACM can be used as part of the cladding systems of other buildings. These building regulations specify that those cladding systems must meet the relevant technical requirements applicable in each case; and

- The group discussed its work plan including a fire safety campaign and an expedited consultation on standard requirements for smoke and fire detection in all high rise domestic properties.
165. At its meeting on 20 September 2017, Glasgow City Council (GCC) confirmed that ACM type cladding had been identified on some private high-rise buildings. The Scottish Fire and Rescue Service (SFRS) confirmed that 57 private high-rise buildings had been identified as having some type of ACM cladding of which the SFRS had already visited 42. The other 15 buildings were planned to be completed by 28 September 2017.<sup>67</sup>
166. On 10 October, the Ministerial Working Group confirmed, in a letter to the Committee, that 24 private high-rise domestic buildings in Glasgow have ACM in their cladding systems with the status of 1 further building yet to be determined. GCC have decided that 22 of these buildings are low risk as the extent of ACM is limited. All have received a SFRS operational assurance visit and no cause for concern in terms of the fire safety of the buildings has been identified. The remaining 2 with extensive coverage required further testing to establish the type of ACM. It was subsequently confirmed that the ACM is a PE type - a lesser fire resistant type of ACM.
167. As a result a range of fire safety measures were put into place at these 2 buildings such as an increased response weight by SFRS and increased site patrols as interim measures. These measures will remain until agreement can be reached with owners and factors on the removal and replacement of the material used in the cladding system and a satisfactory conclusion is reached.<sup>68</sup>
168. On 16 October, GCC wrote to the Committee and confirmed that panels at these two buildings had failed tests and so presented an increased risk. The fire risk mitigation measures put in place at these two buildings meant that there was no need for them to be evacuated. Glasgow City Council was arranging a meeting with the building owners to review the recent events and to discuss options for remediation.<sup>69</sup>
169. The Minister confirmed that more than 1200 visits from SFRS have taken place and over 900 inspections have been carried out since the Grenfell tower fire. In addition 60,000 fire safety leaflets have been distributed to residents. The Ministerial Working Group has also commissioned a targeted fire national fire safety campaign for high-rise domestic buildings to be launched shortly.
170. The SFRS confirmed that, along with the Fire Industry Association and the Buildings Research Establishment (BRE), research has been commissioned specifically on what SFRS can do to better target the provision of fire prevention information at those people most at risk, provide bespoke and innovative ways to reduce the risk of their having a fire, and improve their chances of surviving if they happen to have one.<sup>70</sup>
171. On 13, 20 and 27 September the Committee heard oral evidence from a range of organisations and the Scottish Government in relation to fire safety in high-rise buildings. Details of who gave evidence, their written and oral evidence can be found on [the Committee's webpage](#).

172. A number of key themes arose in that evidence which are summarised below.

## Inspection of high rise buildings

173. The Committee heard about the current approach to fire safety inspections of new and high rise buildings.

174. In relation to new buildings, the Fire Brigades Union Scotland (FBUS) commented that there is no specific hand-over process for new build homes between building control and the fire and rescue service. They explained that—

” Very often, buildings are partially occupied before they are completed. Other times they are completed but occupancy is delayed or occupancy builds up over time. As a result, the fire and rescue service frequently do not know that a building has in effect been passed to them from building control. <sup>71</sup>

175. The FBUS suggested that Scotland should adopt a system that is used in other parts of the world whereby a building may not be occupied until all relevant enforcing authorities have undertaken a thorough inspection of the building to make sure that all safety/fire safety measures are as stated in the plan. This process could be further simplified—

” ...if, during that period, the building contractors either invited the fire service in during each stage of the process or took pictures behind walls and ceilings—areas that the fire brigade finds it difficult to reach.

Source: Local Government and Communities Committee 13 September 2017, Denise Christie, contrib. 14<sup>72</sup>

176. In responding the Minister set out the role of Scottish Fire and Rescue Service (SFRS) as consultees on warrant applications for certain categories of buildings. The Minister noted that currently the SFRS are not responsible for or involved in, the verification process, however, going forward the Ministerial Working Group will—

” ...consider as part of the review of building standards fire safety the option to broaden SFRS's role in the verification of buildings prior to the issue of a completion certificate. <sup>73</sup>

177. The SFRS explained that currently, following occupation of a high-rise building, quarterly operational intelligence and reassurance visits are undertaken to provide residents with reassurance but also to ensure that fire crews have sufficient access and are familiar with the common areas. During these visits—

” We look at the integrity of fire-resisting doors, the clearance of the stairways and the presence of rising mains and fire lifts, but we do not look at other aspects that would be looked at in a fire safety audit.

Source: Local Government and Communities Committee 27 September 2017, David McGown, contrib. 42<sup>74</sup>

178. The Scottish Federation of Housing Associations (SFHA) explained that housing associations commission fairly regular fire risk assessments from external providers to look at properties and highlight any issues that require to be rectified. SFHA, in

responding to a Committee suggestion, confirmed that they would support unannounced fire safety inspections as providing reassurances to tenants about fire safety standards.

179. The FBUS also called for the Ministerial Working Group work to be expanded beyond looking at cladding to also include a one-off intrusive inspection of high rise domestic properties in Scotland. Similar to that carried out by London Fire Brigade following the Grenfell fire, such inspections involve a detailed look at the safety of the building such as fire doors, the smoke detectors, the heat detectors and areas that have been impacted by maintenance, repair or redevelopment.
180. The FBUS recognised that such an exercise will be time-consuming and costly. However by proactively inspecting buildings the FBUS contend that a more comprehensive picture of any wider fire safety concerns would be established, enabling early identification other potential safety risks. The SFHA also supported a one-off intrusive inspection exercise to provide reassurance to tenants.
181. In considering the FBUS call for intrusive inspections, the Minister explained that, unlike the situation in England, SFRS currently have no legislative powers to undertake any form of formal fire safety inspection within high-rise domestic premises. SFRS also do not have the expertise or competence to scrutinise building materials, fire separation or structural integrity of domestic high rise buildings.
182. The Minister, however, confirmed that the Ministerial Working Group will—

” ...consider the role of the SFRS in assessing fire risk in high rise domestic buildings as well as a national standards assessment. This will encapsulate the points raised by the FBU to the Committee. <sup>73</sup>

183. The FBUS expressed concern about the impact of cuts to fire safety inspection officer numbers across the country. They cited a Freedom of Information request to the Scottish Fire and Rescue Service which identified that Scotland has lost 24% of its 'uniformed' fire safety inspectors since 2013/14 (from 89 to 68). They explain that this may result in such officers prioritising action in relation to more significant breaches of legislation over other lesser breaches due to pressures on their time. <sup>71</sup>

184. The Scottish Fire and Rescue Service confirmed that—

” ...at the start of the Scottish Fire and Rescue Service, there were 89 uniformed fire safety enforcement officers. This year, we have 73 posts, five of which are currently being filled. We also have 13 specialist non-uniformed auditing officers, who carry out the same role as our fire safety enforcement officers. Our focus is on the work of those officers and our non-uniformed colleagues and the outcomes of that work.

The number of audits has remained stable over that period. We carry out upwards of 9,000 audits in relevant premises every year. More importantly for us, through those audits we are trying to achieve a fall in the number of fires in non-domestic premises. In the first quarter of this year, the number is at its lowest since the start of the Scottish Fire and Rescue Service.

Source: Local Government and Communities Committee 27 September 2017, David McGown, contrib. 108<sup>75</sup>

## Testing of products

185. The Committee explored the way in which materials and building systems are tested to ensure that they meet fire safety standards. The Royal Institution of Chartered Surveyors in Scotland (RICS) explained that—

” A lot of what is built has used materials that have passed tests. Manufacturers go to specialist testing centres and have the materials tested, and they describe them in their literature as combustible, of low combustibility or non-combustible. That classification is determined by a BSI standard 476 fire test that should be carried out in a lab on a rig to rigorous standards.

Source: Local Government and Communities Committee 13 September 2017, Kenny McKenzie, contrib. 24<sup>76</sup>

186. RICS, however, highlighted concerns regarding products previously deemed as non-combustible subsequently being re-tested. The manufacturers are finding some of these materials have now moved from class 0 (the non combustible class) to class 1 where the material has limited combustibility.

187. In a letter to the Committee, RICS explained that—

” There has been ongoing testing of some products that were previously rated as Class 0, that have now been “downgraded” to Class 1 following further testing. This could have implications on some buildings across the UK, but it may be some time before a clear and comprehensive understanding of the current situation can be drawn.

The reason being that whilst some manufacturers have recently recalled or withdrawn some of their products (following retesting which indicated they failed to achieve the ‘Class 0’ fire rating, which covers resistance to surface spread of fire), other product manufacturers have yet to report the results of such retesting and analysis.

Indeed, RICS understands that the Department for Communities and Local Government (DCLG) recently published updated guidance and requested BRE Global contact all their customers who had tested and achieved BR 135 classifications for their external cladding systems.

The table produced by BRE, which will continue to be upgraded, summarises the generic components included within cladding systems, but only “where permission to publish details of a cladding system has been granted by the customer”.

188. Glasgow City Council suggested that although professionals consider BR 135 (Guidance on Fire Performance of external thermal insulation for walls of multi-story buildings) as robust a test as is possible the challenge with any testing regime is that it is conducted in laboratory or factory condition which may not replicate how the material or product is built on site.<sup>77</sup>

189. A number of witnesses (such as SFHA and RICS) suggested that any review or consideration of fire safety should not work against or conflict with energy efficiency standards. FBUS highlighted that sometimes the demand for better thermal

insulation is driving innovation in the construction industry but that sometimes the best insulation materials are also easily ignited.

190. In a letter to the Committee, the Minister explained that in Scotland all building products must meet the functional requirements (standards) of Schedule 5 of the Building (Scotland) Regulations 2004, as amended. This regulation implements relevant European legislation and building standards technical handbooks set out further guidance to support the standards. There are several independent product certification schemes within the UK and elsewhere which may be a further source of information on product performance. In the UK, most independent certification bodies are accredited by the national UK Accreditation Service (UKAS). UKAS is independent of government but is sponsored and funded by them to undertake public interest activities.<sup>78</sup>
191. FBUS raised concerns that funding for research into combustible materials (such as new materials coming onto the market) should be made available. The Minister explained that product testing and certification bodies are generally funded from fees charged to customers e.g. construction product manufacturers.<sup>78</sup>

## A national inventory of high rise buildings

192. The Ministerial Working Group confirmed that it has commissioned an inventory of the design of high rise domestic building in Scotland in order to give an overview of the types of high rise blocks, their construction and an understanding of their existing fire safety measures. This will provide a better understanding of how further improvements to fire safety in the existing stock can be made. It aimed to:
- determine the active and passive fire safety measures present in existing high rise domestic buildings;
  - inform future thinking about retrofit of sprinklers or alternative measures;
  - determine if the existing structure has been over clad using an External Wall Insulation System (EWI); and
  - where over cladding has been carried out determine when and what type of over cladding system has been used.<sup>73</sup>
193. COSLA considered such an inventory as useful. The Association of Local Authority Chief Housing Officers, however, highlighted that whilst local authorities would have a role in the maintenance of and information provision for that database, who owns the buildings and who administers the database are two issues that require consideration. In particular—

” ...it is worth reflecting on the responsibility of owners, property managers and factors of private properties to know their buildings and giving them specific responsibility for making that information public on such a database... Some of these buildings go back to the 1990s or the 1980s or whenever—that particularly applies to high-rise buildings in urban areas. Many such buildings are in private ownership or managed by private property agents. It is worth reflecting on what responsibilities owners or their agents would have to update such a database.

Source: Local Government and Communities Committee 20 September 2017, Michael Thain, contrib. 69<sup>79</sup>

194. In a letter to the Committee the Minister confirmed that—

” The commission for this work was publicised on 5 October and once the work is complete the Ministerial Working Group (MWG) on building and fire safety will consider how the findings can be used to best effect going forward. This will include considering the merits of such an inventory being regularly updated, who may be best placed to do that and what the longer term aim of that should be. As this work progresses there will be opportunities for stakeholders to share their views on this with the MWG. <sup>80</sup>

## Alterations to properties

195. Both the Scottish Federation of Housing Associations (SFHA) and the Fire Brigade Union Scotland (FBUS) highlighted concerns about subsequent renovations to buildings reducing the fire safety precautions in buildings. The often cited example of this was the replacement of fire doors with doors that are not fire rated. The SFHA highlighted this as a particular issue in mixed tenure high-rise buildings where owner occupiers have purchased a formerly socially rented home.

196. SFHA explained that common housing quality standards might assist to addressing this as they would enable action to be taken against private owners to ensure they maintain the fire safety measures of their property particularly in mixed tenure buildings. SFHA added that—

” A lot of our members and others in the private sector have real issues with tenements falling into disrepair and not being able to effect repairs or improvements to common parts. Having a common housing quality standard for all tenures would help with that. It would also help where the Government sets energy efficiency standards and social landlords or even private owners who want to improve their properties cannot do so because they cannot get other owners to agree. That is our proposal.

Source: Local Government and Communities Committee 13 September 2017, David Stewart, contrib. 125<sup>81</sup>

197. RICS also highlighted that compared with privately let housing, where the safety and building standards legislation is very strict, the obligations on public-let properties are less onerous. The Minister also observed that there is now much better regulation in the private tenanted sector such that the social rented sector

and owner-occupiers now need to catch up. The Scottish Government has recently launched a consultation on fire and smoke alarms in Scottish homes. This consultation proposes extending the current minimum safety standards in private rented housing to all other tenures as the Scottish Government believes that where possible housing standards should be consistent across tenures.<sup>82</sup>

198. The Committee welcomes the establishment of the Ministerial Working Group and does not intend to use its inquiry to replicate its important work. Rather, the Committee will monitor its progress and periodically take oral evidence from Scottish Government on the outcomes of the Ministerial Working Group's planned activities.
199. The Committee welcomes the Scottish Government commitment to keep it informed on the developments in the work of this Group and would seek, in due course, confirmation of its findings and recommendations or conclusions reached.
200. We acknowledge the work of the Government, local authorities, SFRS and others such as housing associations, the NHS and private sector to quickly investigate and then reassure residents, and building users of the safety of domestic high rise and other public buildings in Scotland. Given this, it is all the more regrettable that the public disclosure to this Committee by Glasgow City Council that ACM type cladding may be present on private high rise domestic buildings in Glasgow was not better managed such that the relevant residents and SFRS received this information first.
201. We welcome the additional fire safety visits undertaken by SFRS, as well as their and others efforts to inform residents, particularly the most vulnerable, about fire safety in their homes.
202. The Committee welcomes the evidence we received of the close working relationship between many social landlords across Scotland and the SFRS in terms of the fire safety in the high rise properties. It also welcomes the quarterly operational reassurance visits conducted by the SFRS. However the Committee is sympathetic to both a national standard assessment process in relation to high rise fire safety and the conducting of unannounced inspections by the SFRS. The Committee welcomes that the Ministerial Working Group will look at these matters and would further ask that in doing so it considers the FBUS's call for a 'one-off' intrusive inspection of high rise domestic buildings.
203. We note that under the Building (Scotland) Regulations 2004 high rise domestic buildings must now be designed and constructed in such a way that in the event of a fire, fire growth is inhibited by an automatic fire suppression system. During this inquiry there were calls (such as from the FBUS) for all high rise domestic properties to be fitted with fire sprinklers. We note the Minister's comments that the review of fire safety and buildings standards, and the Ministerial Working Group will look at this issue.<sup>83</sup>
204. The Committee welcomes the national inventory of high rise domestic buildings in Scotland and notes the Ministerial Working Group will give consideration to the merits of such an inventory being regularly updated. The Committee believes

there is a powerful case for such an inventory to be a living document which is regularly updated and can be speedily accessed when required. The Committee would welcome consideration of whether any additional information should be recorded within the inventory.

205. The objectives for the Committee at this stage for the work of the Ministerial Working Group is that the Group:

1. carries out its work as timeously as possible, whilst ensuring a thorough review is completed across the relevant building stock in Scotland; and
2. reviews current building and fire safety regulations in Scotland in light of Grenfell and make any necessary changes to ensure that the risk of any similar tragedy is minimised to the fullest degree that is possible.

206. We also seek confirmation that the key themes arising in the Committee's work and set out above will be considered as part of the Ministerial Working Group's ongoing work.

#### **KEY QUESTIONS FOR THE PARLIAMENT DEBATE**

1. Is the focus and remit of the Ministerial Working Group the right one?
2. Is the membership of the working group correct or should there be additions?
3. What are members' views on the initial findings of the Working Group?

# Annexe A - Note from SPICe on Building Standards in Scotland

## Background

Building Regulations set out legal requirements for the design, construction, demolition or conversion of buildings and the provision of associated fittings, services and equipment. Building Regulations exist to provide minimum standards for the health, safety, welfare and convenience of people in and around buildings, and for the conservation of energy. Current standards are set out in the Building (Scotland) Regulations 2004, as amended.

Building Regulations establish “functional standards”. Each standard defines a particular function that a new building must be able to accommodate, e.g. Building Standard 2.2 states:

### “Standard 2.2

Every building, which is divided into more than one area of different occupation, must be designed and constructed in such a way that in the event of an outbreak of fire within the building, fire and smoke are inhibited from spreading beyond the area of occupation where the fire originated.”

This illustrates how standards establish how a building should perform in the event of a fire, rather than how that requirement should be achieved. The Scottish Government provides detailed guidance on achieving building standard requirements in regularly updated technical handbooks, for both domestic and non-domestic properties.

Whilst compliance with building standards is mandatory, the choice of how to meet them lies with the building owner. The technical handbooks provide practical guidance to building industry professionals on meeting building standards. If the guidance is followed in full, then the local authority verifier should approve any building warrant without any need for amendment.

A developer can use alternative methods of compliance provided they fully satisfy the regulations. Failure to comply with the technical handbook does not render a person liable to civil or criminal procedures, but proof of compliance with the guidance may be relied on in any proceedings as tending to negative liability for an alleged contravention of the building regulations. Generally, developers choose to follow the advice in the Technical Handbooks, as proving compliance through other means can be difficult and costly.

## How does the building standards system work?

The building standards system currently operates under the provisions of the Building (Scotland) Act 2003. This section briefly outlines how the system operates in practice.

- Prior to starting building or demolition work a “building warrant” must be obtained by the person proposing to do the work.
- Local authority building control officers are responsible for issuing such warrants, which will only be issued after the building control officer is satisfied that the proposed building work meets the required building standards.

- Work can start immediately after a warrant has been granted.
- The local authority has a right to inspect work in progress to check that the warrant is being complied with.
- Any changes proposed after the issue of a warrant must be discussed with the local authority and, if necessary, an amendment to the warrant should be applied for.
- On completion of the building work a relevant person (generally an owner, developer or contractor) may apply to the local authority for a “completion certificate”. Prior to issuing this certificate, the work may be inspected by a building control officer for compliance with the warrant. If the work complies then a completion certificate will be issued, where the work does not meet the requirements of the warrant the building control officer will advise what remedial measures are required to ensure compliance.
- A building cannot be occupied unless a completion certificate has been issued.

It is important to note that the issue of a completion certificate is not a guarantee of the quality of any building work, it is simply an acknowledgement that the work carried out complies with the terms of the building warrant and with building regulations. Building regulations do not control many aspects of quality.

A more detailed description of how the system operates can be found in the Scottish Government's [Building Standards Customer Journey](#) booklet.

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