

**PARTIAL BUSINESS AND REGULATORY IMPACT
ASSESSMENT**

**COMPLIANCE PLAN AND INTRODUCTION OF COMPLIANCE
PLAN MANAGER ROLE ON HIGH RISK BUILDING TYPES**

BUILDING STANDARDS DIVISION

Contents

1. TITLE OF PROPOSAL.....	3
2. PURPOSE AND INTENDED EFFECT	3
2.1 Background	3
2.2 Objective and rationale.....	4
2.3 Definition of High Risk Building Types.....	6
3. CONSULTATION	6
3.1 Within Government.....	6
3.2 Public Consultation.....	7
3.3 Business.....	7
4. OPTIONS	8
4.1 Options proposed	8
4.2 Sectors and groups affected.....	8
4.3 Costs	10
5. SCOTTISH FIRMS IMPACT TEST	10
6. COMPETITION ASSESSMENT	10
7. CONSUMER ASSESSMENT	11
8. TEST RUN OF BUSINESS FORMS	11
9. DIGITAL IMPACT TEST.....	11
10. LEGAL AID IMPACT TEST	11
11. ENFORCEMENT, SANCTIONS AND MONITORING.....	11
12. IMPLEMENTATION AND DELIVERY PLAN.....	12
12.1 Implementation	12
12.2 Implementation Period.....	12
12.3 Post-Implementation Review	13
13. SUMMARY	13
13.1 Summary Costs and Benefits Table	13
13.2 Recommendation	14
14. DECLARATION AND PUBLICATION	14

Interim Business and Regulatory Impact Assessment

1. TITLE OF PROPOSAL

Compliance Plan and the introduction of a Compliance Plan Manager role on High Risk Building (HRB) types

2. PURPOSE AND INTENDED EFFECT

2.1 Background

The existing building standards system and the identified issues

The building standards system in Scotland operates under the Building (Scotland) Act 2003, introduced in 2005 and is a pre-emptive system, carried over from the previous building standards system administered under the Building (Scotland) Acts of 1959 and 1970. This means that before any work, that requires a building warrant can start, the building warrant must be submitted to the relevant local authority verifier for assessment and approval against the Mandatory Functional Standards.

To comply with the mandatory functional standards, Scottish Ministers publish national guidance through the Building Standards Division, the principal document being the Technical Handbooks, of which there is one for domestic buildings and one for non-domestic buildings. These provide details on how the mandatory standards can be achieved. There is no requirement to follow the published guidance as it offers only one possible way to comply with the mandatory functional standards. However, it is the most common way of demonstrating compliance as following the guidance can be relied on in any legal dispute as 'tending to negate liability' for an alleged contravention of the building regulations.

Only once satisfied that the proposals meet the requirement of the standards, the verifier will issue an approved building warrant signalling that works can now legally proceed on-site. Along with the approved building warrant, which includes the stamped and approved drawings, the verifier creates and issues a Construction Compliance and Notification Plan (CCNP) in line with a nationally adopted risk assessment methodology contained in the Verification During Construction Handbooks, produced by Local Authority Building Standards Scotland (LABSS) and the Building Standards Division.

The current CCNP details the construction stages that the verifier requires evidence of compliance with the standards. The CCNP sets out the appropriate methods of providing the evidence. This is generally by way of on-site inspections by the verifier, but may also include digital evidence, testing records and other forms of certification as agreed with the verifier.

At this point, once the building warrant has been approved, it is the legal responsibility of the 'Relevant Person' (normally the building owner or developer) to undertake works on site in accordance with the approved building warrant and more generally the building regulations.

The current system provides a statutory obligation for the 'Applicant' to notify the LA verifier of their intention to commence work on site. The 'Model Form J - Notice Regarding Start of Work', is sent to the 'Applicant' with the approved building warrant and associated CCNP.

The final process involves the Relevant Person, or their duly authorised agent, submitting the completion certificate submission (CC) application to the verifier with a declaration that all works have been carried out in accordance with the approved building warrant and the building regulations. However, at present there is no requirement to demonstrate how the RP or duly authorised agent has ensured that works have been carried out in accordance with the building warrant and building regulations. The CC submission process also includes 'reasonable inquiry' by the verifier (as per the CCNP) that the work has been carried out in accordance with the building regulations and if satisfied, a notice of acceptance of completion certificate is issued. It is an offence to occupy a new building, a conversion or an extension unless the relevant completion certificate has been accepted. It is, however, possible to obtain permission for temporary occupation of use but this will be limited for a specified period of time.

CCNPs were introduced in 2012, some years after the introduction of the Building (Scotland) Act 2003, in order to provide developers and verifiers with a clear view of when verifier inspections should take place using a risk based approach to inspections to enable verifiers to maximise their effectiveness in deploying their resources for the monitoring of building work. However, the Compliance and Enforcement Panel felt that there was a need for a more robust approach to compliance planning and documented evidence of compliance in the form of a Compliance Plan.

2.2 Objective and rationale

A New strengthen approach to compliance with the building standards and regulations

Building Standards Division (BSD), is developing a national Compliance Plan approach to provide greater assurance that compliance with building regulations is achieved from design to completion.

Following the tragic fire at Grenfell Tower in 2017, where 72 people lost their lives, and the collapse of an external wall at Oxfords primary school in Edinburgh, a Ministerial Working Group was set up to review building and fire safety regulatory frameworks. The Group commissioned two review panels for building standards; Compliance and Enforcement and Fire Safety that subsequently published their own recommendations. As part of the Compliance and Enforcement review, consideration was given to issues and findings from the independent inquiries into the construction of both Edinburgh Schools (Cole Report) and the DG One leisure complex in Dumfries.

This included the importance of site inspections and supervision and the role, responsibilities and competence of different persons involved in building projects.

Professor Cole stated in this report “It is clearly the legal responsibility for the building owner or developer to comply with the Building Regulations and it should be expected of them to have appropriately expert inspection during the course of the construction. However, as has unfortunately been shown, it is insufficient for Building Standards services to rely on the signing of a completion certificate by the owner / developer as confirmation of compliance.”

In the 2018 Compliance and Enforcement Consultation, question 1.9 asked:

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

The majority (84%) of respondents agree that the building owner or developer should be required to appoint a competent professional person, with the appropriate experience and qualifications, to act on their behalf in order to assure them of compliance when they submit the completion certificate. Enhancement by incorporating previous views of named individuals that are accountable when a lack of compliance is later identified would also be valued. Again, the group most disagreeing is ‘Construction firm/contractor’. Many of the 112 who provided additional information in support of their response highlight a perceived need for defining the qualifications, responsibilities and scope of the competent professional person role.

This consultation seeks to further develop the recommendations of the Compliance and Enforcement review panel recommendations, specifically on defining which building types should be classed as High Risk Buildings (HRBs) and the requirement for the Relevant Person to appointment of a ‘Compliance Plan Manager’ (a suitably qualified person acting on their behalf).

It is proposed that a Compliance Plan must be developed by the applicant, then submitted and agreed by the verifier at the outset of every project and will be used to demonstrate, through the collection of evidence and documentation how the risk of non-compliance has been minimised and also the verifier’s reasonable inquiry requirements have been met.

All parties involved in a project must be able to provide the necessary written assurances and documentation to the Compliance Plan Manager (CPM) — a proposed oversight role appointed and acting on behalf of the Relevant Person (RP) — throughout the project as well as at the completion stage. The CPM will collate and interrogate the evidence to support the compliant construction and completion of approved building warrant works. They will provide the necessary assurances, in the form of a fully discharged Compliance Plan, to the RP to permit the competent submission of the completion certificate to the verifier either by the relevant person or the CPM acting as their agent.

2.3 Definition of High Risk Building Types

The intention is to strengthen compliance across all building types with the Compliance Plan approach but also introduce a requirement for independent professional oversight — a Compliance Plan Manager — on High Risk Buildings to manage the compliance process from start to finish. This work has concentrated on application to high risk buildings (eg. high rise residential, high public value: schools, healthcare facilities) but this may be extended in the future to apply to a wider range of buildings types. The consultation also seeks to establish views on the definition of buildings that should be classed at High Risk Building Types.

3. CONSULTATION

3.1 Within Government

Before making or amending provisions within the building standards system, Scottish Ministers are required, under section 1(2) of the Building (Scotland) Act 2003, to consult “such persons as appear to them to be representative of the interests concerned”.

Prior to public consultation on proposed changes, this duty is discharged through the development of proposals by a Departmental Working Group, comprising of officials and representatives of industry, together with communication with other parts of Government and representative organisations of the construction industry. This is intended to ensure that proposals are proofed against: cost implications, technical feasibility, flexibility in achieving the desired policy, confliction with other regulatory requirements and the wider societal impact of proposals relative to the occupation and use of buildings.

Prior to public consultation, four Building Standards Working Groups were held between October 2020 and June 2021. The group discussed the reality of why non-compliance occurs, something which has been described as a systemic issue within the construction industry.

The Group’s remit was:-

- To make recommendations for a system which would provide greater assurance that the need, and legal responsibility, to comply has been understood by building owners, designers, contractors and then supported by verifiers from concept to completion.
- To review the existing approach to compliance, identifying strengths and weaknesses, to identify and recommend potential changes that could strengthen the compliance system.
- To consider the roles and responsibilities of those involved in the process, including skills needed to undertake particular roles or new roles, including the independence and reliability of oversight during construction.

- To consider whether a strengthened approach to compliance should focus on high risk projects and safety critical elements or whether the approach should be tailored to apply to all.
- To develop and make recommendations for a potential new Compliance Plan approach, including on the status needed within the building standards system to deliver the most effective outcome.
- To consider and recommend the best way of implementing a new Compliance Plan to have maximum effect, including associated procedures and enforcement.
- To consider what should be done in Scotland to embed a stronger culture of compliance throughout the construction industry.

3.2 Public Consultation

A public consultation 'Building Standards Compliance and Fire Safety – a consultation on making Scotland's buildings safer for people' was carried out between July to September 2018.

The responses were supportive of change to strengthen current building standards guidance to improve building quality, compliance and enforcement (Building Standards Compliance and Fire Safety Consultation Analysis Report December 2018). Eighty two percent of respondents agreed that a Compliance Plan should be provided to demonstrate compliance with the building regulations from concept to completion.

During the 2018 consultation, a question was asked on the requirement to appoint a competent professional person, with the appropriate experience and qualifications, to act on behalf of the Relevant Person to assure them of compliance when they submit the completion certificate. The majority of respondents (84%) agreed that the Relevant Person (normally the building owner or developer) should be required to appoint a competent professional person, with the appropriate experience and qualifications, to act on their behalf in order to assure them of compliance when they submit the completion certificate. This consultation seeks to develop and gather views on the Compliance Plan Manager, an oversight role, to be required on all new HRBs,

As noted in 3.1, to develop the policy proposals, a Government Working Group was established in October 2020 and four Working Group meetings have been held prior to the consultation. The Working Group is made up of industry stakeholders and academia and the group will continue to inform and assist in the development of the policy beyond the consultation.

3.3 Business

We established a Working Group with representation from industry, academia and local authorities to develop the proposals. Details of the Working Group are set out preceding paragraphs.

4. OPTIONS

4.1 Options proposed

There are two options in the regulatory framework to consider.

Option 1 – **Do nothing;**

Option 2 – **Introduce a requirement for a new Compliance Plan and Appointment of Compliance Plan Manager on High Risk Buildings**

4.2 Sectors and groups affected

- a) Building owners/developers – These proposals seek to ensure that building owners and developers are aware of their legal responsibility to ensure compliance with building regulations. This would involve building owners and developers ensuring that they have appropriately considered the risks involved in their project and have detailed this in a Compliance Plan. Building owners and developers will also have to appoint an appropriate construction professional in the form of the CPM to act on their behalf. This is to provide the necessary assurances that compliance has been achieved to support the competent submission of a completion submission at the end of the project.
- b) Building designers/constructors - All those involved with building design and construction would have to familiarise themselves with the new strengthened process and ensure that construction and appropriate inspection and documentation is made available to the Compliance Plan Manager to evidence how Compliance has been achieved and provide greater assurance that the risk of non-compliance has been minimised.
- c) Verification - Local authority verifiers will be affected as the strengthened Compliance Plan process and professional oversight in the form of a Compliance Plan Manager should result in increased levels of notification of work for verification inspection at the required stages and this will increase the number of inspections undertaken by verifiers.

The proposed Compliance Plan approach seeks to define and implement an appropriate and robust assurance regime to demonstrate that the duty imposed on the Relevant Person, under the Building (Scotland) Act 2003, is being managed robustly at both design and construction stage. This will give greater and better evidenced assurance that the outcome of works will be a compliant building.

Option 1 – do nothing

This option would not change the position for industry and prospective building owners/occupiers/users.

Option 2 – Introduce a requirement for a new Compliance Plan and Appointment of Compliance Plan Manager on High Risk Buildings

Reducing the risk of non-compliance with better oversight, evidence recording and monitoring

This option would require the development of a Compliance Plan to be submitted with the building warrant clearly setting out how compliance with the building regulations and standards will be approached.

At present the local authority verifier produces the Construction Compliance and Notification Plan (CCNP) setting out the inspection that the verifier intends to inspect and requires notification of all stages as detailed by the verifier. At present the CCNP is not well understood and in many cases the CCNP is not fully achieved usually as a result of lack of notification at the identified stages. The benefit of the proposed CP is that it would be developed by the CPM and designer. In doing so, this would make the process more visible and better understood by those involved. Therefore it is more likely that compliance would be better considered and evidenced from start to finish giving greater assurance that the risk of non-compliance has been minimised.

The appointment of the CPM on high risk building types, acting on behalf of the Relevant Person, would ensure there is continuity of appointment of a construction professional responsible for ensuring the Compliance Plan developed at the start of the process has been managed through to the completion of the project. The CPM would provide the Relevant Person with the necessary assurances needed to competently submit the completion certificate to the verifier which confirms that all work has been carried out in accordance with the approved building warrant and more generally the building regulations.

Option 2 offers a significant benefit of a more informed approach to compliance with the building regulations with enhanced professional oversight providing greater assurance through improved record keeping and monitoring that the risk of non-compliance with the building regulations has been minimised leading to a reduction in rework costs or resulting a building being closed as a result of detected non-compliance.

This would be a requirement on all HRBs and without the development of the CP by the CPM and the CP being fully discharged, the Relevant Person would be unable to obtain a completion certification submission acceptance from the verifier until evidence of how compliance has been achieved can be provided.

Monetised Benefits

4.3 Costs

Option 1 - Do nothing

There are no implementation costs associated with this option.

Option 2 - Cost of new guidance and familiarisation

Cost to industry is currently being considered by an external contractor.

There are approximately 560 building standards professionals in Scotland. The time impact per person should be no more than 4 hours on training and familiarisation. Therefore, based on an average hourly rate of £21.50 per hour (based on £16.50 average hourly wage plus 30% overhead costs), the total one off cost for building standards professionals would be $560 \times 4 \times £21.50 = £48k$.

However, this can be off-set against Continued Professional Development requirements. For example, building standards professionals (verifiers) architects, architectural technologists, energy consultants may incur no additional costs as professional institutions demand at least 25 - 40 hours Continued Professional Development as part of their professional membership criteria.

According to Businesses in Scotland 2018, there are an estimated 20,355 enterprises in Scotland working in the Construction sector. Assuming one person from every enterprise in Scotland spends 1 hour familiarising themselves with the guidance at a rate of £8.75 per hour, the total cost of familiarisation cost would be £178k. Again, for many of these individuals, such activity may form part of mandatory CPD activity where their professional activity includes working to building regulations.

5. SCOTTISH FIRMS IMPACT TEST

No current actions undertaken re: face to face meetings. Impacts will be informed from the consultation exercise with a specific question relating to impacts on business.

6. COMPETITION ASSESSMENT

As the proposals will form part of the national building standards system, they will be implemented uniformly throughout the country. It is not envisaged that the means of complying with the building regulations will impact on competition between companies.

Having reviewed the four competition filter questions provided within the Office of Fair Trading guidelines for policy makers on competition assessment we are satisfied that the proposed changes to the building standards and guidance will not impact on competition within the market place.

7. CONSUMER ASSESSMENT

The proposals may have an adverse impact on consumers as they will result in increased construction costs, of which at least some, if not all, could be passed onto the ultimate owner of a dwelling (who may in turn pass this onto any tenant, if applicable). However it may also have a positive impact as it should improve compliance and reduce the likelihood of later costs of correcting non-compliant work.

8. TEST RUN OF BUSINESS FORMS

There will be updated forms as part of the development. We are undertaking a trial project with Fife Council on a new learning campus in Dunfermline. Testing and development of forms and processes are currently ongoing.

9. DIGITAL IMPACT TEST

Compliance Plan is digital, accessible to CPM, design team and verifier and we would suggest the client at all times, and potentially issued with CC, set approved plans, Fire safety design summary etc. The E-Development portal will require substantial upgrading to allow for the level and type of data which will be submitted in support of compliance evidence. Most significantly, the ability to upload files greater than 5MB is essential.

10. LEGAL AID IMPACT TEST

It is not expected that there will be any greater demands placed on the legal system by this proposal. Accordingly, it is not considered that there will be any effect on individuals' right of access to justice through availability of legal aid or possible expenditure from the legal aid fund.

11. ENFORCEMENT, SANCTIONS AND MONITORING

Work subject to the Building (Scotland) Regulations 2004 generally requires that a building warrant must be obtained before work can start, unless it is an exempt type, or a type not requiring a warrant.

On completion of the work for a new building, the Compliance Plan and a completion certificate certifying compliance with the building regulations must be signed and submitted by the 'relevant person' to the local authority. Only if the certificate is accepted by the local authority can such a building be occupied. The 'relevant person' responsible for the building work is defined in section 17 of the 2003 Act.

Where a building warrant is required, the proposals are subject to scrutiny of the verifiers prior to their granting a building warrant and risk based inspections through reasonable inquiry are undertaken by the verifier prior to acceptance of a completion certificate. However responsibility for ensuring compliance with the building regulations rests with the relevant person and they must ensure they have a system of checks in place to monitor compliance throughout the lifespan of the project. The 32

Scottish local authorities have enforcement powers under the Building (Scotland) Act 2003 which can be used where non-compliance with the approvals and building regulations is identified however at present this is not well used by local authorities due to the perceived complexities, resources required, success rate and relatively low fines attributed under the existing legislation. Cases of non-compliance can be referred to the Procurator Fiscal and persons found guilty of offences in terms of the Act are liable on summary conviction to a fine not exceeding level 5 on the standard scale which at present is £5000. Local authorities can also undertake enforcement work themselves and recover their costs from the building owner.

12. IMPLEMENTATION AND DELIVERY PLAN

12.1 Implementation

The proposal will be taken forward by new published guidance in the form of a National Compliance Plan Handbook which we envisage will have same status as the Technical Handbooks and as such this new publication will sit alongside these existing documents as an extended suite of Building Standards publications.

This information will be made available free of charge, as an electronic download from the Building Standards Division (BSD) website, www.gov.scot.

The Scottish Government will publicise the Compliance Plan Handbook on the Building Standards section of the Scottish Government website and by issuing a building standards eNewsletter/alert to stakeholders. The Scottish Government will also notify all local authorities of the changes.

12.2 Implementation Period

We intend to have a 6 month lead in period after the publication of the Compliance Plan Handbook to allow industry to familiarise themselves with the new processes. At present we expect that the requirements for the Compliance Plan and the appointment of a CPM on HRBs would come into effect in 2023. The proposed changes to the building standards system are relevant to any party responsible for building work that is subject to the building regulations. However it is only on HRBs where there will be a necessity to appoint a CPM.

Stakeholders will be made aware of these changes at the earliest opportunity and ideally at least three months prior to their introduction. The major stakeholders who will be affected by this proposal have been involved in the Working Group.

12.3 Post-Implementation Review

12.4 There will be continuous monitoring of the implementation of the proposals through feedback from the local authority verifiers, designers, manufacturers and building owners. These stakeholders are in regular contact with Building Standards Division, and any issues identified will offer a broad view of how proposals are being implemented, if the objective is being achieved and how it is working in practice. Issues raised in this manner become a matter of record and are used to inform any future review.

12.5 As part of the delivery plan a formal post-implementation review will take place within 10 years of these provisions being applied.

13. SUMMARY

13.1 Summary Costs and Benefits Table

At this stage the cost and benefits are not known. Building Standards Division have appointed an external research contractor to undertake a cost benefit analysis of the proposed Compliance Plan Manager role. It is expected that this information will be available by the end of 2021 and will inform the final BRIA.

Option	Total benefit per annum: - economic, environmental, societal	Total cost per annum: - economic, environmental, societal - policy and administrative
Option 1- Do nothing	No additional benefits accrue	No cost associated with action
Option 2 – Introduce a requirement for a new Compliance Plan and Appointment of Compliance Plan Manager on High Risk Buildings	[To be completed when policy direction known] The Compliance Plan process and CPM role will reduce the risk of non-compliance with the building standards. This will reduce redo and repair works, reduce the likelihood of building closures or the delayed opening of buildings as a result of non-compliance such as schools and hospitals which has significant social benefits and ensure new building conform to environmental and energy building standards which will	To be completed post consultation.

	help deliver environmental and carbon emission benefits.	
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13.2 Recommendation

We consult on proposals to introduce a requirement for a Compliance Plan, and on High Risk Buildings the appointment of a Compliance Plan Manager, to be adopted as the new process, subject to responses, to strengthen the building standards system and reduce the risk of non-compliance.

14. DECLARATION AND PUBLICATION

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.



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